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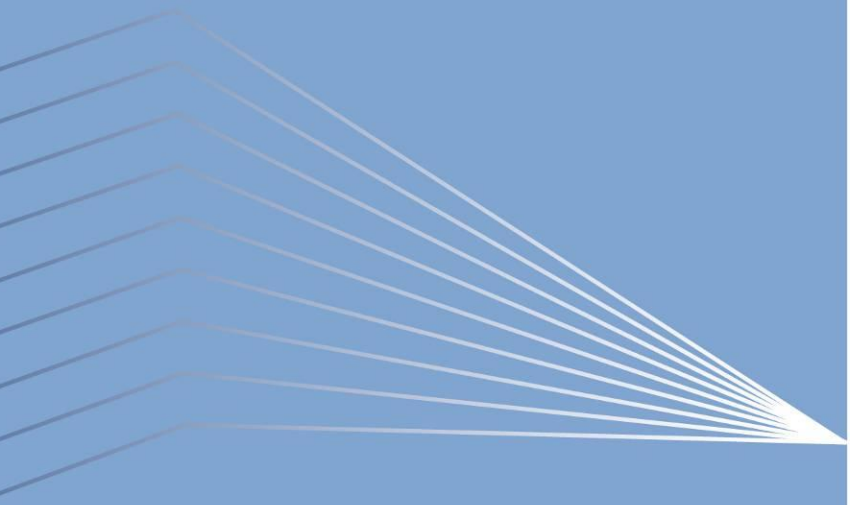

FCPA Digest

Cases and Review Releases Relating to Bribes to Foreign Officials under the Foreign Corrupt Practices Act of 1977

JANUARY 2013

SHEARMAN & STERLING LLP

FCPA Digest of Cases and Review Releases Relating to Bribes to Foreign Officials under the Foreign Corrupt Practices Act of 1977

(January 2, 2013)

Shearman & Sterling LLP

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Editorial Board

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

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In our last *Trends & Patterns*, we noted that the year had been "a fairly slow time" in terms of enforcement actions. The second half of the year hasn't changed that story—since July, the government has brought only five additional enforcement actions—*Pfizer/Wyeth*, *Tyco International*, *Oracle*, *Allianz*, and *Eli Lilly*. This may be explained by the various pending motions in cases against individuals and, as we noted earlier, the DOJ, in particular, has been busily clearing away some previous cases with pleas, dismissals, and sentencings. Obviously, the most significant act of the last half of 2012 was the release of the long-awaited U.S. guidance on the FCPA, *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (the "*Guide*"), much of which confirms our reading of the tea-leaves of previous enforcement action, including some of the more disturbing positions that we have identified in our previous *Trends & Patterns*.

Among the highlights:

- Over $260 million in penalties in 2012, but the average penalties ($21.7 million) and the adjusted average ($17.7 million) were both considerably down from previous years;
- Significantly fewer new cases against individuals;
- Few appointments of independent monitors, with an emerging default of self-monitoring and reporting;
- A wealth of sentencings, with widely disparate results, reflecting in part differing judicial attitudes to the FCPA and white collar crimes in general;
- Continued aggressive theories of jurisdiction and parent-subsidiary liability;
- Comprehensive (but not groundbreaking) official guidance on the FCPA from the DOJ and SEC, as well as revisions to guidance on the U.K. Bribery Act previously issued by the U.K. enforcement authorities; and
- Increased enforcement outside the United States and the likely adoption of deferred prosecutions in the United Kingdom.

Enforcement Actions and Strategies

Statistics

In 2012, the government brought twelve enforcement actions against corporations: Marubeni, Smith & Nephew, BizJet/Lufthansa Technik, Biomet, Data Systems & Solutions, Orthofix, NORDAM, Pfizer/Wyeth, Tyco International, Oracle, Allianz, and Eli Lilly.

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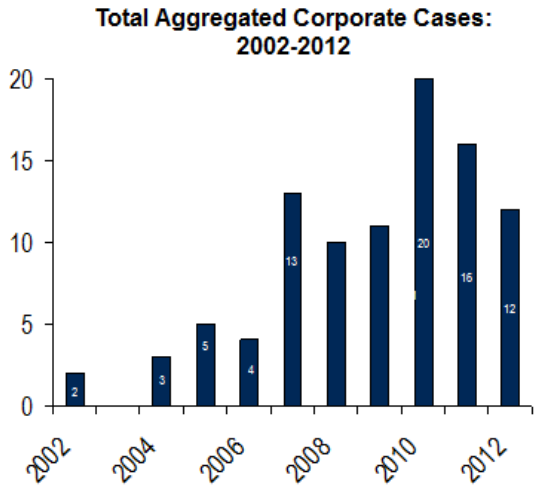
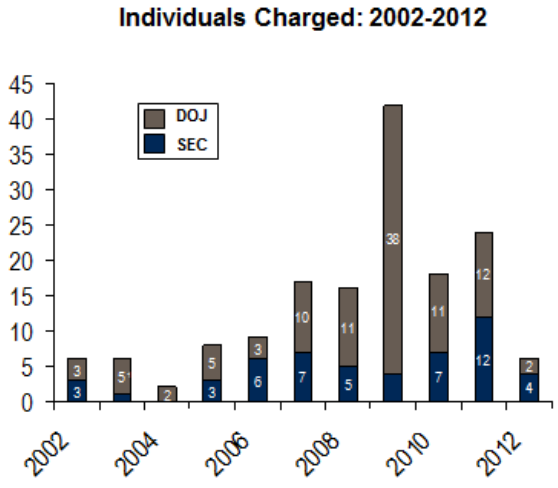


This pace of enforcement actions is slightly down from previous years, which have seen annual totals averaging fourteen cases per year since 2007. Interestingly, in contrast to previous years, less than half (five) of these matters were parallel enforcement actions with coordinated actions brought by the SEC and the DOJ. Of the remaining, the DOJ slightly edged out the SEC, with four independent actions (*Marubeni*, *Bizjet/Lufthansa*, *Data Systems*, and *NORDAM*) against three from the SEC (*Oracle*, *Allianz*, and *Eli Lilly*) (all of which were brought in December). Although the pace was slightly down this year, a substantial number of companies have announced new investigations during the past year, and some have publicly announced reserves for enforcement fines, suggesting that they are close to a settlement. In addition, the several industry sweeps—pharmaceuticals, medical devices, sovereign wealth funds, China media sales—have been out for some time, and it is likely that some of them may bear fruit in the near term. Indeed, this year has seen five enforcement actions against medical device and pharmaceutical companies and one declination (Grifols S.A./Talecris).

This year saw a substantial drop in actions against individuals, with only five individuals having been charged in 2012. One of those individuals, *Cecilia Zurita*, was added to the existing *Haiti Telecom* case. Three more individuals, *James Ruehlen*, *Mark Jackson*, and *Thomas O'Rourke*, all of whom were charged by the SEC, are all current or former executives of *Noble Corporation*, which settled with the SEC and the DOJ in 2010. Thus, the only truly new case is that brought by the DOJ and the SEC against the former Morgan Stanley employee, *Garth Peterson*. We note, however, that the government took special pains in several of the corporate cases to identify a number of executives by title and make specific allegations concerning their participation in illegal acts; it is possible that the government may proceed against some of these individuals in the future, even several years after the corporate settlement, as it did with the *Noble* executives this year and the *Siemens* executives last year. Further, there remains a considerable pipeline of



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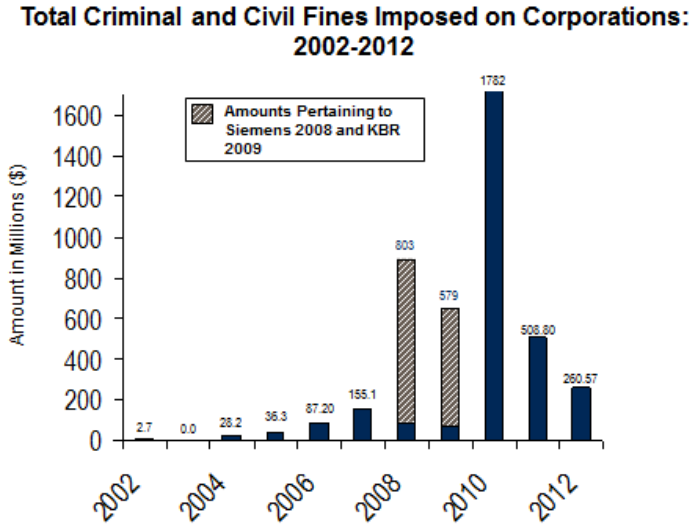
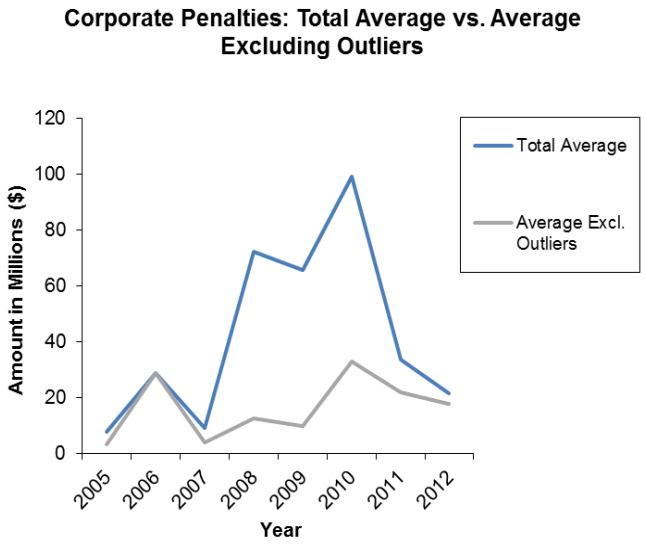
individuals awaiting trial (albeit some of them are fugitives or have not been served), including at least seventeen defendants in DOJ cases and at least eleven defendants in SEC cases.

On the penalties side, the corporate penalties assessed in 2012 are consistent with those imposed in previous years. Altogether, the government collected $260,571,467 in financial penalties (fines, DPA/NPA penalties, disgorgement, and pre-judgment interest) from corporations in 2012. This equates to an average of $21.7 million per corporation with a range of $2 million (*NORDAM* and *Oracle*) to $54.6 million (*Marubeni*) and $60 million (*Pfizer/Wyeth*). *Marubeni* and *Pfizer*'s penalties are, each respectively, over twice that of any of the other companies. *Marubeni* was part of the *TSKJ* cases, which have yielded over $1 billion in total fines to date, and *Pfizer* saw enforcement actions against three different entities, regarding two wholly different courses of conduct which took place in at least eleven countries. *NORDAM* received a significant discount on the basis of potential insolvency, and in *Oracle* the SEC did not specifically allege bribery but only books-and-records and internal controls violations. Therefore, a more accurate average, with those four outliers removed, is $17.7 million. Both of these numbers, in fact, compare favorably with previous years. For example, using the same criteria, the averages in 2011 were considerably greater, at $33.8 million (total average) and $22.1 million (average with high and low outliers removed).





On the individuals side, one of the individuals, *Zurita*, is a fugitive and two others, *Ruehlen* and *Jackson*, are pending trial (although the court recently significantly limited the penalties available unless the SEC cures certain statute of limitations issues in an amended complaint). The other *Noble Corp*. defendant, *O'Rourke*, is presumably cooperating and has settled with the SEC for the relatively

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modest fine of $35,000. The one new criminal defendant, *Garth Peterson*, was sentenced to nine months of incarceration and three years of supervised release. This sentence was a significant departure from the Sentencing Guidelines, which recommended a sentence of fifty-seven to seventy-one months.

As noted below, the courts have imposed widely disparate sentences in FCPA cases. In *Peterson* the court noted Peterson's harsh upbringing as one reason for the lenient sentence and further noted, in a statement that is likely to cause some controversy, that significant periods of incarceration are not necessary to deter white collar criminals because they are more likely to weigh any potential gain from criminal conduct against the risks of conviction. In addition, in the parallel SEC case, Peterson agreed to disgorge approximately $3.6 million, including $241,589 in cash and his shares in the investment vehicle he shared with the Chinese official—shares that are estimated to be worth $3.4 million. Judge Weinstein considered the sentencing and civil disgorgement together as sufficient to send a message that any bribery of foreign officials would result in a substantial sentence and significant financial penalties.

In contrast to the relative dearth of new enforcement actions against individuals in 2012, numerous individuals pleaded guilty, were convicted, or were sentenced for their guilty pleas and convictions related to enforcement actions from previous years. *Jean Rene Duperval*, *Haiti Telecom*'s former head of international relations and the first ever foreign official to stand trial in connection with offenses related to a violation of the FCPA, was convicted of twenty-one money-laundering counts.[1] The government was also able to resolve the *CCI* case almost in its entirety, with four of the five remaining defendants pleading guilty this year: *Stuart Carson*; his wife *Hong Carson*; *Paul Cosgrove*; and *David Edmonds*. The only remaining *CCI* 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. Meanwhile, a total of sixteen individuals were sentenced: *Peterson*, the four *CCI* defendants who pleaded guilty this year, three from *Latin Node* (*Manuel Caceres*, *Juan Pablo Vasquez*, *Manuel Salvoch*), three from *KBR* (*Wojciech Chodan*, *Jeffrey Tesler*, *Albert Jackson Stanley*), three from *Haiti Telecom* (*Robert Antoine*, *Jean Rene Duperval*, *Patrick Joseph*), one from *ABB* (*Fernando Maya Basurto*), and one from the *SHOT-Show* cases (*Richard Bistrong*). Sentences ranged from one year probation for *Chodan* to nine years imprisonment for *Duperval*. *Antoine*, who was originally sentenced to four years, received a reduced sentence of eighteen months after prosecutors filed a motion to reduce Antoine's prison term for his cooperation with law enforcement. *Cosgrove* and *Hong Carson* also received reduced sentences comprised only of home confinement and respective fines, with the sentencing judge taking into account Cosgrove's serious health issues, and the fact that Hong Carson "was born in China and lived there until age 26, lacked the American education and early business training of her co-defendants." The DOJ also requested leniency for *Bistrong*, who was involved in the ill-fated *SHOT-Show* cases that were dismissed in their entirety early this year. However, in spite of the government's request for no jail and a "combination of probation,

[1] There have been foreign officials convicted of offenses where the underlying facts reflected bribery (such as Pavlo Lazarenko, the former Prime Minister of Ukraine who was convicted of laundering money obtained through extortion and bribery), but none of those cases have involved underlying or related FCPA charges.

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home confinement, and/or community service," the court (the same court that dismissed the charges against most of the *SHOT-Show* defendants) sentenced Bistrong to 18 months in prison followed by 36 months' probation.

Types of Settlements

As in the past, all of the corporate settlements were in the form of deferred or non-prosecution agreements, with no corporation pleading guilty to an offense. In the *Guide*, the DOJ outlined a range of settlements—plea, DPA, NPA, and declination. Strangely, although the FCPA specifically authorizes the DOJ to bring a civil action for injunctive relief against domestic concerns and "other persons" (non-U.S. companies and nationals), the *Guide* wholly fails to mention such actions as an option. (Maybe this is not so surprising, as the last such action was in 2001 against KPMG's Indonesian affiliate and there have been only six such cases since the statute was enacted.)

Unfortunately, the *Guide* does not provide any specific guidance as to what factors influence the government to choose among the various options. Instead, the *Guide* simply lists the resolution options available to the DOJ and SEC and describes their effect. Indeed, even though the *Guide* provides six examples of matters the government declined, the factors it cites are almost identical to those that resulted in any of the other options. While some of the declination examples in the *Guide* offer subtle distinctions, whether these points of comparison are significant is doubtful. Unfortunately, the *Guide's* attempt to provide more detail to the settlement process, particularly with respect to declinations, has done little to illuminate the government's enforcement policy.

Take for example the case of *Biomet*, a medical products distributor which settled the DOJ's claims through a deferred prosecution agreement in 2012. When making the agreement, the DOJ considered the following factors: (1) timely and voluntary disclosure of the misconduct to the DOJ and SEC; (2) an internal investigation into the misconduct and subsequent disclosure of the investigation's findings to the DOJ and SEC; (3) continued cooperation with the DOJ and SEC; (4) the agreement to and implementation of an enhanced compliance program; (5) continued cooperation with the DOJ and SEC, as well as foreign authorities, into related investigations; and (6) the possible negative repercussions of an indictment. The factors are largely the same cited in other deferred and non-prosecuted agreements entered by the DOJ in 2012, including *Orthofix* and *Pfizer*. By way of comparison, the *Guide's* declination examples recite almost the same factors: (1) the company discovered the misconduct; (2) the company took prompt remedial actions, terminating the relevant contracts and firing the employees who were involved; (3) the company initiated an internal investigation following the discovery and voluntarily disclosed the results to the DOJ and SEC; and (4) the company took substantial steps to improve its compliance program. Little else needs to be said about the lack of contrast between the factors used in the deferred prosecution agreement context and the declination context.

The year introduced an additional factor into the mix, when the DOJ agreed to end *Pride International*'s DPA one year early, to reward the company "for good behavior" in its compliance efforts. This marks the first time the DOJ has terminated a DPA before its term, but the DOJ's motion to dismiss does not

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provide meaningful clues as to why *Pride* was singled out for special treatment. The DOJ's motion to dismiss said simply that Pride "adhered to its compliance undertakings required by the DPA" by (1) instituting and maintaining a compliance and ethics program designed to prevent and detect violations of the FCPA; (2) maintaining internal controls, policies and procedures to ensure that books, records, and accounts are fairly and accurately made and kept; and (3) reducing its reliance on third parties and subjecting third parties to appropriate due diligence requirements. This is virtually identical to the requirements imposed on most companies that settle FCPA violations. We surmise that the answer may lie in the fact that Pride was acquired by Ensco plc in 2011, and the DOJ has found Ensco's assumption of control and responsibility relevant to determining whether further supervision was necessary. This is somewhat reminiscent of *InVision*, where the regulatory investigations of potential violations of the FCPA took place when InVision was about to be acquired by General Electric. The DOJ entered into a two-year NPA with InVision, backed up with a letter of understanding with GE limiting the term of the NPA and its monitorship to sufficient time to ensure that GE had completed its acquisition of InVision and fully integrated the company into its compliance program.

Elements of Settlements

Monitors. Only three of the twelve corporations charged in 2012 had independent monitors imposed on them, and in only one case, *Marubeni*, did the DOJ impose a monitor for the full term of the agreement. In two other cases, *Smith & Nephew* and *Biomet*, the companies agreed to a hybrid monitor in which the monitor's term was only eighteen months followed by eighteen months of self-reporting. *Orthofix* appears to be allowed to self-monitor, although the DOJ agreement refers to an "independent review" of its compliance program. In the rest of the cases, the DOJ agreed to allow the companies to self-report and self-monitor for the term of the agreement.

When the DOJ will impose a monitor remains a matter of some mystery. The *Guide* does not provide any particular insight, and recites only generic factors such as seriousness of the offense, pervasiveness and duration of the conduct, adequacy of remediation, etc. How these factors will be applied in a particular case is difficult to predict. For example, *Tyco* had been previously subject to an FCPA enforcement action in 2006. However, when prosecuted a second time, in 2012, the government did not impose a monitor on the repeat offender even though it was charged with a series of illicit schemes operating within approximately twenty different countries. Instead, in spite of the extensive allegations, as well as the guilty plea by one of its subsidiaries, Tyco was permitted to self-monitor.

We have not, of course, heard any companies complain about being allowed to self-monitor as opposed to having an independent monitor imposed on them. However, although self-monitoring clearly provides companies with advantages in terms of managing costs and scope, there are some potential risks: without an independent monitor as an interlocutor the government may play a more proactive role in evaluating the company's monitoring, remediation, and compliance design and implementation. Indeed, *Pfizer's* DPA provides, "If the Department in its sole discretion determines that Pfizer has not fulfilled the commitments outlined in Attachments C.1, C.2, and C.3 [the compliance and monitoring provisions], any

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such failure may be considered, in the sole discretion of the Department, to be a breach of the Pfizer HCP DPA . . . ." This specific reference to the DOJ's active review of the compliance commitments is a departure from the typical language the DOJ uses in its NPAs and DPAs.

Discount. Most of the companies received a generous discount from the Sentencing Guidelines as a reward for their cooperation and settlement. In the medical device cases, two of the three companies received a 20% discount from the bottom of the applicable Guidelines range (*Orthofix* is again the outlier here, with no discount), and *BizJet*, *Data Systems & Solutions*, and *Pfizer* each received a 30% discount to reflect the companies' "extraordinary" cooperation and remediation in their respective cases. *Marubeni* and *Tyco* did not receive discounts, perhaps because the former was the last of the *TSKJ* entities to settle and the latter was a recidivist FCPA defendant. *Biomet* and *Orthofix* yield an interesting comparison: on the one hand, Biomet received a 20% discount even though it only made a "partial" voluntary disclosure but received explicit credit, both in the Guidelines calculation and in the discount, for its substantial assistance in prosecuting other unnamed entities. On the other hand, Orthofix made a full voluntary disclosure, for which it received credit in the Guidelines calculation, but no discount was applied.

Ability to Pay. In *NORDAM*, the DOJ agreed to a reduced penalty on the basis of the company's potential insolvency. According to the NPA, the DOJ agreed to impose a financial penalty of $2 million, "substantially below the standard range" under the Sentencing Guidelines (although it is not clear by how much), because the company fully demonstrated that a penalty exceeding $2 million would "substantially jeopardize the company's continued viability." In the past, the government has allowed for payments of FCPA-related corporate penalties in installments, presumably accounting for the financial health of the company. For example, in the case of *Technip*, the company agreed to pay a $240 million penalty in eight equal installments of $30 million. After we published our last *Trends & Patterns*, some of our readers pointed out that the DOJ had recommended a departure from the Sentencing Guidelines (which the judge granted) in *Innospec* due to economic hardship and potential insolvency. Thus, the criminal fine dropped from $101 million to $14.1 million, certainly a substantial reduction. However, the government likely took into account that the aggregate fine, including amounts imposed by the SEC and the U.K. Serious Fraud Office, was over $40 million—approximately 40% of the potential criminal fine. In contrast, potential insolvency seems to have been the only rationale behind the "substantial" discount granted in *NORDAM*.

Collateral Consequences. The DOJ settlements continue to reflect a sensitivity to the collateral consequences of a conviction. In the past, *e.g.*, in *Siemens*, the government carefully chose the entity to charge with bribery, apparently to minimize the risk that the entire corporate family would be debarred from public contracting in the U.S. or in the E.U. In two of the three medical device cases this year (*Biomet* and *Smith & Nephew*), the government explicitly noted as a justification for resolving the cases through deferred prosecution agreements that, "[w]ere the Department to initiate a prosecution . . . and obtain a conviction, instead of entering into this Agreement to defer prosecution, [the company] would potentially be subject to exclusion from participation in federal health care programs . . . ."

Admissions. In January, Robert Khuzami, the Director of the SEC's Division of Enforcement, announced that the SEC would no longer allow companies to settle on a "neither admit nor deny" basis in certain

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circumstances, notably where there are parallel criminal enforcement actions in which the defendants admitted to or were convicted of culpable conduct. Indeed, the defendants in three of the eight SEC corporate actions this year so far, *Biomet*, *Orthofix*, and *Tyco*, each had admitted to certain facts in their respective parallel DOJ actions, and thus none were permitted to settle the SEC actions on a "neither admit nor deny" basis.[2] Interestingly, however, the SEC did permit the companies to admit *only* to what they had admitted in the DOJ cases and not to admit to any of the allegations in the SEC's complaint that went beyond those admissions or addressed different conduct. In contrast, *Wyeth*, which settled with the SEC after it was acquired by Pfizer but whose conduct was not covered by the DOJ's *Pfizer* matter, settled with the traditional "neither admit nor deny," as did the defendants in the three SEC-only prosecutions, *Oracle*, *Allianz*, and *Eli Lilly*.

Approval of Settlements. SEC civil settlements against companies for FCPA violations tend to be approved within thirty days, but in December 2012, a federal judge warned that he wouldn't "rubber stamp" *IBM*'s pending $10 million settlement (which had been signed twenty-one months earlier in March 2011). The SEC settlement with *Tyco*, entered into this year, is also pending approval. Both of these cases are in front of U.S. District Judge Richard Leon, who, during a hearing in December 2012, questioned SEC settlement policies in general and warned that he was among "a growing number of district judges who are increasingly concerned" by these policies. Judge Leon insisted that IBM should be required to report to the court and the SEC annually on (1) its efforts to comply with the FCPA, (2) any future violations of the FCPA, and (3) any new criminal or civil investigations. IBM said that it was willing to comply with the first requirement but that the others were "too burdensome," and the SEC backed IBM's position. Both of these cases have, in fact, been subject to considerable controversy: *IBM* for the disgorgement imposed on an action that alleged only books-and-records violations, and *Tyco* for its status as a recidivist FCPA defendant after its settlement with the SEC in 2006. Moreover, Judge Leon's caution may stem from his experience presiding over the *SHOT-Show* cases (during which he "became intimately acquainted with the corrosive effect of the FCPA on corporate culture") that were dismissed in their entirety this year after two years of mistrials and acquittals. Judge Leon said that he would need to review the data about the cost of the additional reporting requirements, to evaluate whether they would be "too burdensome." With that being said, all three of those reporting requirements were imposed in *Pfizer*'s DPA with the DOJ, so it remains to be seen whether future enforcement actions will reflect Judge Leon's view, or the SEC's seemingly more lenient position.

Dodd-Frank Whistleblowers

In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act added Section 21F to the Exchange Act, providing incentives and protections for whistleblowers who provided information

[2] The SEC enforcement action against *Smith & Nephew*, filed on February 6, 2012, is an exception here—while it did admit to certain conduct in the parallel criminal action, it was allowed to settle on a "neither admit nor deny" basis, presumably because negotiations took place (and the settlement finalized) before Khuzami's January announcement.

concerning violations of the securities laws, including the FCPA, by issuers. Section 21F directs the SEC to provide monetary awards to eligible whistleblowers who voluntarily provide original information leading to a successful SEC enforcement action that results in sanctions exceeding $1 million. Awards range from ten percent to thirty percent of the monetary sanctions collected by the government.

Given the relatively large monetary sanctions frequently associated with FCPA enforcement actions, and because the award is based on a percentage of the *total* sanctions imposed in all related actions, the incentives for whistleblowers are quite significant. In 2012, the SEC released the first Annual Report on the Dodd-Frank Whistleblower Program providing statistical information concerning the 3,001 whistleblower tips received during the program's first year. During that period, the SEC received 115 FCPA related tips, accounting for 3.8 percent of total tips. Although the Report did not break down the FCPA tips by geography, it did note that the SEC received tips from all fifty states, the District of Columbia and Puerto Rico, and from forty-nine countries outside of the United States. Further, over a fifth (seventy-four) of a 324 total foreign whistleblower tips originated from the U.K. During the fiscal year (October 2011 to September 2012), the SEC's Office of the Whistleblower posted 143 notices of enforcement judgments and orders that potentially could qualify for a whistleblower award.

The SEC issued its first award under the whistleblower program in August 2012. The whistleblower provided documents and other significant information related to an ongoing multi-million-dollar fraud and received the maximum award of thirty percent. Motions for additional judgments are currently pending before the court and additional collections resulting from the first action or any increase in sanctions will increase the amount paid to the whistleblower.

Perennial Statutory Issues

Jurisdiction

The expanding scope of the FCPA's territorial jurisdiction over seemingly non-U.S. activity has been a controversial issue in the past few years, but the enforcement actions brought in 2012 were well within the established limits. However, there were some interesting developments in 2012, involving one action brought previously and one matter apparently still under investigation. In late 2011, the SEC sued three former employees at *Magyar Telekom Plc* (*Elek Straub*, *Andras Balogh*, *Tamas Morvai*, all Hungarian citizens) for violations of the FCPA. The defendants filed a motion to dismiss partly based on jurisdiction grounds. While much of the subsequent briefing focused on the personal jurisdiction due process angle (concerning whether the defendants had the requisite minimum contacts with the U.S.),[3] the defendants also argued that the SEC's claim was insufficient for failure to meet the FCPA's territorial jurisdiction requirement for the anti-bribery counts. The defendants argued that the SEC's sole allegation of allegedly

[3] Herbert Steffen (German citizen and former Siemens executive also sued in 2011) also filed a motion to dismiss, but only on personal jurisdiction grounds.

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territorial acts—that one defendant sent and received email messages in furtherance of the bribery scheme "from locations outside the United States but [] routed through and/or stored on network servers located within the United States"—was insufficient as a matter of law. As we noted in last year's *Trends & Patterns* when analyzing the case against *Magyar Telekom* itself, this was an unprecedented expansion of what constitutes territorial acts, and the defendants argued that "the unforeseen and unforeseeable transit of purely foreign email traffic through a U.S. server, guided by a data manager for technological reasons separate and apart from anything the defendants could know, let alone intend, is insufficient to meet the United States interstate commerce element of the FCPA bribery provision, which requires the defendant to 'make use of' those instrumentalities 'corruptly.'" The SEC responded simply that "it is beyond dispute that the use of the internet is an instrumentality of interstate commerce" and that the "corrupt" requirement applies only to the payment, and not to the alleged use of the instrumentalities. The court has not yet ruled.

Litigation is rare in FCPA enforcement actions, and there is very little precedent that might indicate how the courts will determine these issues. However, the courts may consider the acquittal of *Pankesh Patel* (a U.K. citizen) in the *SHOT-Show* cases, where grounds for asserting criminal jurisdiction against Patel were based on a DHL package that Patel sent from the U.K. to the U.S. containing purchase agreements for an allegedly corrupt deal. Following the close of the government's case, Judge Leon dismissed *Patel,* apparently rejecting the government's jurisdictional theory without requiring any briefing, calling it a "novel" interpretation of the FCPA's anti-bribery provisions. As we have previously noted, it is not clear whether Judge Leon's ruling turned on the limits of the FCPA's territorial jurisdiction or was related to the fact that the recipient of the package was a government informant, not a co-conspirator.

Yet another jurisdictional challenge may result if the SEC and DOJ decide to pursue an anti-bribery case against Net 1 UEPS Technologies, Inc. ("Net 1"), a South African company listed on the Nasdaq. Net 1 announced in an SEC filing that it is under investigation for payments to South African government officials that may have violated the FCPA. While Net 1 is clearly subject to the FCPA's accounting provisions, it will be interesting to see whether the authorities have a sufficient territorial jurisdictional hook to bring bribery allegations—after all, the SEC filing appears to indicate that the conduct under question involved a bribe paid in South Africa by a South African employee of a South African company to a South African official of a South African government agency!

Parent/Subsidiary Liability

We have previously expressed concern about the SEC's stretching to holding parent companies liable under the FCPA's anti-bribery provisions for corrupt payments by their subsidiaries, as opposed to the more clearly applicable books-and-records provisions, when the facts alleged in its pleadings do not establish any authorization, direction, or control of the subsidiaries' conduct. Several cases from 2012 demonstrate the issue. In *Biomet*, the SEC charged that the parent company and its subsidiaries paid bribes, and it alleged in detail facts that established the parent's authorization, direction, and control of the subsidiaries' conduct. These allegations included that the parent company was aware of the bribes

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being paid to doctors yet made no effort to stop them. In contrast, in *Smith & Nephew* the SEC alleged that the parent issuer had, "*through its subsidiaries*, violated [the FCPA] by making illicit payments to foreign government officials in order to obtain or retain business." This flat allegation, repeated in several places in the complaint, is not supported anywhere in the factual allegations, which describe in detail a complex scheme of payments entirely orchestrated solely by the subsidiaries and their employees. Similarly, in *Tyco*, the SEC charged the parent company, Tyco International, with bribery, alleging that the parent company "exerted control" over its subsidiaries by "utilizing dual roles for its officers"; *i.e.*, Tyco International's officers served as directors or officials of Tyco subsidiaries. On that thin reed, the SEC characterized a now-divested subsidiary as the parent's agent, alleging that the "dual roles" for its officers demonstrated that it controlled the subsidiary—*even though none of the dual-listed officers had any involvement or, by the SEC's own admission, knowledge of the bribery*.

It is difficult to reconcile these cases with the "authorization, direction, or control" requirement although it might be sufficient for control person liability (which was not charged). This is even more so given that in *Pfizer/Wyeth* the SEC did not bring anti-bribery charges against the parent, stating that the illicit payments made by the controlled Wyeth subsidiary were made "without the knowledge or approval of officers or employees of [parent company] Pfizer." The SEC has not explained the difference between the circumstances in *Tyco* and in *Pfizer/Wyeth*, but it is possible that they chose a different approach because Wyeth was newly acquired by Pfizer and not yet fully integrated into Pfizer's controls.

We have speculated for some time that the SEC was applying an agency theory to the parent-subsidiary relationship that was more expansive than the traditional mantra of "authorization, direction, and control."[4] For example, in a previous SEC enforcement action against *United Industrial Corp.* ("*UIC*") (whose facts are summarized in the *Guide*), the SEC brought anti-bribery charges against the parent company for the actions of its subsidiary, relying on the following: (1) that the CEO of the subsidiary had a "direct reporting line" to the CEO of the parent, UIC, and was identified in the parent's SEC filings as a member of UIC's "senior management; (2) that UIC's corporate legal department approved the retention of the agent responsible for the bribes; and (3) that an official at UIC approved an unusual advance to the agent without inquiring into its purpose. These allegations, without more, however, fail to establish an "authorization, direction, and control" standpoint by UIC where the SEC failed to allege UIC's knowledge of any of the allegedly unlawful payments and seems to have relied solely on the parent's general control over the subsidiary.[5]

In the *Smith & Nephew* pleadings, the SEC does not even attempt to allege "authorization, direction, and control," and the recently issued *Guide* confirms that the government, at any rate, considers the agency

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4 For further discussion on this issue, you may wish to refer to our prior client publication, available at Shearman & Sterling, *The Other FCPA Shoe Drops: Expanded Jurisdiction over Non-U.S. Companies, Foreign Monitors, and Extending Compliance Controls to Non-U.S. Companies* (July 19, 2010).

5 For further discussion on this issue, you may wish to refer to our prior client publication, available at Shearman & Sterling, *Internal Control Failures Lead to Parent Liability for a Subsidiary's FCPA Violations* (June 2, 2009).

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theory to be sufficient without more. In the *Guide*, the government asserted that a parent company may be liable for a subsidiary's conduct in two ways: (i) where the "parent . . . participated sufficiently in the activity to be directly liable for the conduct," *or* (ii) "under traditional agency principles." The *Guide* stands by the notion that the "fundamental characteristic of agency is control"—"including the parent's knowledge and direction of the subsidiary's actions, both generally and in the context of the specific transaction." Thus, the government seems to be saying that it will first determine whether the subsidiary is an agent of the parent, focusing not only on the formal relationship but also on the practical realities of how the parent and subsidiary actually interact, and then apply "traditional principles of *respondeat superior*" to hold the parent liable for the acts of the subsidiary, whether or not specifically authorized, directed, or controlled by the parent. This would, in our view, be a significant departure from existing practice and indeed from generally applicable corporate principles.[6]

Obtain or Retain Business

The "obtaining or retaining business element," also called the business nexus, was largely uncontroversial for the majority of cases in 2012. However, in the *O'Rourke*, *Ruehlen*, and *Jackson* cases against former *Noble* executives, the SEC filed suit on the basis of payments made to officials to avoid import duties. In the *Ruehlen* and *Jackson* case, the court recently denied the defendants' motion to dismiss, relying on *United States v. Kay*, in which the Fifth Circuit held that bribes paid to reduce the tax obligations of a company *could* satisfy the business nexus requirement *if* the payments resulted in reduced operating expenses in a manner directly tied to the company's obtaining or retaining business. As in *Kay,* the court's decision puts the burden on the government in the trial to demonstrate more than a mere reduction in expenses or increase in profits; the government must link the benefits obtained by bribery, here reduced duties, to obtaining or retaining business.

In past *Trends & Patterns*, we have expressed concern that the government had veered away from the important lesson of *Kay* that not every bribe met the business purpose test, and indeed the *Guide* confirms that the business purpose test is "broadly interpreted"—though it does refer to *Kay* for specific guidance. Fortunately, none of the actions brought in 2012 went beyond the scope delineated in *Kay*. Indeed, in many cases the business nexus was very closely related to securing contracts or sales—or was simply a variation thereof. *Pfizer* involved payments that were allegedly made to ensure the registration and reimbursement by government health insurance programs of Pfizer products or the inclusion of Pfizer products in tenders or government-recommended treatment algorithms. In *Pfizer/Wyeth,* employees allegedly used bribes to influence doctors at state-owned hospitals to recommend Wyeth nutritional products, ensure that the products were made available to new mothers at the hospitals, and to secure the

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[6] *See, e.g.*, *Matter of Morris v. N.Y. State Dep't of Taxation & Fin.*, 82 N.Y.2d 135, 141 (1993) ("Generally, however, piercing the corporate veil requires a showing that: 1) the owners exercised complete domination of the corporation in respect to the transaction attacked; and 2) that such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff's injury.").

release of promotional materials for Wyeth nutritional products, which were held in a port because Wyeth failed to secure the required government-issued certificate. Meanwhile, in *Tyco*, the business nexus consisted of removing manufacturing plants from various "blacklists" or "holds," winning specific bids, and obtaining product approval.

Facilitation Payments

Not unexpectedly, *Ruehlen* and *Jackson* raised the facilitation payments exception as a defense against the SEC's complaint, arguing that the payments in question—to accept false documentation allowing drilling rigs to remain in-country without payment of duties—were facilitation payments and, moreover, that the SEC's complaint was deficient as a matter of law because it had failed to allege that the payments were *not* facilitation payments.

The SEC appears to have attempted to anticipate this defense, although somewhat sideways. In its complaint, it notes that Noble Corporation's policy defined a facilitation payment as a "small payment to assure or speed the proper performance of a foreign official's duties that does not involve a discretionary action by such official." It then alleges, "By its terms, the definition excludes large payments, all payments connected with discretionary acts and all payments to induce foreign officials to process and approve false documents." Although the Noble Corporation's definition is consistent with those we have seen in many other companies' policies, notably it is *not* the one found in the statute itself, which provides only that such payments must be "to expedite or to secure the performance of a routine governmental action" and "does not include any decision whether, or on what terms, to award new business or to continue business." *See* 15 U.S.C. § 78dd-1(b), (f)(3)(B). By the time it responded to defendants' motion to dismiss, the SEC appeared to no longer rely on the size of the payments but instead on the non-discretionary nature of the bribe, one of the factors reflected in the 1977 legislative history but not incorporated into the statutory exception in the 1988 amendments. The SEC also argues that "lying on official documents" and basing decisions on "known false documents" cannot be construed as "routine government action."

In denying *Ruehlen* and *Jackson*'s motions to dismiss, the court rejected the defendants' contention that the facilitation payment exception was an affirmative defense, but nevertheless held that the SEC bore the burden of negating the "facilitating payments" exception in its complaint. The court concluded that the exception "is best understood as a threshold requirement to pleading that a defendant acted 'corruptly'" (but made clear that it was not holding that negating the "facilitating payments" exception was *all* that is required to plead that a defendant acted corruptly). The court found, however, that even though the SEC had not affirmatively pled that the payments were not facilitation payments, its allegations that the payments were made to obtain permits based on false documents were sufficient to support the inference that the defendants knew that they were seeking to obtain the permits in an illegal manner and that the payments were therefore not facilitation payments. Interestingly, the court did not reject the SEC's "discretionary act" theory, but it found that the SEC's conclusory allegations were not sufficient to establish the discretionary nature of the foreign official's duties. The court gave the SEC leave to amend its complaint to cure this defect.

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Of course, as the *Guide* makes clear, merely labeling a bribe as a "facilitation payment" does not make it one. For example, in *Pfizer/Wyeth* an illicit payment was recorded as a facilitation payment when its actual purpose was to secure the release of promotional items that were held in port because Wyeth had failed to secure a required Saudi Arabian Standards Organization Certificate of Conformity. Overlooking the failure to meet customs requirements likely would not fall under the category of "routine government action," so "facilitation payment" was a misnomer at best, and an active attempt to conceal a bribe at worst. The *Guide* also emphasizes the exception's focus on the *purpose* of the payment. In *Eli Lilly*, false contracts were signed for services such as "immediate customs clearance" or "immediate delivery" of products. However, according to the SEC, Eli Lilly failed to inquire into how the private third parties intended to perform services that required interaction with government officials, such as expedited customs clearance, and, most importantly, the contemporaneous documents made clear that the Eli Lilly employees viewed the payments as necessary to obtain business.

Instrumentalities

The debate over what constitutes an instrumentality of a foreign government continues.[7] As we noted previously, the argument that, as a matter of law, such instrumentalities are limited to agencies of foreign governments and do not encompass state-owned entities has thus far failed in every instance in which it was presented to a court. It is currently before the Eleventh Circuit in the appeals by *Joel Esquenazi* and *Carlos Rodriguez* in the *Haiti Telecom* case.

The district courts have uniformly held that the nature of the instrumentality is a matter of fact to be decided by the fact-finder, and they have drafted jury instructions to that effect. The results under these instructions have thus far been fairly consistent: the juries in *Lindsay* and *Esquenazi* and *Rodriguez* (*Haiti Telecom*) clearly found the relevant state-owned entities were instrumentalities as part of their verdict, as did the judge in approving the plea in *Nexus* (the court dismissed the *O'Shea* case before it went to the jury).

In the meantime, the government does not appear to have been deterred by the debate. Indeed, in the *Guide*, both the DOJ and SEC reaffirmed the government's prior position that the term "instrumentality" is broad and encompasses both state-owned and controlled entities. The *Guide* reiterates the fact-specific, factor-based analysis previously used by the enforcement authorities and the courts and highlights the need for a flexible analysis that can take into account the variety of manners in which governments are organized and operate through state-owned or controlled entities. While the *Guide* did note that an entity is unlikely to qualify as state-owned or controlled if the government did not own or control a majority of its shares, it also emphasized that there could be exceptions, particularly where the

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7 For further discussion on this issue, you may wish to refer to P. Urofsky & J. Bartlett, *Definition of "Foreign Official" Irrelevant to Compliance Efforts*, Bloomberg BNA/ACCA Compliance Manual: Prevention of Corporate Liability (Dec. 17, 2012).

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government holds status as a "special shareholder" or where most senior company officers were political appointees. However, the fact of minority ownership appears to weigh against finding that an entity is an instrumentality, absent other factors to tip the balance.

In most of the cases brought in 2012, the relevant government officials were employed by "instrumentalities" such as state health insurance plans (*Orthofix*), a state-owned nuclear plant (*Data Systems & Solutions*), government hospitals (*Biomet*, *Smith & Nephew*, *Pfizer/Wyeth* and *Eli Lilly*), a state-owned real estate development company (*Peterson*), a state-owned oil company (*Tyco*), state-owned airlines (*NORDAM*), and unspecified "state-owned entities" (*Allianz*). In each case, the government laid out with more or less detail facts that it believes are sufficient to meet the criteria established by the district courts. For example, in *Pfizer*, the government alleged that the government officials included doctors who held positions on registration committees and other employees of "hospitals, clinics, and pharmacies in countries with national healthcare systems."

Anything of Value

As in the past, companies have given a wide variety of benefits to government officials. Cash was by far the preferred vehicle, but travel and vacations featured prominently as well (*Biomet*, *Data Systems*, *Tyco*, *Pfizer/Wyeth*, *Orthofix*). Evidently to highlight the inappropriate nature of certain gifts and travel, the enforcement authorities at times referenced specific brands (a Cartier watch in *Data Systems*, BlackBerrys in *Pfizer/Wyeth*, a Volkswagen Jetta in *Orthofix*) or specific destinations (Florida and Hawaii in *Data Systems*; Paris in *Tyco*, "international travel" in *Pfizer/Wyeth*). By and large, general descriptions such as "gifts," "entertainment," and "travel" are common, but the three enforcement actions in the *Pfizer/Wyeth* cases contained a veritable laundry list of very specific items of value, including: televisions; cell phones; phone card credits; continuing medical education events; office equipment, such as monitors, photocopiers, and printers; renovations; "incentive trips" with "extensive recreational and entertainment activities"; "points programs" under which doctors could accumulate points to redeem for various gifts such as cell phones, tea sets, and reading glasses; and "donation of durable goods."

The most abstract of the "items of value" this year was perhaps the "exclusive distributorship" allegedly granted to a third party in *Pfizer/Wyeth*. Pfizer policy prohibited exclusive arrangements, but the third party stated that if it did not receive exclusive rights, Pfizer would not be able to sell products in Kazakhstan. Pfizer refused, but subsequently experienced substantial difficulty obtaining approval for the registration of its products. Once Pfizer entered into an exclusive distributorship agreement with the third party, the registration was approved—however, the pleadings do not make clear if anything of value was given to the Kazakh authorities who granted the approval.

Corporations tend to view this "anything of value" element with a degree of consternation, because of the mistaken perception that an innocent cup of coffee could trigger or require an FCPA investigation. Apparently recognizing this, the *Guide* addresses this issue thoroughly, emphasizing the importance of "corrupt intent" in distinguishing between a legitimate business expense and a bribe while giving several examples. We discuss this portion of the *Guide* in detail in the FCPA *Guide* section, below.

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Modes of Payment

The means of raising funds to pay bribes have similarly been varied and imaginative. Companies entered into fictitious or inflated contracts with third parties (some of which were shell companies and some of whom were legitimate contractors) (*Orthofix*, *Data Systems*, *Smith & Nephew*, *Pfizer/Wyeth*, *Tyco*) or colluded with vendors to generate false invoices (*Pfizer/Wyeth*). Employees submitted fictitious expense reimbursements (*Pfizer/Wyeth*, *Orthofix*, *Tyco*) or artificially inflated customer invoices to offset the cost of the bribes (*NORDAM*). *Pfizer/Wyeth* included a particularly inventive scheme: what appeared to be a mechanism for providing the equivalent of indirect price discounts or in-kind benefits to government hospitals turned out to be a vehicle to make cash payments to individual government healthcare professionals to corruptly reward past (and induce future) purchases and prescriptions.

Oracle, however, may be perhaps the strangest case of the year. In its complaint, the SEC outlines in detail the steps the company took to "park" funds with distributors (*i.e.*, outside of its books and records) which were then paid to shell companies. In the end, however, the SEC was apparently unable to connect the dots, even under its lower standard of proof, and it does *not* allege that *any bribes* were paid—only that the company's practices created the *risk* of improper payments.

Compliance Guidance

The FCPA Guide

In November, the DOJ and the SEC released the long-promised *Resource Guide to the U.S. Foreign Corrupt Practices Act*. For the most part, the *Guide* does not break new ground and instead confirms and consolidates the agencies' previous interpretations of the FCPA's scope and terms.[8] The *Guide* does, however, provide some useful insight into what the government expects when it comes to critical elements of compliance programs, such as due diligence in M&A transactions and gifts and entertainment.

"Enhanced" Compliance

In recent cases such as *Noble Corp*. and *Daimler*, the government has referred to the defendant as having adopted an "enhanced" compliance program as part of its pre-settlement remedial actions. For the most part, these programs are substantially similar to the "Appendix C" programs mandated by all DOJ settlements. In *Pfizer*, however, we see what is truly a significantly more expansive program. In addition to an Appendix C.1 including standard compliance elements, the *Pfizer* DPA includes an Appendix C.2 detailing the company's "enhanced" compliance obligations as well as an Appendix C.3 with extensive

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8 For further discussion on this issue, you may wish to refer to our prior client publication, available at Shearman & Sterling, *The New FCPA Guide: The DOJ and the SEC Do Not Break New Ground But Offer Useful Guidance and Some Ominous Warnings* (Nov. 15, 2012).

reporting requirements. Under the provisions, Pfizer agreed, among other things, to select at least five markets with high corruption risk for proactive FCPA reviews each year and to conduct specified mandatory due diligence on all sales intermediaries at least once every three years. Particularly striking is the degree of specificity in the requirements that the DPA spells out for Pfizer, which appear to go beyond even those contemplated by the DOJ in the *Guide*'s "Hallmarks of Effective Compliance Programs."

Some of the elements of *Pfizer*'s enhanced compliance program were likely developed by the company itself to persuade the government of its commitment to FCPA compliance after the discovery of extensive violations. Their inclusion in the DPA with such specificity may, however, have been intended by the DOJ to strengthen the hand of Pfizer's internal compliance personnel and to ensure that the company maintained the same level of compliance resources in the face of economic headwinds.

Gifts and Entertainment

We have long advised that the FCPA doesn't forbid providing gifts, entertainment, and hospitality to customers, provided there are sufficient controls in place to ensure that the benefit cannot be construed as a *quid pro quo* for obtaining or retaining business.[9] This common-sense position has been echoed in the U.K. *Guidance* and now in the DOJ/SEC *Guide*.

The cases brought in 2012 do not materially add to the existing guidance from previous enforcement actions and FCPA Opinions, but they do provide some additional examples of when gifts and entertainment may cross the line from promotion to bribery. For example, in *Orthofix*, both the DOJ and the SEC alleged that the company had provided vacation packages, televisions, laptops, appliances, and a lease for an automobile to doctors to induce them to use the company's products. Similarly, in *Biomet*, the DOJ alleged that the company flew one Chinese official to Switzerland to visit his daughter and sent others on a "training trip" to Spain of which a substantial portion consisted of sightseeing and entertainment. *Tyco* also involved allegedly corrupt travel, including a "social trip" to Paris and a "factory visit" to Germany. In *BizJet*, the DOJ's pleadings refer to one instance in which the company gave an official a cell phone and cash. In *Data Systems & Solutions*, the DOJ criminal information contains reference to paying for officials' vacations and giving an official a Cartier watch worth $2,664.74. Finally, in *Pfizer/Wyeth*, in addition to providing gifts directly, the company allegedly used "bonus programs" or "points programs" which, in effect, rewarded doctors for writing Pfizer prescriptions, with items such as cell phones, tea sets, free products, international travel support, or even cash.

The year also brought an example of using charitable donations as a front for alleged bribery. In *Eli Lilly*, the company sought the support of the top official of a Polish regional government health authority to place Eli Lilly drugs on the government's insurance reimbursement list. To that end, the company made

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9 For further discussion on this issue, you may wish to refer to P. Urofsky, Ten Strategies for Paying for Government Clients to Attend the Olympics or Other Sporting Events Without Violating the Foreign Corrupt Practices Act, The FCPA Report (June 6, 2012).

payments to the Chudow Castle Foundation, a charitable foundation founded and administered by that very official. The name of the foundation may provoke a sense of déjà vu for our readers, as it is the same foundation that was used to funnel bribes in the 2004 SEC enforcement against *Schering-Plough*. The same official was likely involved as well, as both actions cover the period between 2000 and 2003.

In each of these cases, the gifts and entertainment were of a type and amount, or were accompanied by explicit agreements, that tied the gift to obtaining or retaining business. Where, on the other hand, such promotional expense was truly *bona fide* and legitimately tied to promoting the company, its products, or even its individuals (*i.e.*, networking), or for community outreach (in the case of charitable contributions), gifts and entertainment, hedged with appropriate controls and accurately recorded in the company's books, should not run afoul of the statute.

Indeed, the *Guide* makes clear that "corrupt intent" is what distinguishes a bribe from a legitimate business expense. In an apparent attempt to assuage concerns and criticisms regarding the potentially nebulous distinction, the *Guide* notes that "it is difficult to envision any scenario in which the provision of cups of coffee, taxi fare, or company promotional materials of nominal value would ever evidence corrupt intent." The "corrupt intent" requirement thus protects companies that "engage in the legitimate promotion of their business while targeting conduct that seeks to improperly induce officials into misusing their positions."

With that being said, the distinction between legitimate and corrupt will always be a fact-specific issue requiring careful investigation, particularly if the gifts or entertainment occur with such frequency that they may be viewed as a systemic course of conduct that could evidence corrupt intent. Further, of course, legitimate gifts and entertainment can still be subject to the FCPA if they are not properly recorded and accounted for. Apparently with such concerns in mind, Harris Corp., a communications technology company, recently disclosed that it is investigating "certain entertainment, travel, and other expenses which may have been incurred or reported improperly" at Carefx, a company it acquired in 2011.

M&A Due Diligence and Successor Liability

The FCPA *Guide*, as well as actions brought over the past year, emphasize the importance of engaging in adequate pre-acquisition and post-closing due diligence in M&A transactions. When a company acquires or merges with another company, the acquiring entity assumes all liabilities of the predecessor company. The *Guide* emphasizes that successor liability (an "integral part of corporate law") applies to all kinds of civil and criminal liabilities, including FCPA violations. The DOJ and SEC note, however, that they have almost never prosecuted the acquiring company for the pre-acquisition acts of the acquired company and have held an acquiring company responsible only for post-acquisition continuation of unlawful conduct that it failed to prevent after it took control of the acquired company. This may be of some comfort to the acquiring company, but the government also notes that it has charged the predecessor company itself, now a subsidiary of the acquiring company, for pre-acquisition conduct. The acquiring company, therefore, still bears the financial burden resulting from its new acquisition's pre-acquisition conduct even if it is not held directly liable.

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Recent actions over the past year reinforce the SEC and DOJ's expectation that companies involved with mergers will conduct pre-merger and post-merger due diligence and undertake measures to address existing FCPA issues. For example, in *Pfizer*, the government charged the company with having paid approximately $2 million in improper payments to government officials in Bulgaria, Croatia, Kazakhstan, and Russia. The improper bribes were made by a Pfizer subsidiary, Pharmacia & Upjohn, which Pfizer acquired in 2003. This conduct clearly continued well past the acquisition; the DOJ and the SEC thus found Pfizer liable for its subsidiary's pre-acquisition conduct.

In contrast, at the same time as the DOJ and SEC actions against *Pfizer* and its subsidiary *Pfizer HCP*, the SEC brought an action against *Wyeth LLC*, which Pfizer acquired in 2009. 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 and falsely recorded those payments as promotional expenses, "Miscellaneous Selling Expenses," "Trade Allowances," "Entertainment," and "Give Aways and Gifts." Similar to the earlier acquisition of Pharmacia, the Wyeth conduct occurred both before and after its acquisition by Pfizer, but the government noted that this time Pfizer's pre-merger due diligence of Wyeth included a global review of Wyeth's internal controls and an immediate integration of Wyeth into Pfizer's internal controls systems. Following the closing of the deal, Pfizer also performed a worldwide, risk-based FCPA due diligence of Wyeth's operations, while fully cooperating with an SEC investigation. The DOJ made clear that Pfizer's exhaustive internal investigation and cooperation were significant factors influencing its decision not to pursue criminal action for the pre-acquisition violations committed by Wyeth subsidiaries, while the SEC pursued only books-and-records against Wyeth and not Pfizer for Wyeth's violations.

In terms of further guidance for FCPA compliance in the merger context, the *Guide* encourages companies to conduct pre-acquisition due diligence and to improve compliance programs and internal controls after acquisition for reasons such as accurate valuation and risk management. Of particular interest to companies, however, will be the possibility that the enforcement authorities might decline prosecution of successor companies on the basis of proper due diligence. The *Guide* expressly states that the SEC and the DOJ have declined to take action against companies that voluntarily disclosed and remediated conduct and cooperated with the DOJ and the SEC in the M&A context. From the corporate compliance perspective, perhaps the most useful guidance is found in the "Practical Tips to Reduce FCPA Risk in Mergers and Acquisitions." In that section, the *Guide* recommends seeking an FCPA Opinion from the DOJ in anticipation of a potential acquisition, similar to FCPA Opinion Release 2008-02 given to Halliburton opinion mentioned above. As we have noted before, the requirements of that Opinion are near-draconian, but the *Guide* makes it clear that conducting thorough pre-acquisition due diligence may result in concrete benefits. Thus, the *Guide* expressly states that those who take the following actions will be given "meaningful credit" and, in appropriate circumstances, may qualify for a declination:

- conduct thorough due diligence;
- ensure that the newly acquired or merged business is promptly integrated into the company's code of conduct and compliance policies and procedures;

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- conduct an FCPA-specific audit of all newly acquired or merged businesses as quickly as practicable; and
- disclose any corrupt payments discovered as part of its due diligence of newly acquired entities or merged entities.

Due Diligence on Third Parties

The *Guide* contains a discussion of due diligence on third parties, along with a case study and two hypotheticals on third party vetting. Though the *Guide* does not contain any surprises—it emphasizes that third party due diligence should be risk-based and will thus necessarily vary based on industry, country, size and nature of the transaction, and historical relationship with the third party—it also provides several universal guiding principles. First, companies should always understand the qualifications and associations of their third party partners; second, companies must understand the business rationale for including the third party in the transaction; and third, companies should monitor third party relationships on an ongoing basis. The *Guide* also provides a set of common red flags well known to followers of the FCPA, including excessive commissions or unreasonably large discounts to third party distributors. The *Guide* uses a discussion of third party payments to reiterate that "knowledge" of a corrupt payment under the FCPA includes willful blindness and awareness of a high probability that improper payments are being made.

Best Practices

Many critics of the FCPA have called for a "compliance program defense." This seems unlikely, particularly in the wake of the recent Wal-Mart bribery scandal in Mexico, which was the subject of a series of investigative articles in *The New York Times*. The *Times* articles, if accurate, provide a vivid example of how an extensive bribery scheme may occur even in companies that appear to have relatively well-established compliance programs. Nevertheless, while rejecting the concept of an adequate procedures defense similar to that of the U.K. Bribery Act, the U.S authorities have sought to provide incentives for companies to establish strong compliance programs.

In April 2012, in the *Morgan Stanley* matter, the government provided its strongest incentive to date, by showing that a strong compliance program could completely shield a company from liability relating to the actions of a single employee. There the DOJ and SEC brought actions against *Garth Peterson*, a former managing director of Morgan Stanley Real Estate Group's Shanghai office, for bribery in China but did not charge Morgan Stanley itself, noting its strong compliance program and the lengths to which Morgan Stanley went to train and remind Peterson of FCPA compliance. In its press release, the DOJ specifically stated, "After considering all the available facts and circumstances, including that Morgan Stanley constructed and maintained a system of internal controls, which provided reasonable assurances that its employees were not bribing government officials, the Department of Justice declined to bring any enforcement action against Morgan Stanley related to Peterson's conduct. The company voluntarily

disclosed this matter and has cooperated throughout the department's investigation." The SEC similarly stated in its press release that Peterson was a "rogue employee" (which may represent the first government acknowledgement that there are such animals) and that "Morgan Stanley, which is not charged in the matter, cooperated with the SEC's inquiry and conducted a thorough internal investigation to determine the scope of the improper payment and other misconduct involved."

As a cautionary note, we note that the elements of Morgan Stanley's program, as described in the government's pleadings, are relatively indistinguishable from those of many companies that have been prosecuted. Thus, we cannot rule out that other factors may have influenced the government's decision nor provide any assurance that companies adopting similar programs will be assured of similar treatment.

Private Litigation

The year saw a slew of private litigation related to FCPA investigations and enforcement. While most were the usual derivative and securities class action lawsuits that follow FCPA disclosures (with several arising from the Wal-Mart scandal), one of them was a rare FCPA-related malpractice case. *Watts Water Technologies Inc.*, which had settled FCPA allegations last year concerning an acquisition of a Chinese entity in 2005, launched a malpractice suit against its legal advisor on the Chinese acquisition, Sidley Austin LLP. Watts Water alleged that Sidley Austin failed to warn it about possible corruption issues, even though its review of the transaction had uncovered "a suspicious document." Watts Water also alleged that it would not have executed the acquisition if it had known about the Chinese company's written policy of paying kickbacks to Chinese government officials—which Sidley Austin allegedly uncovered but did not reveal to Watts Water. Sidley Austin found these allegations "preposterous" and filed a motion to dismiss, stating that it was never asked to conduct anti-bribery due diligence and that it had conducted proper due diligence. The case failed to establish a precedent for future cases, however, as it was dismissed after the parties filed a joint stipulation of dismissal, which gives no explanation as to why the suit was terminated.

Going beyond malpractice, investors who suffered losses in the Allen Stanford Ponzi scheme have recently sued two law firms, Greenberg Traurig LLP and Hunton & Williams LLP, alleging, *inter alia*, that certain partners who acted as counsel to Stanford knowingly participated and facilitated Stanford's alleged bribery of officials in Antigua. Curiously, the investigation of the Stanford scheme had not resulted in any FCPA enforcement, despite the government's allegations of bribes Stanford paid to Antiguan officials in return for various business advantages. Stanford's investment company eventually imploded, with the SEC alleging a "massive Ponzi scheme of staggering proportions," and Allen Stanford was convicted on multiple (but not FCPA) counts and sentenced to 110 years in prison. The investors then sued the law firms for breach of fiduciary duty and unjust enrichment, alleging that Greenberg not only knew of and assisted in Stanford's bribery of Antiguan officials, but also advised Stanford on the implications of his bribery. After some of the Greenberg partners left for Hunton & Williams, the lawyers at Hunton allegedly "continued to assist Stanford with all aspects of his illegal operations," presumably including bribery. These cases are examples of the different ways a person or corporation's corrupt activities can

adversely affect the lawyers who advise them, and they highlight the need to detect and address corruption-related red flags, especially in transactions involving foreign government officials.

Enforcement in the United Kingdom

Enforcement in the U.K.

The past year has been one of some turmoil in the U.K. The management of the Serious Fraud Office ("SFO") changed in April 2012, which has led to a shift in the SFO's stated approach to the handling of bribery and corruption cases. Further, statements by the new Director of the SFO have indicated a distinct change of tone, emphasizing the prosecutorial role of the SFO in contrast to a consultative role concerning corporate compliance. On the other hand, while the U.K. government continues to explore adopting the Deferred Prosecution Agreement concept in the U.K., its enforcement authorities continue to use other tools to reach resolutions short of a criminal prosecution.

SFO Guidance

In March 2011, the U.K. Ministry of Justice ("MoJ") issued comprehensive guidance on the Bribery Act, mostly in relation to the new corporate offense (section 7 of the Bribery Act) and its adequate procedures defense. The SFO and the Crown Prosecution Service also issued joint enforcement guidance addressing the policies they would follow in evaluating issues such as facilitation payments (which, in the absence of an exception such as that written into the FCPA, are violations of the U.K.'s general prohibition on corrupt payments). The SFO also published on its website some of its own guidance on its approach to certain issues arising under the Bribery Act.

However, in September 2012 the SFO removed from its website its previous guidance, replacing it with statements referring to the Code for Crown Prosecutors, the Joint Prosecution Guidance of the Director of the SFO and the Director of Public Prosecutions, and the Joint Guidance on Corporate Prosecutions. The SFO also withdrew its guidance in respect of corporate self-reporting, which had suggested that the SFO might settle through a civil remedy, as opposed to criminal prosecution, if a company self-reported bribery and corruption issues. Subsequently, on December 6, 2012, David Green QC (the new Director of the SFO) published an open letter on facilitation payments, re-emphasizing that such payments are illegal under English law, regardless of their size or frequency.

These developments show a definite shift in approach by the SFO. The SFO appears to have made a conscious effort to step away from its previous stance, particularly with regard to self-reporting. Notably, Mr. Green has emphasized in his recent appearance before a House of Commons Justice Committee that the SFO is a "crime-fighting agency" as an investigator and prosecutor of serious fraud, bribery and corruption, not an adviser to corporates. If actions follow rhetoric, this may presage an increase in prosecutions under the Bribery Act in the near future.

A. Recent Trends and Patterns in FCPA Enforcement

Deferred Prosecution Agreements in the U.K.

Even though the SFO has withdrawn its guidance on voluntary disclosures and civil remedies, earlier this year the U.K. took steps toward authorizing the SFO to enter into DPAs with corporations which are being investigated for bribery offenses. The MoJ published a consultation paper on DPAs in May. While DPAs have long been used by prosecutors in the U.S., the adoption of an alternative negotiated resolution in criminal matters would be a significant shift in the U.K. In the consultation paper, the MoJ invited interested parties to comment on its proposals to help determine whether they are sensible, proportionate, and likely to make a genuine difference.

Currently, prosecutors in the U.K. can either bring a formal prosecution against a commercial organization for committing a criminal offense or pursue a civil recovery order. Both of these options can be expensive, involve lengthy investigations, and in many instances are regarded as ineffective. The MoJ stated that DPAs would give prosecutors the "flexibility to secure appropriate penalties for wrongdoing, at the same time as achieving better outcomes for victims" without the costs, uncertainty, and risks involved in formal criminal prosecutions. The MoJ also hoped that the potential to settle through a DPA would encourage organizations to self-report economic crime, with the incentive for doing so being to defer, and possibly avoid, criminal prosecution. However, the MOJ emphasized that self-reporting by itself would not guarantee a decision not to prosecute.

Following the consultation period, the MoJ announced on October 23, 2012 that legislation would be introduced to allow DPAs in the U.K. for corporations. Similar to the practice in the U.S., the U.K. version of a DPA (as contemplated by the MoJ) will be an agreement between a prosecutor and a commercial organization[10] under which the prosecutor will bring, but not immediately proceed with, criminal charges against the organization. In a significant departure from U.S. practice, however, the MoJ's consultation paper contemplates substantial oversight and approval by the courts and a number of formal proceedings before the court approves the terms of the DPA. The agreed terms and conditions are likely to include financial penalties, reparation to victims, confiscation of the profits of wrongdoing, and measures to prevent future offending. Moreover, although the MoJ recognizes that the parties will need a level of certainty and confidentiality to be able to negotiate the details of a DPA, the public interest in ensuring that the DPAs are part of a robust prosecutorial approach requires that the final DPA will be made public in open court to ensure openness and transparency.

The MoJ noted that even if the proposed legislation is passed, the new remedy would have to be applied in a clear and practical manner and supported by guidance to ensure that all parties have a thorough understanding of how they operate. Thus, the Director of Public Prosecutions and the Director of the SFO will be required to develop and publish a "DPA Code of Practice for Prosecutors," setting out the factors to

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[10] While the consultation paper refers to "commercial organizations," the MoJ states that "many of the difficulties [referred to in the consultation paper] apply with equal force to large partnerships or trusts." However, it appears that the SFO will not be able to enter into DPAs with individuals.

which prosecutors ought to have regard when considering whether to enter into a DPA; the Sentencing Council will need to produce sentencing guidelines on offenses likely to be encompassed by DPAs, providing transparency and certainty for the parties and the court; and Criminal Procedure Rules will have to be developed to enable the DPA process to operate effectively and efficiently.

The introduction of DPAs would come at a time when companies in the U.K. are more open and transparent about investigations and their approach to bribery and corruption allegations. For example, Rolls-Royce is facing the possibility of prosecution after a probe by the SFO which prompted an internal investigation into allegations about corruption and bribery in Indonesia, China, and other overseas markets. Rolls-Royce has stated that it will appoint an independent senior figure to review its compliance regime and report to the board's ethics committee. The company has also stated that it has strengthened its compliance procedures in recent years, including by the establishment of a new ethics code.

Anti-Bribery Controls

On March 29, 2012, the U.K. Financial Services Authority ("FSA") published the findings of its thematic review into anti-bribery and corruption systems and controls in investment banks. The FSA examined the effectiveness of the anti-bribery and corruption controls of eight global investment banks and seven other smaller firms offering investment banking or similar activities. The FSA's findings included the following:

- Most of the group had not yet properly taken account of the FSA's existing rules relating to anti-corruption controls;
- Nearly half the group did not have an adequate anti-corruption risk assessment;
- Information provided on anti-corruption by the group to senior management was generally poor; and
- Most of the group had not yet devised mechanisms for reviewing or monitoring the effectiveness of their anti-corruption policies and procedures.

Overall, the FSA concluded that the investment banking sector has been "too slow and reactive in managing bribery and corruption risk." The FSA is now considering possible regulatory action against some members of the group, and it has also launched a consultation on changes it is proposing to make to its guidance in this area.

Enforcement Actions

Although, as described above, the new Director of the SFO has withdrawn the SFO's guidance insofar as it suggested that voluntary disclosures would result in civil recovery orders as opposed to criminal prosecutions, there have been several matters this year that have been resolved in that way. Indeed, none of the enforcement actions against companies in 2012 were resolved through a formal criminal prosecution.

A. Recent Trends and Patterns in FCPA Enforcement

Oxford Publishing Ltd

In July, Oxford Publishing Ltd ("OPL"), a wholly owned subsidiary of Oxford University Press ("OUP"), agreed to pay almost £1.9 million under a civil recovery order. This amount reflected sums generated through unlawful conduct related to OPL's subsidiaries in Tanzania and Kenya. The two subsidiaries have also been excluded from competing for World Bank contracts for three years. OUP has offered to contribute £2 million to not-for-profit organizations in sub-Saharan Africa and will be subject to a compliance monitor who will report to the SFO on compliance in twelve months' time.

This case represents an example of how, even without the availability of DPAs, the SFO has some flexibility in reaching alternative resolutions with cooperating corporations. In this case, it determined that the case was appropriate for a civil recovery order instead of a criminal prosecution because: (1) OUP met the criteria set out in the then-applicable SFO guidance on self-reporting matters of overseas corruption (which, as explained above, has now been superseded); (2) the settlement terms ensure all gross profit from any tainted contract will be disgorged; and (3) there was no evidence of board-level knowledge or connivance in relation to the business practices which led to the case being referred to the SFO. Thus, in announcing the settlement, the Director of the SFO stated that "[t]his settlement demonstrates that there are, in appropriate cases, clear and sensible solutions available to those who self-report issues of this kind to the authorities."

Abbot Group Limited

The Crown Office (the agency responsible for prosecution of crime in Scotland) announced on November 23, 2012 a £5.6 million civil recovery against the Scotland-based drilling company Abbot Group Limited. Abbot admitted that it had benefited from corrupt payments in relation to a contract between one of its overseas subsidiaries and an overseas oil and gas company. The sum to be paid by Abbot represents the profit made by the company under the contract which was entered into in 2006 and the payments made in 2007. Abbot had instructed an investigation to be carried out by solicitors and accountants that it had appointed and subsequently self-reported the results of that investigation to the Crown Office.

Mabey & Johnson

In 2009, Mabey & Johnson, an international construction company, pleaded guilty to corruption charges and agreed to pay £6.5 million in fines and reparations to foreign governments. In January of this year, the SFO obtained a civil recovery order against Mabey & Johnson's parent company, requiring it to pay back dividends exceeding £130,000 which were gained as a result of bridge-building contracts in Iraq obtained through unlawful conduct. The director of the SFO stated that this represented "the final piece in an exemplary model of self-reporting and cooperative resolution. This is the approach I would like to foster across the wider business community when it comes to the self-referral processes the SFO has created. The process should provide clarity, confidence and, ultimately for the business concerned, a resolution to the problem."

A. Recent Trends and Patterns in FCPA Enforcement

Swift Group

On December 17, 2012, the SFO charged four employees of Swift Technical Energy Solutions Ltd (the Nigerian subsidiary of the Swift Group of companies) with two offenses of conspiracy to corrupt. The Swift Group provides workers for the gas and oil industry worldwide. The charges relate to alleged payments amounting to around £180,000 which were said to have been made in 2008 and 2009 to tax officials in Nigeria to avoid, reduce or delay paying taxes on behalf of the workers that Swift sent to Nigeria. There will be a preliminary hearing on February 22, 2013. The Swift Group has been cooperating with the SFO investigation and is currently not facing criminal charges.

OECD Working Group on Bribery

According to the OECD Working Group on Bribery, fourteen (out of thirty-eight) OECD members have prosecuted 210 individuals and ninety entities since the OECD Convention entered into force in 1999, with sixty-six individuals being sentenced to imprisonment. Moreover, the OECD reports that there are over 170 ongoing criminal proceedings in thirteen Parties, and over 300 ongoing investigations by twenty-six Parties (although half of those appear to be in the U.S.). Enforcement is not, of course, uniformly distributed, with a significant number of Parties reporting no cases, no proceedings, and no investigations. Nevertheless, it does appear that, even if other countries are not publicizing their enforcement actions to the extent done in the U.S. (and thus perhaps losing the deterrent value of such prosecutions); there are a growing number of cases being brought outside the U.S.

The OECD data is subject to a several qualifications as to accuracy and methodology that make it hard to compare countries meaningfully. For example, unlike our approach above of aggregating cases against related entities and not double-counting civil and criminal cases against the same individuals, this data counts each entity and each action separately and thus potentially overstates the extent of enforcement. However, the five most active countries are the U.S., Germany, Italy, Hungary, and Korea. Several others have a few cases. Perhaps most surprising is that two countries not viewed as being particularly active in this area, Japan and France, have both allegedly brought six and seven cases, respectively!

The OECD, however, did recently issue a report on the situation in France[11] in which it severely criticized France for its lack of bribery prosecutions and convictions. It noted that the French authorities have obtained only five convictions that involved a company in the past twelve years. The report also criticized the sanctions in France as not sufficiently dissuasive, and it emphasized that more effort should be made to confiscate proceeds from bribery or corruption. The report recommended that France focus on reforms leading to greater independence for its prosecutors, that it clarify the law on corruption and bribery to aid prosecutors' interpretation of it, and that it encourage officials to report suspected cases of foreign bribery

[11] Organisation for Economic Co-operation and Development, *Phase 3 Report on Implementing the OECD Anti-Bribery Convention in France* (Oct. 2012).

A. Recent Trends and Patterns in FCPA Enforcement

without fear of retaliation. The report also notes some positive developments in France, such as steps toward greater impartiality for prosecutors and the introduction of whistleblower protection into the law.

B. Foreign Bribery Criminal Prosecution under the FCPA

B. Foreign Bribery Criminal Prosecution under the FCPA

135. United States v. Tyco International, Ltd. (2012)[12] United States v. Tyco Valves & Controls Middle East, Inc. (E.D. Va. 2012)[13]

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.

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[12] Matter resolved through non-prosecution agreement (September 2012).

[13] *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

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-112.

See Ongoing Investigations F-13 and F-47.

B. Foreign Bribery Criminal Prosecution under the FCPA

134. United States v. Pfizer H.C.P. Corporation (D.D.C. 2012)[14]

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.

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

[14] Matter resolved through deferred prosecution agreement (February 2012).

B. Foreign Bribery Criminal Prosecution under the FCPA

discounts or in-kind benefits to government hospitals in connection with their purchases of Pfizer products. In practice, however, the Hospital Program was used to make cash payments to individual healthcare professionals to corruptly influence purchases and prescriptions.

Funds for these payments were often generated by Pfizer 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."

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 pre-judgment interest of approximately $26.3 million.

See SEC Digest Number D-110.

See Ongoing Investigation Number F-60.

B. Foreign Bribery Criminal Prosecution under the FCPA

133. United States v. The NORDAM Group, Inc. (2012)[15]

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.

[15] Matter resolved through non-prosecution agreement (July 2012).

B. Foreign Bribery Criminal Prosecution under the FCPA

132. United States v. Orthofix International, N.V. (E.D. Tex. 2012)[16]

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-109.

See Ongoing Investigation Number F-63.

[16] *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

131. United States v. Data Systems & Solutions LLC (E.D. Va. 2012)[17]

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.

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

B. Foreign Bribery Criminal Prosecution under the FCPA

130. United States v. Garth Peterson (E.D.N.Y. 2012)[18]

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

[18] *U.S. v. Garth Peterson*, No. 12-cr-00224 (E.D.N.Y. 2012).

B. Foreign Bribery Criminal Prosecution under the FCPA

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.

See Ongoing Investigation Number F-46.

B. Foreign Bribery Criminal Prosecution under the FCPA

129. United States v. Biomet, Inc. (D.D.C. 2012)[19]

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

[19] Matter resolved through deferred prosecution agreement (February 2012).

B. Foreign Bribery Criminal Prosecution under the FCPA

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-38 and F-91.

B. Foreign Bribery Criminal Prosecution under the FCPA

128. United States v. BizJet International Sales and Support, Inc. (N.D. Ok. 2012)[20] United States v. Lufthansa Technik AG (2012)[21]

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.

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

[21] Matter resolved through non-prosecution agreement (December 2011).

B. Foreign Bribery Criminal Prosecution under the FCPA

127. United States v. Smith & Nephew, Inc. (2012)[22]

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 pre-judgment interest.

See SEC Digest Number D-105.

See Ongoing Investigations Digest Number F-38.

[22] Matter resolved through deferred prosecution agreement (February 2012).

B. Foreign Bribery Criminal Prosecution under the FCPA

126. United States v. Marubeni Corporation (S.D. Tex. 2012)[23]

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, Derivative Case Number H-F10.

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

B. Foreign Bribery Criminal Prosecution under the FCPA

125. United States v. Magyar Telekom, Plc. (E.D. Va. 2011)[24]

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 Telecom, charging Magyar Telekom with violations of the anti-bribery and books and records provisions of the FCPA. On the same day, the DOJ entered into a two-year deferred prosecution agreement with Magyar

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

B. Foreign Bribery Criminal Prosecution under the FCPA

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 pre-judgment interest.

See SEC Digest Number D-104.

See Ongoing Investigations Digest Number F-34.

B. Foreign Bribery Criminal Prosecution under the FCPA

125. United States v. Aon Corporation (2011)[25]

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

[25] Matter resolved through non-prosecution agreement (December 2011).

B. Foreign Bribery Criminal Prosecution under the FCPA

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.

See Ongoing Investigations Digest Number F-40.

B. Foreign Bribery Criminal Prosecution under the FCPA

124. United States v. Uriel Sharef, Herbert Steffen, Andres Truppel, Ulrich Bock, Eberhard Reichert, Stephan Signer, Carlos Sergi, and Miguel Czysch (S.D.N.Y. 2011)[26]

Nature of the Business. Siemens AG is an engineering company headquartered in Munich, Germany. Siemens Business Services GmbH & Co. ("SBS") and Siemens S.A. ("Siemens Argentina") are both subsidiaries of Siemens AG. All allegations in this case are related to a project to develop a new national identity card in Argentina.

All of the defendants are non-U.S. citizens. Uriel Sharef, a dual citizen of Germany and Israel, was a member of Siemens AG's Managing Board. Herbert Steffen, a citizen of Germany, was group president of Siemens AG's transportation systems operating group, and was previously CEO of Siemens Argentina. Andres Truppel, a dual citizen of Germany and Argentina, was a consultant to Siemens, and previously CFO of Siemens Argentina. Ulrich Bock, a citizen of Germany, was a consultant to Siemens, and previously commercial head of SBS's Major Projects subdivision. Eberhard Reichert, a citizen of Germany, was technical head of SBS's Major Projects subdivision. Stephan Signer, a citizen of Germany, worked for SBS as a commercial director. Carlos Sergi, a citizen of Argentina, was a businessman with extensive high-level government contracts in Argentina. Miguel Czysch, a citizen of Argentina, was a business associate of Carlos Sergi.

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, Czysch and other intermediaries. In May 1999, however, the Argentine government suspended the DNI project. When a new government took power in Argentine, and in the hopes of getting the DNI project resumed, the defendants allegedly paid additional bribes to the incoming officials. When the project was terminated in May 2001, the defendants allegedly responded with a multi-faceted strategy to overcome the termination. According to the Indictment, the defendants sought to recover the anticipated proceeds of the DNI project, notwithstanding the termination, by causing Siemens AG to file a fraudulent arbitration claim against the Republic of Argentina. Defendants

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

B. Foreign Bribery Criminal Prosecution under the FCPA

allegedly caused Siemens to actively hide from the arbitral tribunal the fact that the DNI contract had been secured through bribery and corruption. A separate arbitration was initiated in Switzerland to enforce a sham contract between SBS and Mfast Consulting, a shell company controlled by intermediaries Sergi and Czysch. The Indictment also alleges that the defendants continued the bribery scheme until August 2009, to prevent disclosure of the bribery in the arbitration and to ensure Siemens's ability to secure future government contracts in Argentina.

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 13, 2011, the Government sent a letter to the court stating that the defendants all reside overseas and that none of the defendants are currently in custody. In the letter, the Government promised to keep the court apprised of any developments regarding the defendants' extradition. There have been no updates as of December 2012.

On the same day, the SEC filed a civil complaint alleging similar facts against many of the defendants in the DOJ case, excluding Eberhard Reichert and Miguel Czysch, but including Bernd Regendantz. Regendantz was the only defendant to settle with the SEC when the civil complaint and criminal indictment were filed, and he is the only SEC defendant that is not included in the DOJ Indictment.

Previous DOJ and SEC actions against Siemens AG and its subsidiaries were filed and settled in 2008, in part based on the alleged conduct in Argentina. In the criminal action, all corporate defendants pleaded guilty (Siemens Argentina to conspiring to falsify Siemens AG's books; Siemens AG to wire fraud, books and records, and internal controls; Siemens Bangladesh and Siemens Venezuela to FCPA bribery charges), and agreed to pay criminal fines totaling $450 million. In the parallel SEC action against the corporate defendants, Siemens AG agreed to disgorge more than $350 million in ill-gotten profits. Siemens also settled with German authorities, agreeing to pay a total of €596 million in penalties.

See DOJ Digest Numbers B-78.

See SEC Digest Numbers D-102 and D-56.

See Parallel Litigation Digest, Securities 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)[27]

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

[27] *U.S. v. Bridgestone Corporation*, No. 4:11-00651 (S.D. Tex. 2011).

B. Foreign Bribery Criminal Prosecution under the FCPA

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.

See Ongoing Investigations Number F-41.

B. Foreign Bribery Criminal Prosecution under the FCPA

122. United States v. Tenaris, S.A. (2011)[28]

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'ztashqineftgaz ("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'ztashgineftgaz ("OAO"). In or around February 2007, Tenaris entered into an agreement to pay the agent a commission of 3.5% for access to confidential bid information. Using the confidential bid information, Tenaris was awarded the contract and OAO agreed to pay Tenaris $2,719,720 for pipe used in oil and gas development in Uzbekistan. In or around April and May 2007, Tenaris entered into an agreement to pay the agent a commission of 3% for bid information related to three additional OAO contracts. By using confidential bid information Tenaris was awarded the three contracts. Tenaris's then-regional sales personnel understood that a portion of the commissions paid to the agent would be used to pay OAO officials.

Tenaris's then-regional sales personnel also agreed to make payments to the Uzbek government agency, Uzbekexpertiza JSC ("Uzbekexpertiza"), to encourage Uzbekexpertiza not to investigate the bidding process. However, evidence of such payment was not found. According to the SEC, in or around 2007, Tenaris also failed to accurately account for these transactions with the agent and payments to OAO officials on their books and records. Tenaris's system of internal controls also allegedly failed to detect or prevent payments to OAO officials, including a failure to ensure that proper due diligence was conducted on the agent.

Enforcement. 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

[28] Matter resolved through non-prosecution agreement (May 2011).

B. Foreign Bribery Criminal Prosecution under the FCPA

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 pre-judgment 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.

See Ongoing Investigation Number F-52.

B. Foreign Bribery Criminal Prosecution under the FCPA

121. United States v. Armor Holdings Inc. (2011)[29]

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.

See Ongoing Investigations Digest Number F-30.

[29] 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)[30]

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

[30] *U.S. v. DePuy, Inc.*, No. 1:11-00099 (D.D.C. 2011).

B. Foreign Bribery Criminal Prosecution under the FCPA

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 pre-judgment interest.

See SEC Digest Number D-96.

See Ongoing Investigations Digest Number F-33 and F-13.

See Parallel Litigation Digest, Derivative Case Numbers H-F22 and H-F25.

B. Foreign Bribery Criminal Prosecution under the FCPA

119. United States v. Comverse Technology Inc. (2011)[31]

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"). 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.

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[31] 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)[32]

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

[32] *U.S. v. JGC Corporation*, No. 4:11-00260 (S.D. Tex. 2011).

B. Foreign Bribery Criminal Prosecution under the FCPA

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, Derivative Case Number H-F10.

B. Foreign Bribery Criminal Prosecution under the FCPA

117. United States v. Tyson Foods, Inc. (D.D.C. 2011)[33]

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.

[33] *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)[34]

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 SEC Digest Number D-91.

See Ongoing Investigations Digest Number F-55.

[34] *U.S. v. Maxwell Technologies, Inc.*, No. 3:11-00329 (S.D. Cal. 2011).

B. Foreign Bribery Criminal Prosecution under the FCPA

115. United States v. Alcatel-Lucent, S.A. (S.D. Fla. 2010)[35] United States v. Alcatel-Lucent France, S.A., Alcatel-Lucent Trade Int'l, A.G., and Alcatel Centroamerica, S.A (S.D. Fla. 2010)[36]

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.

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

36 *U.S. v. Alcatel-Lucent France, S.A., Alcatel-Lucent Trade Int'l, A.G., and Alcatel Centroamerica, S.A.*, No. 10-cr-20906 (S.D. Fla. 2010).

B. Foreign Bribery Criminal Prosecution under the FCPA

Alcatel also entered into several suspicious consulting agreements, with a high probability that some or all of the fees would be passed on to government officials, in Kenya, Nigeria, Bangladesh, Ecuador, Nicaragua, Angola, Ivory Coast, Uganda, and Mali.

Enforcement. On December 27, 2010, the government filed a criminal information charging Alcatel-Lucent with one count of violating the internal control provisions of the FCPA and one count of violating the books and records provisions of the FCPA. On the same day, the government filed a criminal information charging Alcatel-Lucent France, S.A., Alcatel-Lucent Trade International, A.G., and Alcatel Centroamerica, S.A. with conspiring to violate the anti-bribery, books and records, and internal controls provisions of the FCPA. Each of the three subsidiaries entered into plea agreements under which each entity agreed to pay a fine of $500,000 and a special assessment fee of $400, commit no further crimes and work with Alcatel-Lucent in fulfilling compliance obligations. Under a three-year deferred prosecution agreement, signed on December 20, 2010, Alcatel-Lucent agreed to pay a $92 million penalty (with a deduction for the fines imposed on its wholly-owned subsidiaries), continue to implement a compliance and ethics program, review its internal controls, policies and procedures, and retain a compliance monitor for a three-year term.

On December 29, 2010, Alcatel-Lucent settled related charges with the SEC.

On May 9, 2011, the Instituto Costarricense de Electricidad ("ICE") filed in the 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)[37] United States v. Jorge Granados and Manuel Caceres (S.D. Fla. 2010)[38] United States v. Manuel Salvoch (S.D. Fla. 2010)[39]

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

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37 *United States v. Vasquez*, No. 10-cr-20894 (S.D. Fla. 2010).

38 *U.S. v. Jorge Granados and Manuel Caceres*, No. 1:10-cr-20881 (S.D. Fla. 2010).

39 *United States v. Salvoch*, No. 10-20893 (S.D. Fla 2010).

B. Foreign Bribery Criminal Prosecution under the FCPA

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.

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, Commercial Cases Number H-C21.

B. Foreign Bribery Criminal Prosecution under the FCPA

113. United States v. RAE Systems Inc. (D.D.C. 2010)[40]

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.

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[40] Matter resolved through non-prosecution agreement (December 2010).

B. Foreign Bribery Criminal Prosecution under the FCPA

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.
See Ongoing Investigation Number F-45.

B. Foreign Bribery Criminal Prosecution under the FCPA

112. United States v. Panalpina World Transport (Holding) Ltd. (S.D. Tex. 2010)[41] United States v. Panalpina, Inc. (S.D. Tex. 2010)[42]

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

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

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

B. Foreign Bribery Criminal Prosecution under the FCPA

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.

B. Foreign Bribery Criminal Prosecution under the FCPA

111. United States v. Shell Nigeria Exploration and Production Company Ltd. (S.D. Tex. 2010)[43]

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.

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43 *U.S. v. Shell Nigeria Exploration and Production Company 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)[44]

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.

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44 *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)[45]

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.

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45 *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)[46] United States v. Pride Forasol S.A.S. (S.D. Tex. 2010)[47]

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.

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

47 *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

("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.

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)[48]

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.** 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.

[48] 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)[49]

Nature of the Business. Enrique Aguilar and Angela Aguilar are a husband and wife associated with two companies, incorporated in Panama and based in Mexico City, Grupo Internacional de Asesores S.A. ("Grupo") and Sorvill International S.A. ("Sorvill"). The purported business of both companies is to provide sales representation to companies with business with Comisiòn Federal de Electricidad ("CFE"), a state-owned utility in Mexico. Enrique Aguilar is a director of Grupo and Sorvill and Angela Aguilar is an officer and director of Grupo and managed finances for both companies. He is a Mexican citizen and a lawful permanent resident of the U.S.; she is a citizen of Mexico.

Lindsey Manufacturing Company is a privately held California corporation headquartered in Azusa, California which manufactures emergency restoration systems ("ERSs") and other equipment used by electrical utility companies. Lindsey Manufacturing hired Enrique Aguilar to assist in obtaining contracts with CFE based on his personal relationship with the utility's director of operations. Keith E. Lindsey is the president and majority owner of the company; Steve K. Lee is its Vice President and CEO. Both Lindsey and Lee are U.S. citizens.

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

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49 *U.S. v. Noriega, et al.*, No. 10-01031 (C.D. Cal. 2010).

B. Foreign Bribery Criminal Prosecution under the FCPA

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.

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. (D.D.C. 2010)[50]

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.

[50] *U.S. v. Bobby J. Elkin, Jr*, 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)[51]

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.

[51] *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)[52] United States v. Alliance One Tobacco Osh, LLC (W.D. Va. 2010)[53]

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-subsidiaries of Alliance One, both falsely characterized the payments in their respective books and records as "commissions" paid to their sales agents. DIAG and SB realized profits of $4.3 million and $2.7 million, respectively, as a result of the scheme.

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.

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52 *United States v. Alliance One Int'l AG*, No. 4:10-cr-00017 (W.D. Va. 2010).

53 *United States v. Alliance One Tobacco Osh, LLC*, No. 4:10-cr00016 (W.D. Va. 2010).

B. Foreign Bribery Criminal Prosecution under the FCPA

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.

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)[54] United States v. ABB Ltd. – Jordan (S.D. Tex. 2010)[55] United States v. ABB Inc. (S.D. Tex. 2010)[56]

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.

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.

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

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

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54 Matter resolved through deferred-prosecution agreement (Sept. 2010).

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

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

B. Foreign Bribery Criminal Prosecution under the FCPA

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.

B. Foreign Bribery Criminal Prosecution under the FCPA

101. United States v. Snamprogetti Netherlands B.V. (S.D. Tex. 2010)[57]

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

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57 *U.S. v. Snamprogetti Netherlands B.V.*, No. 1:10-cr-00460 (S.D. Tex. 2010).

B. Foreign Bribery Criminal Prosecution under the FCPA

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, Derivative Case Number H-F10.

B. Foreign Bribery Criminal Prosecution under the FCPA

100. United States v. Technip S.A. (S.D. Tex. 2010)[58]

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, Derivative Case Number H-F10.

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[58] *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)[59]
United States v. Daimler Export and Trade Finance GmbH (D.D.C. 2010)[60]
United States v. DaimlerChrysler Automotive Russia SAO (D.D.C. 2010)[61]
United States v. DaimlerChrysler China Ltd. (D.D.C. 2010)[62]

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.

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

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

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

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

B. Foreign Bribery Criminal Prosecution under the FCPA

- Employees of DaimlerChrysler China Ltd. ("DCCL") and Daimler made improper payments in the form of commissions, delegation travel, and gifts for the benefit of Chinese government officials in connection with the sale of vehicles to Chinese government customers. Daimler and DCCL inflated the sales price of vehicles sold to Chinese government customers, then maintained a special account to track these overpayments and disburse them to and for the benefit of Chinese officials. Daimler and DCCL also made payments to third party agents who passed the payments on to Chinese officials or used them to buy the officials gifts or trips.
- Daimler Export and Trade Finance GmbH ("DETF") paid bribes to Croatian government officials, both directly and via U.S.-based shell companies, to secure the sale of fire trucks to the Croatian government.
- Daimler paid kickbacks to the former Iraqi government to obtain contracts for the sale of vehicles to the government of Iraq under the oil-for-food program. Like other companies that have been prosecuted in oil-for-food cases, Daimler agreed to pay a 10% commission to the Iraqi government by inflating contract prices by 10%. The payments were characterized as "after sales services fees," but no services were 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.[63]

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

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

B. Foreign Bribery Criminal Prosecution under the FCPA

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-13.

B. Foreign Bribery Criminal Prosecution under the FCPA

97. United States v. BAE Systems PLC (D.D.C. 2010)[64]

Nature of the Business. Defense, security, and aerospace products. BAE Systems PLC ("BAE"), 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.

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64 *U.S. v. BAE Systems*, No. 1:10-cr-00035 (D.D.C. 2010).

B. Foreign Bribery Criminal Prosecution under the FCPA

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.

See Parallel Litigation Digest, Derivative Case Number H-F5.

B. Foreign Bribery Criminal Prosecution under the FCPA

96. United States v. Richard T. Bistrong (D.D.C. 2010)[65]

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.

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

B. Foreign Bribery Criminal Prosecution under the FCPA

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.

See Ongoing Investigation Number F-30.

B. Foreign Bribery Criminal Prosecution under the FCPA

95. United States v. UTStarcom, Inc. (2009)[66]

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.

[66] Matter resolved through non-prosecution agreement (Dec. 2009).

B. Foreign Bribery Criminal Prosecution under the FCPA

94. United States v. Daniel Alvirez and Lee Allen Tolleson (D.D.C. 2009)[67]
United States v. Helmie Ashiblie (D.D.C. 2009)[68]
United States v. Andrew Bigelow (D.D.C. 2009)[69]
United States v. R. Patrick Caldwell and Stephen Gerard Giordanella (D.D.C. 2009)[70]
United States v. Yochanan R. Cohen (D.D.C. 2009)[71]
United States v. Haim Geri (D.D.C. 2009)[72]
United States v. John Gregory Godsey and Mark Frederick Morales (D.D.C. 2009)[73]
United States v. Amaro Goncalves (D.D.C. 2009)[74]
United States v. Saul Mishkin (D.D.C. 2009)[75]
United States v. John M. Mushriqui and Jeana Mushriqui (D.D.C. 2009)[76]
United States v. David Painter and Lee Wares (D.D.C. 2009)[77]
United States v. Pankesh Patel (D.D.C. 2009)[78]
United States v. Ofer Paz (D.D.C. 2009)[79]
United States v. Jonathan M. Spiller (D.D.C. 2009)[80]
United States v. Israel Weisler and Michael Sacks (D.D.C. 2009)[81]
United States v. John Benson Weir III (D.D.C. 2009)[82]

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.

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67 *U.S. v. Alvirez and Tolleson*, No. 09-cr-348 (D.D.C. 2009).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Foreign Bribery Criminal Prosecution under the FCPA

2. **Amount of business related to the payment.** Approximately $15 million.
3. **Intermediary.** Sales Agents.
4. **The foreign official.** None (Undercover FBI Sting).

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 Alvirez on March 11, 2011; Jonathan Spiller on March 29, 2011; and Haim Geri on April 28, 2011.

B. Foreign Bribery Criminal Prosecution under the FCPA

The trials resulted in a series of mistrials and acquittals, and, in February 2012, the court granted the DOJ's motion to dismiss the charges against the remaining defendants. Later that month, charges against Alvirez, Spiller, and Geri were dismissed as well.

See DOJ Digest Number B-96.

See Ongoing Investigation Numbers F-61, F-59 and F-30.

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)[83]
United States v. Jean Fourcand (S.D. Fla. 2010)[84]

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.

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83 *U.S. v. Esquenazi, et al.*, 1:09-cr-21010 (S.D. Fla. 2009).

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

B. Foreign Bribery Criminal Prosecution under the FCPA

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. 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.

The court has 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 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. 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. Both have appealed their convictions.

On January 19, 2012, a second superseding indictment was filed against Vasconez, Richers, Cinergy, Joseph, Duperval, and Grandison, with the addition of Vasconez's wife, Cecilia Zurita (former Vice President of Cinergy).

On February 24, 2012, the court issued an order of dismissal as to Cinergy after the government learned that Cinergy was a non-operational entity that effectively exists only on paper. Cinergy then filed a petition for re-hearing on, or in the alternative, clarification of, the order of dismissal. The court denied the motion, and Cinergy has filed 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 3 years of supervised release, along with a $2,100 assessment. Duperval filed an appeal to the Eleventh Circuit on June 1, 2012.

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.

Grandison entered a not guilty plea in February 2012, and her trial is pending.

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).

B. Foreign Bribery Criminal Prosecution under the FCPA

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)[85] United States v. Fernando Maya Basurto (S.D. Tex. 2009)[86]

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

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85 *U.S. v. John Joseph O'Shea*, No. 09-00629 (S.D. Tex. 2009).

86 *U.S. v. Fernando Maya Basurto*, No. 09-00325 (S.D. Tex. 2009).

B. Foreign Bribery Criminal Prosecution under the FCPA

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.

B. Foreign Bribery Criminal Prosecution under the FCPA

91. United States v. Charles Paul Edward Jumet (E.D. Va. 2009)[87] United States v. John W. Warwick (E.D. Va. 2009)[88]

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

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

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

B. Foreign Bribery Criminal Prosecution under the FCPA

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.

B. Foreign Bribery Criminal Prosecution under the FCPA

90. United States v. AGCO Ltd. (D.D.C. 2009)[89]

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.

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

B. Foreign Bribery Criminal Prosecution under the FCPA

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-13.

B. Foreign Bribery Criminal Prosecution under the FCPA

89. United States v. Helmerich & Payne, Inc. (2009)[90]

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.

[90] 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)[91]

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.

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

B. Foreign Bribery Criminal Prosecution under the FCPA

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 six former CCI executives related to the same conduct—as of the end of 2012, five 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. Two other former employees pleaded guilty to related charges.

See DOJ Digest Numbers B-84, B-79, and B-73.

B. Foreign Bribery Criminal Prosecution under the FCPA

87. United States v. Novo Nordisk A/S (D.D.C. 2009)[92]

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 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, the DOJ agreed to drop the charges after three years in exchange for Novo Nordisk consenting to:

1. Pay a $9 million fine.
2. Cooperate with further investigation.
3. Implement a specified compliance program, including internal accounting controls and an anti-corruption compliance code.

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92 *U.S. v. Novo Nordisk A/S*, No. 09-12C (RJL) (D.D.C. 2009).

B. Foreign Bribery Criminal Prosecution under the FCPA

In addition, Novo Nordisk agreed to pay $3,025,066 in civil penalties and $6,005,079 in disgorgement of profits, including pre-judgment interest, as part of a separate settlement with the SEC.

See SEC Digest Number D-59.

See Ongoing Investigation Number F-13.

B. Foreign Bribery Criminal Prosecution under the FCPA

86. United States v. Juan Diaz (S.D. Fla. 2009)[93]

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,

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

B. Foreign Bribery Criminal Prosecution under the FCPA

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.

B. Foreign Bribery Criminal Prosecution under the FCPA

85. United States v. Antonio Perez (S.D. Fla. 2009)[94]

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

94 *U.S. v. Perez*, 1:09-cr-20347-JEM (S.D. Fla. 2009).

B. Foreign Bribery Criminal Prosecution under the FCPA

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.

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)[95]

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,

[95] *U.S. v. Carson, et al.*, No. 09-00077 (C.D. Cal. 2009).

B. Foreign Bribery Criminal Prosecution under the FCPA

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). Individually, 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.

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.

On April 16, 2012, Carson and his wife, Hong "Rose" 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. His sentencing is scheduled for March 18, 2013. 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)[96]

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

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

B. Foreign Bribery Criminal Prosecution under the FCPA

$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, Commercial Cases Number H-C21.

B. Foreign Bribery Criminal Prosecution under the FCPA

82. United States v. Jeffery Tesler and Wojciech J. Chodan (S.D. Tex. 2009)[97]

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.

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97 *U.S. v. Tesler and Chodan.*, No. 4:09-00098 (S.D. Tex. 2009).

B. Foreign Bribery Criminal Prosecution under the FCPA

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.

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, Derivative Case Number H-F10.

B. Foreign Bribery Criminal Prosecution under the FCPA

81. United States v. Ousama M. Naaman (D.D.C. 2008)[98]

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.

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

B. Foreign Bribery Criminal Prosecution under the FCPA

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-13.

B. Foreign Bribery Criminal Prosecution under the FCPA

80. United States v. Kellogg Brown & Root LLC (S.D. Tex. 2009)[99]

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.

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99 *U.S. v. Kellogg Brown & Root LLC*, No. 4:09-cr-00071 (S.D. Tex. 2009).

B. Foreign Bribery Criminal Prosecution under the FCPA

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 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, Derivative Case Number H-F10.

B. Foreign Bribery Criminal Prosecution under the FCPA

79. United States v. Richard Morlok (E.D. Cal. 2009)[100]

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. He and another former CCI employee, Mario Covino, are scheduled for sentencing in March 2013. They are both required, under the terms of their plea agreements, to cooperate with the government in its continuing investigation and prosecution of six other former CCI employees. In that case, five defendants pleaded guilty and the remaining defendant is considered a fugitive.

See DOJ Digest Numbers B-88, B-84, and B-73.

[100] *U.S. v. Morlok*, No. 09-cr-05 (C.D. Cal. 2009).

B. Foreign Bribery Criminal Prosecution under the FCPA

78. United States v. Siemens Aktiengesellschaft (D.D.C 2008) [101]
United States v. Siemens S.A. (Argentina) (D.D.C 2008) [102]
United States v. Siemens Bangladesh Ltd. (D.D.C 2008) [103]
United States v. Siemens S.A. (Venezuela) (D.D.C 2008) [104]

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.

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

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

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

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

B. Foreign Bribery Criminal Prosecution under the FCPA

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.

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

B. Foreign Bribery Criminal Prosecution under the FCPA

independent monitor for a period of up to four years. Theo Wiegle, a former German finance minister, will serve as the Monitor, and will be assisted by a U.S. law firm, marking the first time that a non-U.S. Monitor has been appointed in an FCPA case.

In addition, the DOJ brought a forfeiture action against more than $3 million contained in several bank accounts held by or for the benefit of the son of the former Prime Minister of Bangladesh and two of the intermediaries involved in the bribery scheme involving Siemens Bangladesh. On April 7, 2010, the district court granted an unopposed motion for default judgment as to approximately $3 million, no party having challenged the forfeiture claim.

In July 2009, Siemens reached a settlement with the World Bank over bribery allegations. The Bank's investigation focused specifically on an urban-transport project the bank financed in Moscow, Russia. Siemens agreed to pay $100 million over 15 years to help anticorruption efforts and also agreed to forgo bidding on any of the Bank's projects for two years. The settlement means that Siemens and its subsidiaries will not face additional sanctions from the World Bank.

Separately, on August 12, 2009, Siemens AG stated that it would drop a case against Argentina's government in the World Bank's International Center for Settlement of Investment Disputes, which had demanded $200 million related to the cancellation of a contract to make identity cards. Proceedings were discontinued in September 2009. Siemens had been accused of paying bribes to win the contract. Siemens stated that it would continue to cooperate 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)[105]

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.

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

B. Foreign Bribery Criminal Prosecution under the FCPA

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.

See Ongoing Investigations Number F-41.

B. Foreign Bribery Criminal Prosecution under the FCPA

76. United States v. James K. Tillery and Paul G. Novak (S.D. Tex. 2008)[106]

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 U.S. citizen, is a former officer and employee of Willbros International and another Willbros Group subsidiary. Paul G. Novak, also 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 FPCA violations, a Nigerian national who performed purported consulting services for one or more of Willbros's Nigerian subsidiaries, and Nigeria-based employees of a major German construction and engineering firm. Additionally, Tillery and Novak, along with several other individuals, allegedly agreed to make corrupt payments of at least $300,000 to Ecuadorian officials to obtain a contract for the rehabilitation of a gas pipeline for Willbros International. Novak, at the direction of Tillery, allegedly made a $150,000 corrupt payment by wire transfer to an Ecuadorian bank account.

Enforcement. On January 17, 2008, a grand jury indicted Tillery and Novak on one count of conspiracy to violate the FCPA and two substantive counts of violating the FCPA. The indictment also charged one

[106] *U.S. v. Tillery and Novak*, No. 4:08-cr-00022-1, (S.D. Tex. 2008).

B. Foreign Bribery Criminal Prosecution under the FCPA

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. Novak's sentencing was rescheduled repeatedly until well into 2011, and the subsequent orders are sealed. It appears that he has not yet been sentenced.

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, Securities Case Number H-A8.

B. Foreign Bribery Criminal Prosecution under the FCPA

75. United States v. Aibel Group Ltd. (S.D. Tex. 2008)[107]

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 Ongoing Investigation Number F-13.

See Parallel Litigation Digest, Sovereign Case Number H-E5.

[107] *U.S. v. Aibel Group 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.[108] United States v. Iveco S.p.A. (2008)[109] United States v. CNH Italia S.p.A (2008)[110] United States v. CNH France S.A. (2008)[111]

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

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

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

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

111 *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

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.

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, pre-judgment 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 (E.D. Cal. 2008)[112]

Nature of the Business. Mario Covino, an Italian national and U.S. resident was the Director of Worldwide Factory Sales for Control Components, Inc. ("CCI"), a California based company that designs and manufactures severe service control valves used in the nuclear, oil and gas, and power generation industries.

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. He and another former CCI employee, Richard Morlok, are scheduled for sentencing in March 2013. They are both required, under the terms of their plea agreements, to cooperate with the government in its continuing investigation and prosecution of six other former CCI employees. In that case, five defendants pleaded guilty and the remaining defendant is considered a fugitive.

See DOJ Digest Numbers B-88, B-84, and B-79.

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[112] *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)[113]

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.

[113] *U.S. v. Shu*, No. 2:08-00194 (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)[114]

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.

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

B. Foreign Bribery Criminal Prosecution under the FCPA

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 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)[115]

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, Derivative Case Number H-F10.

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[115] *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)[116]

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 deferred-prosecution agreement 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, Securities Litigation Case Number H-A4.

See Parallel Litigation Digest, Derivative Case Number H-F6.

[116] Matter resolved through deferred-prosecution agreement (June 2008).

B. Foreign Bribery Criminal Prosecution under the FCPA

68. United States v. AGA Medical Corp. (D. Minn. 2008)[117]

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, Commercial Case Number H-C15.

[117] *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)[118]

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 $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. Willbros Group and Willbros International agreed, jointly and severally, to a fine of $22,000,000 payable in four installments. In addition, Willbros Group and Willbros International represented that they had implemented and would continue to implement a compliance and ethics program and a review of existing controls, policies and procedures, and agreed to engage an independent corporate monitor for a period of three years.

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[118] *U.S. v. Willbros Group, Inc. and Willbros Int'l, Inc.*, No. 4:08-cr-0287 (S.D. Tex. 2008).

B. Foreign Bribery Criminal Prosecution under the FCPA

See DOJ Digest Numbers B-76, B-54, and B-45.

See SEC Digest Numbers D-51 and D-28.

See Parallel Litigation Digest, Securities Case Number H-A8.

B. Foreign Bribery Criminal Prosecution under the FCPA

66. United States v. Martin Eric Self (C.D. Cal. 2008)[119]

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.

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[119] *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 (2008)[120] United States v. Volvo Construction Equipment AB (D.D.C. 2008)[121] United States v. Renault Trucks SAS (D.D.C. 2008)[122]

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.

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.

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120 Matter resolved through deferred-prosecution agreement (March 2008).

121 *U.S. v. Volvo Construction Equipment, AB*, No. 1:08-cr-00069 (D.D.C. 2008).

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

B. Foreign Bribery Criminal Prosecution under the FCPA

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

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-13.

B. Foreign Bribery Criminal Prosecution under the FCPA

64. United States v. Flowserve Corp. (2008)[123] United States v. Flowserve Pompes SAS (D.D.C. 2008)[124]

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-13.

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123 Matter resolved through deferred-prosecution agreement (Feb. 2008).

124 *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)[125]

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.

[125] Matter resolved through non-prosecution agreement (Feb. 2008).

B. Foreign Bribery Criminal Prosecution under the FCPA

62. United States v. El Paso Corp. (S.D.N.Y. 2007)[126]

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-13.

[126] Matter resolved through deferred prosecution agreement (Feb. 2007).

B. Foreign Bribery Criminal Prosecution under the FCPA

61. United States v. Gerald Green and Patricia Green (C.D. Cal. 2007)[127] United States v. Juthamas Siriwan and Jittisopa Siriwan (C.D. Cal. 2009)[128]

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.

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

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

B. Foreign Bribery Criminal Prosecution under the FCPA

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.

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

On January 28, 2009, the senior government official with TAT, Juthamas Siriwan, and her daughter, Jittisopa Siriwan, both Thai citizens, were indicted in the U.S. District Court for the Central District of California. They are charged with transporting funds to promote unlawful activity, namely bribery of a foreign official in violation of the FCPA, conspiring to do so, and aiding and abetting. The Greens are identified in the indictment as co-conspirators. On August 19, 2011, the Siriwans moved to dismiss the indictments on the ground that the government's charges rely on an expansive interpretation of "promotion of money laundering" under the Money Laundering Control Act to circumvent the fact that the FCPA does not criminalize a foreign public official's receipt of a bribe. The next hearing on the motion is scheduled for February 21, 2013.

B. Foreign Bribery Criminal Prosecution under the FCPA

60. United States v. Akzo Nobel, N.V. (2007)[129]

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 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, 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 pre-judgment interest, and a civil penalty of $750,000.

See SEC Digest Number D-44.

See Ongoing Investigation Number F-13.

[129] Matter resolved through deferred-prosecution agreement (Dec. 2007).

B. Foreign Bribery Criminal Prosecution under the FCPA

59. United States v. Chevron Corp. (S.D.N.Y. 2007)[130]

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 deferred-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, Derivative Case Number H-F8.

See Ongoing Investigations Number F-6.

[130] Matter resolved through deferred prosecution agreement (Nov. 2007).

B. Foreign Bribery Criminal Prosecution under the FCPA

58. United States v. Lucent Technologies Inc. (2007)[131]

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 deferred-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.
See Ongoing Investigation Number F-15.

[131] Matter resolved through deferred-prosecution agreement (Dec. 2007).

B. Foreign Bribery Criminal Prosecution under the FCPA

57. United States v. Ingersoll-Rand Co. Ltd.[132] United States v. Ingersoll-Rand Italiana SpA (D.D.C. 2007)[133] United States v. Thermo King Ireland Ltd. (D.D.C. 2007)[134]

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.

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132 Matter resolved through deferred prosecution agreement (Oct. 2007).

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

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

B. Foreign Bribery Criminal Prosecution under the FCPA

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 pre-judgment 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-13.

B. Foreign Bribery Criminal Prosecution under the FCPA

56. United States v. York International Corp. (D.D.C. 2007)[135]

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

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

B. Foreign Bribery Criminal Prosecution under the FCPA

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.

See Ongoing Investigation Number F-13.

B. Foreign Bribery Criminal Prosecution under the FCPA

55. United States v. Paradigm B.V. (2007)[136]

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

[136] Matter resolved through non-prosecution agreement (2007).

B. Foreign Bribery Criminal Prosecution under the FCPA

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.

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)[137]

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, Securities Case Number H-A8.

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137 *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)[138]

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-13.

[138] Matter resolved through non-prosecution agreement (Aug. 2007).

B. Foreign Bribery Criminal Prosecution under the FCPA

52. United States v. Steven J. Ott (D.N.J. 2007)[139] United States v. Roger Michael Young (D.N.J. 2007)[140]

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.

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

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

B. Foreign Bribery Criminal Prosecution under the FCPA

51. United States v. Si Chan Wooh (D. Or. 2007)[141]

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.

[141] *U.S. v. Wooh*, No. 07-244 (D. Or. 2007).

B. Foreign Bribery Criminal Prosecution under the FCPA

50. United States v. William J. Jefferson (E.D. Va. 2007)[142]

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.

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

B. Foreign Bribery Criminal Prosecution under the FCPA

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.

B. Foreign Bribery Criminal Prosecution under the FCPA

49. United States v. Leo Winston Smith (C.D. Cal. 2007)[143]

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.

143 *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)[144] United States v. Baker Hughes Inc.[145]

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 Services also agreed to serve a three-year term of organizational probation and adopt a comprehensive anti-bribery compliance program.

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. Baker Hughes also has agreed to cooperate completely with the DOJ's ongoing investigation into other corrupt payments. If Baker Hughes

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

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

B. Foreign Bribery Criminal Prosecution under the FCPA

complies fully with its agreement for a period of two years, the DOJ agrees not to bring any other charges based on this underlying conduct or any other conduct that comes to light in the course of its investigation.

See SEC Digest Numbers D-34 and D-11.

See Parallel Litigation Digest, Derivative Case Number H-F4.

See Parallel Litigation Digest, Derivative Case Number H-F9.

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)[146]
United States v. Aibel Group Ltd. (S.D. Tex. 2007)[147]

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.

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

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

B. Foreign Bribery Criminal Prosecution under the FCPA

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 Ongoing Investigation Number F-13.

See Parallel Litigation Digest, Sovereign Case Number H-E5.

B. Foreign Bribery Criminal Prosecution under the FCPA

46. United States v. Christian Sapsizian and Edgar Valverde Acosta (S.D. Fla. 2006)[148]

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.
See Ongoing Investigation Number F-15.

148 *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)[149]

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, Securities Case Number H-A8.

149 *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)[150] United States v. Schnitzer Steel Industries, Inc. (2006)[151]

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.

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150 *U.S. v. SSI Int'l Far East, Ltd.*, No. 06-cr-398 (D. Or. 2006).

151 Matter resolved through deferred prosecution agreement (Oct. 2006).

B. Foreign Bribery Criminal Prosecution under the FCPA

43. United States v. Statoil ASA (S.D.N.Y. 2006)[152]

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

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

B. Foreign Bribery Criminal Prosecution under the FCPA

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.

B. Foreign Bribery Criminal Prosecution under the FCPA

42. United States v. Steven Lynwood Head (S.D. Cal. 2006)[153]

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, Securities Case Number H-A3.

[153] *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)[154]

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 either pleaded guilty or are currently being prosecuted on various non-FCPA charges.

154 *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)[155]

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.

[155] *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)[156]
United States v. Hans Bodmer (S.D.N.Y. 2003)[157]
United States v. Omega Advisors, Inc. (2007)[158]
United States v. Clayton Lewis (S.D.N.Y. 2003)[159]
United States v. Thomas Farrell (S.D.N.Y. 2003)[160]

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

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156 *U.S. v. Kozeny,* No. 05-cr-518 (S.D.N.Y. 2005).

157 *U.S. v. Bodmer,* No. 03-cr-947 (S.D.N.Y 2003).

158 Matter resolved through non-prosecution agreement (June 2007).

159 *U.S. v. Lewis,* No. 03-cr-930 (S.D.N.Y. 2003).

160 *U.S. v. Farrell,* No. 03-cr-290 (S.D.N.Y. 2003).

B. Foreign Bribery Criminal Prosecution under the FCPA

$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 offence 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 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.

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On September 17, 2008, Bourke filed a motion for the issuance of a Letter Rogatory to the appropriate judicial authority of the Principality of Liechtenstein, requesting international judicial assistance to inspect and obtain evidence to be used at trial. Bourke's motion was granted on October 17, 2008.

On October 21, 2008, the court issued an order denying Bourke's motion seeking a jury instruction on the FCPA affirmative defense of lawfulness under written law. Bourke argued that the alleged payments were legal under the written law of Azerbaijan, which provided that a "person who has given a bribe shall be free from criminal responsibility" if the bribe was the product of extortion or was subsequently disclosed. Bourke argued that he was extorted and that he disclosed the payment to the President of Azerbaijan.

The court held that for purposes of the FCPA affirmative defense, the *payment* must be legal under the written law. The court read the Azeri provision to relieve the bribe payer of criminal responsibility in certain circumstances but that the payment itself remained illegal. The court wrote that "[a]n individual may be prosecuted under the FCPA for a payment that violates foreign law even if the individual is relieved of criminal responsibility for his actions by a provision of foreign law." The court explained that the payment did not become lawful despite the payor being relieved of criminal liability.

The court also appears to have rejected an argument that economic extortion could be a defense to the statute. Instead, it stated that it would agree to give the jury an instruction on extortion only if the defendant laid a sufficient evidentiary foundation of "true extortion." In doing so, the district court distinguished between "true extortion" involving threats of injury, death or destruction versus mere demands made in exchange for business from which the defendant could have "walked away."

Bourke filed a motion for reconsideration, which was denied by the court on December 15, 2008. The court found, first, that Bourke was attempting to raise a proposed instruction not found in his initial motion. Moreover, the court concluded that it need not rule on Bourke's proposed instruction, which provided the circumstances under which a "mere offer" would not be illegal under Azeri law, because he had not been charged with making a "mere offer." The court also refused to consider Bourke's argument that the FCPA has a broader intent element than the "direct intent" required under Azeri law.

Bourke argued that, by being a whistleblower, he interfered in the strategic relationship between the United States and Azerbaijan and, consequently, was the target of a vindictive prosecution. At a hearing on November 17, 2008, Bourke thus requested that the court review internal prosecution documents prepared prior to his charge. Following a motion by Bourke to compel discovery in connection with these allegations, the court ordered that the government disclose to Bourke the grand jury testimony of Clayton Lewis and John Pulley. In addition, the government voluntarily disclosed affidavits and plea agreements from Lewis and Pulley.

On July 1, 2008, the court entered an order of *nolle prosequi* disposing of the case as to Pinkerton. The government stated that based upon its review of the evidence acquired since the filing of the indictment, further prosecution of Pinkerton would not be in the interest of justice.

On July 10, 2009, after a five week trial, a federal jury found Bourke guilty of conspiracy to violate the FCPA and the Travel Act, as well as of making false statements to the FBI. Bourke was acquitted on a

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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.

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.

Related Case. *U.S. v. Hans Bodmer* (S.D.N.Y 2003)

Hans Bodmer is a Swiss citizen and was the lawyer who acted on behalf of the Investment Consortium. Bodmer was indicted by a federal grand jury on August 5, 2003 in the Southern District of New York for one count of conspiracy to violate the FCPA and one count of conspiracy to launder money. The indictment sought $150 million in restitution. In January 2004, Bodmer consented to his extradition to the United States from South Korea. The District Court set Bodmer's bail at $1.5 million and Bodmer filed

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a motion to dismiss the indictment. On July 23, 2004, the District Court granted Bodmer's motion to dismiss the count charging him with conspiring to violate the FCPA. His only charge for conspiring to launder money was upheld. The District Court held that prior to the 1998 amendments to the FCPA, foreign nationals who served as agents of domestic concerns and who were not residents of the United States, could not be criminally prosecuted under the FCPA because they were outside the jurisdiction of the United States. In a lengthy opinion analyzing both the legislative history of the FCPA as well as relevant judicial interpretation, the District Court found that the phrase "otherwise subject to the jurisdiction of the United States" found in the pre-1998 FCPA was not so broad as to include foreign nationals acting merely as agents of domestic concerns. In early October 2004, Bodmer withdrew his previously entered plea of not guilty and pleaded guilty to conspiracy to launder money. On May 19, 2009, the District Court accepted Bodmer's guilty plea. Shortly thereafter, Bodmer testified against Bourke. Bodmer's sentencing was adjourned until the first quarter of 2011; however, as of December 2012, there has been no updated information regarding the sentencing date.

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. Lewis's sentencing is scheduled for February 10, 2013. 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. Farrell's sentencing date is not yet set.

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38. United States v. DPC (Tianjin) Co. Ltd. (C.D. Cal. 2005)[161]

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.

[161] *U.S. v. Diagnostic Prods. Corp.*, No. 05-cr-482 (C.D. Cal. 2005).

B. Foreign Bribery Criminal Prosecution under the FCPA

37. United States v. Yaw Osei Amoako (D.N.J. 2005)[162]

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.

[162] *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.[163]

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.

[163] Matter resolved through non-prosecution agreement (Jan. 2005).

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35. United States v. InVision Technologies, Inc.[164]

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, Securities Case Number H-A7.

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[164] Matter resolved through non-prosecution agreement (Feb. 2005).

B. Foreign Bribery Criminal Prosecution under the FCPA

34. United States v. Micrus Corp.[165]

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.

[165] Matter resolved through non-prosecution agreement (Mar. 2005).

B. Foreign Bribery Criminal Prosecution under the FCPA

33. United States v. Titan Corp. (S.D. Cal. 2005)[166]

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, Securities Case Number H-A3.

166 *U.S. v. Titan Corp.*, No. 05-cr-314 (S.D. Cal. 2005).

B. Foreign Bribery Criminal Prosecution under the FCPA

32. United States v. Robert E. Thompson and James C. Reilly (N.D. Al. 2005)[167]

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.

[167] *U.S. v. Thompson*, No. 2:04-cr-00240 (N.D. Al. 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)[168]

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 Ongoing Investigation Number F-13.

See Parallel Litigation, Sovereign Number H-E5.

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168 *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)[169] United States v. J. Bryan Williams (S.D.N.Y. 2003)[170] United States v. The Mercator Corp. (S.D.N.Y. 2010)[171]

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

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169 *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).

170 *U.S. v. Williams*, No. 03-cr-406 (S.D.N.Y. 2003).

171 *U.S.. v. The Mercator Corp.*, No. 03-cr-404 (S.D.N.Y. 2003).

B. Foreign Bribery Criminal Prosecution under the FCPA

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.

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.[172] 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*[173]

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

172 *U.S. v. Approx. $84 Million*, No. 1:07-cv-3559 (S.D.N.Y. 2007).

173 *U.S. v. Mercator Corp.*, S3 03 Cr. 404 (S.D.N.Y. 2010).

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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.

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29. United States v. Richard G. Pitchford (D.D.C. 2002)[174]

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.

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174 *U.S. v. Pitchford*, No. 1:02-cr-00365 (D.D.C. 2002).

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28. United States v. Syncor Taiwan, Inc. (C.D. Cal. 2002)[175]

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, Securities Case Number H-A2.

See Parallel Litigation Digest, ERISA Case Number H-B1.

[175] *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)[176] United States v. Ramendra Basu (D.D.C. 2002)[177]

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.

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176 *U.S. v. Sengupta*, No. 02-cr-40 (D.D.C. 2002).

177 *U.S. v. Basu*, No. 02-cr-475 (D.D.C. 2002).

B. Foreign Bribery Criminal Prosecution under the FCPA

26. United States v. David Kay and Douglas Murphy (S.D. Tex. 2002)[178]

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 nexus[179] 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

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178 *U.S. v. Kay*, No. 4:01-cr-914 (S.D. Tex. 2002).

179 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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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 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

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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)[180] United States v. Albert Franklin Reitz (W.D. Mo. 2001)[181] United States v. Robert Richard King and Pablo Barquero Hernandez (W.D. Mo. 2001)[182]

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

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180 *U.S v. Halford*, No. 01-cr-221 (W.D. Mo. 2001).

181 *U.S. v. Reitz*, No. 01-cr-222 (W.D. Mo. 2001).

182 *U.S. v. King*, No. 01-cr-190 (W.D. Mo. 2001).

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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 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)[183]

Nature of the Business. Sale of approximately 20 work-over oil rigs to RVO Zarubezhneftestroy ("Nestro"), a Russian government-owned purchasing agency, by The Cooper Division of Allied Products Corporation ("Allied"). Allied is a Delaware corporation based in Chicago, Illinois, and a U.S. issuer.

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.

[183] *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)[184]

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.

184 *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)[185]

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.

[185] *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)[186]

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.

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186 *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)[187]

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.

[187] *U.S. v. Tannenbaum*, No. 98-cr-784 (S.D.N.Y. 1998).

B. Foreign Bribery Criminal Prosecution under the FCPA

19. United States v. Saybolt North America Inc. and Saybolt Inc. (D. Mass. 1998)[188] United States v. David H. Mead and Frerik Pluimers (D.N.J. 1998)[189]

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.

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188 *U.S. v. Saybolt North Am. Inc.*, No. 98-cr-10266 (D. Mass. 1998).

189 *U.S. v. Mead*, No. 98-cr-240 (D.N.J. 1998).

B. Foreign Bribery Criminal Prosecution under the FCPA

Furthermore, Saybolt was required to advertise in petroleum industry trade publications the terms of its guilty plea to data falsification charges. David H. Mead was convicted and sentenced to four months of confinement, four months' home detention, three years' supervised probation and a $20,000 fine. Frerik Pluimers is a fugitive.

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 Pluimers, a national and resident of The Netherlands, was a chairman of the board of directors (Saybolt Inc. and Saybolt North America Inc.), a president (Saybolt North America Inc. and Saybolt International) and a chief executive officer (Saybolt International).
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 Pluimers were charged with conspiracy to violate the FCPA, use of facility in foreign commerce in aid of racketeering, and aiding and abetting.

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, Securities Case 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)[190]

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.

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190 *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)[191] United States v. Herzberg (D.N.J. 1994)[192]

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.

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191 *U.S. v. Vitusa Corporation*, No. 94-cr-253 (D.N.J. 1994).

192 *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)[193]

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.

[193] *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)[194]

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.

194 *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)[195]

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.

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[195] *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)[196]
United States v. John Blondek, Vernon R. Tull, Donald Castle and Darrell W.T. Lowry (N.D. Tex. 1990)[197]
United States v. Eagle Bus Manufacturing, Inc. (S.D. Tex. 1991)[198]
United States v. Donald Castle and Darrell W.T. Lowry (N.D. Tex. 1990)[199]

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.

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196 *U.S. v. Morton*, No. 3:90-cr-061 (N.D. Tex. 1990).

197 *U.S. v. Blondek*, 741 F. Supp. 116 (N.D. Tex. 1990).

198 *U.S.* v. *Eagle Bus Mfg. Inc.*, No. B-91-171 (S.D. Tex. 1991).

199 *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

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.

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)[200] Abrahams v. Young & Rubicam (D. Conn. 1994)[201]

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.

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200 *U.S. v. Young & Rubicam, Inc.*, 741 F. Supp. 334 (D. Conn. 1990).

201 *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

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, Commercial Case Number H-C6.

B. Foreign Bribery Criminal Prosecution under the FCPA

11. United States v. Joaquin Pou, Alfredo G. Duran and Jose Guarsch (S.D. Fla. 1989)[202]

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.

[202] *U.S. v. Joaquin 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)[203]

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.

[203] *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)[204] United States v. Richard H. Liebo (D. Minn. 1989)[205] United States v. Richard H. Liebo 1308 (8th Cir. 1991)[206]

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.

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204 *U.S. v. NAPCO Int'l, Inc.*, No. 4-89-65 (D. Minn. 1989).

205 *U.S. v. Liebo*, No. 4-89-76 (D. Minn. 1989).

206 *U.S. v. Liebo*, 923 F.2d, 1308 (8th Cir. 1991).

B. Foreign Bribery Criminal Prosecution under the FCPA

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 Civil Litigation Digest Number C-3.

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)[207]

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.

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[207] *U.S. v. Silicon Contractors, Inc.*, No. 85-251 (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)[208]

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, Commercial Case Number H-C3.

[208] *U.S. v. W.S. Kirkpatrick & Co.*, No. 85-353 (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)[209] United States v. Gary D. Bateman (D.D.C. 1983)[210]

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.

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209 *U.S. v. Applied Process Products Overseas, Inc.*, No. 83-00004 (D.D.C. 1983).

210 *U.S. v. Bateman*, No. 83-00005 (D.D.C. 1983).

B. Foreign Bribery Criminal Prosecution under the FCPA

5. United States v. Int'l Harvester Co. (S.D. Tex. 1982)[211] United States v. McLean (5th Cir. 1984)[212] McLean v. Int'l Harvester Co. (5th Cir. 1987)[213]

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.

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211 *U.S. v. Int'l Harvester Co.* (now known as Navistar International Company), No. 82-244 (S.D. Tex., Nov. 1982); *U.S. v. Luis Uriarte*, No. 82-224 (S.D. Tex., Oct. 1982).

212 *U.S. v. McLean*, 738 F.2d 655 (5th Cir. 1984), *cert. denied*, 470 U.S. 1050 (1985).

213 *McLean v. Int'l Harvester Co.*, 817 F.2d 1214 (5th Cir. 1987).

B. Foreign Bribery Criminal Prosecution under the FCPA

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.

B. Foreign Bribery Criminal Prosecution under the FCPA

4. United States v. Ruston Gas Turbines, Inc. (S.D. Tex. 1982)[214]

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.

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214 *U.S. v. Ruston Gas Turbines, Inc.*, No. H-82-207 (S.D. Tex.1982); *U.S. v. Al Lee Eyster and James R. Smith*, No. H-82-224 (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)[215] United States v. Marquis D. King (D.D.C. 1983)[216]

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.

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215 *U.S. v. C.E. Miller Corp.*, No. 82-cr-788 (C.D. Cal. 1982).

216 *U.S. v. King*, No. 83-00020 (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)[217]

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.

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[217] *U.S. v. Crawford Enters., Inc.*, No. H-82-224 (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)[218]

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.

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[218] *U.S. v. Kenny Int'l Corp.*, No. 79-372 (D.D.C. 1979); *U.S. v. Kenny*, No. 79-cv2038 (D.D.C. 1979).

C. Foreign Bribery Civil Actions Instituted by the Department of Justice under the FCPA

C. Foreign Bribery Civil Actions under the FCPA

5. United States v. Metcalf & Eddy (D. Ma. 1999)[219]

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.

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219 *U.S. v. Metcalf & Eddy*, No. 99-cv-12566 (D. Mass. 1999).

C. Foreign Bribery Civil Actions under the FCPA

4. United States v. American Totalisator Co. Inc. (D. Md. 1993)[220]

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.

[220] *U.S. v. Am. Totalisator Co.* (D. Md. 1993).

C. Foreign Bribery Civil Actions under the FCPA

3. United States v. Dornier GmbH (D. Minn. 1990)[221]

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.

[221] *U.S. v. Dornier GmbH* (D. Minn. 1990).

C. Foreign Bribery Civil Actions under the FCPA

2. United States v. Sam P. Wallace Co., Inc. (D.P.R. 1983)[222] United States v. Alfonso A. Rodriguez (D.P.R. 1983)[223]

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.

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222 *U.S. v. Sam P. Wallace Co.*, No. 83-cr-0034 (D.P.R. 1983).

223 *U.S. v. Rodriguez,* No. 83-cr-0044 (D.P.R. 1983).

C. Foreign Bribery Civil Actions under the FCPA

1. United States v. Roy J. Carver and R. Eugene Holley (S.D. Fla. 1979)[224]

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.

[224] *U.S. v. Carver* (S.D. Fla. 1979).

D. SEC Actions Relating to Foreign Bribery

D. SEC Actions Relating to Foreign Bribery

115. SEC v. Eli Lilly and Company (D.D.C. 2012)[225]

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 officials, and another was owned by a person closely associated with an important member of Russia's parliament.

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225 *SEC v. Eli Lilly and Co.*, No. 1:12-cv-02045 (D.D.C. 2012).

D. SEC Actions Relating to Foreign Bribery

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.

See Ongoing Investigation Number F-1.

D. SEC Actions Relating to Foreign Bribery

114. SEC v. Allianz (2012)[226]

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.

See Ongoing Investigation Number F-80.

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[226] SEC Accounting and Auditing Enforcement Release No. 68448 (Dec. 13, 2012); Admin. Pro. File. No. 3-15132.

D. SEC Actions Relating to Foreign Bribery

113. SEC v. Tyco International Ltd. (D.D.C. 2012)227

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, Viet Nam, 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. If approved by

227 *SEC v. Smith & Nephew plc*, No. 1:12-cv-00187 (D.D.C. 2012).

D. SEC Actions Relating to Foreign Bribery

the court, Tyco will be required to pay disgorgement and prejudgment interest of approximately $13.13 million and be permanently restrained and enjoined from further violations of the FCPA. However, the matter is before U.S. District Judge Richard Leon, and, along with the SEC's settlement with IBM (filed 2011), as of December 2012 he has not yet approved the final order.

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-135.

See Ongoing Investigation Number D-24.

D. SEC Actions Relating to Foreign Bribery

112. SEC v. Oracle Corporation (N.D. Cal. 2012)[228]

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.

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228 *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)[229]

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.

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229 *SEC v. Pfizer Inc.*, No. 1:12-cv-01303 (D.D.C. 2012).

D. SEC Actions Relating to Foreign Bribery

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.

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-134.
See Ongoing Investigation Number F-60.

D. SEC Actions Relating to Foreign Bribery

110. SEC v. Wyeth LLC (D.D.C. 2012)[230]

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

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230 *SEC v. Wyeth LLC*, No. 1:12-cv-01304 (D.D.C. 2012).

D. SEC Actions Relating to Foreign Bribery

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 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-13.

D. SEC Actions Relating to Foreign Bribery

107. SEC v. Orthofix International, N.V. (E.D. Tex. 2012)[231]

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-132.

See Ongoing Investigation Number F-63.

[231] *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)[232]

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,

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[232] *SEC v. Garth Peterson*, No. 1:12-cv-00224 (E.D.N.Y. 2012).

D. SEC Actions Relating to Foreign Bribery

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-130.

See Ongoing Investigation Number F-46.

D. SEC Actions Relating to Foreign Bribery

107. SEC v. Biomet, Inc. (D.D.C. 2012)[233]

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.

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233 *SEC v. Biomet, Inc.* , No. 1:12-cv-00454 (D.D.C. 2012).

D. SEC Actions Relating to Foreign Bribery

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-129.

See Ongoing Investigation Numbers F-38 and F-91.

D. SEC Actions Relating to Foreign Bribery

106. SEC v. Mark A. Jackson and James J. Ruehlen (S.D. Tex. 2012)[234] SEC v. Thomas O'Rourke (S.D. Tex. 2012)[235]

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

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234 *SEC v. Jackson et al.*, No. 4:12-cv-00563 (S.D. Tex. 2012).

235 *SEC v. O'Rourke*, No. 4:12-cv-00564 (S.D. Tex. 2012).

D. SEC Actions Relating to Foreign Bribery

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"). The SEC has been granted leave to file an amended complaint.

On Feb 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.

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)[236]

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 pre-judgment 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-127.

See Ongoing Investigation Number F-38.

236 *SEC v. Smith & Nephew plc*, No. 1:12-cv-00187 (D.D.C. 2012).

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104. SEC v. Magyar Telekom, Plc. and Deutsche Telekom, AG (S.D.N.Y. 2011)[237] SEC v. Elek Straub, Andras Balogh, and Tamas Morvai (S.D.N.Y. 2011)[238]

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

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237 *SEC v. Magyar Telekom, Plc. and Deutsche Telekom, AG*, No. 11-cv-09646 (S.D.N.Y. 2011).

238 *SEC v. Straub et al.*, No. 11-cv-09645 (S.D.N.Y. 2011).

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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 though a public tender process, but Magyar Telekom was unsuccessful in acquiring shares from the minority shareholders due to a budget set by Deutsche Telekom. Straub, Balogh, and Morvai offered bribes to Montenegrin officials to induce the government to contribute €0.30 per share to private shareholders, which enabled Magyar Telekom to acquire additional shares.

After the government facilitated the TCG deal, Straub and Balogh allegedly funneled €4.47 million to Montenegrin officials through "consulting" contracts between Magyar Telekom's subsidiaries and entities in Mauritius and the Seychelles. Straub, Balogh, and Morvai also allegedly funneled €580,000 to the sister of a Montenegrin official through a sham consulting agreement with a purported New York-based counter-party and entered a fourth sham consulting agreement with a shell company purportedly based in England, under which it paid €2.3 million.

The SEC further alleged that Straub, Balogh, and Morvai lied to Magyar Telekom's auditors by failing to disclose the purpose and existence of the contracts used to pay government officials. The false entries in Magyar Telekom's books and records were consolidated into the books and records of Deutsche Telekom.

Enforcement. The SEC charged Magyar Telekom with violations of the anti-bribery, books and records, and internal controls provisions of the FCPA. Magyar Telekom agreed to pay $31.2 million in disgorgement and pre-judgment 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 are 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 seeks 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

D. SEC Actions Relating to Foreign Bribery

their alleged conduct occurred wholly outside, and without a nexus to, the United States. Furthermore, the defendants argue that the SEC's claims are time-barred. Lastly, the defendants argue that the complaint fails to state the claims alleged because it does 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 does not sufficiently allege facts to support the aiding and abetting claims; and the complaint does 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. The case is pending.

See DOJ Digest Number D-126.

See Ongoing Investigation Number F-34.

D. SEC Actions Relating to Foreign Bribery

103. SEC v. Aon Corporation (D.D.C 2011)[239]

Nature of the Business. Aon 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.

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.

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239 *SEC v. Aon Corporation.*, 1:11-cv-02256 (D.D.C. 2011).

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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.

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 reasonably designed to detect and prevent the improper payments.

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.
See Ongoing Investigation Number F-40.

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)[240]

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. Stephan Signer, a citizen of Germany, worked for SBS as a commercial director. Bernd Regendantz, a citizen of Germany, was CFO of SBS. Carlos Sergi, a citizen of Argentina, was a businessman with extensive high-level government contracts 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 Argentine, and in the hopes of getting the DNI project resumed, the defendants allegedly paid additional bribes to the incoming officials. When the project was terminated in May 2001, the defendants allegedly responded with a multi-faceted strategy to overcome the termination. According to the 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

[240] *SEC v. Sharef et al.*, No. 11-cv-09073 (S.D.N.Y. 2011).

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from the arbitral tribunal the fact that the DNI Contract had been secured through bribery and 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.

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, the SEC advised the court that the SEC and Sharef had reached an agreement in principle to settle the civil claims against Sharef. As of December 2012, any terms of the settlement have yet to be disclosed. Also 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. The motion is currently pending.

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, Securities 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)[241]

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 Ongoing Investigation Number F-50.

See Parallel Litigations Digest, Other Number H-G1.

[241] SEC Accounting and Auditing Enforcement Release No. 3307 (Oct. 13, 2011); Admin. Pro. File. No. 3-14585.

D. SEC Actions Relating to Foreign Bribery

100. In the Matter of Diageo plc (2011)[242]

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

[242] SEC Accounting and Auditing Enforcement Release No. 3307 (July 27, 2011); Admin. Pro. File. No. 3-14490.

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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.

See Ongoing Investigation Number F-53.

D. SEC Actions Relating to Foreign Bribery

99. SEC v. Armor Holdings, Inc. (2011)[243]

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.

See Ongoing Investigation Number F-30.

[243] *SEC v. Armor Holdings, Inc.*, 1:11-01271 (D.D.C. 2011).

D. SEC Actions Relating to Foreign Bribery

98. SEC v. Tenaris, S.A. (2011)[244]

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'ztashqineftgaz ("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'ztashgineftgaz ("OAO"). In or around February 2007, Tenaris entered into an agreement to pay the agent a commission of 3.5% for access to confidential bid information. Using the confidential bid information, Tenaris was awarded the contract and OAO agreed to pay Tenaris $2,719,720 for pipe used in oil and gas development in Uzbekistan. In or around April and May 2007, Tenaris entered into an agreement to pay the agent a commission of 3% for bid information related to three additional OAO contracts. By using confidential bid information Tenaris was awarded the three contracts. Tenaris's then-regional sales personnel understood that a portion of the commissions paid to the agent would be used to pay OAO officials.

Tenaris's then-regional sales personnel also agreed to make payments to the Uzbek government agency, Uzbekexpertiza JSC ("Uzbekexpertiza"), to encourage Uzbekexpertiza not to investigate the bidding process. However, evidence of such payment was not found. According to the SEC, in or around 2007, Tenaris also failed to accurately account for these transactions with the agent and payments to OAO officials on their books and records. Tenaris's system of internal controls also allegedly failed to detect or prevent payments to OAO officials, including a failure to ensure that proper due diligence was conducted on the agent.

Enforcement. In 2009, Tenaris disclosed the improper activity to the SEC, and in 2010, launched a world-wide investigation and took steps to update and improve its existing compliance programs. On May 17, 2011 Tenaris entered into a deferred prosecution agreement with the SEC, under which Tenaris agreed to pay disgorgement in the amount of $4,786,438 plus prejudgment interest of an estimated

[244] Matter resolved through deferred prosecution agreement (May 2011).

D. SEC Actions Relating to Foreign Bribery

$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.
See Ongoing Investigation Number F-52.

D. SEC Actions Relating to Foreign Bribery

97. In the Matter of Rockwell Automation, Inc. (2011)[245]

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.

See Ongoing Investigation Number F-28.

[245] SEC Accounting and Auditing Enforcement Release No. 64380 (May 3, 2011); Admin Pro. File. No. 3-14364.

D. SEC Actions Relating to Foreign Bribery

96. SEC v. Johnson & Johnson (D.D.C. 2011)[246]

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

246 *SEC v. Johnson & Johnson*, 1:11-00686 (D.D.C. 2011).

D. SEC Actions Relating to Foreign Bribery

$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 pre-judgment interest; and ordering it to comply with an FCPA compliance program.

See DOJ Digest Number B-120.

See Ongoing Investigation Number F-33 and F-13.

See Parallel Litigation Digest, Derivative Case Numbers H-F22 and H-F25.

D. SEC Actions Relating to Foreign Bribery

95. SEC v. Comverse Technology, Inc. (E.D.N.Y. 2011)[247]

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.

247 *SEC v. Comverse Technology, 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)[248]

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

[248] SEC Accounting and Auditing Enforcement Release No. 3255 (Mar. 24, 2011); Admin Pro. File No. 3-14305.

D. SEC Actions Relating to Foreign Bribery

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.

See Ongoing Investigation Number F-39.

D. SEC Actions Relating to Foreign Bribery

93. SEC v. International Business Machines Corporation (D.D.C. 2011)[249]

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

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249 *SEC v. International Business Machines Corporation.*, No. 1:11-00563 (D.D.C. 2011).

D. SEC Actions Relating to Foreign Bribery

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. The settlement, however, is pending approval by U.S. District Judge Richard Leon, and, along with the SEC's FCPA settlement with Tyco (filed in 2012), as of December 2012 he has not yet approved the final order.

See Ongoing Investigation Number F-2.

D. SEC Actions Relating to Foreign Bribery

92. SEC v. Tyson Foods, Inc. (D.D.C. 2011)[250]

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.

[250] *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)[251]

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 Number B-116.

See Ongoing Investigation Number F-55.

[251] *SEC v. Maxwell Technologies Inc.*, No. 1:11-00258 (D.D.C 2011).

D. SEC Actions Relating to Foreign Bribery

90. SEC v. Paul W. Jennings (D.D.C. 2011)[252]

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

[252] *SEC v. Jennings*, 1:11-cv-00144 (D.D.C. 2011).

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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-13.

D. SEC Actions Relating to Foreign Bribery

89. SEC v. Alcatel-Lucent, S.A. (S.D. Fla. 2010)[253]

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 pre-judgment 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.

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253 *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)[254]

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.

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254 *SEC v. RAE Systems Inc.*, No. 1:10-cv-02093 (D.D.C. 2010).

D. SEC Actions Relating to Foreign Bribery

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.

See Ongoing Investigation Number F-45.

D. SEC Actions Relating to Foreign Bribery

87. SEC v. GlobalSantaFe Corp. (D.D.C. 2010)[255]

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.

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255 *SEC v. GlobalSantaFe Corp.*, No. 1:10-cv-01890-RMC (D.D.C. 2010).

D. SEC Actions Relating to Foreign Bribery

86. SEC v. Panalpina, Inc. (S.D. Tex. 2010)[256]

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

[256] *S.E.C. v. Panalpina, Inc.*, No. 4:10-cv-4334 (S.D. Tex. 2010).

D. SEC Actions Relating to Foreign Bribery

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-85, D-84, D-83, and D-82.

D. SEC Actions Relating to Foreign Bribery

85. In the Matter of Royal Dutch Shell plc (2010)[257]

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-86, D-84, D-83, and D-82.

[257] In the Matter of Royal Dutch Shell plc and Shell Int'l Exploration and Production Inc., 3 S.E.C. 14107 (Nov. 4, 2010).

D. SEC Actions Relating to Foreign Bribery

84. SEC v. Transocean Inc. (D.D.C. 2010)[258]

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-86, D-85, D-83, and D-82.

[258] *S.E.C. 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)[259]

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-86, D-85, D-84, and D-82.

[259] *S.E.C. 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)[260]

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.

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[260] *S.E.C. v. Pride Int'l, Inc.*, No. 4:10-cv-4335 (S.D. Tex. 2010).

D. SEC Actions Relating to Foreign Bribery

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").

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-86, D-85, D-84, and D-83.

D. SEC Actions Relating to Foreign Bribery

81. SEC v. Noble Corp. (S.D. Tex. 2010)[261]

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.

[261] *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)[262]

Nature of the Business. Dimon International Kyrgyzstan, was a wholly-owned subsidiary of Dimon, Inc. ("Dimon") engaged in the purchase and fermentation of tobacco in Kyrgyzstan. Dimon and Standard Commercial Corporation merged to form Alliance One in 2005. The four defendants were Dimon executives.

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 defendant 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.

In addition, the SEC's complaint alleges that, from 2000 to 2003, Dimon paid bribes of approximately $542,590 to government officials of the TTM in exchange for obtaining approximately $9.4 million in sales contracts. Defendant 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, defendants Elkin, Myers, Reynolds, and Williams consented to the entry of final judgments permanently enjoining each of them from violating the anti-bribery provisions of the FCPA. Defendants Myers and Reynolds were ordered to pay monetary penalties of $40,000 each.

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262 *SEC v. Bobby J. Elkin, Jr., Baxter J. Myers, Thomas G. Reynolds, and Tommy L. Williams*, No. 1:10-cv-00661 (D.D.C. 2010).

D. SEC Actions Relating to Foreign Bribery

See DOJ Digest Numbers B-103, B-104, and B-105.

See SEC Digest Numbers D-79, and D-78.

D. SEC Actions Relating to Foreign Bribery

79. SEC v. Universal Corporation (D.D.C. 2010)17[263]8

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-103, B-104, and B-105.

See SEC Digest Numbers D-80 and D-78.

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263 *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)17[264]7

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

264 *SEC v. Alliance One Int'l, Inc.*, No. 10-cv-01319 (D.D.C. 2010).

D. SEC Actions Relating to Foreign Bribery

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-103, B-104, and B-105.
See SEC Digest Numbers D-80 and D-79.

D. SEC Actions Relating to Foreign Bribery

77. SEC v. ABB Ltd (D.D.C. 2010)[265]

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.

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.

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

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

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265 *SEC v. ABB Ltd*, No. 10-cv-01648 (D.D.C. 2010).

D. SEC Actions Relating to Foreign Bribery

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.

D. SEC Actions Relating to Foreign Bribery

76. SEC v. David P. Turner and Ousama M. Naaman (D.D.C. 2010)[266]

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.

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266 *SEC v. David P. Turner and Ousama M. Naaman*, No. 1:10-cv-01309-RMC (D.D.C. 2010).

D. SEC Actions Relating to Foreign Bribery

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.

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-13.

D. SEC Actions Relating to Foreign Bribery

75. SEC v. General Electric Co., Ionics, Inc., and Amersham PLC (D.D.C. 2010)[267]

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.

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267 *SEC v. General Electric Co.*, No. 10-cv-01258 (D.D.C. 2010).

D. SEC Actions Relating to Foreign Bribery

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 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 pre-judgment 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 Ongoing Investigation Number F-13.

See Parallel Litigation Digest, Employment 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)[268]

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

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268 *SEC v. ENI, S.p.A. and Snamprogetti Netherlands B.V.*, No. 4:10-cv-02414 (S.D. Tex. 2010).

D. SEC Actions Relating to Foreign Bribery

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, Derivative Case Number H-F10.

D. SEC Actions Relating to Foreign Bribery

73. SEC v. Veraz Networks, Inc. (N.D. Cal. 2010)[269]

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.

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269 *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)[270]

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, Derivative Case Number H-F10.

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270 *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)[271]

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

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[271] *SEC v. Daimler AG.*, No. 10-cv-00473 (D.D.C. 2010).

D. SEC Actions Relating to Foreign Bribery

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 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)[272]

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

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272 *SEC v. Innospec, Inc.*, No. 1:10-cv-0048 (D.D.C. 2010).

D. SEC Actions Relating to Foreign Bribery

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.

D. SEC Actions Relating to Foreign Bribery

69. SEC v. NATCO Group Inc. (S.D. Tex. 2010)[273]

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 Kazakh with bogus invoices. With full knowledge of the invoices' falsity, it is alleged that TEST Kazakh presented these false invoices in excess of $80,000 to the banks to withdraw the requested cash. TEST Kazakhstan later submitted the invoices to TEST for reimbursement. It is alleged that TEST reimbursed these requests despite knowing the invoices mischaracterized the true purpose of the services rendered.

Enforcement. The SEC's complaint charged NATCO violations of the books and records and internal controls provisions of the FCPA. On January 6, 2010, without admitting or denying the allegations in the complaint, NATCO agreed to pay a $65,000 penalty.

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273 *SEC v. NATCO Group 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)[274]

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 a pay a $1.5 million penalty, a permanent injunction against violations of the FCPA, and to provide the SEC with annual FCPA compliance reports and certifications.

See DOJ Digest Number B-95

See Parallel Litigation Digest Number H-A9

274 *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)[275] SEC v. Joe Summers (S.D. Tex. 2010)[276]

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

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275 *SEC v. Bobby Benton*, No. 04:09-cv-03963 (S.D. Tex. 2009)

276 *SEC v. Joe Summers*, No. 04:10-cv-02786 (S.D. Tex. 2010)

D. SEC Actions Relating to Foreign Bribery

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, Derivative Cases Number H-F11.

D. SEC Actions Relating to Foreign Bribery

66. SEC v. AGCO Corp. (2009)[277]

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 pre-judgment interest, and pay a civil penalty of $2.4 million.

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277 *SEC v. AGCO Corp.*, No. 1:09-cv-1865-RMU (D.D.C. 2009).

D. SEC Actions Relating to Foreign Bribery

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-13.

D. SEC Actions Relating to Foreign Bribery

65. SEC v. Oscar H. Meza (D.D.C. Aug. 28, 2009)[278]

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 $30,0000 and disgorgement and prejudgment interest of $26,707.

See DOJ Digest Number B-69.

See SEC Digest Number D-52.

See Parallel Litigation Digest, Securities Litigation Case Number H-A4.

See Parallel Litigation Digest, Derivative Case Number H-F6.

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278 *SEC v. Meza*, No. 1:09-01648 (D.D.C. 2009).

D. SEC Actions Relating to Foreign Bribery

64. SEC v. Helmerich & Payne, Inc. (2009)[279]

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.

[279] SEC Accounting and Auditing Enforcement Release No. 3026 (July 30, 2009); Admin. Pro. File. No. 3-13565.

D. SEC Actions Relating to Foreign Bribery

63. SEC v. Nature's Sunshine Products, Inc., Douglas Faggioli, and Craig D. Huff (D. Utah 2009)[280]

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

[280] *SEC v. Nature's Sunshine Products, Inc., et al.*, No. 2:09-0672 (D. Utah 2009).

D. SEC Actions Relating to Foreign Bribery

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 Number H-A5.

D. SEC Actions Relating to Foreign Bribery

62. SEC v. Avery Dennison Corp. (C.D. Cal. 2009)[281] In re Avery Dennison Corp. (2009)[282]

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.

See Ongoing Investigation Number F-18.

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281 *SEC v. Avery Dennison Corp.*, No. 1:09-cv-5493 (C.D. Cal. 2009).

282 *In re Avery Dennison Corp.*, SEC Administrative Proceeding, File No. 3-13564 (July 28, 2009).

D. SEC Actions Relating to Foreign Bribery

61. SEC v. Thomas Wurzel (D.D.C. 2009)283

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.

283 *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 Corp. (2009)[284]

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.

[284] *In re United Industrial Corp.*, SEC Administrative Proceeding 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)[285]

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 pre-judgment interest.
3. Ordering it to pay a civil penalty of $3,025,066.

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285 *SEC v. Novo Nordisk A/S*, No. 1:09-cv-00862 (D.D.C. 2009).

D. SEC Actions Relating to Foreign Bribery

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-13.

D. SEC Actions Relating to Foreign Bribery

58. SEC v. ITT Corp. (D.D.C. 2009)[286]

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 pre-judgment interest of $387,538.11, and to pay a $250,000 civil penalty.

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286 *SEC v. ITT Corporation*, 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)[287]

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

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287 *SEC v. Halliburton Co. and KBR, Inc.*, No. 4:09-cv-00399 (S.D. Tex. 2009).

D. SEC Actions Relating to Foreign Bribery

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 to conspiracy and other related charges on December 3, 2011 and March 11, 2012 respectively. Sentencing of both individuals took place in February 2012.

French, Nigerian, Swiss, and British authorities continue to investigate this matter. In an SEC filing on February 17, 2010, Halliburton first reported it was seeking plea negotiations with the United Kingdom's Serious Fraud Office. On February 16, 2011, KBR announced that its wholly-owned subsidiary, M.W. Kellogg Limited ("MWKL"), reached a civil settlement with the Serious Fraud Office, according to which MWKL paid approximately $11, 238,886 and agreed to improve its internal audit and compliance systems.

Similarly according to a February 17, 2011 SEC filing, Halliburton and KBR reached a settlement to resolve charged 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, Derivative Case Number H-F10.

D. SEC Actions Relating to Foreign Bribery

56. SEC v. Siemens Aktiengesellschaft (D.D.C. 2008)[288]

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.

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288 *SEC v. Siemens Aktiengesellschaft*, No. 08-CV-02167 (D.D.C. 2008).

D. SEC Actions Relating to Foreign Bribery

The SEC alleged a wide range of corrupt payments, spread across several of Siemens's divisions. Significantly, in some cases, the sole jurisdictional basis for certain of the bribes was based on the use of correspondent bank accounts. Siemens allegedly paid almost $19 million in bribes to Venezuelan government officials, using sham consultants and other intermediaries, in connection with mass transit systems in the Venezuelan cities of Valencia and Maracaibo.

Between 2002 and 2007, Siemens allegedly paid approximately $22 million to business consultants who used some portion of those funds to bribe government officials in China in connection with a $1 billion project to construct metro trains and signaling devices. Also in China, between 2002 and 2003, Siemens allegedly paid approximately $25 million in bribes to government customers in connection with two projects involving installation of high voltage transmission lines. The projects were worth approximately $838 million, and as in many other instances, Siemens allegedly funneled payments through multiple intermediaries. Siemens also allegedly paid approximately $14.4 million in bribes in connection with $295 million in sales of medical equipment to five Chinese state-owned hospitals, and funded expensive trips for doctors at Chinese state-owned hospitals.

In Israel, between 2002 and 2005, Siemens allegedly paid approximately $20 million in bribes through a business consultant to a former director of the state-owned electricity company in connection with four contracts worth approximately $786 million to build and service power plants.

In Bangladesh, Siemens allegedly made more than $5.3 million in corrupt payments between 2004 and 2006 to Bangladeshi government officials and senior employees of the state-owned Bangladesh Telegraph & Telephone Board ("BTTB") in connection with a BTTB mobile telephone contract worth almost $41 million, using three sham business consultants. The SEC alleged payments to the son of the former Prime Minister of Bangladesh, though it is not clear if the SEC alleged that he was a government official.

In Nigeria, Siemens allegedly made approximately $12.7 million in suspicious payments, including at least $4.5 million in bribes, in connection with four telecommunications projects with state-owned companies worth approximately $130 million. These payments were allegedly made through 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.

D. SEC Actions Relating to Foreign Bribery

Siemens allegedly paid $383,000 in bribes in connection with $6 million in sales of medical devices on two projects involving the Vietnamese Ministry of Health. Finally, Siemens allegedly paid approximately $140,000 in bribes to officials at the Vietnamese defense ministry and state-owned telecommunications company Vietel in connection with a $35 million tender for the supply of telecommunications equipment and services.

Enforcement. On December 15, 2008, Siemens consented to the entry of final judgment enjoining it from committing further FCPA violations. Without admitting or denying the allegations, Siemens agreed to pay $350 million in disgorgement and also agreed to the imposition of an independent monitor for a period of up to four years. Theo Wiegle, a former German finance minister, will serve as the Monitor, and will be assisted by a U.S. law firm, marking the first time that a non-U.S. Monitor has been appointed in an FCPA case.

On the same day, Siemens AG pleaded guilty to conspiring to violate the FCPA's internal controls and books and records provisions, Siemens Argentina pleaded guilty to conspiring to violate the FCPA's books and records provisions, and Siemens Bangladesh and Siemens Venezuela each pleaded guilty to conspiring to violate the FCPA's anti-bribery and books and records provisions. Siemens AG and its subsidiaries agreed to pay criminal fines totaling $450 million. On the same day, Siemens also entered into a settlement with German authorities, agreeing to pay penalties of €395 million in addition to the €201 million in penalties that it previously paid in an earlier settlement.

In addition, the DOJ brought a forfeiture action against more than $3 million contained in several bank accounts held by or for the benefit of the son of the former Prime Minister of Bangladesh and two of the intermediaries involved in the bribery scheme involving Siemens Bangladesh.

In July 2009, Siemens reached a settlement with the World Bank over bribery allegations. The Bank's investigation focused specifically on an urban-transport project the Bank financed in Russia. Siemens agreed to pay $100 million over 15 years to help anticorruption efforts and also agreed to forgo bidding on any of the Bank's projects for two years. The settlement means that Siemens and its subsidiaries will not face additional sanctions from 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, Securities Number 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)[289]

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

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289 *SEC v. Fiat S.p.A. and CNH Global N.V.*, No. 1:08-cv-02211 (D.D.C. 2008).

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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, pre-judgment interest of $1,899,510, and a civil penalty of $3,600,000.

See DOJ Digest Number B-74.

D. SEC Actions Relating to Foreign Bribery

54. SEC v. Albert Jackson Stanley (S.D. Tex. 2008)[290]

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.

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290 *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)[291] In re Con-way Inc. (2008)[292]

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-weigh the shipments, resulting in lower shipping charges (called "gain share" payments).

Enforcement. On August 27, 2008, without admitting or denying the allegations in the SEC's complaint, Con-way agreed to pay a civil penalty of $300,000. On the same day, the Commission issued a settled cease-and-desist order that requires the company to cease and desist from causing or committing any future FCPA violations. Con-way consented to the issuance of the order without admitting or denying any of the Commission's findings.

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291 *SEC v. Con-Way Inc.*, No. 1:08-cv-01478 (D.D.C. 2008).

292 *In re Con-way Inc.*, SEC Adminstrative Proceeding File No. 3-13148 (Aug. 27, 2008).

D. SEC Actions Relating to Foreign Bribery

52. In the Matter of Faro Technologies, Inc. (2008)[293]

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 pre-judgment 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, Securities Litigation Case Number H-A4.

See Parallel Litigation Digest, Derivative Case Number H-F6.

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[293] *In re Faro Techs., Inc.,* SEC Administrative Proceeding 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)[294]

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, and 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 PetroComerical 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

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294 *SEC v. Willbros Group, Inc., et al.*, No. 4:08-cv-01494 (S.D. Tex. 2008).

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.

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 pre-judgment 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

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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, Securities Case Number H-A8.

D. SEC Actions Relating to Foreign Bribery

50. SEC v. AB Volvo (D.D.C. 2008)[295]

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, pre-judgment interest of $1,303,441, a civil penalty of

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295 *SEC v. AB Volvo*, No. 1:08-cv-00473 (D.D.C. 2008).

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$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-13.

D. SEC Actions Relating to Foreign Bribery

49. SEC v. Flowserve Corp. (D.D.C. 2008)[296]

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 if its foreign subsidiaries: Flowserve Pompes SAS, a French subsidiary, and Flowserve B.V., a Dutch subsidiary. These two foreign subsidiaries allegedly entered into 20 contracts in which kickback payments to the Iraqi government were either made or authorized. In total, payments of $646,488 were made through two Jordanian agents with Flowserve Pompes SAS making payments totaling $604,651, and Flowserve B.V. making payments totaling $41,836. According to the SEC, Flowserve Pompes authorized an additional $173,758 in payments which were never made.

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

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296 *SEC v. Flowserve Corp.*, No. 1:08-cv-00294 (D.D.C. 2008).

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mandating that it disgorge $2,720,861, plus $853,364 in pre-judgment interest, and pay a civil penalty of $3,000,000.

See DOJ Digest Number D-64.

See Ongoing Investigation Number F-13.

D. SEC Actions Relating to Foreign Bribery

48. SEC v. Westinghouse Air Brake Technologies Corp. (E.D. Pa. 2008)[297] SEC v. Westinghouse Air Brake Technologies Corporation (Feb. 14, 2008)[298]

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 pre-judgment interest of $29,351 and the appointment of a compliance consultant for a 60 day review.

See DOJ Digest Number B-63.

297 *SEC v. Westinghouse Air Brake Techs. Corp.*, No. 08-cv-706 (E.D. Pa. 2008).

298 *SEC v. Westinghouse Air Brake Techs. Corp.*, SEC Administrative Proceeding 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)[299] SEC v. Gioacchino De Chirico (N.D. GA 2007)[300]

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, Securities Cases Number H-A6.

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299 *In re Immucor, Inc.*, SEC Administrative Proceeding File No. 3-12846 (Sept. 27, 2007).

300 *SEC v. Gioacchino 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)[301]

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.

See Ongoing Investigation Number F-15.

[301] *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)[302]

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 pre-judgment 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-13.

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302 *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)[303]

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.** $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, in violation of the books and records and internal controls provisions of the FCPA.

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 of $1,647,363 in profits, plus $584,150 in pre-judgment interest, and 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

303 *SEC v. Akzo Nobel, N.V.*, No. 07-cv-02293 (D.D.C. 2007).

D. SEC Actions Relating to Foreign Bribery

resolution with the Dutch Public Prosecutor within 180 days, Akzo Nobel will pay $800,000 to the U.S. Treasury.

See DOJ Digest Entry B-60.

See Ongoing Investigation Number F-13.

D. SEC Actions Relating to Foreign Bribery

43. SEC v. Robert W. Philip (D. Or. 2007)[304]

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.

304 *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)[305]

Nature of the Business. Purchase of Iraqi oil by Chevron Corporation ("Chevron"), 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 ("SOMO") 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 violated the books and records and internal controls provisions of the FCPA by improperly recording the true nature of the payments and by failing to detect such improper 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 Corporation. 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.

Chevron also 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.

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[305] *SEC v. Chevron Corp.*, No. 07-cv-10299 (S.D.N.Y. 2007).

D. SEC Actions Relating to Foreign Bribery

See DOJ Digest Number B-59.

See Parallel Litigation Digest, Derivative Case Number H-F8.

See Ongoing Investigation Number F-6.

D. SEC Actions Relating to Foreign Bribery

41. SEC v. York Int'l Corp. (D.D.C. 2007)[306]

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

306 *SEC v. York Int'l. Corp.*, 07-cv-1750 (D.D.C. 2007).

D. SEC Actions Relating to Foreign Bribery

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.
See Ongoing Investigation Number F-13.

D. SEC Actions Relating to Foreign Bribery

40. SEC v. Monty Fu (D.D.C. 2007)[307]

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, Securities Case Number H-A2.

See Parallel Litigation Digest, ERISA Case Number H-B1.

[307] *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.[308]

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.

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308 *In re Bristow Group Inc.*, SEC Administrative Proceeding File No. 3-12833 (Sept. 26, 2007).

D. SEC Actions Relating to Foreign Bribery

38. SEC v. Chandramowli Srinivasan (D.D.C. 2007)[309]

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.

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309 *SEC v. Srinivasan*, 07-cv-1699 (D.D.C. 2007); *see also In re Elec. Data Sys. Corp.*, SEC Administrative Proceeding File No. 3-12825 (Sept. 25, 2007).

D. SEC Actions Relating to Foreign Bribery

37. SEC v. Si Chan Wooh (D. Or. 2007)[310]

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.

[310] *SEC v. Wooh*, 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)[311]

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.

311 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)[312]

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 pre-judgment 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-13.

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312 *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)[313]

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

313 *SEC v. Baker Hughes Inc.*, No. 4:07-cv-01408 (S.D. Tex. 2007).

D. SEC Actions Relating to Foreign Bribery

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, Derivative Case Number H-F4.

See Parallel Litigation Digest, Derivative Case Number H-F9.

D. SEC Actions Relating to Foreign Bribery

33. SEC v. Charles Michael Martin[314]

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.

314 *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)[315]

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.

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315 *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)[316]

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-13.

316 *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)[317]

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.

317 *In re Schnitzer Steel Indus., Inc.*, SEC Administrative Proceeding File No. 3-12456 (Oct. 16, 2006).

D. SEC Actions Relating to Foreign Bribery

29. In the Matter of Statoil ASA (2006)[318]

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.

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318 *In re Statoil ASA*, SEC Administrative Proceeding File No. 3-12453 (Oct. 13, 2006).

D. SEC Actions Relating to Foreign Bribery

28. SEC v. Jim Bob Brown (S.D. Tex. 2006)[319]

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, Securities Case Number H-A8.

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319 *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)[320]

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, Securities Case Number H-A7.

[320] *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)[321]

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-13.

See Parallel Litigation Digest, Sovereign Case Number H-E5.

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[321] *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)[322]

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.

322 *In re Oil States Int'l., Inc.*, SEC Administrative Proceeding 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)[323]

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.

[323] *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)[324]

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.

[324] *In re Diagnostic Products Corp.*, SEC Administrative Proceeding File No. 3-11933 (May, 20 2005).

D. SEC Actions Relating to Foreign Bribery

22. SEC v. Yaw Osei Amoako (D.N.J. 2005)[325] SEC v. Steven J. Ott and Roger Michael Young (D.N.J. 2006)[326]

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.

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325 *SEC v. Amoako*, No. 3:05-cv-01122 (D.N.J. 2005).

326 *SEC v. Ott,* 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)[327]

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.

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327 *SEC v. Monsanto*, 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)[328]

Nature of the Business. Sales of explosives detection products by InVision Technologies, Inc.[329] ("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, Securities Case Number H-A7.

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328 *SEC v. GE InVision, Inc.*, No. 3:05-cv-00660 (N.D. Cal.).

329 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)[330]

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, Securities Case Number H-A3.

330 *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. (D.D.C. 2004)[331]

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.

See Ongoing Investigation Number F-36.

[331] *In re BJ Services Co.*, SEC Administrative Proceeding File No. 3-11427 (Mar. 10, 2004).

D. SEC Actions Relating to Foreign Bribery

17. SEC v. ABB Ltd. (D.D.C. 2004)[332]

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 Numbers F-13.

See Parallel Litigation Digest, Sovereign Case Number H-E5.

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[332] *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)[333]

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.

333 *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)[334]

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, Securities Case Number H-A2.

See Parallel Litigation Digest, ERISA Case Number H-B1.

334 *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)[335]

Nature of the Business. Acquisition of a majority interest in a Nicaraguan telecommunications company by BellSouth ("BellSouth") which has a wholly-owned subsidiary called BellSouth International ("BellSouth International") and two Latin American subsidiaries: Telcel, C.A. ("Telcel"), a Venezuelan corporation, and Telefonia Celular de Nicaragua, S.A. ("Telefonia"), a Nicaraguan corporation.

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 Telefonia. The chairman of the legislative committee played a significant role in the repeal of the foreign ownership provision.

Enforcement. On January 15, 2002, while neither admitting nor denying the SEC's allegations, BellSouth entered into a cease-and-desist order relating to BellSouth's Latin American subsidiaries, Telcel and Telefonia. BellSouth also agreed to pay a civil penalty of $150,000.

335 *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)[336]

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.

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336 *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 Int'l, Inc.[337] SEC v. Chiquita Brands Int'l, Inc. (D.D.C. 2001)[338]

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.

See Ongoing Investigation Number F-9.

337 *In re Chiquita Brands Int'l., Inc.,* SEC Administrative Proceeding File No. 3-10613 (Oct. 3, 2001).

338 *SEC v. Chiquita Brands Int'l., Inc.*, 1:01-cv-02079 (D.D.C. 2001).

D. SEC Actions Relating to Foreign Bribery

11. In the Matter of Baker Hughes Inc.[339] SEC v. KPMG Siddharta Siddharta & Harsono, and Sonny Harsono (S.D. Tex. 2001)[340] SEC v. Eric L. Mattson and James W. Harris (S.D. Tex. 2001)[341]

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.

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339 *In re Baker Hughes Inc.*, SEC Administrative Proceeding File No. 3-10572 (Sep. 12, 2001).

340 *SEC v. KPMG*, No. 01-cv-3105 (S.D. Tex. 2001).

341 *SEC v. Mattson*, No. 01-cv-3106 (S.D. Tex. 2001).

D. SEC Actions Relating to Foreign Bribery

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, Derivative Case Number H-F4.

See Parallel Litigation Digest, Derivative Case Number H-F9.

D. SEC Actions Relating to Foreign Bribery

10. In the Matter of American Bank Note Holographics, Inc. (July 18, 2001)[342] SEC v. American Bank Note Holographics, Inc. (S.D.N.Y. 2001)[343] SEC v. Joshua C. Cantor (S.D.N.Y 2003)[344]

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.

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342 *In re Am. Bank Note Holographics, Inc.*, SEC Administrative Proceeding File No. 3-10532 (July 18, 2001).

343 *SEC v. Am. Bank Note Holographics, Inc.*, No. 01-6453 (S.D.N.Y. 2001).

344 *SEC v. Cantor*, No. 03-cv-2488 (S.D.N.Y. 2003).

D. SEC Actions Relating to Foreign Bribery

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.

D. SEC Actions Relating to Foreign Bribery

9. SEC v. Int'l Business Machines Corp. (D.D.C. 2000)[345]

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.

345 *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)[346]

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.

346 *SEC v. Triton Energy Corp.*, 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)[347]

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.

347 *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)[348]

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.

348 *SEC v. Ashland Oil, Inc.*, 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)[349]

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.

See DOJ Civil Litigation Digest Number C-2.

349 *SEC v. Sam P. Wallace Co.*, No. 81-1915 (D.D.C. 1981).

D. SEC Actions Relating to Foreign Bribery

4. SEC v. Tesoro Petroleum Corp. (D.D.C. 1980)[350]

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.

[350] *SEC v. Tesoro Petroleum Corp.*, No. 8-2961 (D.D.C. 1980).

D. SEC Actions Relating to Foreign Bribery

3. SEC v. Int'l Systems & Controls Corp. (D.D.C. 1979)[351]

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.

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[351] *SEC v. Int'l. Sys. & Controls Corp.*, No. 79-1760 (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)[352]

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.

352 *SEC v. Katy Indus., Inc.*, 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)[353]

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.** n 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.

353 *SEC v. Page Airways, Inc.,* No. 78-cv-0645 (D.D.C. 1978).

E. Department of Justice FCPA Opinion Procedure Releases[354]

354 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

56. 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 requester 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. ("TRACE"), 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. 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. 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. 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. 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. 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. 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. 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. 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. 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-13.

See Parallel Litigation Digest, Sovereign Case 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. 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. 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. 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

116. ABM Industries Inc.

Background. ABM Industries Inc. is an American company that provides building maintenance, facilities management, and outsourcing to facilities, primarily in the United States.

The Investigation. According to a 10-Q filed September 6, 2012, ABM began an internal investigation in October 2011 regarding activities relating to their wholly owned subsidiary, Linc Network, LLC. Their investigation is regarding the internal policies in connection with a former Linc joint venture partner, which occurred prior to ABM's acquisition of Linc. After the termination of the investigation, ABM terminated its association with the joint venture.

Following the investigation, the Company voluntarily disclosed its findings to the SEC and DOJ. There have been no updates to the investigation recently, and the Company states that it fully intends to cooperate with any investigation the SEC and DOJ may conduct.

F. Ongoing Investigations under the FCPA

115. Analogic Corp.

Background. Analogic Corp. 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 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 involved in the transactions.

Following the investigation, the Company voluntarily disclosed its findings to the SEC, DOJ, and the Danish government. The Company states that it fully intends to cooperate with any investigation the SEC and DOJ may conduct.

F. Ongoing Investigations under the FCPA

114. 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 6-K filed October 31, 2012, Barclays was informed by the SEC and DOJ that they are conducting investigations regarding 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 have helped to gain certain business for the Company.

The Company is conducting its own internal investigation and states that it is fully cooperating with the DOJ and SEC in their inquiries.

F. Ongoing Investigations under the FCPA

113. 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 10-Q filed November 8, 2012, Beam conducted an investigation into its Indian business after having received information through its internal compliance procedures.

The Company disclosed its finding to the SEC and DOJ and states that it intends to cooperate fully with any DOJ or SEC inquiry.

F. Ongoing Investigations under the FCPA

112. Central European Distribution Corp.

Background. Central European Distribution Corp. ("CEDC") is a distilled spirits company, which produces and distributes alcoholic beverages primarily in Central and Eastern European markets.

The Investigation. In an October 5, 20120 10-K/A filing, CEDC disclosed that a potential breach of the books and records provisions of the Foreign Corrupt Practices Act 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 also identified other flaws in internal controls over financial reporting.

According to a 10-Q filed November 18, 2012, the SEC and DOJ have asked the Company to disclose information related to these matters on a voluntary basis. The Company states it is fully cooperating with the SEC and DOJ.

F. Ongoing Investigations under the FCPA

111. Cobalt International Energy

Background. Cobalt International Energy is a United States 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 10-K filed February 21, 2012, Cobalt became aware of media allegations in the fall of 2010 regarding 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 it 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, and the Company states it has been fully cooperating with both agencies since.

F. Ongoing Investigations under the FCPA

110. DreamWorks Animation
Twentieth Century Fox Film Corporation (subsidiary of News Corporation)
The Walt Disney Studios

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, and The Walt Disney Studios 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 at least five movie studios (including DreamWorks, Twentieth Century Fox, and Disney), asking for information about potential inappropriate payments and how the companies dealt with certain government officials in China. As of December 2012, none of the companies have disclosed any information regarding the matter.

F. Ongoing Investigations under the FCPA

109. The Dun & Bradstreet Corp.

Background. The Dun & Bradstreet Corp., a company based in the U.S., 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 November 1, 2012 10-Q, 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. 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 Audit Committee. The Company states that it fully intends to cooperate with the SEC, DOJ, and the Audit Committee.

F. Ongoing Investigations under the FCPA

108. Deere & Co.

Background. Deere & Co. is the world's largest manufacturer of farm equipment.

The Investigation. Deere received an inquiry from the SEC on July 25, 2011 regarding Deere's payments made in Russia and nearby countries. The inquiry included a request to produce documents voluntarily relating to Deere's activities, as well as those of third parties, in "certain foreign countries."

F. Ongoing Investigations under the FCPA

107. Expro International (owned by Goldman Sachs Group Inc.)

Background. Expro International 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 there from 2006 until summer 2009. The alleged bribes were paid to clear Expro's equipment through customs to avoid costly delays.

The Company notified the authorities in the U.K. and the U.S. and is conducting an internal investigation.

F. Ongoing Investigations under the FCPA

106. 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. Ina 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 the Audit and Corporate Governance Committee of the Company's Supervisory Board to conduct in investigation alongside outside counsel. The Company voluntarily disclosed the information it received to the DOJ and SEC.

The Company states it is committed to FCPA compliance.

F. Ongoing Investigations under the FCPA

105. Goodyear Tire & Rubber Co.

Background. Goodyear Tire & Rubber Co. is a U.S.-based manufacturer of tires for automobiles, commercial trucks, light trucks, SUVs, race cars, airplanes, farm equipment, and heavy earth-mover machinery.

The Investigation. According to a 10-Q filed April 27, 2012, the Company received information in June 2011 from an anonymous source that certain payments made by a majority-owned Kenyan joint venture may have been improper. The following month the Company also received information from an employee that a subsidiary in Angola may have made similar payments. As a result, the Company began an investigation alongside outside counsel and forensic accountants.

The Company voluntarily disclosed the findings of its investigation to the SEC and DOJ. Goodyear states that it is fully cooperating with those entities.

F. Ongoing Investigations under the FCPA

104. Halliburton Co.

Background. Halliburton Co. is a U.S. and U.A.E.-based provider of goods and services to oil and gas industries.

The Investigation. According to a 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.

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.

The Company expects discussions with the SEC and DOJ regarding the Angola and Iraq matters and it plans to cooperate fully.

F. Ongoing Investigations under the FCPA

103. Harris Corp.

Background. Harris Corp. 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 10-Q dated October 31, 2012, the Company disclosed its on-going investigation into potential FCPA violations as a result of a recent acquisition. On April 4, 2011 the Company acquired Carefx along with its subsidiaries, one of which is Carefx China. Over the course of an audit of Carefx China's financials, the 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.

In response to the China investigation, the Company has contacted the DOJ and the SEC to inform them of the investigation. Harris states it intends to fully cooperate with any inquiry the DOJ or SEC may initiate.

F. Ongoing Investigations under the FCPA

102. MTS Systems Corp.

Background. MTS Systems Corp. 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 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 reason. The Company discovered potential violations of their internal procedures and policies, applicable law, and the FCPA. MTS Systems has taken the necessary actions of altering their internal controls and removing the individuals implicated in the violations. Additionally, the Company disclosed the investigation and its results to the SEC and DOJ, as well as the U.S. Air Force.

The Company states that it fully intends to cooperate with any ongoing investigations.

F. Ongoing Investigations under the FCPA

101. NCR Corp.

Background. Atlanta-based NCR Corp. 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 and the Middle East were engaging in sales practices that could violate the FCPA.

The Company disclosed that it received a subpoena from the SEC, and that it is also being investigated by the DOJ and the Treasury's Office of Foreign Assets Control, which administers U.S. trade sanctions and export rules.

F. Ongoing Investigations under the FCPA

100. Net 1 UEPS Technologies, Inc.

Background. Net 1 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, Net 1 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 in connection with statements made by Net 1 in its SEC filings regarding this contract. On the same date, Net 1 received a letter from the SEC notifying the Company of an investigation.

Net 1 intends to cooperate fully with the SEC and DOJ investigations.

F. Ongoing Investigations under the FCPA

99. Nordion Inc.

Background. Nordion Inc. is a Canada-based 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 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 and other related financial irregularities in connection with the supply of materials and services. The Company has since ceased payments to the affected foreign supplier.

The Company has 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 and intends to cooperate with any future inquiry into the matter.

F. Ongoing Investigations under the FCPA

98. 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 reported them to the DOJ. At issue may be the way the Company handled doctors' expenses for travel, meals, or entertainment.

F. Ongoing Investigations under the FCPA

97. 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 10-Q filed October 25, 2012, the Company disclosed its investigation into certain overseas operations which may have violated anti-bribery provisions of the FCPA, the FCPA's books and records and internal controls provisions, the Company's own internal policies, and various local laws.

In October 2012, the Company disclosed the investigations to the DOJ and SEC. The Company states that it intends to cooperate with any investigation by either entity.

F. Ongoing Investigations under the FCPA

96. Qualcomm Inc.

Background. Qualcomm Inc., 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 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 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. The SEC investigation remains ongoing despite the results of Company's internal investigation.

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.

The investigations are ongoing, and Qualcomm states that it fully intends to cooperate with the SEC and DOJ in their pending investigations.

F. Ongoing Investigations under the FCPA

95. 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 10-Q dated November 6, 2012, SL Industries discovered possible violations of the FCPA during an investigation into their business in China. They believe that several of the employees of the Company's subsidiaries have been providing gifts and entertainment to government officials. With the investigation into these practices largely complete, the Company has concluded that these bribes could potentially violate the FCP and has contacted the DOJ and the SEC.

In response to the China investigation, the Company has contacted forensic accountants and outside consultants to implement more effective FCPA compliance programs for the employees. SL Industries states that it continues to fully cooperate with the SEC and DOJ in their investigations.

F. Ongoing Investigations under the FCPA

94. 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 propriety pharmaceuticals and active ingredients. Teva has facilities located in Israel, North America, Europe, and South America.

The Investigation. According to a 6-K filed November 1, 2012, Teva received a subpoena from the SEC on July 9, 2012. The subpoena dictated 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 10th and October 26th. The Company states that it fully intends to cooperate with both investigations.

Additionally, Teva is conducting an internal investigation into business practices that potentially violate the FCPA. They have also engaged independent counsel to assist in its investigation. The investigation is ongoing, and Teva states it will update the shareholders in future filings.

F. Ongoing Investigations under the FCPA

93. 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 10-Q filed November 1, 2012, the Company has been conducting an internal investigation into alleged 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 of its customers. Therefore, W.W. Grainger retained outside counsel to investigate potential violations of the FCPA. In January of this year, the Company voluntarily disclosed the internal investigation and agreed to fully cooperate with the DOJ and SEC as the investigation continues.

In July 2012, the Company reported that its internal investigation had not found evidence of "significant use of gift cards for improper purposes." In November 2012, the Company reported that the DOJ closed its inquiry into the matter. There has been no update from the SEC regarding its inquiry.

F. Ongoing Investigations under the FCPA

92. 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 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*.

The Company states that it is cooperating with investigations by the DOJ and SEC.

See Parallel Litigation Digest, Securities Number H-A14.
See Parallel Litigation Digest, Derivative Number H-F23.

F. Ongoing Investigations under the FCPA

91. LVB Acquisition, Inc.

Background. LVB Acquisition, Inc., a U.S.-based corporation that recently merged with Biomet, Inc., distributes and manufactures surgical products.

The Investigation. According to a Form 10-12G filed on November 22, 2011, the Company received a letter from the SEC on September 25, 2007 informing it of an informal investigation alleging possible violations of the FCPA. The allegations are related to the sale of medical devices by companies in this industry in foreign countries. On November 9, 2007, the DOJ requested that the Company provide any information given to the SEC also be produced to the DOJ on a voluntary basis.

LVB is continuing to cooperate with both government agencies and has conducted an internal review in the countries in question.

Related to this investigation, Biomet entered into a Deferred Prosecution Agreement with the DOJ under which it paid $17.28 million in penalties. Biomet also settled with the SEC, paying disgorgement and prejudgment interest of approximately $5.6 million.

See DOJ Digest Number B-129.

See SEC Digest Number D-107.

F. Ongoing Investigations under the FCPA

90. Keyuan Petrochemicals, Inc.

Background. Keyuan Petrochemicals, Inc. ("Keyuan"), a Chinese-based company, manufactures, and supplies petrochemicals, selling five different categories of petrochemical products.

The Investigation. According to a 10-Q dated November 21, 2011, Keyuan disclosed issues brought to the attention of the Audit Committee by a letter from KPMG, LLP, the Company's former auditor. KPMG sent a memorandum and a letter to the Audit Committee, dated March 28, 2011 and April 18, 2011, respectively, delineating said issues. The Audit Committee began an independent investigation and engaged outside counsel, Pillsbury Winthrop Shaw Pittman LLP, who engaged Deloitte Financial Advisory Services LLP as an independent forensic accountant and King & Wood as counsel for the Audit Committee.

The investigation was completed on September 28, 2011, identifying possible violations of laws in the U.S. and the People's Republic of China. Said violations include the existence of an off-balance sheet cash account used to aid in paying service providers and other business related expenses. As a result of this investigation, Keyuan was delisted by NASDAQ.

To specifically address how these allegations affect the Company, Keyuan has obtained an expert in FCPA to review the transactions and accounts in question. The investigation is ongoing.

F. Ongoing Investigations under the FCPA

89. Delta Tucker Holdings, Inc.

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.

The Investigation. According to a 10-Q filed November 13, 2012, the Company retained outside counsel following possible compliance issues regarding payments made on Delta Tucker Holdings' behalf by two subcontractors to expedite the creation of a certain amount 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 is cooperating with the government organizations and is in the process of reviewing its internal policies and procedures.

In addition to the possible violations of the FCPA, the Company was served in 2005 with a Grand Jury Subpoena by the DOJ with regards 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.

Further, according to the November 2012 10-Q, on February 24, 2012, the Company was advised by the Department of Justice 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 Department of Justice Civil Litigation Division has requested information from the Company, and Delta Tucker Holdings have been fully cooperating with the government's review.

F. Ongoing Investigations under the FCPA

88. 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 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 in accordance with the FCPA. The DOJ has additionally announced that it is conducting an investigation. The Company believes that the investigations stem from allegations regarding a law suit filed against the former Chief Executive Officer, Steven C. Jacobs.

According to a 10-Q dated November 9, 2012, Las Vegas Sands is continuing to cooperate with the SEC subpoena and the DOJ Investigation.

See Parallel Litigation Derivative Cases Number H-F16.

F. Ongoing Investigations under the FCPA

87. Bruker Corporation

Background. Bruker Corporation, a U.S. corporation based in Massachusetts, produces scientific instruments and solutions in the molecular and materials research field.

The Investigation. According to a 10-Q filed November 9, 2011, Bruker Corp. received anonymous information claiming improper conduct by its subsidiary Bruker Optics in its China operations. As a result, according to a 10-Q filed on November 8, 2012, the Company formed an Audit Committee from the Board of Directors and hired an independent forensic consulting firm and outside counsel who are investigating the allegations.

The investigation found evidence indicating that payments were made that improperly benefited employees or agents of government-owned enterprises in China and Hong Kong. The investigation also found evidence that certain employees of Bruker Optics in China and Hong Kong failed to comply with the Company's policies and standards of conduct. As a result, the Company took personnel actions, including the termination of certain individuals. The Company also terminated its business relationships with certain third party agents, implemented an enhanced FCPA compliance program, and strengthened the financial controls and oversight at its subsidiaries operating in China and Hong Kong.

The Company voluntarily contacted the SEC and DOJ in August 2011 to advise both agencies of its internal investigation. Since then, the Company has cooperated with the SEC and DOJ, as well as Hong Kong government authorities, with respect to their inquiries and has provided documents and made witnesses available in response to requests from the governmental authorities reviewing this matter.

The Company states that it intends to continue to cooperate with the SEC and DOJ in connection with their inquiries.

F. Ongoing Investigations under the FCPA

86. Archer Daniels Midland Co.

Background. Archer Daniel Midland Co. is a U.S.-based company that specializes in food production, storage, and transportation services. Archer Daniel has plants worldwide.

The Investigation. According to a 10-Q filed November 7, 2011, Archer Daniels has been conducting an internal investigation into their internal policies and procedures after discovering that certain transactions made by the Company and its affiliates may have been in violation of the FCPA. Archer Daniels voluntarily disclosed this information to the DOJ and SEC in March 2009 and subsequently hired outside counsel to further investigate the matter.

According to a 10-Q filed on November 5, 2012, the Company has recently completed its internal review and has initiated discussions with the DOJ and the SEC on the resolution of the matter.

F. Ongoing Investigations under the FCPA

85. Embraer S.A.

Background. Embraer S.A. is a Brazil-based commercial aircraft company. They develop commercial, executive, and military aircrafts as well as providing technical support.

The Investigation. According to a Form 6-K dated November 3, 2011, the Company disclosed that they had retained outside counsel after receiving a subpoena from the SEC related to possible violations of the FCPA. Outside Counsel is currently conducting an internal investigation into the transactions in three countries.

The Company has vowed to fully cooperate with the SEC and the DOJ and has disclosed that their outside counsel is in contact with the two agencies and is freely providing documents and other information.

According to a 6-K dated October 24, 2012, Embraer is continuing to cooperate with the SEC and DOJ in their investigations. It has reported the findings of their internal investigation to the SEC and DOJ.

F. Ongoing Investigations under the FCPA

84. Baxter International Inc.

Background. Baxter International Inc. is a U.S.-based health care company focusing in manufacturing products that treat hemophilia and kidney disease, among other ailments, as well as producing a variety of vaccines.

The Investigation. Accordingly to a 10-Q filed November 1, 2012, Baxter International received a subpoena from the SEC in March 2012, requesting the production of documents and other records related to the company's accounting treatment, financial reporting, and disclosures relating to the remediation and recall of the company's COLLEAGUE and SYNDEO infusion pumps. The Company has disclosed that it is fully cooperating with the investigation.

Further, according to the same 10-Q, the Company received an inquiry from the DOJ and SEC requesting that the company provide information about its business activities in a number of countries. The Company has disclosed that it is fully cooperating with this investigation as well.

F. Ongoing Investigations under the FCPA

83. Hercules Offshore, Inc.

Background. Hercules Offshore, Inc., a U.S. corporation, contributes to the natural gas exploration and production industry by providing shallow-water drilling and marine services through domestic and international subsidiaries.

The Investigation. According to a 10-K filed on October 28, 2011, Hercules disclosed that they received a subpoena from the SEC on April 4, 2011 in connection with an investigation regarding possible violations of the securities law, including FCPA violations. Additionally, the Company was notified by the DOJ that they are in the process of reviewing the Company's activities.

In a 10-Q dated October 25, 2012, the Company stated that it received a letter on April 24, 2012 from the DOJ notifying them that its investigation has been closed. The DOJ does not plan to pursue further enforcement actions against Hercules. On August 7, 2012 the Company received a similar letter stating that the SEC had completed its investigation into potential violations of the FCPA and does not plan on imposing any fines or penalties. There are no longer any open FCPA investigations against Hercules.

See Parallel Litigation Derivative Case Number H-F18.

F. Ongoing Investigations under the FCPA

82. 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 10-Q filed August 15, 2011, Dialogic disclosed having received a letter from the SEC on March 28, 2011 informing them 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 is in connection with the former Veraz Networks Inc. prior to the merger with Dialogic Corporation 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.

According to a 10-Q dated November 14, 2012, Dialogic hired outside counsel throughout the duration of the investigation. The Company has begun to take action in updating and improving FCPA compliance procedures at the suggestion of counsel. Dialogic has voluntarily produced relevant documents to the DOJ as they relate to the SEC inquiry.

The Company continues to fully cooperate with the SEC and DOJ in connection with the investigation.

F. Ongoing Investigations under the FCPA

81. Kraft Foods Inc.

Background. Kraft Foods Inc., a U.S. Corporation, produces, packages, markets, and sells packaged food products to an international consumer base.

The Investigation. According to a 10-K filed February 28, 2011, Kraft was issued a subpoena from the SEC in connection with an investigation under the FCPA regarding a Cadbury facility in India that mostly deals with information with relation to dealings with the Indian governmental agencies and officials. The Cadbury facility works with the government to obtain approvals regarding operations.

According to a 10-K filed February 2, 2012, Kraft reiterated that it will fully cooperate with the SEC in its ongoing investigation. There have been no further reported developments since the Company was originally served with the subpoena.

F. Ongoing Investigations under the FCPA

80. Allianz SE

Background. Allianz SE, a German-based company, is a world leader in financial services, specializing in the insurance industry. Allianz offers services worldwide.

The Investigation. According to a posting in the *Wall Street Journal* on December 22, 2010, the Company received a letter in November of 2010 requesting the production of documents regarding payments made by a Swiss subsidiary, Votra SA and Manroland AG . The inquiry was in relation to questionable sales commission payments made without showing the proper documentation from Votra to Manroland from 2002 to 2007. The SEC's investigation stems from an internal investigation conducted by the Company which revealed said irregularities in payments.

Allianz hired outside counsel and auditors to conduct a full investigation into the ramifications of the allegations and expressed its plans to fully cooperate with the SEC.

In a potentially related matter, on December 17, 2012 the SEC charged Allianz with violating the books and records and internal controls provisions of the FCPA for improper payments to government officials in Indonesia during 2001 to 2008. The SEC announced that its investigation uncovered 295 insurance contracts on large government projects that were obtained or retained by improper payments of $650,626 by Allianz's subsidiary in Indonesia to employees of state-owned entities. Allianz was found to have made more than $5.3 million in profits as a result of the improper payments.

The SEC's order found that Allianz violated the books and records and internal controls provisions of the FCPA, specifically Sections 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934. Without admitting or denying the findings, Allianz agreed to cease and desist from further violations and pay disgorgement of $5,315,649, prejudgment interest of $1,765,125, and a penalty of $5,315,649 for a total of $12,396,423.

See SEC Digest Number D-114.

F. Ongoing Investigations under the FCPA

79. Parametric Technology Corporation

Background. Parametric Technology Corporation 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. According to a 10-Q filed August 10, 2011, Parametric Tech. disclosed the investigation into payments made in the People's Republic of China by business partners. The Company is concerned that these payments violate business policies, local law in the PRC, and the FCPA. Following the identification of these payments, the Company decided to conduct an internal investigation and has voluntarily disclosed the information to the SEC and DOJ.

The investigation is ongoing, and the Company fully intends to cooperate with both government agencies.

F. Ongoing Investigations under the FCPA

78. Koninklijke Philips Electronics N.V.

Background. Koninklijke Philips Electronics N.V. ("Philips"), a Netherlands-based corporation, is a large electronics manufacturing company.

The Investigation. According to a 6-K filed on July 18, 2011, Philips is conducting a review of activities related to the sale of medical equipment for potential FCPA violations in connection with an indictment issued by authorities in Poland in December 2009. The Company voluntarily contacted the SEC and the DOJ to inform them of possible FCPA violations.

In an annual report for the year 2011, Philips stated that it continues to cooperate with the SEC and DOJ.

F. Ongoing Investigations under the FCPA

77. 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 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 voluntary disclosed its findings to the SEC and DOJ. In a 10-Q filed October 26, 2012, the Company revealed that the DOJ had closed its inquiry into the matter. There has been no update from the SEC regarding its inquiry.

F. Ongoing Investigations under the FCPA

76. Tata Communications Ltd.

Background. Tata Communications Ltd., an Indian corporation, is a global communications company.

The Investigation. In a 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.

F. Ongoing Investigations under the FCPA

75. RINO International Corp.

Background. RINO International Corp., is a Chinese corporation that manufactures, designs, installs, and services wastewater treatment, desulphurization, and anti-oxidation systems.

The Investigation. According to an 8-K filed on December 2, 2010, RINO disclosed that the SEC commenced a formal investigation related to RINO's financial reporting and FCPA compliance from January 1, 2008 through the present. RINO plans to fully cooperate with the SEC investigation.

F. Ongoing Investigations under the FCPA

74. Lyondellbasell Industries N.V.

Background. Lyondellbasell Industries N.V., is a Dutch corporation that manufactures, supplies, and refines plastics and chemicals.

The Investigation. According to a 10-Q filed on November 1, 2011, Lyondell disclosed that an agreement related to a project in Kazakhstan may have resulted in a payment that violates the company's compliance policies and the FCPA. Lyondell has engaged outside counsel to assist with their investigation regarding the questionable payment. The company voluntarily disclosed their concerns and findings to the DOJ. The Company fully intends to continue to cooperate with the government agency.

According to a 10-Q dated October 26, 2012, the investigation is ongoing and the Company states it fully intends to cooperate with the DOJ.

F. Ongoing Investigations under the FCPA

73. Layne Christensen Co.

Background. Layne Christensen Co., a U.S. corporation, specializes in deep drilling for energy resources.

The Investigation. In a 10-Q filed on December 8, 2010, Layne disclosed that while updating their FCPA compliance policies, questions arose regarding payments to customs officials. These payments were made by agents importing equipment into the Democratic Republic of Congo and other countries in Africa. Layne has engaged outside counsel to further assist in their internal investigation of these payments.

Layne voluntarily disclosed their investigation to the SEC and DOJ and plans to fully cooperate with any investigation into this matter.

According to a 10-K filed December 11, 2012, Layne began preliminary discussions with the SEC and DOJ in relation to the possible violations of the FCPA uncovered during its internal investigation. The Company has stated that it will propose a voluntary settlement, but is unsure if the governmental agencies will accept this offer. It has voluntarily disclosed additional information regarding questionable payments and transactions. Layne Christensen estimates an accrued liability of $3,715,000 based on similar FCPA settlements and financial analysis. It stated that it is potentially liable for fines and penalties related to a settlement.

The Company continues to cooperate with the SEC and DOJ in connection with the ongoing investigations.

F. Ongoing Investigations under the FCPA

72. Hewlett Packard Co.

Background. Hewlett Packard Co. ("HP"), is a U.S. information technology corporation.

The Investigation. In a 10-K filed on December 15, 2010, HP disclosed that the German Public Prosecutors Office has been conducting an investigation into allegations that former HP employees engaged in embezzlement, bribery, and tax evasion related to a transaction between HP and a former subsidiary of HP (ISE GmbH in Germany) and the Chief Public Prosecutor's Office of the Russian Federation known as the Russia GPO deal.

According to a 10-Q filed September 9, 2011, the SEC and DOJ are investigating possible kickbacks and other improper payments to personnel located in Russia, Germany, Austria, Serbia, the Netherlands, and the CIS as well as information regarding two former Hewlett-Packard executives seconded in Russia.

According to a 10-Q filed September 10, 2012, the SEC and DOJ are continuing to investigate the Russia GPO deal, as well as other transactions in Russia, Serbia, and the Commonwealth of the Independent States (CIS) dating back to 2000. They are also investigating two former HP executives seconded to Russia and possible kickbacks. HP continues to cooperate with the DOJ and SEC throughout their investigations.

F. Ongoing Investigations under the FCPA

71. CB Richard Ellis Group Inc./ CBRE Group, Inc.

Background. CB Richard Ellis Group Inc., a U.S. corporation, is a real estate service company with global operations. On October 3, 2011, the Company changed its corporate name to CBRE Group, Inc.

The Investigation. In a 8-K filed on October 5, 2010, the Company disclosed that as the result of an internal investigation it had concluded that employees in its China office had made payments that were in violation of company policy. The payments were made to local governmental officials and were for non-business-related entertainment and gifts. As a result, the Company voluntarily disclosed its findings to the DOJ and SEC in early 2010. The company hired outside counsel to assist in its investigation into this matter and, in addition, commenced another investigation regarding its use of a third party agent in connection with a purchase in 2008 of an investment property in China.

In a 10-K filed March 2011, the Company reported that the DOJ and SEC closed their review into the matter without any action.

F. Ongoing Investigations under the FCPA

70. 3M Co.

Background. 3M Co., a U.S. corporation, has products in the health care, highway safety, office products, and abrasives and adhesives markets.

The Investigation. In a 10-Q filed on August 4, 2010, 3M disclosed that on November 12, 2009 the company made a voluntary disclosure to the DOJ and SEC that 3M was conducting an internal investigation. The internal investigation was prompted by reports that 3M received from its Turkish subsidiary alleging bid rigging and bribery of Turkish government officials. 3M has engaged outside counsel to conduct an evaluation of its policies, practices, and controls.

According to a subsequent 10-Q filing on November 1, 2012, the Company continues to report its findings to the SEC and DOJ, as well as Turkish governmental authorities. 3M cannot currently predict the result that these two regulatory actions will take in the future.

F. Ongoing Investigations under the FCPA

69. Allied Defense Group, Inc.

Background. Allied Defense Group, Inc. is a U.S. corporation that designs, develops, manufactures, and sells various defense weapons including ammunition and anti-material weapons.

The Investigation. According to a 10-Q filed on August 13, 2010, Allied received a subpoena and communications from the DOJ on January 19, 2010. The subpoena requested Allied produce documents relating to its dealings with foreign governments. The subpoena and inquiry stem from the "Shot Show" arrests on January 19, 2010. Allied notes that the DOJ is conducting an industry-wide review.

Allied has been complying with the subpoena and conducting its own internal investigation by the Board of Directors with the assistance of outside counsel.

On June 24, 2010, Allied signed a definitive purchase and sale agreement with Chemring Group plc pursuant to which Chemring agreed to acquire substantially all of Allied's assets. In conjunction with the agreement, Allied filed a Certificate of Dissolution with the Delaware Secretary of State on August 31, 2011.

According to a 10-Q filed November 14, 2012, Allied estimates that based on advice from outside counsel, Allied may not be able to conclude the SEC and DOJ inquiries, complete the Delaware dissolution process, and make final distribution to shareholders until 2013.

The "Shot Show" cases were dismissed in their entirety in February 2012.

See DOJ Digest Number B-94.

F. Ongoing Investigations under the FCPA

68. Bio-Rad Labs., Inc.

Background. Bio-Rad Laboratories, Inc., a U.S. corporation, manufactures and supplies life science research, healthcare, and analytical chemistry products.

The Investigation. In a 10-Q filed November 3, 2011, Bio-Rad disclosed that on May 4, 2010, through an internal review, Bio-Rad identified conduct in overseas operations that may be violations of anti-bribery laws. Specifically, Bio-Rad may have violated the FCPA's books and records and internal controls provisions as well as company policies. In May 2010, Bio-Rad voluntarily disclosed this information to the DOJ and SEC, which both began investigations. Currently, the Audit Committee of the Board of Directors is evaluating the matter with the assistance of outside counsel. Bio-Rad has produced, and intends to produce, additional information to the DOJ and SEC as the investigation continues.

F. Ongoing Investigations under the FCPA

67. Diebold, Inc.

Background. Diebold, Inc., a U.S. corporation, is a services company that provides integrated technology solutions.

The Investigation. According to a 10-Q filed November 1, 2011, Diebold disclosed that while conducting due diligence in connection with a possible acquisition in Russia, it identified select transactions and payments by its subsidiary in Russia that are potential FCPA books and records violations. These transactions primarily occurred during 2005 to 2008. During the fourth quarter of 2010, Diehold discovered additional transactions within its Asia Pacific operation that may also implicate the FCPA. Diebold is conducting an internal review and continues to collect information. Diebold has voluntarily disclosed this information to the DOJ and SEC and is cooperating with both. The SEC has launched a formal, non-public investigation into the matters and issued a subpoena requesting additional information. Similarly, the DOJ has issued a voluntary request for documents. The Company expects its internal investigation to finish by the end of 2011.

According to a 10-Q filed November 9, 2012, the SEC and DOJ investigations are ongoing, and as of September 30, 2012, Diebold estimated that the potential loss accrued related to the violations are not considered material to financial estimates. The Company states it is continuing to discuss a possible resolution to the investigations and is cooperating with both governmental agencies.

F. Ongoing Investigations under the FCPA

66. GSI Group Inc.

Background. GSI Group Inc., a U.S. corporation, develops and delivers technology solutions including precision motion products and lasers.

The Investigation. In a June 2010 public filing, GSI disclosed that it has conducted an internal review of potential FCPA violations in China. GSI has engaged outside counsel to assist in their review and voluntarily disclosed this information to the SEC in the third quarter of 2009. As of June 2010, the company had not received any requests from the SEC regarding the internal investigation. GSI is currently updating their FCPA compliance policies and training programs.

F. Ongoing Investigations under the FCPA

65. Huntsman Int'l LLC

Background. Huntsman International LLC, a U.S. corporation, markets and manufactures differentiated chemicals such as plastics, textiles, paints, and coatings.

The Investigation. In a 10-Q filed on August 5, 2010, Huntsman disclosed an internal investigation into operations of Petro Araldite Pct. Ltd. ("PAPL"), Huntsman's majority-owned joint venture in India. The ongoing investigation is focused on allegations of illegal disposal of hazardous waste, waste water discharge, and certain product sales made by PAPL. Those questionable product sales were made by certain employees of the joint venture to government officials in India.

In May 2010, Huntsman voluntarily disclosed this investigation to the SEC and DOJ, as well as to the Tamil Nadu Pollution Control Board ("TNPCB"), a local Indian environmental agency. According to a 10-Q dated November 2, 2011, the Company has taken steps to stop the illegal activity and to strengthen their policies in accordance with the FCPA. Additionally, at the direction of the TNPCB, the Company drafted a remediation plan to improve the waste disposal areas. The altered methods for waste disposal await approval from the TNPCB.

According to a 10-Q filed August 1, 2012, the Company has been notified that the SEC and DOJ will not be recommending any enforcement action.

F. Ongoing Investigations under the FCPA

64. Merck & Co., Inc.

Background. Merck & Company, 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. The company believes that this request for materials is related to a broader review of the pharmaceutical industry. Merck plans to fully cooperate with the DOJ and SEC in their investigation.

The Company is continuing to cooperate with the SEC and DOJ as they continue to monitor the pharmaceutical industry. Merck stated that it expects to continue additional requests for information from the SEC and the DOJ in connection with this larger investigation.

F. Ongoing Investigations under the FCPA

63. Orthofix Int'l N.V.

Background. Orthofix International N.V., based in the Netherlands, manufactures orthopedic and other medical products.

The Investigation. According to a 10-Q filed on July 29, 2010, during an internal management review of Promeca S.A. SE C.V., a Mexican subsidiary of Orthofix, the company received allegations of improper payments. These payments were made by Promeca employees in Mexico to Mexican government officials. Orthofix has engaged Hogan Lovells U.S. LLP and Deloitte Financial Advisory Services as outside counsel to conduct an internal investigation into possible violations of the FCPA in relation to the payments. The company voluntarily contacted the SEC and DOJ to inform them of the investigation.

According to a 10-Q filed October 31, 2011, the Company received subpoenas from the SEC and DOJ on November 16, 2010, requesting all documents related to this matter. Orthofix states that it has completed production of all relevant documents.

The investigation related to the Promeca payments was completed in April 2011. On July 10, 2012, the Company entered into a consent to final judgment with the SEC and a deferred prosecution agreement with the DOJ. The U.S. District Court for the Eastern District of Texas, Sherman Division, entered final judgment on September 4, 2012 in accordance with the terms of the SEC Consent. The Company is in the process of performing its obligations under the deferred prosecution agreement.

See DOJ Digest Number B-132.
See SEC Digest Number D-109.

F. Ongoing Investigations under the FCPA

62. 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 relating to oncology, nervous system disorders, and vaccine development, among other ailments.

The Investigation. In a November 9, 2011 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 ("PRC"). On August 6, 2010, SciClone received a letter from the DOJ about a general pharmaceutical industry-wide investigation and that they 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 has largely concluded its investigation and has reported its findings to the SEC and DOJ. The internal investigation uncovered that the Company lacks internal controls, transparency, and the proper professionals with FCPA compliance experience to educate employees and adopt new policies.

In a 10-Q dated November 9, 2012, the Company stated that both the SEC and DOJ investigations are ongoing. The Company stated that it fully intends to continue cooperating with both government agencies throughout their formal investigations.

See Parallel Litigation Digest, Securities Case Number H-A12.

F. Ongoing Investigations under the FCPA

61. Smith & Wesson Holding Corp.

Background. Smith & Wesson Holding Corporation, a U.S. corporation, is a global manufacturer and provider of products and services for safety, security, protection, and sport.

The Investigation. In a 10-Q filed September 7, 2011, Smith & Wesson reported that one of the 22 individuals from the law enforcement and military equipment industry indicted on January 19, 2010 as part of the "Shot Show" cases was their Vice President-Sales, International & U.S. Law Enforcement. The company was served with a subpoena asking for the production of related documents. Smith & Wesson has not been charged, is reviewing company policies, and intends to fully cooperate with the DOJ.

In February 2012, all of the Shot Show cases were dismissed.

See DOJ Digest Number B-94.

F. Ongoing Investigations under the FCPA

60. Pfizer Inc.

Background. Pfizer Inc., a U.S. corporation, is a pharmaceutical company that produces consumer health care products.

The Investigation. In a 10-Q filed on September 26, 2004, Pfizer disclosed that the company voluntarily provided information regarding an internal investigation to the SEC and DOJ. The internal investigation focused on improper payments connected to foreign sales activities in Croatia. In November 2008, a plea agreement was reached between a subsidiary of Pfizer and the prosecutor in Bari, Italy to resolve allegations of improper payments in the Puglia region of Italy. Investigations by other governmental authorities in Italy are ongoing.

In August 2012, Pfizer H.C.P. Corporation, an indirect subsidiary of Pfizer Inc., entered into a deferred prosecution agreement with the DOJ. Similarly, Pfizer Inc. entered into a civil settlement with the SEC. The Pfizer H.C.P. Corporation settlement with the DOJ covers improper conduct in Bulgaria, Croatia, Kazakhstan, and Russia. The Pfizer Inc. civil settlement with the SEC covers improper conduct in those countries as well as in China, the Czech Republic, Italy, and Serbia. In addition, Pfizer's newly acquired Wyeth subsidiary also settled with the SEC in a separate action.

See DOJ Digest Number B-134.

See SEC Digest Number D-110 and D-111.

F. Ongoing Investigations under the FCPA

59. Protective Products of America, Inc.

Background. Protective Products of America, Inc., a U.S. corporation, designs, manufactures, and markets products that provide ballistic protection for personnel and vehicles in the military and law enforcement.

The Investigation. In an 8-K filed on January 25, 2010, Protective Products disclosed an internal investigation into allegations made by the DOJ against the company's CEO, R. Patrick Caldwell. Caldwell was among the twenty-two defense company employees and executives indicted in the SHOT Show matter. No charges have been filed against Protective Products. While the company's internal investigation continues, Caldwell was placed on administrative leave from his executive position as well as his position on the Board of Directors.

The case against Caldwell and the other SHOT Show defendants was dismissed in February 2012.

See DOJ Digest Number B-94.

F. Ongoing Investigations under the FCPA

58. Talecris Biotherapeutics Holdings Corp. Grifols SA

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.

The Investigation. In a 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 focuses on sales to certain Eastern European and Middle Eastern countries. As a result, the company suspended shipments to some of these countries while safeguards are put into place. Talecris reports that it voluntarily disclosed the possible FCPA violations to the DOJ in July 2009. As of April 2011, the company is continuing to investigate the matter.

These allegations were also disclosed in a 10-Q filed by Grifols SA on November 9, 2011. Grifols acquired Talecris due to a desire to combine the operations of the two plasma-producing companies. The acquisition took place in June 2011, and thus Grifols disclosed that it was continuing all necessary investigations and cooperation.

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."

F. Ongoing Investigations under the FCPA

57. STR Holdings, Inc.

Background. STR Holdings, Inc., a U.S. corporation, specializes in solar panel encapsulation.

The Investigation. In a 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, questionable payments and expenses may have been paid for entertainment for government officials in India. Upon discovering this, STR's Audit Committee directed outside counsel to conduct an investigation into this matter. During this investigation, the company uncovered approximately $74,000 in additional questionable expenses since 2003 in two other jurisdictions.

After the completion of the investigation, STR reports 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. As of December 2012, the DOJ had not taken action against STR. The SEC informed STR that it is not subject to the SEC's jurisdiction during the relevant time period, and the SEC does not intend to investigate this matter.

F. Ongoing Investigations under the FCPA

56. DynCorp International LLC

Background. DynCorp International LLC, a U.S. corporation, 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. In a 424B3 filed June 21, 2011, DynCorp identified payments that were made to expedite the issuance of a limited number of licenses and visas from foreign government agencies. DynCorp believes that approximately $300,000 in payments was made to sub-contractors in connection with the licenses and visas. The company engaged outside counsel to assist in its investigation. DynCorp is in the process of evaluating its internal policies and procedures. The company voluntarily notified the SEC and the DOJ of these possible violations and states that it will comply fully with both.

F. Ongoing Investigations under the FCPA

55. Maxwell Technologies, Inc.

Background. Maxwell Technologies, Inc., a U.S. corporation, develops and manufactures energy storage and power delivery solutions.

The Investigation. In a 10-Q filed on November 5, 2009, Maxwell disclosed that during an internal review, the company discovered questionable payments made to a former independent sales agent in China. These payments were in connection with sales of high voltage capacitor products produced by a Swiss subsidiary. The relationship between Maxwell and the independent sales agent was terminated as of May 20, 2009. Maxwell is in the process of conducting an internal review into the company's compliance programs as well as its international operations and business practices. Maxwell voluntarily informed the SEC and the DOJ of these possible violations. In October 2010, the company announced that it negotiated in principle a settlement in the amount of $6.5 million with the SEC. Discussions with the DOJ are ongoing; the company has set aside $1.7 million for expenses linked to the DOJ probe.

According to a 10-Q filed November 7, 2011, the Company has reached a settlement with both the SEC and DOJ in January 2011. If Maxwell cooperates with the terms of a three-year deferred prosecution agreement, the government agencies will dismiss the matters with prejudice.

See SEC Digest Number B-116.
See DOJ Digest Number D-91.

F. Ongoing Investigations under the FCPA

54. PBSJ Corp.

Background. PBSJ Corp., a U.S. corporation, provides engineering, environmental science, architecture, planning, and construction services.

The Investigation. In a 8-K dated December 30, 2009, PBSJ disclosed possible FCPA violations discovered during an internal investigation by the Audit Committee of its Board of Directors. The company is investigating certain projects conducted in foreign countries by PBS&J International, a subsidiary of PBSJ. According to a 10-K dated January 13, 2010, PBSJ voluntarily disclosed its investigation to the SEC and the DOJ. In a 10-Q filed on May 17, 2010, PBSJ disclosed that its Audit Committee completed their internal investigation and that PBSJ is continuing to cooperate with the SEC and DOJ's review.

F. Ongoing Investigations under the FCPA

53. Diageo plc

Background. Diageo plc, a corporation based in London, England, manufactures and promotes alcoholic beverages, including brands such as Smirnoff, Johnnie Walker, Captain Morgan, Baileys, J&B, and José Cuervo, among others. The company is listed on both the London Stock Exchange and the New York Stock Exchange.

The Investigation. According to a 6-K filed August 27, 2009, Diageo announced that Diageo Korea and several of its current and former employees have been the subject of an investigation by Korean authorities regarding various regulatory and control matters. Those employees were later convicted of making improper payments to a Korean customs official. Diageo voluntarily reported the Korean investigation and convictions to the DOJ and SEC and began its own internal investigation.

In July 2011, Diageo reached a settlement with the SEC, paying about $16.4 million in penalties, disgorgement, and prejudgment interest.

See SEC Digest Number D-100.

F. Ongoing Investigations under the FCPA

52. Tenaris S.A.

Background. Tenaris S.A., a Luxembourg corporation, supplies tubes and other related services for the energy industry such as steel pipe manufacturing and distribution.

The Investigation. According to its November 10, 2009 SEC filing, Tenaris has learned of certain sales agency payments that may have benefited employees associated with one of its subsidiary companies in Central Asia. The Audit Committee was notified and the company engaged outside counsel to assist in its investigation of possible FCPA violations. The company has voluntarily notified the SEC and DOJ of these possible violations and will comply fully with both agencies.

According to an annual report filed June 30, 2011, the Company reached a settlement agreement with the SEC and DOJ on March 17, 2011. The settlement with the DOJ requires Tenaris to pay $3.5 million in penalties, while the settlement with the SEC mandates a payment of $5.4 million in disgorgement of profits and interest. These amounts have been paid to the two government agencies, and the Company fully intends to continue to cooperate in the future.

See DOJ Digest Number B-122.

See SEC Digest Number D-98.

F. Ongoing Investigations under the FCPA

51. Team Inc.

Background. Team Inc., a U.S. corporation, provides industrial service maintenance to high pressure piping systems, vessel utilization, power, and other heavy industries.

The Investigation. In a 10-K filed August 11, 2009, the company disclosed that during an internal management review, it discovered allegations of improper payments made by company employees to employees of certain customers including foreign government-owned ventures. As a result, the Audit Committee of the Board of Directors began an internal investigation into these allegations and engaged the assistance of outside counsel. The investigation found that the payments made to certain employees potentially violate the FCPA. The investigation is still ongoing but has found that based on current evidence, the payments made to certain individuals over the past five years did not exceed $50,000. The company has voluntarily disclosed this information to the SEC and DOJ.

In a 10-K filed August 2, 2011, Team Inc. disclosed that the SEC informed the company that it had completed its investigation and did not intend to recommend any enforcement action by the SEC or impose any fines or penalties against the company. The company did not receive formal notification from the DOJ, but in July 2011, the DOJ also told the company that it was likely that it would not take any further action or impose any fines or penalties against the company.

F. Ongoing Investigations under the FCPA

50. Watts Water Technologies, Inc.

Background. Watts Water Technologies, Inc., a U.S. corporation, designs and manufactures valves and other related products that promote quality and conservation of water used in commercial, residential, and municipal applications.

The Investigation. In a 10-Q dated August 7, 2009, Watts Water disclosed that they received information regarding possible improper payments to foreign government officials by employees of Watts Valve (Changsha) Co., Ltd., which is an indirect wholly-owned subsidiary of Watts Water in China. The company has engaged outside counsel to assist in its investigation of possible FCPA violations. The company has voluntarily disclosed its investigation to the DOJ and the SEC and intends to comply fully with both governmental agencies.

On October 13, 2011, the Company reached settlements with the SEC and DOJ in connection with the Watts Valve matter. According to a 10-Q dated November 8, 2012, the Company has agreed to pay $3.6 million in disgorgement and prejudgment interest to the SEC, as well as another $200,000 in penalties. Watts Water believes that this settlement will fully resolve all investigations regarding Watts Valve and their FCPA violations.

See SEC Digest Number D-101.

See Parallel Litigation Digest, Other Number H-G1.

F. Ongoing Investigations under the FCPA

49. Sun Microsystems, Inc.

Background. Sun Microsystems, Inc., a U.S. corporation, provides network computing infrastructure solutions, including computer systems, software, storage, and services.

The Investigation. In a 10-Q filed on May 8, 2009, the company disclosed that during the 2009 fiscal year, Sun Microsystems, Inc. identified activities in a certain foreign country that may have violated the FCPA. The company engaged outside counsel to assist it with an independent investigation of those violations. The company voluntarily disclosed its investigation to the DOJ and the SEC and intends to cooperate fully with those authorities.

Notably, however, Sun Microsystems filed a Definitive Merger Proxy on June 8, 2009 related to its planned merger with Oracle. Section 4.13, entitled "Compliance with Applicable Law" states: "(a) The Company and each of its Subsidiaries is and, since June 30, 2006 has been, in compliance in all material respects with all Applicable Laws and Orders. Neither the Company nor any of its Subsidiaries has received any written notice since June 30, 2006 (i) of any administrative, civil or criminal investigation or audit by any Governmental Authority relating to the Company or any of its Subsidiaries or (ii) from any Governmental Authority alleging that the Company or any of its Subsidiaries are not in compliance with any Applicable Law or Order in any material respect." Section 4.24 further affirms that the company has "complied with the U.S. Foreign Corrupt Practices Act of 1977 and other applicable anti-corruption laws."

F. Ongoing Investigations under the FCPA

48. Raytheon Co.

Background. Raytheon Co., a U.S. corporation, develops defense technologies and converts them for commercial markets.

The Investigation. In a 10-Q dated October 27, 2011, Raytheon Co. disclosed that during an internal review, they identified several possible areas of concern associated with payments made to certain international operations. The company voluntarily contacted the DOJ and SEC to disclose that an internal review is in progress.

F. Ongoing Investigations under the FCPA

47. Covidien PLC

Background. Covidien PLC ("Covidien"), a U.S. corporation, manufactures medical devices, medical supplies, diagnostic imaging agents, and pharmaceuticals.

The Investigation. On June 29, 2007, Covidien entered into a Separation and Distribution Agreement with Tyco International ("Tyco") and Tyco Electronics. This agreement allows for the allocation of certain of Tyco's assets, liabilities, and obligations to Covidien and Tyco Electronics.

In a 10-Q dated July 30, 2009, Covidien disclosed that allegations have been made that, in recent years, Tyco made improper payments to subsidiaries that are now part of Covidien. In 2005, Tyco reported possible FCPA violations to the DOJ and SEC. Tyco then reported to both agencies that it had begun taking investigative steps in response to the allegations; that it had engaged outside counsel to assist it in its investigation of these possible violations; that it would perform a company-wide baseline review of its policies and practices; and that it would present the findings of the baseline review to the DOJ and SEC. Covidien stated its intention to continue to update the DOJ and SEC on the results of the baseline review and follow-up investigations. Currently, the baseline review has shown that some business practices might not comply with Covidien's or the FCPA's requirements. According to a 10-Q dated July 30, 2010, Covidien is continuing to investigate the matter.

In September 2012, Tyco International settled all outstanding FCPA matters with the SEC and the DOJ, including those matters involving Covidien.

See Ongoing Investigation Number F-13 [Tyco International].

See DOJ Digest Number B-135.

See SEC Digest Number D-113.

F. Ongoing Investigations under the FCPA

46. Morgan Stanley

Background. Morgan Stanley, a U.S. corporation, provides various financial products and services to corporations, governments, financial institutions, and individuals worldwide.

The Investigation. In an 8-K filing dated February 9, 2009, Morgan Stanley disclosed that it had recently discovered actions initiated by one of its employees based in China that may have violated the FCPA. Beginning in 2003, the company began investing several billion Chinese yuan in various residential and commercial real estate deals in Shanghai. The employee, who has been terminated, was one of the company's top property dealers in an overseas real estate subsidiary. Additionally, Morgan Stanley suspended its global head of real estate investing, Sonny Kalsi, in connection with the potential violations. According to November 2009 media reports, Morgan Stanley found no evidence Kalsi caused or authorized the alleged misuse of funds and turned its findings over to the DOJ and SEC. According to an 8-K filed November 7, 2011, the company is involved in legal actions related to the violations.

On April 25, 2012, the DOJ announced that the employee, Garth Peterson, had pled guilty to criminal charges, and the SEC announced that it also brought civil charges against the employee. Both entities also announced that they would not take any action against the Company.

See DOJ Digest Number B-130.
See SEC Digest Number D-108.

F. Ongoing Investigations under the FCPA

45. RAE Systems, Inc.

Background. RAE Systems, Inc. ("RAE"), a U.S. corporation, develops and manufactures chemical and radiation detection monitors and networks for energy exploration and production, industrial safety, environmental monitoring and remediation, public safety, and military applications.

The Investigation. In a 10-K filed on November 6, 2008, the company disclosed that its 2008 internal audit revealed that payments and gifts made by certain personnel in the company's China operations may have violated the FCPA. The Audit Committee of the Board of Directors subsequently initiated an independent investigation and disclosed the investigation to the DOJ and SEC. In addition to cooperating with the government's review of the possible violations, the company reports that it has implemented additional policies and controls related to FCPA compliance. In December 2010, RAE entered into a settlement with the DOJ and SEC. The Company agreed to advise both entities of its ongoing compliance with the FCPA until December 2013.

See DOJ Digest Number B-113.

See SEC Digest Number D-88.

F. Ongoing Investigations under the FCPA

44. Avon Products, Inc.

Background. Avon Products, Inc. ("Avon"), a U.S. corporation, engages in the manufacture and marketing of beauty and related products worldwide.

The Investigation. In an 8-K filing dated October 21, 2008, Avon announced that, as of June 2008, it had opened an investigation into its China operations, following allegations that certain travel, entertainment and other expenses may have been improperly incurred in that region. The investigation is being conducted under the oversight of the Audit Committee. Avon has voluntarily informed the SEC and the DOJ that the investigation is underway. According to a 10-Q filing dated July 29, 2010, derivative complaints have been filed against former officers and directors of Avon. The complaints alleged breach of fiduciary duty, abuse of control, and waste of corporate assets. The Company has since initiated internal investigations into compliance with the Foreign Corrupt Practices Act and related U.S. and foreign laws in a number of countries in which it is active. As reported by a recent 10-Q filing dated October 27, 2011, the Company notes that the SEC and DOJ investigations are ongoing, and it continues its cooperation with both government agencies.

F. Ongoing Investigations under the FCPA

43. Alcoa, Inc.

Background. Alcoa Inc., a U.S. corporation, is a world leader in the production and management of aluminum.

The Investigation. On February 27, 2008, Alcoa Inc. received notice of a suit filed against it by Aluminium Bahrain B.S.C. ("Alba"), a majority-owned entity of the Bahrain government, in the U.S. District Court for the Western District of Pennsylvania, alleging an extensive bribery scheme of Alba officials. The company reported that on February 26, 2008, it had advised the DOJ and the SEC that it had recently become aware of these claims, had already begun an internal investigation, and intended to cooperate fully in any investigation that the DOJ or the SEC may commence.

On March 17, 2008, the DOJ notified Alcoa that it had opened a formal investigation.

In connection with these litigations, businessman Victor Dahdaleh was arrested on October 24, 2011, charged with illegal payments made from 2002 to 2005.

According to a *Wall Street Journal* law blog posting on November 11, 2011, the Judge assigned to the Alba litigations reopened the matter at the request of Alcoa. Believing that the Company did not play a role in the bribes in 2002 to 2005, the Company wished to reopen the matter to file a Motion to Dismiss. The case was originally stayed pending the DOJ FCPA Investigation, as the government agency believed it may interfere with the results of their inquiry. The investigation is ongoing despite the current litigation, and the company is continuing to fully cooperate.

See Parallel Litigation Digest, Sovereign Case Number H-E4.

See Parallel Litigation Digest, Derivative Case Numbers H-F7 and H-F24.

F. Ongoing Investigations under the FCPA

42. Global Crossing Ltd.

Background. Global Crossing Limited ("Global Crossing"), a Bermuda corporation and U.S. issuer, provides telecommunications solutions worldwide.

The Investigation. According to an August 2008 SEC filing, Global Crossing has been engaged in an internal investigation of possible FCPA violations since its May 9, 2007 acquisition of Impsat, a Latin American provider of IP. Upon integration of Impsat with its own operations, the company became aware of certain issues with respect to Impsat's use of third-party agents, including the existence of two foreign government investigations, which were not known at the time of the acquisition. Subsequently, the company engaged outside counsel and accounting advisors to assist in an internal review focused predominantly on certain agent relationships, government contracts and potential unauthorized payments in Latin American countries.

Additionally, the company was informed by two Impsat employees that, in 2005 and 2006, Impsat made payments of approximately $19,000 to a government official to allow performance of construction work notwithstanding the fact that required permits were not obtained. Additional investigative work confirmed those payments and revealed additional, similar payments totaling $4,000, which began in 2004.

The company has voluntarily disclosed these findings to government authorities in the U.S., including the SEC, which has commenced a preliminary investigation into the matter. According to a 10-Q filing dated August 3, 2010, the SEC has completed its investigation and does not intend to seek any enforcement action against Global Crossing.

F. Ongoing Investigations under the FCPA

41. Bridgestone Corp.

Background. Bridgestone Corporation ("Bridgestone"), a Japanese corporation and U.S. issuer, supplies tires to major car manufacturers, as well as for heavy equipment, such as off-road and mining vehicles, and aircraft.

The Investigation. In a February 12, 2008 news release, Bridgestone reported that, during the course of an internal inquiry related to an international cartel, the company uncovered the fact that there have been incidents of improper monetary payments, including but not limited to those to foreign agents, all or part of which may have been provided to foreign government officers. The company voluntarily reported the matter to the DOJ and public prosecutor's office of Japan, and intends to continue to cooperate with each of these agencies. Bridgestone's investigation is continuing and may expand.

See DOJ Digest Number B-123 and B-77.

F. Ongoing Investigations under the FCPA

40. Aon Corp.

Background. Aon Corporation ("Aon"), a U.S. corporation, is the world's largest insurance and reinsurance broker, and a leading provider of risk management services, human capital and management consulting, and specialty insurance underwriting.

The Investigation. On November 8, 2007, Aon disclosed in a Form 10-Q filing that it had retained outside counsel and commenced an internal review of possible violations of the FCPA and non-U.S. anti-corruption laws. The company has voluntarily disclosed the matter to the DOJ, SEC and certain non-U.S. regulators, and has agreed with the U.S. regulators to toll any applicable statute of limitations pending completion of the review. According to a 10-Q filed August 4, 2011, the SEC and DOJ investigations are ongoing.

On January 7, 2009, the U.K.'s Financial Services Authority imposed a £5.25 million fine on Aon for deficiencies in its systems and controls, which failed to detect suspicious payments made to foreign third parties.

See SEC Digest Number B-125.

See DOJ Digest Number D-103.

F. Ongoing Investigations under the FCPA

39. Ball Corp.

Background. Ball Corporation ("Ball"), a U.S. corporation, is a provider of product packaging and aerospace services to commercial and governmental customers.

The Investigation. According to its November 2007 Form 10-Q, Ball became aware of potential violations of the FCPA in Argentina on or about October 15, 2007. The company stated that based on its subsequent investigation, it does not believe that this matter involved senior management or management or other employees who have significant roles in internal control over financial reporting. According to a 10-K filing dated February 25, 2009, Ball's investigation is ongoing.

See SEC Digest Number D-94.

F. Ongoing Investigations under the FCPA

38. Smith & Nephew PLC
Zimmer Holdings Inc.
Medtronic Inc.
Biomet Inc.
Stryker Corp.
Wright Medical Group

Background. Smith & Nephew PLC ("Smith & Nephew"), a U.K. corporation and U.S. issuer, is a manufacturer of artificial hips and knees. Zimmer Holdings Inc. ("Zimmer"), a U.S. corporation, is the world's largest orthopedic device company. Medtronic Inc. ("Medtronic"), a U.S. corporation, is a medical device manufacturer specializing in implantable defibrillator heart devices that also has a spinal products division. Biomet Inc. ("Biomet"), a U.S. corporation, designs joint replacements. Stryker Corp. ("Stryker"), a U.S. corporation, is a medical technology company with a broadly-based range of orthopedic products. Wright Medical Group ("Wright"), a U.S. corporation, manufactures and distributes orthopedic implants and instrumentation worldwide.

The Investigation. The SEC reportedly sent letters in mid-October 2007 to at least five orthopedic device makers regarding an informal probe into possible FCPA violations relating to the sale of medical devices in foreign countries.

According to Medtronic's 10-Q filing dated December 7, 2011, Medtronic received letters from the SEC and DOJ on September 25, 2007 and November 16, 2007, respectively, requesting any information on potential violations of the FCPA with regards to the sale of medical equipment outside of the United States. Furthermore, the DOJ and SEC have requested information regarding payments made directly or indirectly to government-employed doctors. The Company states that it has cooperated, and plans to continue cooperating, with the authorities' ongoing investigation.

According to a 10-Q filing dated October 28, 2011, Stryker received an inquiry in 2007 from the SEC into the sale of certain medical devices. The following year it subsequently received a subpoena from the Criminal Division of the DOJ for documents in connection with the SEC's investigation. The company stated that the investigation is ongoing and that it intends to fully cooperate with both agencies' requests.

In an 8-K filing dated June 10, 2008, Wright disclosed that it had also received a letter from the SEC regarding the same investigation. According to a 10-Q filing dated August 3, 2010, Wright was informed in March 2010 that the SEC's investigation is complete. The SEC does not intend to implement any enforcement action against Wright.

According to a 10-Q filed August 8, 2011, the SEC and DOJ are continuing their ongoing investigation into the Company's potential violation of the FCPA in relation to their business activities in the Asia Pacific region. In September of 2007, the SEC announced its investigation into the sale of medical devices to foreign countries. A subsequent letter from the DOJ requires that the Company produce any document that has been previously provided to the SEC on a voluntary basis. In the first quarter of 2011, Zimmer received a formal subpoena from the SEC requiring all documents to be produced to them in relation to

F. Ongoing Investigations under the FCPA

this matter. The Company's SEC filing asserts that the investigation is ongoing and that it intends to fully cooperate with both agencies' requests.

In a 10-Q filing dated October 14, 2011, Biomet disclosed that, in addition to the SEC's September 27, 2008 letter requesting information, it received a letter from the DOJ on November 9, 2007 requesting the same information regarding possible violations of the FCPA for the sale of medical devices in certain countries. The company cooperated with both requests and conducted its own review relating to these matters.

In March 2012, Biomet settled with the SEC and entered into a deferred prosecution agreement with the DOJ. The company agreed to pay a $17.28 million criminal penalty and disgorgement and prejudgment interest of $5.4 million.

In a 20-F filing dated March 27, 2008, Smith & Nephew announced that the SEC is conducting a similar investigation into Smith & Nephew's marketing practices in Germany, Poland, and Greece. The company retained independent counsel and investigated the matter broadly. The DOJ also joined in the investigation, and the company expressed its intention to comply fully with both agencies.

In February 2012, Smith & Nephew settled with the SEC and entered into a deferred prosecution agreement with the DOJ. The company agreed to pay a $16.8 million criminal penalty and $5.4 million in disgorgement and prejudgment interest.

See DOJ Digest Numbers B-127, B-129.

See SEC Digest Numbers D-105, D-107.

F. Ongoing Investigations under the FCPA

37. Cameron Int'l Corp. ENSCO plc Global Indus., Ltd. Nabors Indus. Ltd. Parker Drilling Co. Schlumberger Ltd.

Background. ENSCO plc ("ENSCO"), a U.S. corporation, is an offshore oil services company. Global Industries, Ltd. ("Global Industries"), a U.S. corporation, is an offshore construction company specializing in marine construction, including pipelines, platforms, and diving services. Nabors Industries, Ltd. ("Nabors"), a Bermuda corporation and U.S. issuer, is the largest land drilling contractor in the world, conducting oil, gas, and geothermal land drilling in the Americas, the Middle East, the Far East, and Africa. Cameron International Corp. ("Cameron"), a U.S. corporation, is the leading oil and gas products and services provider in downstream applications. Parker Drilling Company ("Parker"), a U.S. corporation, is engaged in oil and gas drilling, both on land and barge rigs. Schlumberger Limited ("Schlumberger"), a Netherlands West Indies corporation and U.S. issuer, is a leading oil and gas services company.

The Investigation. The U.S. government is investigating oil and oil-service companies in the U.S. In a July 2007 SEC filing, ENSCO disclosed that it had also launched an internal investigation its customs brokers and voluntarily notified the SEC and DOJ of the existence of the internal investigation. According to a July 2008 SEC filing, the internal investigation process has involved extensive reviews of documents and records, as well as production to the authorities, and interviews of selected personnel. In a 10-Q filed July 23, 2009, the company disclosed that their internal investigation has concluded. On February 24, 2009, the company met with authorities to discuss and review findings from their investigation. According to a 10-Q filed on July 22, 2010, ENSCO has completed its internal investigation and has been informed by the SEC that they do not expect to recommend an enforcement against the company. ENSCO is currently waiting to hear from the DOJ regarding the matter.

In an August 2007 SEC filing, Global Industries disclosed that in June 2007 it had launched an internal investigation of its West African operations, with specific reference to a subsidiary's reimbursement of certain expenses incurred by its customs agent. The company also disclosed that it had voluntarily informed the SEC and DOJ of its ongoing internal investigation. According to a December 2007 SEC filing, the company recently received a subpoena from the SEC, requesting documents related to the company's dealings with the customs agent in question and focusing primarily on transactions in the company's West African operations. The company intends to continue to cooperate fully with both the SEC and DOJ in this investigation. Furthermore, in a November 2009 10-Q filing, Global Industries disclosed that it has adopted, and may adopt additional, measures intended to enhance its compliance procedures and its ability to audit and confirm compliance with those procedures.

In an August 2007 SEC filing, Nabors disclosed that on July 5, 2007, it received an inquiry from the DOJ relating to an investigation of a freight forwarding/customs clearance vendor used by Nabors. According to a 10-Q filing dated October 31, 2008, the company has engaged outside counsel to review certain transactions with Panalpina. According to a 10-Q filed November 9, 2011, the Audit Committee of the Board of Directors has retained outside counsel to conduct an internal investigation regarding the transactions. Outside counsel periodically and consistently updates the Company regarding its finding.

F. Ongoing Investigations under the FCPA

Nabors voluntarily disclosed the transactions to the SEC and the DOJ. According to a 10-Q filed November 2, 2012, the Company received additional notification from the DOJ regarding compliance with the FCPA in regards to Nabors' transactions with the Swiss company Panalpina, which provided various services to the Company's affiliates, including freight forwarding and customs clearance services, specifically in Kazakhstan, Saudi Arabia, Algeria, and Nigeria. In response to this inquiry, the company engaged outside counsel to investigate the transactions in question. After review of potential violations, specifically the transactions paid to and by Panalpina in obtaining permits for the import of goods through customs, Nabors disclosed its findings to the SEC and DOJ.

In April 2012, the SEC informed the Company that the review of the potential violations had concluded. The DOJ has not concluded its inquiry, but does not anticipate that its findings will affect the Company in any way.

In an August 2007 SEC filing, Cameron disclosed that, in July 2007, it was one of many companies that received a letter from the DOJ requesting information about a freight forwarder used by the company. The company is conducting an internal investigation and is providing information to the DOJ. Moreover, in a January 28, 2008 SEC filing, Cameron disclosed that the SEC recently began an investigation into the same matter under review by the DOJ and has asked Cameron to provide information and documents that were provided to the DOJ. Both agencies have requested an extension of the statute of limitations with respect to matters under review until January 2009. In an August 2010 10-Q filing, Cameron indicated that the investigation is ongoing, and that it is cooperating with both the DOJ and SEC. According to a 10-Q filed August 1, 2011, the SEC and DOJ have informed the Company that they do not intend to pursue any further actions against the Company and that the investigation into possible violations of the FCPA is complete.

In an August 2007 SEC filing, Parker disclosed that the DOJ recently requested that the company provide information regarding its use of a freight forwarding/customs agent over the past five years. According to a 10-Q filing dated November 10, 2008, Parker received a similar request from the SEC in January 2008. The DOJ and SEC are conducting a parallel investigation, focusing, in particular, on the company's use of customs agents in certain countries including Kazakhstan and Nigeria. According to a 10-Q filed November 2, 2012, Parker has adopted revised procedural policies, controls and other provisions to avoid illegal activity, and has hired a full-time Chief Compliance Office, specializing in the FCPA. These investigations are ongoing, and the Company is fully cooperating with the SEC and DOJ.

In an October 2007 SEC filing, Schlumberger disclosed that in July 2007, it received an inquiry from the DOJ relating to the freight forwarding and customs clearance services of Panalpina and others. Schlumberger expressed its intent to cooperate with the DOJ's investigation and conducted an internal investigation. According to an October 26, 2011 10-Q filing, Schlumberger learned that U.S. officials were conducting a grand jury investigation and connected inquiry into company-related operations in certain countries. On October 24, 2012, Schlumberger said that the DOJ has closed its investigation.

F. Ongoing Investigations under the FCPA

36. BJ Services Co.

Background. BJ Services Co. ("BJ Services"), a U.S. corporation, provides oil field services, products, and equipment to petroleum producers worldwide.

The Investigation. In October 2004, BJ Services received whistleblower allegations that illegal payments had been made to foreign officials in the Asia Pacific region. The results of the company's investigation suggested that payments made to a contractual partner in the region may have been passed along to government officials in the region, and that certain employees of the company were aware of this. The payments, made from fiscal 1999 through fiscal 2004, totaled approximately $2.6 million. In December 2005, the contractual partner refunded the company $2.8 million (representing the $2.6 million in payments plus interest) and indicated that the funds had been misappropriated by employees of the contractual partner and had not been used to pay government officials. The internal investigators were unable to confirm or disprove this claim. However, in 2007, the internal investigation identified another payment (in the amount of $300,000) to the same contractual partner that may have been used to pay government officials.

The company is also investigating an additional approximate $10 million in inadequately documented payments made from fiscal year 1998 through fiscal year 2004 in the Asia Pacific region.

The company voluntarily reported information from its internal investigations to the DOJ and SEC. According to a 10-Q filing dated February 9, 2010, BJ Services cannot currently predict what future actions, if any, these agencies may take.

See SEC Digest Number D-18.

F. Ongoing Investigations under the FCPA

35. Norsk Hydro ASA

Background. Norsk Hydro ASA ("Hydro"), a foreign corporation and a U.S. issuer, develops, produces, and supplies oil, gas, and hydropower worldwide.

The Investigation. On October 1, 2007, Hydro released a statement announcing that, in the process of completing a merger of its former oil and gas business with Statoil ASA ("Statoil"), questions arose with respect to Hydro's former Oil and Energy operations in Libya. These operations were acquired through Hydro's takeover of Saga Petroleum ("Saga") in 1999. Subsequently, Hydro and Statoil each appointed Norwegian and U.S. law firms to conduct investigations into the operations in question.

On October 7, 2008, the companies released final reports on the findings of the investigation, and submitted the report to Økokrim, the Norwegian National Authority for the Investigation and Prosecution of Economic and Environmental Crime.

According to the company's October 2008 report, Hydro voluntarily reported the issues surrounding the Libyan consultants to Økokrim, the DOJ, and the SEC the weekend before the StatoilHydro ASA merger took place on October 1, 2007. On May 15, 2009, Økokrim announced that it would not open an investigation, concluding that any potential issues were either time-barred or that there was an insufficient basis for a criminal investigation. The company plans to continue cooperating with the U.S. authorities.

F. Ongoing Investigations under the FCPA

34. Magyar Telekom, Plc

Background. Magyar Telekom, Plc ("Magyar"), a Hungarian corporation and U.S. issuer, owned by the German corporation Deutsche Telekom, is Hungary's leading telecommunications provider.

The Investigation. The international press reported in April and May 2007 that Magyar was under investigation by the SEC. The investigation comes after Magyar voluntarily disclosed to the SEC and DOJ the results of its own internal investigation, conducted by independent legal counsel, into allegations of improper payments in Montenegro and Macedonia involving certain consultancy agreements. According to an August 2008 SEC filing, in May 2008, the independent investigators reported that "there is affirmative evidence of illegitimacy in the formation and/or performance" of six contracts for advisory, marketing, acquisition due-diligence and lobbying services in Macedonia, entered into between 2004 and 2006 between the company and its affiliates, or a Cyprus-based consulting company and its affiliates. Under these contracts, the company and its affiliates paid a total of over EUR 6.7 million.

The DOJ and SEC have opened their own investigations into the matter. According to an SEC filing dated November 6, 2008, the company is cooperating with these investigations by responding to requests for documents and information from these authorities.

According to a 6-K filed August 6, 2009, a letter dated February 27, 2009 to the Audit Committee from the DOJ requested that the Committee pursue all avenues of investigation before completing a final report of Magyar's internal investigation. The DOJ asked the company to look into all matters that have recently been brought to the Audit Committee's attention by the DOJ.

According to a 6-K filed on December 3, 2009, the Audit Committee completed the internal review suggested by the DOJ. In December of 2009, the Audit Committee submitted its final report to its Board of Directors. In an SEC filing dated August 5, 2010, Magyar announced that they are currently in discussions with the DOJ and SEC to resolve this matter.

On June 24, 2011, Magyar Telekom's board of directors approved of an agreement in principle with the SEC that would resolve the SEC's investigation of the Company's possible FCPA violations though a settlement. Under the agreement in principle the Company would not admit or deny wrongdoing and in exchange the Company would consent to a U.S. District Court order enjoining the Company from further FCPA violations and the payment of disgorgement and a conditional civil penalty. Additional settlement negotiations with DOJ were still ongoing. To cover the potential costs of the SEC and DOJ settlements, the Company set aside $62.4 million.

See DOJ Digest Number D-104.
See SEC Digest Number B-126.

F. Ongoing Investigations under the FCPA

33. Johnson & Johnson

Background. Johnson & Johnson, a U.S. corporation, engages in the research and development, manufacture, and sale of a variety of health care products worldwide.

The Investigation. In an SEC filing dated February 12, 2007, Johnson & Johnson announced that it had voluntarily disclosed to the SEC and DOJ that some of its foreign subsidiaries are believed to have made improper payments that may have violated the FCPA in connection with the sale of medical devices in two small-market countries. The company stated that in the course of continuing dialogues with the DOJ and SEC, other issues potentially rising to the level of FCPA violations in additional markets have been brought to its attention and stated that it had provided and will continue to provide additional information to the SEC and DOJ, and will cooperate with the agencies' reviews of these matters. In conjunction with this investigation, Johnson & Johnson announced the immediate retirement of the worldwide chairman of its Medical Devices & Diagnostics division. According to an August 11, 2010 filing, the company has provided the SEC and DOJ with additional materials and information regarding the investigation.

In April 2010, a former vice president of Johnson & Johnson's U.K. subsidiary was sentenced to 12 months in jail in the United Kingdom after admitting to taking part in a scheme to bribe Greek physicians.

In April 2011, Johnson & Johnson entered into a settlement agreement with the SEC, and a three-year deferred prosecution with the DOJ to settle allegations of improper payments in Greece, Poland, Romania, and Iraq.

In 2011 and 2012 several derivative shareholder lawsuits were filed against Johnson & Johnson in various courts in New Jersey. At least one of these lawsuits is ongoing.

See Parallel Litigation Numbers H-D3 and H-F25.

See SEC Digest Number D-96.

F. Ongoing Investigations under the FCPA

32. Bausch & Lomb Inc.

Background. Bausch & Lomb Incorporated, a U.S. corporation, is a leading developer, manufacturer, and marketer of eye health products.

The Investigation. In an SEC filing dated February 2007, Bausch & Lomb disclosed that its audit committee is currently investigating FCPA implications of certain practices of its Spanish subsidiary; specifically, the provision of free products and other items to doctors at public hospitals in Spain. The investigation was prompted by reports of potentially improper sales practices by a former employee. The company voluntarily reported the matter to the SEC.

In an August 2007 10-Q filing, the company disclosed that its internal investigation was complete. While they found no evidence that the company's senior management authorized, directed, controlled, or knowingly acquiesced to the matters in question, the company did find that, in some instances, the provision of free products was not appropriately documented or accurately recorded by its Spanish subsidiary. Bausch & Lomb reports that it is unable to predict the outcome of the government's investigation.

F. Ongoing Investigations under the FCPA

31. AstraZeneca PLC

Background. AstraZeneca, 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 relates to the company's operations in Italy, Croatia, Russia, and Slovakia, and also asks for information relating to FCPA compliance. In 2008, the company produced documents in response to the SEC's request. According to a 6-K filed on August 2, 2011 , the company has received inquiries from the SEC and DOJ regarding issues in the pharmaceutical industry within certain countries, including People's Republic of China.

AstraZeneca PLC is cooperating with these inquiries.

F. Ongoing Investigations under the FCPA

30. Armor Holdings, Inc.

Background. Armor Holdings, Inc., a U.S. corporation, is a global manufacturer of military, law enforcement, and personal safety equipment.

The Investigation. In an SEC filing dated May 2007, Armor Holdings disclosed that its subsidiary, Armor Holdings Products Group, had received a written request for information from the United Nations Office for Internal Oversight Services in January 2007. The request related to IHC Services, Inc., a former U.N. vendor intermediary that another Armor Holdings subsidiary had in the past used to assist in the preparation of bid proposals to the U.N. IHC was suspended by the U.N. in 2005 in the wake of revelations that it was closely connected to a former U.N. procurement official who had pled guilty to federal crimes, including misconduct relating to his duties at the U.N. Armor Holdings terminated its relationship with IHC upon learning this. The company has complied with the request for information and is cooperating with the U.N.'s investigation.

In February 2007, Armor Holdings also launched an internal investigation of its international sales practices, which resulted in the termination of several employees, agents, and distributors. The company is continuing to implement corrective measures. The board of directors also established a special committee of independent directors to investigate, among other things, FCPA compliance issues raised by the U.N. request for information. The special committee has retained outside counsel, which is conducting an internal investigation and has met with the DOJ and SEC to discuss the matter. The company continues to cooperate with these agencies.

In December 2009, the DOJ charged former Armor Holdings CEO, Jonathan M. Spiller, with violating the FCPA. In January 2010, the DOJ charged former Armor Holdings vice president Richard T. Bistrong with conspiracy to violate the FCPA in connection with the alleged bribery of a U.N. procurement official and others.

See DOJ Digest Numbers B-121, B-96 and B-94.
See SEC Digest Number D-99.

F. Ongoing Investigations under the FCPA

29. Smartmatic Corp.

Background. Smartmatic Corp. ("Smartmatic"), a Venezuelan corporation and U.S. issuer, manufactures and markets electronic voting systems.

The Investigation. In December 2006, various U.S. press sources reported that Smartmatic was under investigation by the DOJ for possible violations of the FCPA. The press reports allege that the investigation focuses on whether Smartmatic bribed officials in Venezuela through a consultant with payments of as much as $4 million. Further details of the investigation are currently unavailable.

F. Ongoing Investigations under the FCPA

28. Rockwell Automation, Inc.

Background. Rockwell Automation, Inc., a U.S. corporation, is a leading global provider of industrial automation power, control, and information products and services.

The Investigation. In an SEC filing dated November 9, 2006, Rockwell disclosed that, as a result of an internal review, it determined in the fourth quarter of 2006 that employees in an unnamed jurisdiction may have violated the FCPA by paying for non-business travel expenses and employing potentially improper payment mechanisms for legitimate business expenses. Rockwell's Audit Committee has retained outside counsel, whose investigation of this activity is ongoing.

Rockwell voluntarily disclosed the matter to the DOJ and SEC beginning in September 2006 and reports that it is cooperating with them and has agreed to update them periodically on the progress of its internal investigation. Rockwell also reports that thorough remedial measures are being implemented. On January 31, 2007, Rockwell divested its Reliance Electric industrial motors and Dodge mechanical power transmission businesses to Baldor Electric Company ("Baldor"). In an SEC filing dated February 28, 2007, Baldor disclosed that, subject to certain limitations, it has been indemnified by Rockwell against government penalties arising from these potential violations of the FCPA.

Rockwell settled the matter with the SEC in April 2011.

See SEC Digest Number D-97.

F. Ongoing Investigations under the FCPA

27. OSI Restaurant Partners, Inc.

Background. OSI Restaurant Partners, Inc. ("OSI"), a U.S. corporation, operates popular restaurant chains such as Outback Steakhouse, Carrabba's Italian Grill, and Cheeseburger in Paradise through a variety of subsidiaries.

The Investigation. In its 2005 Form 10-K, OSI disclosed that in the course of its customary review of its international operations, it discovered that employees of a South Korean subsidiary may have made improper payments to government officials. The company engaged outside counsel to conduct an internal investigation, which is substantially complete. The investigation's results determined that the payments, which amounted to less than $75,000, may have violated the FCPA and South Korean law. Several senior executives of the South Korean subsidiary have resigned. The company voluntarily reported the matter to the SEC and DOJ. It is unclear if the SEC and DOJ have commenced investigations.

F. Ongoing Investigations under the FCPA

26. Apex Silver Mines Ltd.

Background. Apex Silver Mines Limited ("Apex"), a Cayman Islands corporation and a U.S. issuer, engaged in the exploration and development of silver and other mineral properties in Latin America.

The Investigation. Apex disclosed in March 2006 that it had concluded an internal investigation regarding payments made by employees of one of its South American subsidiaries to government officials that may have violated the FCPA. The company disclosed the results of the investigation to the SEC, which commenced its own investigation of the matter. Apex reported in an SEC filing dated November 2007 that it is cooperating fully with the SEC investigation.

F. Ongoing Investigations under the FCPA

25. Millipore Corp.

Background. Millipore Corporation ("Millipore"), a U.S. corporation, is a global provider of products and services for biopharmaceutical manufacturing and laboratory operations.

The Investigation. On August 10, 2006, Millipore disclosed in a Form 10-Q filing that it had uncovered unspecified payment and commission practices at a 40% owned Indian joint-venture that may violate the FCPA. The company's Audit and Finance Committees retained independent counsel to investigate these practices. According to a 10-Q filing dated November 5, 2008, Millipore's investigation is ongoing. The company has voluntarily disclosed the matter to the DOJ and SEC and has stated that it has implemented corrective actions. According to a 10-Q filed on August 12, 2009, the SEC sent a letter to Millipore on May 14, 2009 informing them that the investigation is complete and enforcement action regarding this matter will not be pursued.

F. Ongoing Investigations under the FCPA

24. Sitel Corp.

Background. Sitel Corporation ("Sitel"), a U.S. corporation, designs, builds, and operates customer service centers for companies around the world.

The Investigation. Sitel disclosed that on March 1, 2006, it notified the SEC that it had identified accounting and other irregularities in its Brazil subsidiary that may have violated the FCPA. The irregularities involved accounting errors and a failure to remit municipal taxes. The company has stated that their investigation does not reveal any prior involvement or knowledge of the irregularities by any officer or director of Sitel and that the company is currently taking remedial actions. According to a November 2006 SEC filing, Sitel has reported the results of its internal investigation to the SEC and is responding to the SEC's requests for further information.

F. Ongoing Investigations under the FCPA

23. ERHC Energy

Background. ERHC Energy ("ERHC"), a U.S. corporation, is an independent oil and gas company.

The Investigation. On May 4, 2006, ERHC received a search warrant seeking various documents, including correspondence with foreign governmental officials and entities in São Tomé and Nigeria. The search warrant alleges, among other things, violations of the FCPA. The company has retained independent counsel and continues to work with the DOJ in connection with the search warrant. According to a July 2007 SEC filing, the judge has ruled on ERHC's litigation regarding attorney-client privilege issues and access to the factual basis of the search warrant. His ruling requires the DOJ to provide a neutral "taint team" to review all seized documents and to identify those that may be privileged. The ruling also provides ERHC with the right to challenge the DOJ's privilege determination in court. Since the ruling, ERHC has been in communication with the DOJ regarding the government's compliance with the ordered taint team procedures and the government's ongoing investigation. ERHC has also received two related subpoenas from the SEC and has responded to both of them.

According to a 10-Q filed August 8, 2011, the Company does not see a reason to believe that the investigations are still active. ERHC has not received any additional subpoenas or document requests from either the SEC or DOJ in the recent past.

F. Ongoing Investigations under the FCPA

22. Horizon Offshore, Inc.

Background. Horizon Offshore, Inc. ("Horizon"), a U.S. corporation traded on the NASDAQ, provides marine construction services for the offshore oil and gas industry, including installation, repair and abandonment of marine pipelines and production platforms.

The Investigation. On May 3, 2006, Horizon announced that, as a result of an internal review, the company became aware of the possibility that one of its subsidiaries authorized an improper payment to a customs official in a Latin American country of approximately $35,000 in connection with the importation of construction equipment. The Audit Committee of Horizon's Board of Directors has engaged outside counsel to conduct an investigation of the allegations and of Horizon's internal controls, and has instituted disciplinary actions against several employees.

The company has also notified the SEC and DOJ and is fully cooperating with them.

F. Ongoing Investigations under the FCPA

21. United Parcel Service, Inc.

Background. United Parcel Service, Inc. ("UPS"), a U.S. corporation, is the world's largest package delivery company and a leader in broader supply chain services, such as freight forwarding, customs brokerage, fulfillment, returns, and financial transactions.

The Investigation. On March 14, 2006, UPS announced in an SEC filing that an internal investigation conducted by outside counsel into its Supply Chain Solutions subsidiary in certain locations outside the United States determined that certain conduct, which commenced prior to the subsidiary's 2001 acquisition, may have violated the FCPA. The company announced that the investigation determined that a small number of former employees directed the conduct in question and that the monetary value involved appears to be immaterial. The company informed the SEC and DOJ of its internal investigation in March 2006. As of a November 2006 SEC filing, the company has implemented numerous remediation steps.

In a 10-Q filing dated November 9, 2007, UPS stated that it plans to continue cooperating with the relevant authorities in this matter. The status of any review by the SEC or the DOJ is unclear.

F. Ongoing Investigations under the FCPA

20. Freeport McMoRan Copper & Gold Inc.

Background. Freeport McMoRan Copper & Gold Inc. ("Freeport"), a U.S. corporation, is one of the world's largest producers of copper and gold. Freeport's operations are conducted through its subsidiaries, PT Freeport Indonesia, PT Irja Eastern Minerals and Atlantic Copper, S.A.

The Investigation. In a January 17, 2006 8-K filing and an earnings conference call on the same day, Freeport reported that it had received informal inquiries from governmental agencies in connection with payments to Indonesian security forces. The inquiries followed a *New York Times* article alleging that Freeport paid money directly to individual military officers. Freeport admits to making certain security payments in Indonesia under its Contract of Work with the Government of Indonesia, which it claims were disclosed in SEC filings.

In a company filing dated August 2006, Freeport disclosed that it is complying with requests for information from unspecified governmental authorities in both the United States and Indonesia.

F. Ongoing Investigations under the FCPA

19. BearingPoint Inc.

Background. BearingPoint Inc. ("BearingPoint"), a U.S. corporation, provides strategic consulting application services, technology solutions, and managed services to global companies and government organizations.

The Investigation. BearingPoint revealed in documents filed with the SEC in January 2006 that it faces potential exposure to liability under the Foreign Corrupt Practices Act because of internal control issues related to the company's China operations.

In the filing, BearingPoint states that BearingPoint China formerly maintained a subcontractor relationship with an entity that may have made inappropriate payments to current and former employees of state-owned enterprises in China. According to their statement, the relationship was terminated in October 2005, and the details of the relationship have been communicated to government authorities. The investigation also revealed other potential FCPA issues stemming from expenditures approved by senior employees of BearingPoint China for gifts, entertainment, and international travel provided to employees of state-owned entities. The company disclosed that an internal investigation conducted by its Audit Committee did not conclude that the company had engaged in any violations of the FCPA's anti-bribery provisions. However, the company disclosed that its internal controls presented an unacceptable risk of exposure to FCPA violations. On March 27, 2006, the company received a subpoena from the SEC regarding these matters. According to a June 2009 SEC filing, although BearingPoint has not received any additional requests for documents, the SEC investigation is ongoing.

F. Ongoing Investigations under the FCPA

18. Avery Dennison Corp.

Background. Avery Dennison Corporation ("Avery Dennison"), a U.S. corporation, is a global leader in pressure-sensitive technology, self-adhesive base materials and self-adhesive consumer and office products.

The Investigation. According to a company filing dated November 2005, the company contacted U.S. authorities with respect to preliminary results of an internal investigation of potential violations of the FCPA. The transactions at issue occurred with regard to business in the People's Republic of China and involved, among other things, impermissible payments or attempted impermissible payments. The company has voluntarily disclosed these matters to authorities. According to a 2008 10-Q, the company reported that the payments in question appeared to be relatively minor in amount and of limited duration and that it has taken corrective and disciplinary actions.

Furthermore, in a 2009 10-K filing, Avery Dennison disclosed that, on or about October 10, 2008, the company notified relevant authorities that it had discovered additional questionable payments to certain foreign customs and other regulatory officials by some employees of its recently acquired companies. While the company does not believe that these payments were made for the purpose of obtaining business from a governmental entity, the company is currently conducting an internal review and taking remedial measures to comply with the FCPA. Avery Dennison settled a civil enforcement action with the SEC in July 2009.

According to a 10-Q filed on May 10, 2011, Avery Dennison is also investigating payments made to customs officials in Indonesia by personnel employed by Paxel, a company which was acquired by Avery Dennison. This investigation is ongoing.

See SEC Digest Number D-62.

F. Ongoing Investigations under the FCPA

17. Bristol Myers Squibb Co.

Background. Bristol Myers Squibb Company ("Bristol Myers"), a U.S. corporation, is a manufacturer of pharmaceuticals and healthcare products.

The Investigation. On October 25, 2004, the SEC notified Bristol Myers that it was conducting an informal inquiry into the activities of certain of the company's German pharmaceutical subsidiaries and its employees and agents. According to a November 2006 SEC filing, on October 5, 2006, the SEC notified Bristol Myers that it has made the inquiry a formal investigation. The SEC's investigation encompasses matters currently also under investigation by the German prosecutor in Munich, Germany as well as those reviewed by the German government in 2009. The company understands that the investigations concern potential violations of the FCPA and German law.

According to a 10-Q filing dated October 27, 2011, the company reports to be cooperating with the SEC in their investigation. Separately, the German government terminated their investigation.

F. Ongoing Investigations under the FCPA

16. Alltel Corp.
Fidelity National Financial, Inc.

Background. Alltel Corporation ("Alltel") is a U.S.-based communications company. Alltel Information Services ("Alltel Information") was Alltel's international services subsidiary, which in 2003 was sold to Fidelity National Financial, Inc. ("Fidelity"), a U.S.-based provider of products, services, and solutions in the real estate and financial services industry. Grace & Digital Information Technology Co. Ltd. ("Grace") is a Chinese consulting firm.

The Investigation. In May 2005, Alltel informed the SEC and DOJ that it had launched an internal investigation into possible violations of the FCPA by Alltel Information. Alltel became aware of these possible violations as a result of a lawsuit filed in California in December 2004 by Grace & Digital Information, a Chinese consulting firm, against Fidelity. The lawsuit alleged that, prior to its sale to Fidelity, Alltel Information had failed to pay Grace its share of two contracts awarded to Alltel Information for services rendered in the marketing of software products to the China Construction Bank in 2000 and 2001. The lawsuit included allegations of improper business conduct by Alltel and China Construction Bank executives who allegedly engaged in unlawful bribes and payouts. In the course of business, it is alleged that Alltel Information executives made inappropriate payments in the form of travel expenses, lump sums disguised as consulting fees, and other miscellaneous expenses to Zhang Enzhao and others. At the time, Zhang was the chairman of the China Construction Bank, though he has subsequently resigned in connection with these allegations. Alltel is not a party to the lawsuit.

As a result of the disclosure by Alltel, the SEC and DOJ began investigations with which Alltel is cooperating. In a 10-Q filing dated November 2005, Alltel reported that it had retained independent legal counsel to conduct an internal investigation and to facilitate cooperation with government inquiries. The SEC staff informed the counsel that it had opened an informal inquiry relating to the alleged improper payments. The DOJ also conducted an interview with a former employee in connection with this matter. Alltel's internal investigation was reported as being complete, the findings of which were reported to the SEC and DOJ. According to a May 2008 SEC filing, the DOJ closed its investigation with no action being taken against the company. The company is awaiting final determination by the SEC.

In documents filed with the SEC in May 2006, Fidelity disclosed that the California lawsuit brought by Grace was dismissed on *forum non conveniens* grounds in December 2005. Grace filed a new lawsuit in the Middle District of Florida on March 6, 2006, adding a RICO claim to the FCPA and other claims of the original lawsuit. The company has reported that the court dismissed the RICO claims with prejudice and struck the FCPA allegations in March 2007, and the parties settled the remaining breach of contract claim in mediation in April 2007.

See Parallel Litigation Digest, Commercial Case Number H-C13.

F. Ongoing Investigations under the FCPA

15. Alcatel-Lucent, S.A.

Background. Alcatel-Lucent, S.A., a French corporation and U.S. issuer, is a leading provider of a wide range of telecommunications and data solutions.

The Investigation. In October 2004, Alcatel-Lucent SA ("Alcatel"), a French corporation, learned that the Costa Rican prosecutor and National Congress had launched investigations of payments made by consultants on behalf of various Alcatel subsidiaries to Costa Rican government officials, political parties, and officials of the state-owned telecom in connection with securing contracts for Alcatel. Alcatel commenced an internal investigation, which is still ongoing. Alcatel terminated the employees involved and ended the relationships with the consultants involved, and has also brought litigation against some of these persons and entities.

Alcatel voluntarily disclosed the matter to the DOJ and SEC and indicated that it would cooperate with any investigations. According to a 6-K filing dated September 25, 2008, the DOJ and the SEC, as well as the company itself, are conducting ongoing investigations of the matter. Furthermore, the DOJ indicted the two former Alcatel employees, one of whom recently pleaded guilty to an FCPA violation.

In December 2007, the DOJ resolved a separate matter with Lucent Technologies Inc. and stated, in the non-prosecution agreement, that the DOJ is continuing to investigate whether Alcatel, prior to the formation of Alcatel-Lucent, violated the FCPA in connection with business in Costa Rica and elsewhere.

According to an SEC filing from August 2010, the DOJ and SEC asked for information regarding Alcatel's operations in other countries. In December 2010, Alcatel entered into settlements with the DOJ and SEC regarding this matter.

See DOJ Digest Numbers B-115, B-58, and B-46.
See SEC Digest Numbers D-89 and D-46.

F. Ongoing Investigations under the FCPA

14. Total SA
Norsk Hydro ASA

Background. Total SA, 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 has asked Total SA 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 are 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 SA disclosed that the SEC has issued a non-public formal order directing a private investigation into certain oil companies (including, among others, Total SA) 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. No allegations of wrongdoing have been reported, although press reports have stated that the ongoing French investigation into Total involves payments made in Iran to secure a 1997 deal to develop the South Pars liquefied natural gas project.

According to an annual report filed with the SEC on March 28, 2011, Total disclosed that it has opened settlement discussions with the SEC and DOJ in hopes to settle the matter out of court. According to a 6-K filed November 5, 2012, the SEC and DOJ have drafted proposed agreements. However, the Company and the agencies have not yet come to an agreement and talks are ongoing.

F. Ongoing Investigations under the FCPA

13. Wyeth ABB Ltd. DaimlerChrysler AG Novo Nordisk A/S Beckman Coulter, Inc. Ingersoll-Rand Co. Ltd. Innospec Inc. Total SA 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 SA, 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 payment 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 reports to have received an order from the SEC to provide a written statement and to produce certain documents regarding transactions with the U.N. Oil-for-Food Program and that it is cooperating with this request. The company also reports that the DOJ has requested information in this regard. According to a February 2008 SEC filing, a German prosecutor also commenced an investigation into Daimler's involvement in the U.N. Oil-for-Food Program. In March 2010, Daimler and its Chinese subsidiary entered into a deferred prosecution agreement with the DOJ, and Daimler's Russian subsidiary and finance subsidiary each entered a guilty plea. In April 2010, Daimler also settled a related action with the SEC.

In February 2006, AGCO received a subpoena from the SEC in connection with its investigation of the U.N. Oil-for-Food Program and was contacted by the DOJ in connection with the same matter thereafter, although no subpoena or other formal process has since been initiated by the DOJ. Similar inquiries have been initiated by the Danish and French governments regarding two of AGCO's subsidiaries. The inquiries arose from sales of approximately $58 million in farm equipment to the Iraq ministry of agriculture between 2000 and 2002. In September 2009, AGCO entered into a three-year deferred prosecution agreement with the DOJ. AGCO also settled related civil charges with the SEC and other OFF-related charges brought by the Danish State Prosecutor for Serious Economic Crimes related to contracts executed by AGCO's Danish subsidiary.

On February 7, 2006, Innospec disclosed in an 8-K that the SEC informed the company that it had commenced an investigation regarding the U.N. Oil-for-Food Program activities of the company and its Swiss indirect subsidiary, Alcor Chemie Vertriebs GmbH. A former agent of Innospec, Ousama M. Naaman, was indicted in August 2008 for FCPA violations. In a 10-Q filing dated August 5, 2009, the company, as well as its officers and directors, reasserted its commitment to cooperating 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 United Nations Oil for Food Program, the U.S. Foreign Corrupt Practices Act, the U.S. Cuban Assets Control Regulations and United Kingdom anti-bribery laws.

F. Ongoing Investigations under the FCPA

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 Programme.

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 cooperated with the various investigations. In a 10-Q filing dated October 27, 2011, Weatherford stated that its internal investigation is ongoing and that the company would continue to report any findings to the DOJ and SEC. Similarly, 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 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 has 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 continues to cooperate in the matter.

According to press reports in April 2007, Total SA is under investigation for improper payments involving Iraq and the U.N. Oil-for-Food Program, in addition to allegations regarding bribes in Iran. According to an annual report filed with the SEC on March 28, 2011, Total disclosed that it has opened settlement discussions with the SEC and DOJ in hopes to settle the matter out of court. The Company and the agencies have not yet come to an agreement and talks are ongoing.

According to a 2008 SEC filing, Ingersoll-Rand began investigating potential FCPA violations involving the U.N. Oil-for-Food Program with respect to Trane, Inc., promptly after its acquisition of Trane on June 5, 2008. The company has reported this matter and the ensuing investigation to the DOJ and SEC. The Company consented to the entry of a civil injunction in the SEC action and entered into a three-year deferred prosecution agreement with the DOJ, which expired October 31, 2010. On February 16, 2011, the DOJ filed a motion to dismiss the Oil for Food charges against the Company. On March 11, 2011, the U.S. District Court dismissed the charges.

According to press reports, several other companies based in the U.S. and abroad have also been named in related investigations or have received subpoenas directly from the SEC requesting documents and information.

F. Ongoing Investigations under the FCPA

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.[355] 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.[356] On October 1, 2007, Wyatt pleaded guilty to one count of wire fraud and faces up to two years in prison. Sentencing is scheduled for November 27, 2007. Also named in Wyatt's indictment were two Swiss business associates, Cathy Miguel and Mohameed Saidji, and 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 Foreign Corrupt Practices Act.

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.[357] 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-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-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 Ongoing Investigation Number F-47, F-13.

See Parallel Litigation Digest, Commercial Cases Number H-C20.

See Parallel Litigation Digest, Derivative Cases Numbers H-F12 and H-F25.

355 *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).

356 *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).

357 *State of NY v. Midway Trading, Inc.* (October 19, 2005).

F. Ongoing Investigations under the FCPA

12. Xerox Corp.

Background. Xerox Corp., a U.S. corporation, develops, services, and finances document equipment and software.

The Investigation. In August 2003, Xerox disclosed in an SEC filing that it had discovered certain improper payments made over a period of years in connection with sales to government customers by employees of its majority-owned subsidiary in India, Xerox ModiCorp, Ltd, now Xerox India, Ltd. Xerox conducted an internal investigation and voluntarily reported the payments to the SEC and DOJ.

In January 2005, an Indian government probe determined that the Xerox subsidiary was guilty of violating Indian law when it made the improper payments. The Indian government ordered the formation of an inter-agency group to determine the future course of action. In a June 30, 2005 report, Xerox stated that a private Indian investigator engaged by the Indian Ministry of Company Affairs had completed an investigation into this matter. The report asserted that Xerox senior officials were aware of certain violations and suggested that further investigations into possible criminal activities were necessary. Xerox reported these developments and made available a copy of this report to the SEC and DOJ.

In November 2005, Xerox replied to these allegations, provided a copy of their reply to the SEC and DOJ, and expects a ruling from the Indian ministry in charge of the investigation in the coming months. According to an October 2008 SEC filing, the report is still pending in the Indian Ministry of Company Affairs.

F. Ongoing Investigations under the FCPA

11. United Defense Industries, Inc.

Background. United Defense Industries, Inc., a U.S. corporation, specializes in the design and production of defense systems such as combat vehicles, artillery, naval guns, and missile launchers for the United States Department of Defense.

The Investigation. In 2002, United Defense received a subpoena requesting documents relating to a 2000 contract between United Defense and the Italian government that provided for the upgrading of certain defense vehicles. The Company stated that it was not aware of FCPA violations and was cooperating with the investigation. In April 2005, the Company was bought by BAE Systems, and further information regarding the investigation is not available.

F. Ongoing Investigations under the FCPA

10. Consumers Energy Co.

Background. Consumers Energy Co., a U.S. corporation, is the principal subsidiary of CMS Energy Corp. Consumers provides electrical and natural gas services in Michigan. From 1991 through 2002, subsidiaries of CMS held interests in Equatorial Guinea, operating hydrocarbon production and processing facilities and a methanol plant. On January 3, 2002, CMS sold all its holdings in Equatorial Guinea.

The Investigation. On August 5, 2004, CMS received a request from the SEC that it voluntarily produce all documents and data relating to payments made to the government and officials of Equatorial Guinea. The SEC inquiry followed an investigation and public hearing by the United States Senate Permanent Subcommittee on Investigations, which reviewed the U.S. banking transactions of various foreign governments, including Equatorial Guinea. On August 1, 2005, CMS received additional subpoenas for documents from the SEC. In a 10-Q dated November 2006, CMS stated that is has and will continue to cooperate with the SEC inquiry. As of December 2012, the current status of the inquiry is unclear.

F. Ongoing Investigations under the FCPA

9. Chiquita Brands Int'l

Background. Chiquita Brands International, a U.S. corporation, is a global marketer, producer, and distributor of bananas and other produce.

The Investigation. In September 2004, Chiquita voluntarily disclosed to the SEC and DOJ potential FCPA violations by a Greek subsidiary. According to the company, a questionable payment of €14,700 ($17,600) was made in connection with the settlement of a tax audit in 2003, in contravention of Chiquita's internal policies. According to an SEC filing dated November 2004, the authorities requested certain documents related to this matter, and the investigation was ongoing. According to an August 2006 filing, the status of the investigation remains unchanged.

In 2001, Chiquita reached a settlement with the SEC for similar violations by its Colombian subsidiary and consented to a cease-and-desist order, of which it may be in violation here.

In March 2007, Chiquita entered into a plea agreement with the DOJ relating to payments made by the company's former subsidiary in Colombia to certain groups designated under U.S. law as foreign terrorist organizations. Under the agreement, Chiquita will plead guilty to one count of Engaging in Transactions with a Specially-Designated Global Terrorist and will pay a fine of $25 million and interest and five years of probation and will continue to cooperate with the government in any continuing investigation into the matter. In its factual proffer, Chiquita admitted to making over 100 payments from 1997 to 2004 totaling over $1.7 million to the United Self-Defense Forces of Colombia—the "AUC"—a paramilitary group in Colombia, as well as earlier payments to other groups, with some of these payments occurring after the company had been advised by outside counsel that the payments were illegal and should cease. The payments were made in response to perceived threats to the company's business if such payments were not made.

See SEC Digest Number D-12.

F. Ongoing Investigations under the FCPA

8. Accenture Ltd.

Background. Accenture Ltd. a Bermuda corporation and U.S. issuer, is a global management consulting, technology services, and outsourcing company.

The Investigation. In July 2003, Accenture disclosed in an SEC filing that it had identified a potential violation of the FCPA in connection with its operations in the Middle East. Accenture immediately commenced an internal investigation and reported the incident to the SEC and DOJ. The SEC and DOJ began their own investigations. According to an SEC filing dated October 2009, the company reported that there have been no new developments in the status of these investigations.

F. Ongoing Investigations under the FCPA

7. Chemoil Corp.
Westport Petroleum, Inc.
Glencore Int'l AG

Background. In late November 2003, it was reported in the press that Chemoil Corporation, Westport Petroleum, Inc., both U.S. corporations, and Glencore International AG, a foreign corporation and U.S. issuer, were under investigation by both U.S. and Venezuelan authorities stemming from the sale of oil products by Petroleos de Venezuela SA ("Petroleos"), Venezuela's state-owned oil company.

The Investigation. According to the report, in the months following an oil-workers strike in Venezuela in early 2003, Chemoil, Westport (U.S. oil-trading firms), and Glencore (a Swiss oil-trading firm) were given favorable treatment by executives at Petroleos. Senior Petroleos officials acknowledge that unfavorable trades were made during those months but asserted that there was no evidence of any corruption. It remains unclear which U.S. agencies are investigating this case.

F. Ongoing Investigations under the FCPA

6. Exxon Mobil Corp.
Marathon Oil Corp.
Amerada Hess Corp.
ChevronTexaco Corp.
Devon Energy Corp.

Background. Exxon Mobil Corp. ("Exxon"), Marathon Oil Corp. ("Marathon"), Amerada Hess Corp. ("Amerada Hess"), ChevronTexaco Corp. ("ChevronTexaco"), and Devon Energy Corp. ("Devon"), 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 is cooperating with the SEC in its investigation.

A Senate subcommittee held a hearing on the Riggs issues and disclosed in a subsequent report that Riggs' records showed large payments by U.S. oil companies into accounts controlled by Equatorial Guinean officials and their relatives, sometimes in increments exceeding $1 million. Other payments made by oil companies pertained to land leases and purchases for government officials, expenses for the Equatorial Guinean Embassy in Washington, and educational expenses for the children of Equatorial Guinean officials studying abroad.

Marathon disclosed the SEC inquiry in a 2004 regulatory filing and noted that there "was no finding in the subcommittee's report that Marathon violated" the FCPA. As of August 1, 2005, Marathon reported receiving an SEC subpoena pursuant to a formal investigation of this issue. 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 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 is continuing to cooperate with the SEC investigation.

In press reports and the company's November 2005 10-Q filing, Devon Energy Corp., 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 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 is committed to cooperating with relevant authorities in the event that it receives additional inquiries.

F. Ongoing Investigations under the FCPA

See DOJ Digest Number B-59.

See SEC Digest Number D-42.

See Parallel Litigation Digest, Derivative Case Number H-F8.

F. Ongoing Investigations under the FCPA

5. Petro-Canada

Background. According to a filing with the SEC, in late November 2003, Petro-Canada ("Petro-Canada"), a Canadian oil and gas company and U.S. issuer, notified the DOJ and SEC that it had discovered potential violations of the FCPA with regard to a joint venture in which Petro-Canada holds a minority interest.

The Investigation. According to published reports at that time, Petro-Canada initiated an internal review by outside counsel and was fully cooperating with the DOJ and SEC. The company has not publicly disclosed any details relating to the alleged violations, except that the amounts in question are not material. At present, the status of the investigation is not clear.

F. Ongoing Investigations under the FCPA

4. Metromedia Int'l Group, Inc.

Background. In November 2002, Metromedia International Group, Inc. ("Metromedia"), a high-speed communications network company based in New York, reported to the DOJ and SEC that certain employees may have violated the FCPA in their dealings with ventures in the former Soviet Union.

The Investigation. According to published reports, Metromedia engaged outside counsel to conduct an internal investigation. In early 2003, Metromedia reported to the DOJ and SEC that they did not find any supportable FCPA violations. According to a company filing dated August 2004, early in that year Metromedia began an investigation into allegations that certain employees may have violated the FCPA in dealings with a business venture in the Republic of Georgia. At the conclusion of their investigation, Metromedia concluded that the allegations were without merit and reported such to the Audit Committee of the Board of Directors. Upon further examination, the Audit Committee determined the investigation into these issues to be sufficiently resolved and determined not to re-open the investigation. It is unclear whether the SEC or DOJ have ever commenced their own investigations into these matters.

F. Ongoing Investigations under the FCPA

3. Gtech Holdings Corp.

Background. Gtech Holdings Corp. ("Gtech"), based in West Greenwich, R.I., provides computer programming and data processing services.

The Investigation. In an SEC filing in May 2004, Gtech disclosed that the SEC had begun an investigation into allegations that Gtech's former President and Marketing Director of Gtech Brazil offered an inducement in connection with the negotiation of an extension of Gtech's contract with Brazil's official lottery contractor. Gtech secured a contract extension in 2003, from which Gtech allegedly earned $650 million in revenue. At the time of this filing, the SEC announced an informal inquiry into the bribery allegations, with which Gtech cooperated. At some point in 2004, the SEC inquiry was upgraded to a formal investigation. The company is continuing to cooperate, and a comprehensive internal investigation is also ongoing.

Similar criminal and civil actions have commenced in Brazil. According to Gtech, in late March 2004, Brazilian prosecutors recommended criminal charges be brought against nine individuals, including senior officers and the former president of Gtech Brazil, Antonio Carlos Rocha. In December 2004, the presiding judge rejected the prosecution's request to charge the individuals on procedural grounds. In January 2005, the prosecution re-opened the investigation. On June 21, 2006, a Brazilian Congressional panel issued a report calling for the indictment of 84 individuals, including several former and one current employee of Gtech Brazil.

F. Ongoing Investigations under the FCPA

2. Int'l Business Machines, Corp.

Background. According to press reports, International Business Machines, Corp. ("IBM"), a U.S. corporation and the world's largest computer maker, is the subject of a probe by the DOJ and SEC after 48 government officials and executives were indicted by South Korean officials and charged with rigging state contracts for computer equipment in January 2004.

The Investigation. According to the reports, the investigations stem from allegations that senior executives at IBM's Korean subsidiary and several other companies paid bribes or colluded with one another to win $55 million in government contracts in Korea. According to prosecutors in Korea, the misconduct began as far back as 1998. Several IBM Korea executives were fired after being charged with bribery to win government contracts in Korea worth $55 million. According to the indictment, IBM Korea built up a "slush fund" through Winsol, a local reseller, to facilitate the alleged bribes and kickbacks.

The company reported in a filing, dated October 2005, that a number of individuals, including IBM Korea employees, were found guilty of misconduct and sentenced in Korea. In an SEC filing dated July 2006, the company disclosed that IBM Korea and LG IBM, a joint venture of IBM, were required to pay fines in the Korean prosecution. IBM Korea was disbarred from doing business directly with government-controlled entities in Korea.

In March 2011, IBM reached a settlement with the SEC, in which they were to pay about $10 million in penalties. However, as of December 2012, the district court has not yet approved the settlement.

See SEC Digest Number D-9.

F. Ongoing Investigations under the FCPA

1. Eli Lilly & Co.

Background. Eli Lilly and Co., a U.S. corporation, is a large pharmaceutical manufacturing company.

The Investigation. In November 2003, Eli Lilly announced that the SEC had requested documents related to the company's Polish subsidiary to determine whether any violations of the FCPA had occurred. Eli Lilly's office in Warsaw employs approximately 300 marketing, sales, and medical staff.

According to a 10-K filed on February 22, 2010, the SEC and DOJ expanded their investigations and asked Eli Lilly to voluntarily provide further information related to the investigation. In addition, the SEC issued subpoenas to Eli Lilly affiliates in countries where they suspect violations occurred. Eli Lilly continues to fully cooperate fully with the SEC and DOJ's inquiries.

On December 20, 2012, Eli Lilly reached a settlement with the SEC after almost ten years of investigation. The Complaint alleges falsified expense reports between 206 and 2009, as well as a variety of other bribes administered throughout the Company. Eli Lilly has agreed to pay the SEC about $29 million in civil penalties, disgorgement, and pre-judgment interest.

See SEC Digest Number D-115.

G. Pre-FCPA Prosecutions

G. Pre-FCPA Prosecutions

1. ***U.S. v. J. Ray McDermott & Co. Inc.*, E.D. Louisiana, 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.

G. Pre-FCPA Prosecutions

13. ***U.S. v. Page Airways, Inc., Fed. Sec. L. Rep.*** **(Cr. No. 79-00273) (CCH), 96,393 D.D.C., filed April 12, 1978**
Currency and Foreign Transactions Report Act. Fine and civil penalty of $52,647.

14. ***U.S. v. Textron, Inc.*** **(Cr. No. 79-00330), D.D.C., July 1979**
Currency and Foreign Transactions Report Act. Fine and civil penalty of $131,670.

15. ***U.S. v. McDonnell Douglas Corp., et al.*** **(Cr. No. 79-516), D.D.C., Sept. 8, 1981**
Mail fraud, wire fraud, conspiracy, false statements to Export-Import Bank.

H. Parallel Litigation

H. Parallel Litigation

Index of Parallel Litigation Sections:

H. Parallel Litigation

A. Securities Cases

14. City of Pontiac General Employees Retirement System v. Wal-Mart Stores, Inc. (W.D. Ark 2012)[358]

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, 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, 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.

Status. The case was transferred from the Middle District of Tennessee to the Western District of Arkansas. It remains in the preliminary stages of litigation.

See Ongoing Investigation Number F-92.

See Parallel Litigation Digest, Derivative Number H-F23.

[358] *City of Pontiac Gen. Emps Ret. Sys.*, No. 5:12-cv-05162 (W.D. Ark. 2012).

H. Parallel Litigation

A. Securities Cases

13. City of Brokton Retirement System v. Avon Products, Inc. (D.N.J. 2011)[359]

Background. On July 6, 2011, shareholder plaintiffs filed a class action complaint against Avon Products, Inc. ("Avon") 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.

See Ongoing Investigation Number F-44.

359 *City of Brokton Retirement System v. Avon Products*, No. 1:11-cv-04665 (D.N.J. 2011).

H. Parallel Litigation

A. Securities Cases

12. In re SciClone Pharmaceuticals Securities Litigation (N.D. Cal. 2010)[360]

Background. On October 27, 2010 the district court consolidated two class action suits against SciClone Pharmaceuticals, Inc. ("SciClone"), 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 the plaintiffs, without prejudice.

See Ongoing Investigation Number F-62.

360 *In re SciClone Pharmaceuticals Securities Litigation*, 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)[361]

Background. On December 3, 2009, plaintiff filed a securities class action against Siemens AG ("Siemens"). 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, Securities Numbers H-A11, H-C24, and H-H1.

[361] *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)[362]

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.

362 *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 Litigation[363]

Background. A class of investors who acquired securities of UTStarcom, Inc. ("UTStarcom") 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.

363 *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)[364]

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.

364 *In re Willbros Group, Inc. Sec. Litig.*, 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)[365]

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.

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365 *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

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.

H. Parallel Litigation

A. Securities Cases

6. In the Matter of Immucor, Inc. Securities Litigation (N.D. Ga. 2006)[366]

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.

366 *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)[367]

Background. On November 6, 2006, plaintiffs filed an amended consolidated complaint against Nature's Sunshine Products, Inc., ("Nature's Sunshine") 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.

367 *In re Nature's Sunshine Products 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)[368]

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, Derivative Case Number H-F6.

368 *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)[369]

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.

369 *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)[370]

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, ERISA Cases Number H-B1.

370 *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)[371]

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.

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371 *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).

B. ERISA Cases

1. In the Matter of Syncor ERISA Litigation (C.D. Cal. 2004)[372]

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, Securities Cases Number H-A2.

372 *In re Syncor ERISA Litig.*, 2:03-cv-02446 (C.D. Cal. 2004); *In re Syncor ERISA Litig.*, 03-cv-02446 (9th Cir. 2007).

H. Parallel Litigation

C. Commercial Cases

27. Petróleos Mexicanos, et al. v. CONPROCA S.A. de C.V., et al. (S.D.N.Y. 2012)[373]

Background. On December 12, 2012, Petróleos Mexicanos and Pemex-Refinanción (collectively "Pemex") filed a complaint against Siemens Aktiengesellschaft ("Siemens"), SK Engineering & Construction Co. Ltd. ("SK"), and CONPROCA S.A. de C.V. ("CONPROCA") relating to various alleged acts of bribery by the defendants. In 1997, Siemens and SK, by way of their joint venture entity CONPROCA, were awarded an oil refinery modernization contract in the Cadereyta region of Mexico in exchange for allegedly making various illicit payments to Pemex officials. 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. In 2008, Siemens settled an FCPA enforcement action by the SEC related to this project for $1.6 billion. In January 2012, an ICC arbitral tribunal awarded CONPROCA approximately $530 million for claims against Pemex. As of late 2012, CONPROCA continues to seek enforcement of the arbitral tribunal's award in the Southern District of New York.

Status. The case remains in the preliminary stages.

See SEC Digest Number D-56.

[373] *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.)[374]

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.

374 *Newmarket Corp. and Afton Chemical Corp. v. Innospec Inc. and 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)[375]

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-134.

See SEC Digest Number D-111.

See Ongoing Investigation Number F-60.

See Parallel Litigation Digest, Commercial Number H-C14.

375 *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)[376]

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-123 and B-78.

See SEC Digest Numbers D-99 and D-56.

See Parallel Litigation Digest, Securities Numbers H-A11, H-C24, and H-H1.

376 *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 v. Federal Insurance Company (D.N.J. 2010)[377]

Background. On February 22, 2010, Omega Advisors Inc. ("Omega") 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.

377 *Omega Advisors, Inc. v. Federal Insurance Company*, 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)[378]

Background. On November 1, 2006, RSM Production Company ("RSM"), a Texas corporation, Jack Grynberg and Grynberg Petroleum Company ("GPC") 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.

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[378] *See RSM Production Corp., et al. v. Fridman, et al.*, 2009 U.S. Dist. LEXIS 12898 (S.D.N.Y., Feb. 19, 2009).

C. Commercial Cases

21. eLandia v. Granados and Retail Americas VoIP, LLC (Fla. Cir. Ct. 2008)[379]

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 ("RAV"), 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.

379 *eLandia v. Granados and 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)[380]

Background. On December 22, 2006, the plaintiffs filed a consolidated RICO class action complaint, and subsequently amended on June 15, 2007, on behalf of all Iraqi citizens who: (a) were specific intended beneficiaries of humanitarian benefits under the U.N. Oil-for-Food Program; (b) were qualified to receive program benefits; and (c) did not receive the full benefits of which they were entitled. Such persons include the subclass of citizens who were minors during any portion of the program. Plaintiffs allege that the defendants conspired with various other entities, including certain agencies of the Iraqi government, front companies, and international shipping companies to form an enterprise that bribed the Iraqi government with money illegally siphoned from the U.N. Oil-For-Food Program through bank accounts in the Unites States. It is alleged that, through this scheme, escrow account funds earmarked for the U.N. Oil-for-Food Program were improperly transferred into the coffers of the Hussein Regime or used to indemnify good suppliers, including AWB, for the bribes they had paid to Iraq. Plaintiffs allege four claims for relief: (a) violation of RICO; (b) conspiracy to violate RICO; (c) unjust enrichment; and (d) an accounting as to the disposition of all funds received by defendants. Specifically, plaintiffs allege that the defendants engaged in a pattern of racketeering activity and committed numerous RICO "predicate acts" by repeatedly violating several statutes, including the FCPA.

Status. On October 9, 2008, the court issued an order granting the defendants' motion to dismiss the amended complaint in its entirety. On October 22, 2008, plaintiffs filed an appeal with the Court of Appeals for the Second Circuit. On October 2, 2009, the court of appeals affirmed the judgment of the district court, stating the plaintiffs failed to allege an injury-in-fact that is fairly traceable to the defendants' conduct.

See Ongoing Investigation Number F-13.

380 *Karim, et al. v. AWB Ltd., et al.*., 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)[381]

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.

[381] *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)[382]

Background. On October 21, 2008, plaintiff Supreme Fuels Trading FZE ("Supreme"), 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.

[382] *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)[383]

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.

383 *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)[384]

Background. On March 24, 2008, plaintiff Argo-Tech Corporation ("Argo-Tech"), a Delaware corporation, which manufactures high performance commercial and military aerospace equipment, filed a complaint against Yamada Corporation ("Yamada"), a Japanese defense equipment trading corporation, and its indirect subsidiary, Upsilon International Corporation ("Upsilon"), 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.

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[384] *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)[385]

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.

[385] *Hijazi Medical Supplies v. AGA Medical 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)[386]

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.

386 *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)[387]

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.

See Ongoing Investigation Number F-16.

387 *Grace & Digital Info. Tech., Ltd. v. Fidelity Nat'l Financial, 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)[388]

Background. On December 26, 2002, Metro Communication Corp., BVI ("Metro") 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.

[388] *Metro Communication* Corp., BVI *v. Advanced Mobilecomm* Tech. Inc., et al., 854. A.2d 121, 144 (Del. Ch. 2004).

C. Commercial Cases

11. National Group for Communications & Computers, Ltd. v. Lucent Technologies, Inc., et al. (S.D.N.Y. 2003)[389]

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.

[389] *Nat'l Group for Communications and Computers, Ltd. v. Lucent Technologies, 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)[390]

Background. Juan Fabri Sr. and Juan Fabri Jr. ("Fabris") sued United Technologies International, Inc. ("United Techologies"), a manufacturer and distributor of helicopters, alleging breach of contract, tortious interference, and a violation of Connecticut's unfair trade statute after United Techologies unilaterally terminated its contract with the Fabris and failed to pay the Fabris a commission for the sale of certain helicopters to the Argentine government. United Technologies argued that an outside investigator uncovered certain FCPA "red flags" during an investigation of the Fabris' sale of helicopters to the Argentine government and, therefore, it was allowed to terminate the contract under a provision in the contract wherein the Fabris warranted that they would not violate the FCPA.

A jury found for the defendants on the contract and tortious interference claims but in the plaintiffs' favor on the state unfair trade claim. The defendants moved for judgment as a matter of law, which the district court denied. On appeal to the Second Circuit, United Technologies argued that the jury verdict was inconsistent. With respect to the FCPA issue, the defendants argued that, since the contract claim and the state unfair trade claim both turned on whether the defendants violated a duty of good faith and fair dealing, the jury must have applied a heightened requirement of good faith and fair dealing to the state unfair trade claim. According to the defendants, applying such a heightened standard conflicted with the company's legal duty not to violate the FCPA and, consequently, the FCPA preempted the state unfair trade statute. The Second Circuit disagreed with defendants, holding that the proof offered in support of the state unfair trade claim was sufficient to support the jury's verdict without applying a heightened standard of fairness. The court therefore concluded that the defendant's preemption argument was meritless.

Status. The case settled on remand to the district court.

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390 *Fabri, et al. v. United Techs. Int'l Inc., et al.*, No. 96-2358 (D. Conn. 2002); *Fabri v. United Tech.s 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).

C. Commercial Cases

9. Rotec Industries, Inc. v. Mitsubishi Corp., et al. (D. Or. 2001)[391]

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.

391 *Rotec Industries, 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)[392]

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.

[392] *Scientific Drilling Intern., 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)[393]

Background. Plaintiffs, J.S. Service Center Corp. and Sercenco, S.A., sued General Electric Technical Services Company, Inc. and General Electric Company (together "GE"), U.S. corporations, in New York state court for damages under, *inter alia*, the FCPA and RICO, relating to GE's non-renewal of Sercenco's Service Sales Representative Agreement with GE, pursuant to which Sercenco was designated GE's authorized sales representative for Peru. Defendants removed the action to federal court on June 1, 1995.

Sercenco alleged that officials of ElectroPeru, Peru's state-owned electric utility, were attempting to extort bribes from it on an unrelated project and that when it refused to pay the officials, they fabricated complaints to GE about Sercenco's work. Serenco alleged that GE told Sercenco to "resolve" the problem without involving GE so that GE could obtain additional contracts with ElectroPeru. Sercenco further alleged that although GE purported to comply with, and to insist that its agents comply with the FCPA, GE in fact had a policy of using agents who it knew would pay bribes, and that GE had in fact replaced Sercenco with another agent because Sercenco would not pay bribes and the new agent had and would.

Status. The District Court dismissed the plaintiffs' claim under the FCPA, holding that there is no private right of action under the FCPA. Plaintiffs' RICO claims were also dismissed. The plaintiffs appealed to the Second Circuit, but withdrew their appeal in December 1996. The case is closed.

393 *J.S. Service Center Corp. v. General Electric Technical Services Co.*, 937 F. Supp. 216 (S.D.N.Y. 1996).

C. Commercial Cases

6. Abrahams v. Young & Rubicam Inc., et al. (D. Conn. 1994)[394]

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.

394 *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).

C. Commercial Cases

5. Dooley v. United Technologies Corp. (D.D.C. 1992)[395]

Background. On October 4, 1991, plaintiff Thomas F. Dooley, an employee of Sikorsky Aircraft, a subsidiary of United Technologies Corp. ("United Technologies"), 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.

395 *Dooley v. United Technologies 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)[396]

Background. Two officers of Western Oil and Refining Co., Inc. ("Western"), 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.

396 *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. Environmental Tectonics Corp., Int'l v. W.S. Kirkpatrick & Co., Inc., et al. (1990)[397]

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.

397 *W.S. Kirkpatrick, et al. v. Environmental* Tectonics, 493 U.S. 400 (1990).

C. Commercial Cases

2. Lamb v. Phillip Morris, Inc., et al. (6th Cir. 1990)[398]

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.

398 *Lamb v. Phillip Morris, Inc., et al.*, 915 F.2d 1024 (6th Cir. 1990).

C. Commercial Cases

1. Instituto Nacional de Comercializacion Agricola (Indeca) v. Continental Illinois Nat. Bank & Trust Co., et al. (N.D. Ill. 1983)[399]

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. ("Rumux"), and retained Banco de Guatemala ("Banco") to issue a letter of credit. Banco subsequently engaged the services of defendant Continental Illinois National Bank & Trust Co. ("Continental") 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.

399 *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

11. Khaled Asadi v. G.E. Energy (USA), LLC (S.D. Tex. 2012)[400]

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.

[400] *Asadi v. G.E. Energy (USA), LLC*, No. 12-cv-00345 (S.D. Tex. 2012).

D. Employment Cases

10. Jewett v. IDT Corporation (D.N.J. 2011)[401]

Background. In 2004, plaintiff D. Michael Jewett filed a complaint against IDT Corporation ("IDT"), Mount Salem Management, Ltd. ("Mount Salem"), 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.

[401] *Jewett v. IDT Corp. et al,* No. 2:04-cv-01454 (D. N. J. 2004).

D. Employment Cases

9. Lebron v. AIG, Inc., et al. (S.D.N.Y. 2009)[402]

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.

[402] *Lebron v. AIG, Inc., et al.*, No. 09-CV-4285 (S.D.N.Y. May 1, 2009).

D. Employment Cases

8. General Electric Co. v. Koeck (E.D. Va. 2008)[403]

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.

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403 *General Electric Co. v. Koeck*, No. 08-CV-591 (E.D. Va. June 6, 2008).

D. Employment Cases

7. Haddad v. ITT Industries Inc., et al. (N.D. Ind. 2005)[404]

Background. Plaintiff, a former employee of ITT Industries, Inc. ("ITT"), 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.

404 *Haddad v. ITT Industries Inc.*, No. 1:05-cv-00370 (N.D. Ind. 2005).

D. Employment Cases

6. Bazzetta v. DaimlerChrysler Corp. (E.D. Mich. 2005)[405]

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.

405 *Bazzetta v. DaimlerChrysler Corp.*, No. 2:04-cv-73806 (E.D. Mich. 2005).

D. Employment Cases

5. Duha v. Agrium, Inc., et al. (E.D. Mich. 2003)[406]

Background. On January 28, 2003, Wayne Duha filed a complaint against his former employer, Agrium Inc. ("Agrium"), alleging that Agrium unlawfully terminated his employment after he reported Agrium's Argentine subsidiary to U.S. authorities and company officials for violating the Foreign Corrupt Practices Act ("FCPA"). Agrium, a U.S. company involved in crop production services, claimed that it terminated Duha for making inappropriate jokes in an e-mail to a co-worker.

Defendants moved to dismiss on *forum non conviens* grounds and Duha argued that the FCPA tilted the "public interest" factor of the *forum non conviens* in favor of resolving the dispute in the United States. The district court rejected this argument, noting that the FCPA provides no private right of action, but dismissed the action on other *forum non conviens* grounds.

The Sixth Circuit Court of Appeals reversed and found that the district court erred in not giving sufficient deference to the plaintiff's choice of forum and did not appropriately consider the inconvenience imposed on witnesses and parties if the suit proceeded in Argentina.

Status. The case settled on remand to the district court.

406 *Wayne Duha v. Argium, Inc., et al.*, No. 03 Civ. 10027 (E.D. Mich. 2003).

D. Employment Cases

4. Depuydt v. FMC Corp. (N.D. Cal. 1995)[407]

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.

407 *Depuydt v. FMC Corp.*, No. 5:89-cv-20470 (N.D. Cal. 1995).

D. Employment Cases

3. D'Agostino v. Johnson & Johnson, Inc. (Essex County Ct. 1994)[408]

Background. Richard D'Agostino, an employee of a Swiss subsidiary of Johnson & Johnson, Inc. ("Johnson & Johnson"), 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.

408 *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).

D. Employment Cases

2. Williams v. Hall, et al.; McKay v. Ashland Oil, Inc., et al. (E.D. Ky. 1988) [409]

Background. Harry Williams and Bill McKay, former officers of Ashland Oil, Inc. ("Ashland Oil"), 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, Derivative Case Number H-F2.

409 *Williams v. Hall, et al.*; *McKay v. Ashland Oil, Inc., et al.*, No. 84-149, (E.D. Ky. 1988).

D. Employment Cases

1. Pratt v. Caterpillar Inc. (3rd Dist. 1986)[410]

Background. Plaintiff Donald M. Pratt, a former employee at will of Caterpillar, Inc. ("Caterpillar"), 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.

[410] *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

6. Aluminum Bahrain B.S.C. v. Sojitz Corporation and Sojitz Corporation of America (S.D. Tex. 2009)[411]

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.

411 *Aluminum Bahrain B.S.C. v. Sojitz Corporation et al.*, No. 4:09-cv-04032 (S.D. Tex. 2009).

E. Cases Involving Foreign Sovereigns

5. The Republic of Iraq v. ABB AG, et al. (S.D.N.Y. 2008)[412]

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 court held a hearing on the defendants' motion to dismiss on October 26, 2012.

See DOJ Digest Numbers B-75, B-47, and B-31.

See SEC Digest Numbers D-26 and D-17.

See Ongoing Investigation Number F-13.

See DOJ FCPA Opinion Procedure Release, Digest Number E-41.

412 *The Republic of Iraq v. ABB AG*, No. 1:08-cv-05951 (S.D.N.Y. 2008).

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)[413]

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 is stayed and defendant Victor Dahdaleh petitions for an interlocutory appeal.

See Parallel Litigation Digest, Derivative Case Numbers H-F7 and H-F24.

See Ongoing Investigation Number F-43.

413 *Aluminum Bahrain B.S.C. v. Alcoa, Inc.*, No. 2:08-cv-00299 (W.D. Pa. 2008).

E. Cases Involving Foreign Sovereigns

3. Dominican Republic v. AES Corp. (E.D. Va. 2006)[414]

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.

414 *Gov't of the Dominican Republic and Secretariat of State of the Environment and Natural Resources of the Dominican Republic* (E.D. Va. 2006).

H. Parallel Litigation

E. Cases Involving Foreign Sovereigns

2. World Duty Free Co. v. The Republic of Kenya[415]

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 ("World Duty Free"), 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 (¶ 136) and that a contract secured by bribery is not enforceable as it violates international public policy (¶ 157). 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 (¶ 156). The tribunal found that a bribe is not a transaction severable from the contract (¶ 174). According to the tribunal, the fact that Kenya had not prosecuted its former President was discouraging but irrelevant (¶¶ 180–181).

415 *World Duty Free Co. v. The Republic of Kenya* (ICSID Case No. Arb/00/7, Oct. 4, 2006).

E. Cases Involving Foreign Sovereigns

1. Adler, et al. v. Federal Republic of Nigeria, et al. (9th Cir. 2000)[416]

Background. In May 1994, James E. Adler ("Adler") and El Surtidor Del Hogar, S.A. de C.V. ("El Surtidor"), 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.

[416] *Adler, et al. v. Federal Republic of Nigeria, et al.*, 219 F.3d 869 (9th Cir. 2000).

H. Parallel Litigation

F. Derivative Cases

25. The George Leon Family Trust v. Coleman, et al. (D.N.J. 2012)[417]

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 pre-judgment 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 has been stayed pending resolution of an internal investigation pursuant to a shareholder demand plaintiff made on the Board of Directors.

See DOJ Digest Number B-120.

See SEC Digest Number D-96.

See Ongoing Investigations Numbers F-13 and F-38.

See Parallel Litigation Number H-D3.

417 *George Leon Family Trust v. Coleman,* No. 3:12-cv-04491 (D.N.J. 2012).

H. Parallel Litigation

F. Derivative Cases

24. Catherine Rubery v. Kleinfeld, et al. (W.D. Pa. 2012)[418]

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. The case is pending. Defendants are scheduled to answer or otherwise respond to the complaint on or before March 4, 2013.

See Ongoing Investigation Number F-43.

See Parallel Litigation Numbers H-F7 and H-E4.

[418] *Rubery v. Kleinfeld,* No. 2:12-cv-00844 (W.D. Pa. 2012).

H. Parallel Litigation

F. Derivative Cases

23. Emory v. Duke (W.D. Ark 2012)[419]
Richman v. Alvarez (W.D. Ark 2012)[420]
Brazin v. Wal-Mart Stores Inc. (Del. Ch. 2012)[421]
Cohen v. Alvarez (Del. Ch. 2012)[422]
Knowles v. Alvarez (Del. Ch. 2012)[423]
California State Teachers Retirement System v. Alvarez (Del. Ch. 2012)[424]
Klein v. Robson (Del. Ch. 2012)[425]

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), and Delaware Court of Chancery (filed 2012). 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. In *Richman v. Alvarez*, the court issued an order to stay the proceedings pending resolution of the state court cases in Delaware. The plaintiffs are appealing that order. *Emory v. Duke* remains in the preliminary stages of litigation and was transferred to the Western District of Arkansas after initially being filed in the Eastern District of Arkansas. *Brazin*, *Cohen*, *Knowles*, *California State Teachers*, and *Klein* also are in the preliminary stages of litigation.

See Parallel Litigation Digest, Securities Number H-A14.

[419] *Emory v. Duke*, No. 5:12-cv-05171 (W.D. Ark 2012).

[420] *Richman v. Alvarez*, No. 4:12-cv-04069 (W.D. Ark 2012).

[421] *Brazin v. Wal-Mart Stores*, No. 7489 (Del. Ch. 2012).

[422] *Cohen v. Alvarez*, No. 7470 (Del. Ch. 2012).

[423] *Knowles v. Alvarez*, No. 7630 (Del. Ch. 2012).

[424] *Cal. State Teachers Retirement Sys. v. Alvarez*, No. 7490 (Del. Ch. 2012).

[425] *Klein v. Robson*, No. 7455 (Del. Ch. 2012).

H. Parallel Litigation

F. Derivative Cases

22. Copeland v. Prince, et al. (D.N.J. 2011)[426] Katz v. Weldon, et al. (D.N.J. 2011)[427]

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 pre-judgment 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-33 and F-13.

426 *Copeland v. Prince,* No. 3:11-cv-04993 (D.N.J. 2011).

427 *Katz v. Weldon,* No. 3:11-cv-04994 (D.N.J. 2011).

H. Parallel Litigation

F. Derivative Cases

21. Iron Workers Mid-South Pension Fund v. Keith Rupert Murdoch, et al. (S.D.N.Y. 2011)[428]

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. The case is pending.

[428] *Iron Workers Mid-South Pension Fund v. Murdoch et al.*, No. 1:11-cv-05556 (S.D.N.Y. 2011).

F. Derivative Cases

20. Holt v. Golden, et al. (D.Mass. 2011)[429]

Background. On July 20, 2011 plaintiffs Frank Holt and Norman Hart ("Plaintiffs") filed a shareholder derivative complaint on behalf of Smith & Wesson Holding Corp. ("Smith & Wesson") 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 Number B-94.

See Ongoing Investigation Number F-61.

[429] *Holt v. Golden et al*, No. 3:11-cv-30200 (D. Mass. 2011).

F. Derivative Cases

19. Freuler v. Parker, et al. (S.D. Tex. 2010)[430]

Background. On June 30, 2011, the United States District Court for the Southern District of Texas dismissed plaintiff Douglas Freuler's first amended complaint derivatively filed on behalf of nominal defendant Parker Drilling Company, against certain current directors and officers of Parker Drilling. Plaintiff alleged that defendants breached their fiduciary duties through, *inter alia*, authorizing the company to engage in business practices that may have violated the FCPA and failing to establish and maintain a system of adequate internal controls to prevent the alleged FCPA violations. Plaintiff filed the action after Parker Drilling disclosed that SEC and DOJ investigations had identified potential non-compliance with the FCPA in connection with Parker Drilling's operations in Kazakhstan and Nigeria.

Status. With leave of the Court, plaintiff filed a second amended complaint asserting similar allegations and seeking damages and an injunction to require Parker Drilling to appoint a corporate monitor to implement and oversee a system of internal controls. 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.

See Ongoing Investigation Number F-37.

430 *Freuler v. Parker et al.*, No. 10-cv-03148 (S.D. Tex. 2010).

H. Parallel Litigation

F. Derivative Cases

18. Walbrun v. Bates, et al. (Texas District Court, Harris County 2011)[431]

Background. On April 27, 2011, plaintiff Roger Walbrun filed a shareholder's derivative action on behalf of nominal defendant Hercules Offshore, Inc. ("Hercules Offshore"), 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.

See Ongoing Investigation Number F-83.

[431] *Walbrun v. Bates, et al.*, No. 2011-25582 (Tex. Dist. Ct., Harris County, 2011).

F. Derivative Cases

17. City of Riviera Beach et al. v. Schwartz et al. (Cal. Super. Ct. 2011)[432]

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. ("Bio-Rad") 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. A case management conference was held on March 6, 2012, but further information is not available as of December 2012.

See Ongoing Investigation Number F-68.

[432] *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. (D. Nev. 2011)[433]

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. ("Kohanim") 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. The allegations 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. 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 June 8, 2011, the Court consolidated the actions, and on July 25, 2011, plaintiffs filed their amended consolidated complaint. On September 8, 2011, nominal defendant LVS and individual defendants Schwartz, Leven, Ader, Siegel, and Koo, moved to stay all proceedings for 120 days pending completion of an investigation by a special litigation committee ("SLC") of independent and disinterested directors.

Status. On October 10, 2011, the Court held a hearing on the motion to stay the action pending investigation by the SLC. The Court noted that counsel had contacted chambers and that stated parties would be filing a stipulation. Judge Denton ordered the motion off-calendar.

See Ongoing Investigation Number F-88.

433 *Kohanim et al. v. Adelson et al.* (*Sands*), No. 11-636656 (D. Nev. Clark County 2011).

H. Parallel Litigation

F. Derivative Cases

15. Strong v. Taylor et al. (E.D. La. 2011)[434]

Background. On February 16, 2011, plaintiff Jonathan Strong filed a shareholder derivative action on behalf of nominal defendant Tidewater Inc. ("Tidewater") 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. The court dismissed the case without prejudice to the plaintiff's ability to move for leave to amend the complaint within 20 days. Plaintiff has moved to stay the proceedings pending the resolution of his litigation demand on the Tidewater Board.

See DOJ Digest Number B-109.

See SEC Digest Number D-83.

434 *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)[435]

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 ("Parker") 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.

See Ongoing Investigation Number F-37.

435 *Freuler v. Parker et al.*, No. 4:10-cv-03148 (S.D. Tex. 2010).

F. Derivative Cases

13. County of York Employees Retirement Plan v. Cornwell, et al. (S.D.N.Y. 2010)[436] IBEW Local 1919 Pension Fund v. Cornwell, et al. (S.D.N.Y 2010)[437] Murray C. White v. Andrea Jung et al. (S.D.N.Y. 2010)[438]

Background. In August 2010, plaintiffs filed related derivative shareholder actions on behalf of Avon Products, Inc. ("Avon") 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 Ongoing Investigation Number F-52.

436 *County of York Employees Retirement Plan v. Cornwell et al.*, No. 1:10-cv-05933 (S.D.N.Y. 2010).

437 *IBEW Local 1919 Pension Fund v. Cornwell et al.*, No. 1:10-cv-06256 (S.D.N.Y. 2010).

438 *Murray C. White v. Andrea Jung et al.*, 1:10-cv-05560 (S.D.N.Y. 2010).

F. Derivative Cases

12. Rosner v. Brady (Texas District Court, Harris County 2010)[439]

Background. On July 30, 2010, plaintiff filed a shareholder's derivative action on behalf of nominal defendant Weatherford International Ltd. ("Weatherford") against its directors and officers for breach of fiduciary duty, abuse of control, and waste of corporate assets. Plaintiff alleges 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.

Status. The case remains in preliminary stages. An temporary order granting trial continuance was granted in July 2012.

See Ongoing Investigation Number F-13.

439 *Rosner v. Brady*, No. 2010-47343 (Tex. Dist. Ct., Harris County, 2010).

H. Parallel Litigation

F. Derivative Cases

11. Arnold v. Bragg, et al. (Texas District Court, Harris County 2009)[440]

Background. On October 14, 2009, Kyle Arnold brought a derivative shareholder action against eight former and current directors and officers of Pride International, Inc. ("Pride") 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.

[440] *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)[441]

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.

441 *Policemen and Firemen Retirement System of the City of Detroit v. Halliburton Company and KBR, Inc.*, No. 4:09-cv-01918 (S.D. Tex. 2009).

F. Derivative Cases

9. Midwestern Teamsters Pension Trust Fund, et al. v. Chad C. Deaton, et al. (S.D. Tex. 2009)[442]

Background. Plaintiffs filed a derivative shareholder action on behalf of nominal defendant Baker Hughes Incorporated (the "Company") 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 Company 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 the Company 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 Company's 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, Derivative Case Number H-F4.

442 *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*, 4:08-01809 (S.D. Tex. 2009).

F. Derivative Cases

8. Bezirdjian v. O'Reilly, et al. (Ca. Super. Ct. 2007)[443]

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-6.

443 *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).

F. Derivative Cases

7. Hawaii Structural Ironworkers Pension Trust Fund ex rel. Alcoa, Inc. v. Belda (W.D. Pa. 2007)[444]

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 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 Parallel Litigation Digest, Sovereign Case Number H-E4.

See Ongoing Investigation Number F-43.

444 *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).

F. Derivative Cases

6. Alverson v. Caldwell, et al. (M.D. Fla. 2008)[445]

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, Securities Cases Number H-A4.

445 *Alverson v. Caldwell, et al.*, No. 6:08-cv-00045 (M.D. Fla. 2008).

F. Derivative Cases

5. City of Harper Woods Employees' Retirement System v. Olver, et al. (D.D.C. 2007)[446]

Background. On September 19, 2007, Plaintiff, a shareholder of BAE Systems plc ("BAE") 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.

446 *City of Harper Woods Employees' Retirement Sys.v. Olver*, No. 07-cv-1646 (D.D.C. 2008).

F. Derivative Cases

4. Sheetmetal Workers' National Pension Fund, et al. v. Deaton, et al. (S.D. Tex. 2007)[447]

Background. Plaintiffs filed a shareholders derivative action alleging breaches of fiduciary duty by Baker Hughes Incorporated (the "Company") and certain directors and officers of the Company, including several members of the Company's Audit & Ethics Committee. The Plaintiffs alleged that the Company 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 the Company 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, Derivative Case Number H-F9.

447 *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).

F. Derivative Cases

3. Shields v. Erickson (N.D. Ill. 1989)[448]

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.

448 *Shields, derivatively and on Behalf of Sundstrand Corporation v. Erickson*, 710 F. Supp. 686 (N.D. Ill. 1989).

F. Derivative Cases

2. Howes v. Atkins (E.D. Ky. 1987)[449]

Background. On December 13, 1983, C.W. Howes brought a shareholder derivative action for the benefit of Ashland Oil, Inc. ("Ashland Oil"), 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, Employment Case Number H-D2.

449 *Howes v. Atkins*, 668 F. Supp. 1021 (E.D. Ky. 1987).

F. Derivative Cases

1. Lewis v. Sporck, et al. (N.D. Cal. 1985)[450]

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.

[450] *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)[451] In re Mayra Diaz Kalisch (Bkrtcy. S.D.N.Y. 2006)[452]

Background. On September 6, 2006, a complaint was filed in bankruptcy court by Mark Allen Kalisch, the debtor, against Maple Trade Finance Corporation ("Maple Trade"), 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.

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451 *In re Kalisch* (06-10706) (Bkrtcy. S.D.N.Y. 2006).

452 *In re Kalisch* (07-01484) (Bkrtcy. S.D.N.Y. 2007).

H. Forfeiture Cases

1. United States v. All Assets Held in the Name of Zasz Trading and Consulting PTE Ltd. (D.D.C. 2009)[453]

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, Securities Number H-A11, H-C24, and H-H1.

453 *U.S. v. All Assets Held in the Name of Zasz Trading and Consulting PTE Ltd.*, No. 1:09-cv-00021 (D.D.C. 2009).

H. Parallel Litigation

I. Other Cases

1. Watts Water Technologies, Inc. v. Sidley Austin, LLP[454]

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 in order 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.

See Ongoing Investigation Number F-50.

454 *Watts Water Techs. Inc. v. Sidley Austin, LLP,* Case No. 4847-12 (D.C. Super. Ct. 2012).

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