SQUIRE SANDERS

2011 Foreign Corrupt Practices Act Enforcement Summaries

SQUIRE SANDERS

Table of Contents

Paul W. Jennings 1
Maxwell Technologies, Inc. 2
Tyson Foods, Inc. 3
Manuel Salvoch 4
Daniel Alvirez 5
Jeffrey Tesler 6
International Business Machines Corporation 7
Ball Corporation 8
Jonathan Spiller 9
JGC Corporation 9
Comverse Technologies Inc. 11
Johnson & Johnson and DePuy, Inc. 11
Rockwell Automation 13
Flavio Ricotti 14
Haim Geri 15
Lindsey Manufacturing 15
Tenaris, S.A. 17
Juan Pablo Vasquez, Jorge Granados & Manuel Caceres/Latin Node, Inc. 18
Armor Holdings, Inc. 19
Joel Esquenazi and Carlos Rodriguez 20
Bridgestone Corporation 21
Watts Water Technologies, Inc. 21
Aon Corporation 22
Magyar Telekom Plc and Deutsche Telekom AG 23

SQUIRE SANDERS

Paul W. Jennings

Conduct

- Jennings, a former officer at Innospec, Inc., neither admitted nor denied the SEC's allegations that he violated the FCPA's antibribery, books and records and internal controls provisions and aided and abetted Innospec's violations of the antibribery, books and records and internal controls provisions.
- The SEC re-alleged Innospec, Inc.[1], participated in widespread bribery of foreign officials, some of which Jennings approved, beginning in mid to late 2004 during his term as CFO and continuing after he became the CEO in 2005. From 2000 to 2008, Innospec routinely bribed foreign officials to sell TEL, a fuel additive, to government-owned refineries and oil companies in Iraq and Indonesia.
- The SEC specifically alleged Jennings violated the FCPA's antibribery provisions by engaging in the widespread bribery of Iraqi officials during and after the UN Oil for Food Program (OFFP) to sell TEL to the Ministry of Oil and by engaging in bribery of Indonesian officials to sell TEL to state-owned oil companies. Further, Jennings aided and abetted Innospec's violations of the antibribery provisions by substantially assisting in Innospec's bribery of Iraqi and Indonesian officials. For example, the SEC alleged that Jennings knew and approved of bribery payments to Iraqi and Indonesian officials in order to secure the purchase of TEL. Such payments were even discussed in Jenning's 2005 performance review and euphemized in emails as "pocket money", "cents", and "the Indonesian Way".
- In addition, the SEC alleged Jennings knowingly violated the FCPA's books and records and internal controls provisions by falsifying documents as part of the bribery scheme. In addition, none of the payments described above were accurately recorded in Innospec's books and records. Many were mis-recorded as "commission invoices" with Jennings' knowledge.
- Finally, the SEC alleged Jennings aided and abetted Innospec's violations of the books and records and internal controls provisions by substantially assisting in Innospec's failure to maintain adequate internal controls to detect and prevent bribery of foreign officials and the improper recording of the illicit payments in Innospec's books and records.

Penalties

- Jennings will disgorge $116,092 plus prejudgment interest of $12,945, and pay a civil penalty of $100,000. This resolution, according to the SEC, takes into consideration Jennings' cooperation in this matter.

Notes

- Cheryl J. Scarboro, Chief of the SEC's FCPA Unit stated the Jennings' matter was "the third enforcement action against an individual responsible for the widespread bribery that occurred at Innospec." The other two individuals were Ousama M. Naaman and David P. Turner, each of who resolved their matters in 2010. Scarboro's comments exemplify what enforcement authorities the prosecution of individuals and "company-wide" investigations.

[1] In 2010, Innospec resolved a corruption–related enforcement action brought by the DOJ, SEC, and the U.K.'s SFO. See the "Publication" link at http://www.ssd.com/2010_fcpa_enforcement_actions/ for more details on the Innospec and related prosecution.

SQUIRE SANDERS

Maxwell Technologies, Inc.

Conduct

- Maxwell Technologies, Inc. (Maxwell), a US energy storage and power delivery company, resolved FCPA enforcement actions brought by the DOJ and SEC that focused on bribes paid to Chinese government officials to secure sales of Maxwell's products to Chinese state-owned electricity manufacturers.
- The DOJ and SEC alleged Maxwell violated the FCPA's antibribery and books and records provisions. The SEC further alleged Maxwell violated the FCPA's internal controls provision as well as 15 U.S.C 78m(a) and related securities rules by failing to disclose the material revenues and profits associated with the bribery scheme and inaccurately recording the bribes.
- Specifically, the DOJ and SEC alleged Maxwell's wholly owned Swiss subsidiary, Maxwell S.A., engaged a Chinese agent to sell Maxwell products in China. From at least July 2002 to May 2009, Maxwell S.A. paid more than $2.5 million to the Chinese agent to secure contracts from Chinese customers, including state-owned entities. The agent used Maxwell S.A.'s money to bribe Chinese officials in connection with the contracts. Maxwell characterized the bribes as "sales commissions" in its books and records.
- In furtherance of the scheme, Maxwell's Chinese agent requested quotes from Maxwell S.A. on behalf of prospective Chinese state owned entities. On the Chinese agent's instruction, Maxwell added an "extra" 20% to the quoted amount. This artificially inflated price was then added to purchase orders and eventually invoiced to the Chinese state-owned entities. The Chinese agent invoiced Maxwell for the "extra amount" or "special arrangement" fee, which, on receipt, he would pay to officials at the state owned entities.
- The illegal payments were made with the knowledge and tacit approval of certain former Maxwell officials. For example, in response to a November 2002 email from a former Maxwell controller who noted the above described payments appeared to be "a kick-back, pay-off, bribe, whatever you want to call it". A former Maxwell senior officer replied that "this is a well know[n] issue", that another Maxwell employee who had "familiarity with the issues and solutions" would deal with it and the former senior officer requested "no more emails please."
- Finally, the SEC alleged Maxwell failed to devise and maintain an effective system of internal controls. Specifically, the SEC alleged Maxwell: did not train all relevant employees on the FCPA; Maxwell failed to question why the contract prices were inflated by 20%; did not request supporting documentation for the invoices or track where the commissions were ultimately distributed; performed no due diligence on the Chinese agent; and failed to take any action even though it appeared certain former officers and senior managers had knowledge of the bribes beginning in at least November 2002.

Penalties

- To resolve the DOJ enforcement action, Maxwell entered into a deferred prosecution agreement (DPA). The DPA has a term of three years, during which time Maxwell agreed to, among other things, implement an enhanced compliance program and internal controls capable of preventing and detecting FCPA violation, to self-report periodically to the DOJ concerning its compliance efforts, and to cooperate with the DOJ's ongoing investigation. Maxwell also agreed to pay an $8 million penalty to resolve the DOJ matter.
- To resolve the SEC enforcement action, Maxwell neither admitted nor denied the allegations, Maxwell agreed to disgorge approximately $5.7 million in ill gotten gains and nearly $700,000 in prejudgment interest.

SQUIRE SANDERS

Notes

- Given the extensive involvement of former Maxwell senior management documented in the corporate pleadings and the DOJ and SEC's focus on prosecuting individuals, it seems likely individual prosecutions will follow the corporate enforcement action.
- In deciding whether to enter into a DPA with Maxwell, the DOJ noted it weighed: Maxwell's voluntary disclosure to the DOJ and SEC; Maxwell's cooperation to date and promised cooperation going forward; Maxwell's remedial measures to date and anticipated future measures; and the collateral consequences of a guilty plea or criminal conviction.

Tyson Foods, Inc.

Conduct

- Tyson Foods resolved FCPA enforcement actions brought by the DOJ and SEC. The DOJ charged Tyson Foods with conspiring to violate the FCPA's antibribery and books and records provisions, and substantively violating and aiding and abetting a violation of the FCPA's antibribery provision. The SEC alleged Tyson Foods violated the FCPA's antibribery, books and records, and internal controls provisions.
- According to public records, Tyson de Mexico, a wholly-owned subsidiary of Tyson Foods, paid approximately $90,000 to $100,000 to two publicly employed veterinarians who inspected Tyson de Mexico's plants between 2004 and 2006. Tyson de Mexico made the payments directly to the veterinarians and indirectly through their wives, who Tyson de Mexico listed as employees on its payroll notwithstanding neither wife performed any services for the company. When payroll payments to the wives stopped in 2004 after being discovered by a Tyson de Mexico plant manager, senior Tyson Foods representatives agreed to increase the amount paid to one of the veterinarians for falsely invoiced "services" and "professional honoraria" equal to the amounts previously paid to the veterinarians' wives in salaries and benefits.
- According to court documents, any company that exports meat from Mexico must participate in a certain inspection program administered by the Mexican Department of Agriculture. On-site government employed veterinarians supervise the inspection program to ensure and certify the facility comports with health and safety laws. Tyson de Mexico paid the bribes discussed above so that the veterinarians would certify, without disruption, the meat products for export.
- In addition, the SEC alleged Tyson Foods failed to keep accurate books and records. The bribes discussed above were recorded as legitimate business expenses for "salaries", "services", "professional fees" and "professional honoraria", according to public documents.
- Finally, the SEC alleged Tyson Foods failed to implement a system of effective internal controls to prevent payments to non-existent employees and payment for the above referenced "services", etc.

Penalties

- To resolve the DOJ matter, Tyson Foods entered into a DPA for a term of two years and agreed to pay a $4 million penalty pursuant to the DPA.
- To resolve the SEC matter, Tyson Foods consented to the entry of final judgment ordering disgorgement and prejudgment interest of more than $1.2 million.

Notes

- A Tyson Foods' press release – a release the DOJ had to approve of pursuant to the DPA – represented that none of the products exported from Tyson de Mexico had any safety issues.

This statement is significant because the antibribery violation (or conspiracy to commit such a violation) is premised on Tyson Foods acting "corruptly" as that term is explained in by the statute and case law. Noticeably, the pleadings do not evidence any corrupt intent – an element of the alleged crime. For example, there is no allegation that the payments were made to influence the veterinarians to approve for export meat that failed to meet necessary sanitary requirements. Rather, a reference is made to the payments being made to avoid "disrupting" Tyson de Mexico's operations. While avoiding a disruption in operations may be akin to "retaining" a business advantage – another element of the FCPA – for the DOJ and SEC, these agencies failed to allege every element of the purported violation by failing to allege the corrupt intent requirement.

- As in the Maxwell DPA discussed above, Tyson Foods must periodically self-report the status of its remediation and implementation of compliance activities.

Manuel Salvoch

Conduct

- Salvoch pleaded guilty to one count of conspiracy to violate the FCPA for his role in a scheme to bribe officials at Honduras' state-owned Empresa Hondureña de Telecomunicaciones (Hondutel).
- From March 2005 to 2007 Salvoch served as the Chief Financial Officer of Latin Node, Inc. (Latinode). Officially, Salvoch was responsible for, among other things, approving payments and wire transfers.
- From April 2006 to October 2007, Salvoch, Jorge Granados, Latinode's former CEO and Chairman of the Board, and Manuel Caceres, Juan Pablo Vasquez and Co-Conspirator A, all former senior executives at Latinode, (collectively, the Co-Conspirators) participated in a scheme to bribe at least three Hondutel-affiliated officials to maintain an interchange agreement Latinode had with Hondutel and to obtain rate reductions from the rates contained in said agreement as well as other benefits.
- Salvoch's principal role in the scheme was to facilitate payments to the three officials to secure rate reductions to the existing interchange agreement.
- From September 2006 through June 2007, the Co-Conspirators authorized and facilitated the payment of several hundred thousand dollars to the Hondutel officials.

Penalties

- At sentencing Salvoch faces five years in prison and a fine of $250,000 or twice the gain or loss realized from the criminal conduct.

Notes

- In commenting on the April 7, 2009 resolution to the Latinode enforcement action wherein Latinode pleaded guilty to one count of violating the FCPA's antibribery provision and agreed to pay a $2 million fine, the DOJ represented the investigation's resolution reflected, "in large part," the acts of eLandia International, Inc. (eLandia), Latinode's corporate parent, in disclosing the violations to the DOJ after eLandia's acquisition of Latinode. eLandia promptly voluntarily disclosed to the DOJ the conduct after discovering it, conducted an internal investigation, shared the internal investigation's factual results with the DOJ, cooperated fully with the DOJ, and took remedial action, including terminating senior Latinode management with involvement in or knowledge of the violations.
- In December 2010, the DOJ charged Granados and Caceres in a 19 count indictment with FCPA and international money laundering violations. The indictment also contained a notice of forfeiture.

SQUIRE SANDERS

Daniel Alvirez

Conduct

- Alvirez, formerly the president of ALS Technologies, Inc., an Arkansas-based law enforcement and military supply company, pleaded guilty to a superseding information that charged two counts of conspiracy to violate the FCPA's antibribery provisions.
- Count one charged Alvirez with conspiring to violate the FCPA's antibribery provisions by agreeing with numerous business people (each a "Co-Conspirator") in the law enforcement and military supply industry, "Individual 1" (discussed below) and two individuals posing as "representatives" of the Ministry of Defense of an unnamed African country to secure contracts with the Ministry's Presidential Guard. The contracts were collectively valued at $15 million. In reality, the two "representatives" were FBI Special Agents. In furtherance of the bribery scheme, the Government alleged between April 2009 and January 2010 Alvirez and Co-Conspirators agreed with the "representatives" to increase the prices of the various products by 20%, of which a 10% "commission" would go to the Minister of Defense and the other 10% would be split between one of the "representatives" and "Individual 1". Individual 1 and Alvirez further agreed to split among themselves Individual 1's commission. The superseding information also alleged Alvirez caused to be sent a wire transfer for the 20% "commission" to a bank account belonging to one of the "representatives" for the purpose of making a corrupt payment to the Ministry of Defense and paying the "representative" and Individual 1 for facilitating the scheme.
- According to count two of the superseding information, between February and December 2008, Alvirez and certain sales agents Alvirez knew to be bribing Ministry of Defense officials of the Republic of Georgia to secure ammunition and ready to eat meal contracts contacted Alvirez to assist in coordinating the sale of the goods required under the contracts. Alvirez furthered the bribery scheme by contacting suppliers of ammunition and ready to eat meals to facilitate their sales pursuant to the corruptly obtained contracts.

Penalties

- Alvirez has not been sentenced. At sentencing, for each count, he faces up to a $250,000 fine or twice the pecuniary gain or loss realized by the illegal acts, five years imprisonment and three years of supervised release.
- The superseding information also contained a forfeiture allegation requiring Alvirez forfeit all proceeds traceable to counts one and two.

Notes

- In late 2009, based in part on the cooperation of "Individual 1" (which the press identified as Richard T. Bistrong), the U.S. indicted 22 individuals. The majority of the 22 indictees were later arrested at a Las Vegas military and law enforcement trade show as part of the largest "sting" operation ever carried out in an FCPA context. In late 2010, Bistrong, formerly the Vice President of International Sales of the Products Group of a company identified in press reports as Amor Holdings Inc., pleaded guilty to a one count information that charged conspiracy to violate the FCPA's anti-bribery and books and records provisions, and to export controlled goods without authorization. Alvirez was originally indicted in the sting operation but soon thereafter began to cooperate in the Government's investigation. The prosecution of the remaining 20 indictees continues.

SQUIRE SANDERS

Jeffrey Tesler

Conduct

- Tesler, who had initially challenged extradition from the UK to the US, relented in his fight and pleaded guilty to one count of conspiracy to violate the FCPA and one substantive violation of an FCPA antibribery provision.
- A UK citizen, resident and licensed attorney, Tesler owned and controlled Tri-Star Investments Ltd. (Tri-Star), a Gibraltar corporation. TSKJ, a joint-venture comprised of Technip, S.A., M.W. Kellogg, Brown & Root (and then, Kellogg Brown & Root Inc., collectively, KBR), Snamprogetti Netherlands B.V., and an engineering and construction company headquartered in Yokohama, Japan (identified in press reports as JGC Corporation) engaged Tesler and Tri-Star to assist in securing four engineering, procurement, and construction (EPC) contracts to build liquefied natural gas (LNG) facilities on Bonny Island, Nigeria.
- Between 1995 and 2004, Nigeria Liquefied Natural Gas Limited (NLNG) awarded TSKJ the four EPC contracts collectively valued at more than $6 billion. The government-owned Nigerian National Petroleum Corporation (NNPC) was the largest shareholder of NLNG, owning 49 percent of the company.
- According to court documents, TSKJ hired, Tesler, Tri-Star and a Japanese trading company, to bribe a range of Nigerian government officials, including top-level executive branch officials, to assist TSKJ in obtaining the EPC contracts. At crucial junctures preceding the award of the EPC contracts, KBR's former CEO, Albert "Jack" Stanley, and others, met with top-level Nigerian executive branch officials to confirm that TSKJ should use Tesler as its agent and to learn or confirm the identity of a representative with whom TSKJ and Tesler should negotiate bribes for the officials. TSKJ paid approximately $132 million in "consulting fees" via correspondent accounts in New York City to Tesler and Tri-Star and more than $50 million to the Japanese trading company in furtherance of the bribery scheme. According to court documents, these monies were intended to be used, in part, for bribes for the Nigerian officials.
- Tesler served as an agent of TSKJ and of its members, including KBR, and reported to Stanley, among others. As such, Tesler acted as an agent of a domestic concern.

Penalty

- The court scheduled Tesler's sentencing for June 22, 2011. At sentencing he faces five years in prison for each count. Tesler also faces a fine of $250,000 or twice the gain or loss realized for each count. Finally, as part of his plea agreement, Tesler agreed to forfeit nearly $149 million in proceeds traceable to the illegal conduct.

Notes

- In 2010 Wojceich Chodan, Technip and Snamprogetti each resolved enforcement actions arising out of their respective roles in the Bonny Island scheme. In 2009, the Halliburton Company, Kellogg Brown and Root LLC, and KBR, all resolved FCPA enforcement actions arising out their roles in the Bonny Island conspiracy. In 2008, Stanley, pleaded guilty to conspiring to violate the FCPA for his role in the Bonny Island scheme. To date, the Bonny Island investigation has produced penalties, disgorgement, and forfeiture, in excess of $1.42 billion – the largest ever to arise out of one investigation.
- Tesler's prosecution, like those of Stanley, Chodan, KBR, Technip, Snamprogetti, and reportedly ongoing settlement discussions with JGC, highlights the Government's focus on industry-wide investigations and its thoroughness in such investigations.

- The Bonny Island prosecutions also demonstrate the significant international cooperation that is now becoming commonplace in FCPA enforcement actions. The DOJ specifically commended the assistance provided by authorities in the United Kingdom, France, Italy and Switzerland in the Tesler enforcement action.

International Business Machines Corporation

Conduct

- IBM resolved an enforcement action brought by the SEC, which alleged the company violated the FCPA's books and records and internal controls provisions. SEC alleged IBM subsidiaries and an IBM joint-venture made illicit payments and provided gifts, travel and entertainment to Chinese and South Korean government officials for improper purposes. IBM did not admit nor denied the allegations.
- Specifically, the SEC alleged IBM Korea, Inc., an indirectly wholly owned IBM subsidiary, and LG IBM PC Co., Ltd., a joint-venture in which IBM had a 51% interest, bribed South Korean government officials with approximately $207,000 in cash, gifts (including personal computers), travel and entertainment. The bribes were made to influence or induce South Korean government officials to assist the IBM-related entities with obtaining and retaining business and directing business to other IBM business partners. The business advantages included: securing IBM Korea's status as a preferred supplier of computers, related technologies and services; securing and maintaining the sale of various other products by IBM Korea and LG IBM; helping an IBM Korea business partner win bids to supply computers and related equipment; and obtaining confidential procurement information to which LG IBM was not entitled.
- The SEC also alleged employees of indirectly owned IBM subsidiaries IBM (China) Investment Company Limited and IBM Global Services (China) Co., Ltd., (collectively, "IBM China") improperly provided (directly and indirectly) Chinese government officials with gifts (such as cameras and computers), travel and entertainment.
- Further, the SEC alleged IBM's internal controls allowed employees of IBM's subsidiaries and joint-venture to use local business partners and travel agencies as conduits for improper payments as well as sources of slush funds, which were used to fund improper activities. For example, in the case of IBM China, the SEC alleged at least 114 instances of internal controls failures between 2004 and 2009, which enabled: IBM China employees and a local travel agency to create fake invoices for unapproved travel to match approved customer travel; unapproved sightseeing activities to occur; and per diem payments and gifts to be provided to Chinese government officials.
- Finally, the SEC alleged the payments described above were not recorded properly and, instead, were recorded as legitimate business expenses.

Penalties

- IBM agreed to pay a $2 million civil penalty, disgorge $5.3 million in ill gotten profits and $2.7 million in prejudgment interest.

Notes

- In 2009, IBM stated that both the SEC and DOJ had contacted the company regarding the matters described above. At present, it is unclear whether the DOJ has closed its investigation or whether it continues.
- Also in 2009, IBM described the prosecutions brought by Korean authorities against IBM Korea, LG IBM, and employees of those entities for violations similar to those described above. Many

individuals were subsequently found guilty and sentenced while IBM Korea and LG IBM paid fines.

Ball Corporation

Conduct

- Ball, an Indiana corporation based in Colorado that manufactures metal packaging for household goods, food and beverages, and provides aerospace and technological services, resolved an enforcement action in which the SEC alleged it violated the FCPA's books and records and internal controls provisions.
- The SEC alleged Ball, through a subsidiary, Formametal, S.A., acquired in March 2006, paid bribes totaling at least $106,749 to employees of the Argentine government to secure the importation of prohibited used machinery and the exportation of raw materials at reduced tariffs. The SEC alleged some of the payments and compliance failures occurred prior to Ball's acquisition and Ball failed to take adequate steps to ensure such activities did not recur at Ball-controlled Formametal. Soon after Ball acquired Formametal two (then) senior executives at the subsidiary authorized improper payments to Argentine officials. These payments and others were mischaracterized in Formametal's books and records as "customs assistance," "customs advisory services," "verification charge[s]," "fees," or "advice fees for temporary merchandise exported" and went undetected for more than a year. Even after being detected and re-classified, some improper payments were still inaccurately recorded as ordinary business "interest" or "miscellaneous" expenses in the books and records.
- Ball violated the FCPA's internal controls provision by failing to devise and maintain an effective system of internal controls. Such internal controls violations continued even after senior Ball officers were notified in mid-2006 that Formametal's employees had made questionable payments and caused other compliance issues. Inadequate internal controls allowed, for example, equipment to be imported into Argentina without appropriate documentation and made it difficult to detect that Formametal paid bribes to facilitate the imports. Another internal controls failure occurred when key personnel responsible for dealing with customs officials remained at Formametal even though due diligence suggested Formametal may have previously authorized questionable customs payments and Ball's executives were made aware of such issues as a result of the diligence.

Penalty

- Without admitting or denying the SEC's allegations, Ball consented to the entry of a cease-and-desist order prohibiting Ball from further violations of the FCPA's books and records and internal controls provisions. To resolve the action, Ball agreed to pay a civil penalty of $300,000.
- In February 2010 Ball reported the DOJ had closed its FCPA investigation and declined to file charges.

Notes

- The cease-and-desist order specifically stated the SEC would not impose a civil penalty in excess of the $300,000 – a relatively modest penalty in today's FCPA enforcement environment – based on Ball's cooperation with the SEC in its investigation and enforcement action.
- The Ball enforcement action once again demonstrates the need to conduct adequate due diligence on potential acquisition targets and to remedy deficiencies encountered post-acquisition.
- Finally, the Ball matter also demonstrates the need to conduct effective due diligence on third parties (e.g., customs agents) and to document accurately and transparently the services being

provided and monies being paid in the books and records and ensure controls are in place to catch any lapses in the documentation and recordation.

Jonathan Spiller

Conduct

- Spiller, a U.S. resident, pleaded guilty to count one of a superseding indictment that charged conspiracy to violate the FCPA's antibribery provisions. Spiller admitted he agreed with numerous business people (each a "Co-Conspirator") in the law enforcement and military supply industry, including "Individual 1" (discussed below), and two individuals posing as "representatives" of the Ministry of Defense of an unnamed African country to secure contracts with the Ministry's Presidential Guard. The contracts were secured in exchange for bribes purportedly being paid to the Minister and one of the "representatives", and a kickback to "Individual 1". The contracts were collectively valued at $15 million. In reality, the two "representatives" were FBI Special Agents.
- In furtherance of the bribery scheme, Spiller admitted that between May 2009 and January 2010 he and several Co-Conspirators agreed with the "representatives" to increase the prices of the various products by 20%, of which a 10% "commission" would go to the Minister of Defense and the other 10% would be split between one of the "representatives" and "Individual 1". The superseding indictment also alleged Spiller caused to be sent a wire transfer for the 20% "commission" to a bank account belonging to one of the "representatives" for the purpose of making a corrupt payment to the Minister and paying the "representative" and Individual 1 for facilitating the scheme.

Penalties

- Spiller has not been sentenced. At sentencing, he faces up to a $250,000 fine or twice the pecuniary gain or loss realized by the illegal acts, five years imprisonment and three years of supervised release.
- The superseding indictment also contained a forfeiture allegation requiring Spiller forfeit all proceeds traceable to counts one.

Notes

- In late 2009, based in part on the cooperation of "Individual 1" (which the DOJ identified as Richard T. Bistrong), the US indicted 22 individuals. The majority of the indictees were arrested at a Las Vegas military and law enforcement trade show as part of the largest "sting" ever carried out in an FCPA context. In late 2010, Bistrong, formerly the Vice President of International Sales of the Products Group of a company identified in press reports as Amor Holdings Inc., pleaded guilty to an information that charged conspiracy to violate the FCPA's anti-bribery and books and records provisions, and to export controlled goods without authorization. Daniel Alvirez (see above) was originally indicted but thereafter cooperated in the Government's investigation and subsequently pleaded guilty. The prosecution of the remaining 19 indictees continues.

JGC Corporation

Conduct

- JGC, a Japanese company headquartered in Yokohama, Japan, resolved an FCPA enforcement action brought by the DOJ concerning JGC's participation in the Bonny Island, Nigeria, bribery scheme. The DOJ charged JGC with conspiring to violate and aiding and abetting violations of the FCPA's antibribery provisions. To resolve the allegations, JGC and the DOJ entered into a

DPA that requires JGC to realize certain compliance and cooperation measures, and pay a criminal penalty of $218.8 million.

- JGC admitted TSKJ, a joint-venture comprised of Technip, S.A., M.W. Kellogg, Brown & Root Inc. (and then, Kellogg Brown & Root Inc., collectively, KBR), and Snamprogetti Netherlands B.V., engaged Jeffrey Tesler, a UK citizen, resident and licensed attorney who owned and controlled Tri-Star Investments Ltd. (Tri-Star), a Gibraltar corporation, to assist in securing four engineering, procurement, and construction (EPC) contracts to build liquefied natural gas (LNG) facilities on Bonny Island, Nigeria.
- Between 1995 and 2004, Nigeria Liquefied Natural Gas Limited (NLNG) awarded TSKJ the four EPC contracts collectively valued at more than $6 billion. The government-owned Nigerian National Petroleum Corporation (NNPC) was the largest shareholder of NLNG, owning 49 percent of the company.
- According to court documents, pursuant to JGC's authorization, TSKJ hired Tesler, Tri-Star, and a Japanese trading company, to bribe a range of Nigerian government officials, including top-level executive branch officials, to assist TSKJ in obtaining the EPC contracts. At crucial junctures preceding the award of the EPC contracts, KBR's former CEO, Albert "Jack" Stanley, and others, met with top-level Nigerian executive branch officials to confirm that TSKJ should use Tesler as its agent and to learn or confirm the identity of a representative with whom TSKJ and Tesler should negotiate bribes for the officials. TSKJ paid approximately $132 million in "consulting fees" via correspondent accounts in New York City to Tesler and Tri-Star and more than $50 million to the Japanese trading company in furtherance of the bribery scheme. According to court documents, these monies were intended to be used, in part, for bribes for the Nigerian officials.

Penalty

- As mentioned above, JGC agreed to pay a criminal penalty of $218.8 million, and to realize certain compliance and cooperation undertakings during a two-year period. Part of the compliance undertakings requires JGC to retain an independent compliance consultant for a period of two years.

Notes

- Earlier in 2011 Tesler, pleaded guilty to one count of conspiracy to violate the FCPA and one substantive violation of an FCPA antibribery provision. In 2010 Wojceich Chodan, Technip and Snamprogetti each resolved enforcement actions arising out of their respective roles in the Bonny Island scheme. In 2009, the Halliburton Company, Kellogg Brown and Root LLC, and KBR, all resolved FCPA enforcement actions arising out their roles in the Bonny Island conspiracy. In 2008, Stanley, pleaded guilty to conspiring to violate the FCPA for his role in the Bonny Island scheme. To date, the Bonny Island investigation has produced penalties, disgorgement, and forfeiture, in excess of $1.49 billion – the largest ever to arise out of one investigation.
- The Bonny Island prosecutions highlight the Government's focus on industry-wide investigations and its thoroughness in such investigations.
- The Bonny Island prosecutions also demonstrate the significant international cooperation that is now becoming commonplace in FCPA enforcement actions. The DOJ specifically commended the assistance provided by authorities in the United Kingdom, France, Italy and Switzerland in the JGC enforcement action.

SQUIRE SANDERS

Comverse Technologies Inc.

Conduct

- Comverse Technologies Inc. (CTI), a New York based provider of software for communication and billing services, resolved FCPA enforcement actions brought by the DOJ and SEC arising out of the acts of an indirectly owned overseas subsidiary and the subsidiary's third party agent. CTI resolved the DOJ investigation via an NPA and the SEC investigation by neither admitting nor denying the allegations contained in a civil complaint.
- Specifically, the DOJ and SEC alleged (and CTI admitted in the NPA) CTI violated the FCPA's books and records and internal controls provisions. CTI did so when it failed to prevent improper payments made by employees and a third party agent of an indirectly owned Israeli subsidiary, Comverse Limited, and recorded the bribes as legitimate commissions. The payments were made to individuals affiliated with OTE, a partially state-owned telecommunications firm in Greece, to obtain purchase orders from OTE and its subsidiaries. The books and records of Comverse Limited and its direct parent corporation, Comverse Inc., rolled up into CTI's books and records.
- To facilitate and conceal the payments, certain Comverse Limited employees instructed the third party agent to establish an offshore entity and bank account in Cyprus, which funneled the improper payments to individuals connected to OTE, including employees of OTE subsidiaries. Comverse Limited employees made payments to the agent's offshore entity. At the direction of Comverse Limited employees, the agent took 15% off the top of these payments and paid the remaining 85% in cash, directly or indirectly, to individuals connected to OTE. The agent's Cyprus entity had no offices or employees and was described by the agent as "purely a money laundering operation."
- CTI did not have adequate internal controls to detect or prevent such payments. For example, there was no third party agent due diligence process or independent review of the agent's contract outside the sales departments.

Penalties

- The NPA has a two year term and requires CTI to realize certain compliance undertakings, such as enhancing existing internal controls, and pay a $1.2 million penalty.
- The settled civil complaint requires CTI to disgorge $1.6 million in profits and prejudgment interest.

Notes

- The compliance undertakings required by the NPA are similar to those found in other recent prosecutorial agreements and are far less onerous than those found in the J&J enforcement action (summarized immediately below).
- The CTI enforcement action represents yet another example of the ongoing FCPA investigations in the communications and software industries.

Johnson & Johnson and DePuy, Inc.

Conduct

- Johnson and Johnson (J&J), a New Jersey based issuer, resolved FCPA enforcement actions brought by the DOJ and SEC for the misconduct of certain subsidiaries and agents concerning payments to government officials in Greece, Poland and Romania, and to the government of Iraq

under the OFFP. To resolve the DOJ matter, J&J entered into a DPA that deferred the prosecution of an Indiana based subsidiary, DePuy, Inc., (DePuy). To resolve the SEC enforcement action, J&J neither admitted nor denied the allegations contained in a civil complaint.

- The DPA and civil complaint concern similar behavior. In the DPA, J&J accepts and admits to the conduct of its subsidiaries, employees and agents who made improper payments to public healthcare providers in Greece, Poland and Romania, and the government of Iraq to induce the purchase of products manufactured by J&J or its subsidiaries.
- For example, the deferred information filed against DePuy charges DePuy with one count of conspiracy to violate the FCPA and one count of violating and aiding and abetting a violation of the FCPA for conduct related to the bribing of Greek healthcare providers. The DOJ alleged DePuy made or caused to be made, directly and indirectly through agents, payments totaling approximately $16.4 million from 1998 to 2006 knowing that some or all of the payments would paid to publicly-employed healthcare providers to influence the purchase of DePuy products.
- In respect to Poland, the DPA indicates a Polish subsidiary and its employees authorized the improper payment, directly or indirectly, of approximately $775,000 in monetary compensation and travel to publicly-employed healthcare providers to induce the purchase of J&J products.
- From mid-2005 to mid-2008, a J&J Romanian subsidiary and its employees authorized the payment, directly or indirectly, of approximately $140,000 in cash, gifts (e.g., laptops and other electronics) and travel to publicly-employed healthcare providers to induce the purchase of pharmaceuticals manufactured by J&J subsidiaries and operating companies.
- From December 2000 to March 2003, wholly owned J&J subsidiaries based in Belgium and Switzerland secured 18 OFFP pharmaceutical sales contracts through the payment of kickbacks to the government of Iraq.
- The above described payments were euphemistically referred to as “cash incentives”, “sales promotional costs”, “local support payments”, “civil contracts” or “commissions” and were recorded as such in the corporate books and records of the J&J subsidiaries. These inaccurate books and records were then incorporated into J&J’s books and records for the purposes of preparing financial statements filed with the SEC.

Penalties

- To resolve the enforcement actions, J&J agreed to pay $70 million in a criminal fine ($21.4 million), profit disgorgement and pre-judgment interest ($48.6 million).
- The DPA has a term of three years and contains numerous conditions common in recent DPAs in the FCPA context. Notably, however, the DPA also contains several additional and onerous conditions not found in recent FCPA-related DPAs. For example, the DPA requires J&J to implement a system of annual certifications by senior managers in each of the company’s corporate-level functions, divisions, and business units in each foreign country wherein they confirm their local standard operating procedures adequately implement the company’s anticorruption policies and procedures, including training requirements, and that they are not aware of any FCPA or other corruption issues that have not already been reported to corporate compliance. This condition and several other onerous and expensive conditions have not appeared in recent prosecutorial agreements and may indicate the DOJ has raised the standard in FCPA compliance.
- To resolve the SEC enforcement action, in addition to the disgorgement mentioned above, J&J also agreed “to comply with certain undertakings regarding its compliance program.” The SEC did not further delineate the nature of these “undertakings”. However, given the coordinated nature of the DOJ and SEC’s investigations and resolutions, the unprecedented nature of the DOJ’s compliance requirements may encompass those envisioned by the SEC.

SQUIRE SANDERS

Notes

- The unprecedented nature of the DOJ's FCPA compliance requirements sets an extremely high bar for FCPA compliance. In the prosecutorial agreements that follow, it will be interesting to see if the requirements of the J&J DPA are unique to J&J or whether they represent a new, heightened standard the DOJ will demand of corporate defendants to defer prosecution of FCPA charges.
- On the same day the DOJ and SEC resolved their enforcement actions, the UK's Serious Fraud Office (SFO) resolved its prosecution of DePuy International Limited, a UK-based subsidiary of J&J, which the DOJ had referred to the SFO. The conduct of certain DePuy International personnel figured prominently in the U.S. enforcement actions. To resolve the UK matter, the SFO sought and obtained a civil recovery order in the amount of £4.829 million, plus prosecution costs. The SFO's press release indicates principles of double jeopardy prevented a UK criminal prosecution and, consequently, the most appropriate resolution was a civil recovery order pursuant to the Proceeds of Crime Act 2002.
- In addition to the US and UK enforcement actions, Greek authorities have reportedly frozen at least €5.785 in assets belonging to a J&J subsidiary.

Rockwell Automation

Conduct

- Rockwell Automation, Inc. ("Rockwell"), an industrial automation products and services provider, headquartered in Milwaukee, Wisconsin, resolved an enforcement action in which the SEC alleged it violated the FCPA's books and records and internal controls provisions through the actions of its former China based subsidiary, Rockwell Automation Power Systems (Shanghai) Ltd. ("RAPS-China"), which was divested by Rockwell in 2007.
- The SEC alleged that from 2003 to 2006, RAPS-China employees paid approximately $615,000 to Design Institutes which were typically state owned enterprises for design engineering and technical integrations services that can influence contract awards by end user state owned customers. The payments were made through third party intermediaries at the request of Design Institute employees and at the direction of RAPS-China's Marketing and Sales Director with the expectation of influencing the state owned companies to purchase RAPS products. RAPS-China recorded these payments as "cost of sales." These inaccurate books and records were then incorporated into Rockwell's books and records for the purposes of preparing financial statements filed with the SEC.
- During this same period, the SEC alleged that RAPS-China also paid about $450,000 for sightseeing and leisure travel for employees of Design Institutes to destinations including New York City, Washington D.C., and Hawaii. According to the SEC, "some trips appeared to have no direct business component, other than the development of customer good will." For example, the SEC stated, "RAPS-China arranged for so-called design meetings in New York City despite the lack of any Rockwell facility there because 'everyone likes New York.'"
- In connection with the aforementioned payments by RAPS-China to Design Institutes, the SEC alleged that Rockwell "failed to make and keep accurate books, records and accounts as required by Section 13(b)(2)(A) of the Exchange Act" and "failed to devise or maintain sufficient internal controls as required by Section 13(b)(2)(B) of the Exchange Act."
- Rockwell discovered the violations as part of its normal financial review process and global corporate compliance and internal controls program. Rockwell, thereafter, investigated the payments and self-reported.

SQUIRE SANDERS

Penalty

- Without admitting or denying the SEC's allegations, Rockwell consented to the entry of a cease-and-desist order prohibiting Rockwell from further violations of the FCPA's books and records and internal controls provisions, and agreed to pay disgorgement of $1,771,000, prejudgment interest of $590,091 and a civil penalty of $400,000.

Notes

- The cease-and-desist order specifically stated the SEC would not impose a civil penalty in excess of the $400,000 – a relatively modest penalty in today's FCPA enforcement environment – based on Rockwell's cooperation with the SEC in its investigation and enforcement action.
- The Rockwell enforcement action once again demonstrates the need for US companies with wholly-owned foreign subsidiaries to maintain a robust global compliance program that accurately and transparently documents the services being provided and monies being paid in the books and records, or face the prospect of discovering years later a "poison pill" in the subsidiary's records resulting in SEC enforcement and significant liability.
- Reference: SEC Administrative Release No. 64380, Accounting and Auditing Enforcement Release No. 3274, and Administrative Proceeding File No. 3-14364 in *In Re Rockwell Automation Inc.* (all dated May 3, 2011)

Flavio Ricotti

Conduct

- In 2009, Control Components, Inc. (CCI), a California-based valve company, pled guilty to a three-count criminal information that charged two counts of violating the antibribery provisions of the FCPA and one count of conspiracy to violate the FCPA and Travel Act.
- CCI violated the FCPA by making corrupt payments totaling approximately US$4.9 million to officers and employees of state-owned enterprises (SOEs) - "foreign officials" under the FCPA - for the purpose of obtaining or retaining business. CCI generated approximately US$31.7 million in net profits as a result of these corrupt payments.
- In connection with the 2009 proceeding, Flavio Ricotti, a former CCI executive, pled guilty to one count of conspiring to violate the FCPA and the Travel Act.
- From 2001 to 2007, Ricotti served as CCI's Director and then Vice President of Sales for Europe, Africa, and the Middle East. Ricotti admitted that, in 2002, he authorized a decision to offer a 1.2% commission to an employee of a private Qatari company on whose contract CCI was bidding, in exchange for the employee's agreement to share confidential information on CCI's competitors and exercise influence in CCI's favor. In 2003, Ricotti conspired with another CCI employee to bribe an official of Saudi Aramco, a Saudi oil company, in the amount of approximately $43,000 to secure a valve contract for CCI.

Penalty

- Ricotti faces a maximum five-year prison sentence, $250,000 fine, and three years of supervised release.

Notes

- Payments were made to foreign officials in several countries, including Qatar and Saudi Arabia.

- Some payments were made to individuals who had the power to award contracts or influence projects' technical specifications so as to favor CCI.
- In addition to violating the the FCPA, Ricotti admitted that his conduct violated the Travel Act, 18 USC 1952. The Travel Act makes it unlawful to travel in interstate or foreign commerce, or use any facility of interstate or foreign commerce, with the intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment or carrying-on of any unlawful activity.

Haim Geri

Conduct

- Haim Geri pleaded guilty to a one-count superceding indictment for conspiracy to violate the FCPA's antibribery provisions. Geri formerly served as the president of "Company I," a sales agent for companies in the law enforcement and military products industries.
- Count one charged Alvirez with conspiring to violate the FCPA's antibribery provisions by agreeing with numerous business people (each a "Co-Conspirator") in the law enforcement and military supply industry, "Individual 1" (discussed below) and two individuals posing as "representatives" of the Ministry of Defense of an unnamed African country to secure contracts with the Ministry's Presidential Guard. The contracts were collectively valued at $15 million. In reality, the two "representatives" were FBI Special Agents. In furtherance of the bribery scheme, the Government alleged between April 2009 and January 2010, Geri and Co-Conspirators agreed with the "representatives" to increase the prices of the various products by 20%, of which a 10% "commission" would go to the Minister of Defense and the other 10% would be split between one of the "representatives" and "Individual 1".
- The superseding information also alleged that Geri caused to be sent a wire transfer for the 20% "commission" to a bank account belonging to one of the "representatives" for the purpose of making a corrupt payment to the Ministry of Defense and paying the "representative" and Individual 1 for facilitating the scheme.

Penalty

- Geri has not yet been sentenced. At sentencing, he faces a fine of up to $250,000 or twice the pecuniary gain or loss realized by the illegal acts, five years imprisonment and three years of supervised release.

Notes

- In late 2009, based in part on the cooperation of "Individual 1" (which the press identified as Richard T. Bistrong), the U.S. indicted 22 individuals (the so-called "shot-show defendants"). The majority of the 22 indictees were later arrested at a Las Vegas military and law enforcement trade show as part of the largest "sting" operation ever carried out in an FCPA context.

Lindsey Manufacturing

Conduct

- Lindsey Manufacturing, Inc. ("Lindsey Manufacturing"), an electric utility equipment manufacturer, headquartered in Azusa, California, and two of its executives were indicted by the Department of Justice (DOJ) for their alleged roles in a conspiracy to pay bribes to Mexican government officials at the Comisión Federal de Electricidad (CFE), a state-owned utility company.
- According to the DOJ, CFE is responsible for supplying electricity in Mexico, and contracts with Mexican and foreign companies for goods and services to help supply electricity services to its

customers. Lindsey Manufacturing, allegedly, hired Grupo Internacional de Asesores S.A. (Grupo) to serve as its sales agent in Mexico and to obtain contracts from CFE, in exchange for a percentage of the revenue Lindsey realized from its contracts with CFE.

- From approximately February 2002 until March 2009, Lindsey Manufacturing, its CEO, Dr. Keith Lindsey, its CFO, Steve K. Lee, and Grupo directors Enrique Aguilar and Angela Aguilar allegedly orchestrated a scheme to obtain contracts from CFE by channeling improper payments to CFE officials through Grupo. According to the DOJ, Lindsey Manufacturing directed that a 30 percent commission on all the goods and services it sold to CFE be paid to Enrique Aguilar, even though this was a significantly higher commission than previous sales representatives for the company had received. Lindsey Manufacturing allegedly directed these 30 percent commission payments to Enrique Aguilar for the purpose of using the money to pay bribes to Mexican officials in exchange for CFE awarding contracts to Lindsey.
- Enrique and Angela Aguilar allegedly laundered 30 percent commission payments in the Grupo brokerage account to make concealed payments for the benefit of CFE officials.
- According to the DOJ, "within months of hiring Enrique Aguilar, Lindsey Manufacturing began receiving contracts from CFE and over the course of the next seven years received more than $19 million in CFE business." Enrique and Angela Aguilar allegedly purchased a yacht for approximately $1.8 million named the Dream Seeker and a Ferrari for $297,500 for a CFE official. Enrique and Angela Aguilar also allegedly paid more than $170,000 worth of American Express bills for a CFE official and sent approximately $600,000 to relatives of a CFE official.

Trial

- Rather than negotiate with the DOJ, Lindsey Manufacturing, Keith Lindsey, Lee and Angela Aguilar elected to deny the charges and go to trial. Enrique Aguilar did not participate in the trial and remains a fugitive.
- On May 10, 2011, following a five-week trial and after less than 24 hours of deliberations, the jury returned guilty verdicts on all counts against the defendants on trial in the case. Angela Aguilar was convicted of one count of conspiracy to commit money laundering. Lindsey Manufacturing, Keith Lindsey, and Steve Lee were each convicted of one count of conspiracy to violate the FCPA and five counts of violating the FCPA.

Dismissal of Indictment

- On December 3, 2011, the Court entered an order dismissing with prejudice the indictment against Lindsey Manufacturing, Keith Lindsey, and Lee as a result of government misconduct, including the execution of unauthorized searches, use of false information to obtain a search warrant, and providing incorrect grand jury testimony.

Penalty

- Prior to the dismissal of the indictment, the defendants faced a maximum penalty of five years in prison and a fine of the greater of $250,000 or twice the value gained or lost on the FCPA conspiracy charge. Each of the five FCPA counts carried a maximum penalty of five years in prison and a fine of the greater of $100,000 or twice the value gained or lost. The money laundering conspiracy count carried a maximum penalty of 20 years in prison and a fine of the greater of $500,000 or twice the value of the property involved in the transaction. The government sought forfeiture against all defendants.

Notes

- Since the inception of the FCPA in 1977, only one other corporate defendant had elected to defend an alleged FCPA violation at trial. In 1990-1991, Harris Corporation (and certain of its

executives) were acquitted of alleged FCPA violations at trial. Obviously, Lindsey and its executives did not fair as well. The Lindsey Manufacturing verdict, therefore, represents the first case where a corporate defendant was convicted of FCPA violations after fully litigating the matter through trial.

- The Lindsey Manufacturing case is also noteworthy because the defendants had challenged the FCPA counts in the indictment based upon the argument that the definition of "foreign official" under the FCPA does not include employees of foreign state owned corporations. The Court rejected defendants' arguments and sided with the DOJ, ruling that CFE was an "instrumentality" of the Mexican government, and, therefore, the CFE representative who purportedly accepted bribes qualified as a "foreign official" under the FCPA.
- Reference: DOJ Press Release No. 11-596, (dated May 10, 2011); *U.S. v. Noriega et al*, U.S. District Court, Central District of California (Western Division - Los Angeles), Case #: 2:10-cr-01031-AHM-4.

Tenaris, S.A.

Conduct

- Tenaris, a Luxembourg-based global steel pipe supplier and manufacturer, entered into a two-year deferred prosecution agreement with the SEC and non-prosecution agreement with the DOJ, agreeing to pay fines to the SEC and DOJ in connection with its alleged violations of the FCPA.
- In 2006 and 2007, Tenaris bid on and ultimately won several contracts to supply pipelines for transporting oil and natural gas for OJSC O'ztashqineftgaz (OAO), an Uzbekistan state-controlled oil and gas production company.
- Tenaris allegedly retained an agent who, in exchange for 3.5% of the value of four contracts, bribed OAO officials to gain access to competitors' confidential bids. The company used the confidential information to revise its own bids and, as a result, was ultimately awarded the contracts.
- Tenaris allegedly made approximately $5 million in profits from the contracts it obtained through this alleged bribery scheme. Tenaris also failed to accurately record the payments made to the agent and OAO officials in its books and records.

Penalty

- Pursuant to the two-year deferred prosecution agreement into which it entered with the SEC, Tenaris must disgorge approximately $5.4 million to the SEC and enhance its policies and procedures relating to the FCPA; the company must implement a detailed FCPA training program, review and update its code of conduct, require certifications of compliance with its anticorruption policies, and notify the SEC of future complaints, charges, or convictions of the antibribery or securities laws.
- Under its non-prosecution agreement with the DOJ, Tenaris also agreed to pay a $3.5 million criminal penalty to settle pending FCPA charges with the DOJ.

Notes

SQUIRE SANDERS

Juan Pablo Vasquez, Jorge Granados & Manuel Caceres/Latin Node, Inc.

Conduct

- Former Latin Node, Inc. (Latinode) senior executives, Jorge Granados, Juan Pablo Vasquez & Manuel Caceres each pleaded guilty to one count of conspiracy to violate the FCPA for their respective roles in a scheme to bribe officials at Honduras' state-owned Empresa Hondureña de Telecomunicaciones (Hondutel).
- Latinode provided telecommunications services to Honduras and Yemen. From March 2004 to June 2007, Latinode paid or caused to be paid US$2,249,543 directly or through third-parties, knowing that some or all of the funds would be passed on as bribes to "foreign officials" including officials of Honduran SOE telecommunications companies. Latinode admitted that it made these payments in exchange for obtaining an agreement with the Honduran SOE and for reducing the rate charged under the agreements with the Honduran SOE. Each payment was made from Latinode's Miami bank account and was approved by Latinode senior executives.
- Granadoes was the founder of Latinode. From 1999-2007, he served as the Chief Executive Officer ("CEO"), and Chairman of the Board. Throughout that time period, Granados had authority to set company policy and contract with various telecommunications companies. He was also responsible for hiring and firing employees, setting sales prices, and approving sales practices in foreign countries. Granados's principal role in the conspiracy was to authorize and direct the bribe payments.
- From the end of 2000 until 2007 Vasquez served as a senior official Latinode, holding such titles as the Chief Commercial Officer, Vice President or Sales, and Vice President Whole Division. Officially, Vasquez was responsible for, among other things, LatiNode's commercial and sales relationships with long distance carriers. His principal role in the scheme was to facilitate payments to the three officials to secure rate reductions to the existing interchange agreement
- From September 2004 to 2007, Caceras also was a senior executive where he held titles such as the Vice President of Business Development. Officially, Caceres was responsible for, among other things, developing LatiNode's business in Honduras. His principal role in the scheme was to negotiate the payment of bribes with Hondutel officials in exchange for securing rate reductions and other benefits.

Penalty

- Granados, Vasquez & Caceres each face up to five years in prison and a fine of $250,000 or more.

Notes

- In 2009, Latinode pleaded guilty to a one-count information charging the company with a criminal violation of the FCPA. As part of the plea agreement, Latinode paid a $2 million fine. The DOJ represented that the investigation's resolution reflected, "in large part," the acts of eLandia International, Inc. (eLandia), Latinode's corporate parent, in disclosing the potential violations to the DOJ after eLandia's acquisition of Latinode. eLandia promptly voluntarily disclosed to the DOJ the conduct after discovering it, conducted an internal investigation, shared the internal investigation's factual results with the DOJ, cooperated fully with the DOJ in its investigation and took remedial action including terminating senior Latinode management with involvement in or knowledge of the violations, which included Granados.
- for his role in the conspiracy. At sentencing Salvoch faces five years in prison and a fine of $250,000 or twice the gain or loss realized from the criminal conduct.

SQUIRE SANDERS

Armor Holdings, Inc.

Conduct

- Armor Holdings, a military, security, and law enforcement equipment manufacturer, has agreed to pay a total of approximately $16 million to settle FCPA enforcement actions brought by the Department of Justice ("DOJ") and the Securities and Exchange Commission ("SEC").

Penalty

- Pursuant to the two-year non-prosecution agreement into which it entered with the DOJ, Armor Holdings agreed to pay a $10.29 million penalty, continue to implement rigorous internal controls, report to the DOJ on its compliance efforts every six months for the duration of the agreement, and otherwise cooperate fully with the DOJ.
- Armor Holdings also agreed to disgorge $5.7 million to settle the SEC's pending civil action against it.

Notes

- In 2007, Armor Holdings was acquired by BAE Systems, Inc., an indirect wholly owned U.S. subsidiary of UK-based BAE Systems, PLC. The DOJ elected not to impute culpability to BAE for Armor Holdings's conduct.
- The DOJ's non-prosecution agreement uncharacteristically does not require Armor Holdings to retain a corporate compliance monitor.
- The DOJ elected to enter into the non-prosecution agreement in light of Armor Holdings's cooperation with the DOJ and SEC; the fact that the conduct at issue occurred prior to BAE's acquisition of the company; and the remedial conduct that Armor Holdings undertook in the wake of the conduct at issue, including termination of culpable employees and the implementation of internal controls to preempt future FCPA violations.Diageo, Plc

Conduct

- London-based Diageo, the maker of popular liquor brands such as Johnnie Walker scotch and Smirnoff vodka, has agreed to pay more than $16 million to settle an administrative action brought by the Securities and Exchange Commission ("SEC") for violations of the books and records and internal control provisions of the FCPA.
- From 2003 to 2009, Diageo paid $1.7 million in bribes to hundreds of Indian government officials responsible for purchasing or authorizing the purchase of its products in the country.
- From 2004 to 2008, Diageo similarly paid nearly $600,000 (approximately $12,000 per month) to a Thai government official for his consulting assistance on Diageo's behalf in tax and customs disputes.
- Diageo likewise made nearly $200,000 in payments to South Korean customs officials for their roles in influencing government decisions to grant Diageo tax rebates and for travel and entertainment expenses connected with the negotiations leading up to the government's favorable decisions. Diageo also made hundreds of cash payments totaling more than $230,000 to South Korean military personnel to obtain and retain their business.Penalty
- Diageo agreed to the disgorgement of $11,306,081, prejudgment interest of $2,067,739, and an additional $3 million penalty.

SQUIRE SANDERS

Joel Esquenazi and Carlos Rodriguez

Conduct

- Following a two week trial, on August 4, 2011, a federal jury convicted Joel Esquenazi and Carlos Rodriguez, former executives of Terra Telecommunications Corp. (“Terra”), on all counts for their roles in a scheme to pay bribes to Haitian government officials at the state-owned Telecommunications D’Haiti S.A.M (Haiti Teleco).
- Esquenazi was the president and Rodriguez the vice president of Miami-based Terra. Both were convicted of one count of conspiracy to violate the Foreign Corrupt Practices Act (FCPA) and wire fraud, seven counts of FCPA violations, one count of money laundering conspiracy, and 12 counts of money laundering.
- According to the DOJ, Esquenazi and Rodriguez “authorized more than $800,000 in illegal bribe payments to Haitian officials in exchange for business advantages” in violation of the FCPA.”
- Per the DOJ, the purpose of these bribes “was to obtain various business advantages from the Haitian officials for Terra, including the issuance of preferred telecommunications rates, reductions in the number of minutes for which payment was owed, and the continuance of Terra’s telecommunications connection with Haiti.”
- The DOJ also said they “used shell companies to pay $890,00 in bribes from 2001 through 2005 to "successive directors of international relations" at Haiti Telco, and “created false records claiming that the payments were for “consulting services,” which were never intended to be performed or actually performed.”

Penalties

- Esquenazi received a 15-year prison sentence, while Rodriguez was sentenced to a seven-year prison term.
- The defendants were also ordered to forfeit $3.09 million to the government.

Notes

- Esquenazi’s 15-year prison sentence marks a new record high in FCPA-related sentences, eclipsing the previous 7.25-year record set with the sentencing of Charles Jumet in April 2010. Rodriguez’s seven-year sentence also falls on the high end of the previously typical sentencing range.
- This is just the latest entry of the DOJ's extensive FCPA enforcement action regarding bribes allegedly paid to Haitian government officials at Haiti Teleco. The jury verdicts rendered in this case were based upon indictments filed in December 2009. Multiple individual defendants had already pled guilty to FCPA violations and related money laundering charges.
- Esquenazi and Rodriguez are also unique in the Haiti Teleco prosecutions in that they contested the DOJ’s charges at trial and also challenged the DOJ’s definition of “foreign official” under the FCPA. Esquenazi and Rodriguez almost certainly will appeal the Court’s pre-trial ruling, their convictions, and their sentences.
- Additionally, whether the Court’s jury instruction on what constitutes an “instrumentality” of a foreign government under the FCPA survives appellate scrutiny will be interesting to watch and should be instructive as to the limits of the FCPA’s jurisdictional reach.

SQUIRE SANDERS

Bridgestone Corporation

Conduct

- Tokyo-based Bridgestone, the world's leading producer of tires and other rubber products, has settled an FCPA and Sherman Act antitrust action with the Department of Justice ("DOJ") and agreed to pay a $28 million criminal fine in connection with alleged conspiracies to rig bids and make corrupt payments to foreign officials in Latin America related to the sale of marine hose (a device used to transfer oil from tankers to storage facilities) and other industrial products manufactured by the company.
- From 1999 to 2007, Bridgestone conspired to obtain millions of dollars in business for its International Engineered Products Department by making corrupt payments to Latin American foreign officials. To this end, Bridgestone allegedly contracted with local sales agents in numerous Latin American countries; cultivated relationships with employees of state-owned entities, including Mexico's PEMEX; negotiated corrupt paymentss with these employees to secure business; approved corrupt payments to the foreign officials through the previously mentioned local sales agents; and paid commissions to the sales agents in which were included the corrupt payments.
- The company went to great lengths to conceal these payments, both orally and by adding a "read and destroy" caption to faxes evidencing this alleged misconduct.

Penalties

- Bridgestone has agreed to disgorge $28 million. It is unknown at present what proportion of this sum stems from the company's FCPA violations.

Notes

- The DOJ recommended a reduced fine in light of Bridgestone's cooperation in the investigation through its production of voluminous records, conducting a global investigation, and making employees available to the DOJ for interviews.
- Bridgestone's remediation efforts likewise contributed to this reduction; the company terminated many third-party agents and employees associated with the conduct at issue, dismantling one of its departments, and restructuring the relevant segment of its business.

Watts Water Technologies, Inc.

Conduct

- The Securities and Exchange Commission ("SEC") has issued an administrative cease and desist order as to Watts Water Technologies, Inc. ("Watts"), a water valve designer and retailer, and Leesen Chang ("Chang"), former general manager of Watts Valve Changsha Co., a wholly-owned Chinese subsidiary of Watts.
- Between 2006 and 2009, Chang, on behalf of Watts's Chinese subsidiary, approved payments to employees of government-owned design institutes to obtain recommendations and establish design specifications that favored the company's products. These payments were improperly recorded in the subsidiary's books and records (and subsequently incorporated into Watts's own books and records) as sales commissions. Such payments generated in excess of $2.7 million in profits.
- The SEC alleged that Watts failed to implement a sufficiently rigorous FCPA compliance plan on its acquisition of the subsidiary, including deficient FCPA training for its Chinese employees.

Chang compounded the problem by refusing to allow the translation of the subsidiary's policy that generated these payments into English, thereby preventing the U.S. parent company from learning of the conduct at issue.

Penalties

- Watts has agreed to a payment of approximately $3.7 million, consisting of disgorgement, prejudgment interest, and a civil monetary penalty. Chang agreed to a $25,000 civil penalty.

Notes

- On learning of the FCPA violations at issue, Watts took prompt remedial action, including eliminating commission-based compensation for employees of the Chinese subsidiary, retaining outside counsel to draft an enhanced anticorruption compliance policy, and conducting a global anti-corruption audit.
- Taken in conjunction with previous enforcement actions such as Rockwell Automation and ITT, this decision underscores the SEC's recent focus on Chinese design institutes for anti-bribery investigation.

Aon Corporation

Conduct

- Aon Corp., an Illinois-based world leader in risk management, insurance, and reinsurance brokerage services, has entered into a Non-Prosecution Agreement ("NPA") with the Department of Justice ("DOJ") and has settled a civil action brought by the Securities and Exchange Commission ("SEC") stemming from alleged violations of the anti-bribery, books and records, and internal controls provisions of the Foreign Corrupt Practices Act ("FCPA").
- Between 1983 and 2007, A group of Aon's subsidiaries are alleged to have made over $3.6 million in improper payments to secure or retain business in Costa Rica, Egypt, Vietnam, Indonesia, the United Arab Emirates, Myanmar, and Bangladesh, a portion of which were made directly or indirectly to government officials in these countries. Aon is alleged to have failed to accurately record these payments in its books and records or to maintain adequate internal controls to detect and prevent these payments.
- The improper payments at issue fell into two categories: (1) training, travel, and entertainment for employees of foreign government-owned clients and third parties and (2) payments made to third-party facilitators. Under the first category, Aon or its predecessor, while serving as insurance broker for an Egyptian government-owned company, allegedly funded U.S. trips for company employees that included a disproportionate amount of leisure activities and lasted longer than the business component would justify; the company's books and records did not accurately reflect the true nature of these payments. As to the second category, Aon subsidiaries purportedly made payments to third parties without taking steps to ensure that the money did not pass to government officials. Some of the payments to third parties also appeared not to come in response to any legitimate services, raising the suspicion that such third-party payments were merely fronts for payments to government officials.

Penalties

- Pursuant to its settlement with the SEC, Aon agreed to pay disgorgement of $11,416,814 in profits and $3,128,206 in prejudgment interest, totaling $14,545,020. The company also consented to entry of a final judgment permanently enjoining future books and records and internal controls violations under the FCPA. As part of the NPA, Aon agreed to a $1.764 million criminal fine and to boost its compliance, bookkeeping, and internal controls programs.

SQUIRE SANDERS

Notes

- In its press release announcing the NPA, the DOJ commended Aon for its "extraordinary cooperation with the Department, including its thorough investigation of its global operations and complete disclosure of facts to the Department, and its early and extensive remediation."
- In spite of the seemingly corrupt nature of the improper payments at issue, the SEC's complaint did not allege anti-bribery violations on Aon's part.

Magyar Telekom Plc and Deutsche Telekom AG

Conduct

- Magyar Telekom Plc and its majority owner Deutsche Telekom AG have agreed to pay a total of approximately $95 million in penalties arising from alleged violations of the anti-bribery and books and records provisions of the Foreign Corrupt Practices Act ("FCPA") stemming from conduct in Macedonia and Montenegro.
- Between 2005 and 2006, former executives of Magyar Telekom allegedly entered into sham contracts with third parties, including a Cypriot shell company, with the intent of funneling such contracted funds to Macedonian government officials in exchange for business and operating advantages in the country. Such contracts were recorded as legitimate expenses in the company's books and records. Specifically, the company purportedly induced government officials to delay the introduction of a competitor into the Macedonian market and reduced tariffs imposed on one of its subsidiaries.
- Magyar Telekom is similarly alleged to have entered into erroneously-recorded sham contracts with the intent of forwarding bribes to Montenegran government officials, in exchange for which it received government assistance in facilitating its acquisition of a state-owned telecommunications company.

Penalties

- Magyar Telekom agreed to pay $59.6 million pursuant to a two-year deferred prosecution agreement with the Department of Justice ("DOJ") and $31.2 million to resolve a civil complaint brought by the Securities and Exchange Commission ("SEC") arising from these transactions. Deutsche Telekom entered into a two-year non-prosecution agreement with the DOJ pursuant to which it agreed to pay a $4.4 million penalty.

Notes

- The DOJ pursued charges against Deutsche Telekom in spite of the fact that it arguably had no direct involvement or oversight in the actions of the Magyar Telekom executives implicated in the conduct at issue.
- The SEC has brought a civil action against several former Magyar Telekom executives in connection with this purported conduct, which remains ongoing at this time.

MIAMI/4265046.12