FCPA 2009

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2009 FCPA ENFORCEMENT ACTIONS

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Control Components, Inc. and former executives Mario Covino and Richard Morlok

Conduct

- 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.
- The criminal information and plea agreement represent that 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.
- Covino and Morlok, former CCI executives, each pled guilty to one count of conspiring to violate the FCPA.
- Covino admitted that from March 2003 – August 2007, as CCI's director of worldwide sales, he caused company employees and agents to make approximately US$1 million in payments to vice presidents, managers and purchasing officers of SOEs to assist in obtaining or retaining business. Covino also admitted that as a result of these payments the company earned roughly US$5 million in profits.
- Morlok admitted that he caused company employees and agents to make payments of approximately US$628,000 to officials (e.g., vice presidents, managers and purchasing officers) of numerous SOEs to assist in obtaining or retaining business from 2003 through 2006. During this period, as the company's finance director, Morlok had the responsibility for approving

payments and authorizing wire transfers to the payees. Morlok admitted that as a result of these corrupt payments, CCI earned approximately US$3.5 million in profits.

Penalties

- CCI was required to pay a criminal fine of US$18.2 million; create, implement and maintain a comprehensive antibribery compliance program; retain an independent compliance monitor for three years; serve three years of organizational probation; and continue to cooperate with the Department of Justice's (DOJ) ongoing investigation.
- At sentencing, each faces a maximum of five years in prison, three years supervised release, and a fine of US$250,000 or twice the pecuniary gain or loss resulting from the offense, whichever is greater.

Notes

- Payments were made to foreign officials in several countries including Brazil, China, India, Korea, Malaysia, Romania, Saudi Arabia and the United Arab Emirates.
- 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 the FCPA charges, the DOJ also charged CCI with conspiracy to violate 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. In CCI's case, the state of California's commercial bribery statute served as the substantive predicate offense for the Travel Act charge.
- CCI, according to public documents, gave "flowers," "bonuses" and "commissions" as illegal bribe payments to "consultants" or "friends in camp,"

and provided lavish travel and accommodation to holiday destinations such as Disneyland, Hawaii and Las Vegas under the guises of "training or inspection trips." In addition, CCI entertained potential clients (both SOEs and private entities) with extravagant meals, greens fees for golf and chartered boat trips.

- The US$18.2 million criminal fine is well below the US Sentencing Guidelines' (USSG) range of US$27.9 – US$55.8 million. In its sentencing recommendation, the DOJ noted CCI's recognition and affirmative acceptance of responsibility, its voluntary disclosure of evidence discovered as a result of an exhaustive internal investigation, its substantial cooperation with the DOJ's investigation and prosecution, and CCI's compliance and remediation efforts.
- Covino, an Italian citizen, is a "domestic concern" for the FCPA's purposes because he resides in California.
- All three defendants agreed to cooperate with the ongoing investigation of the DOJ. To date, six additional individuals that acted on CCI's behalf have been indicted.

ITT Corporation

Conduct

- The Securities and Exchange Commission (SEC) filed a settled civil action that alleged that ITT Corporation (ITT), a publicly traded New York-based company, violated the FCPA's books and records, and internal controls provisions as a result of improper payments to Chinese officials by employees or agents of ITT's wholly-owned Chinese subsidiary, Nanjing Goulds Pumps Ltd. (NGP).
- NGP employees or agents paid officials of Chinese SOEs to influence the design of infrastructure projects so as to require the use of NGP pumps. NGP employees also used third-party agents to facilitate payments to foreign officials. When NGP used a third-party agent, it paid inflated commissions to

the agents after the company received payment from the SOE for the pumps. NGP understood that the third-party agent would then pay the foreign official that recommended NGP pumps or directly pay employees of the SOE that purchased the pumps. These illicit payments totaled approximately US$200,000 and generated more than US$4 million in improper NGP sales.

- NGP's books and records disguised these payments as increased commissions. These improper entries were consolidated in ITT's financial statements filed with the SEC. ITT also failed to make or keep books and records in reasonable detail so as to accurately and fairly reflect the illicit payments by NGP and the related disposition of assets. Finally, ITT failed to devise and maintain a system of internal controls sufficient to provide reasonable assurances that: (a) transactions were executed in accordance with management's authorization; (b) transactions were recorded to maintain accountability of assets; and (c) access to assets was permitted only in accordance with management's authorization.

Penalties

- Without admitting or denying the SEC's allegations, ITT consented to the entry of a final judgment permanently enjoining it from future books and records and internal controls violations. ITT will disgorge US$1,041,112 in profits and pay a US$250,000 civil penalty.

Notes

- The SEC represented that when it determined ITT's punishment, it considered the fact that ITT self-reported, cooperated with the SEC's investigation and instituted subsequent remedial measures.
- This matter came to the attention of the SEC after ITT conducted an internal investigation. The investigation began after ITT's corporate compliance ombudsman received an anonymous complaint from an NGP employee

alleging illicit payments were being made to Chinese government officials by NGP employees.

- This enforcement action, like the Covino and Morlok matters, highlights that US enforcement authorities consider payments designed to improperly influence a project's specs in such a way as to favor the payor is a violation of the FCPA.

Kellogg Brown & Root LLC, Kellogg, Brown & Root, Inc. and the Halliburton Company

Conduct

- Related enforcement actions were brought against Kellogg Brown & Root LLC, Kellogg, Brown & Root, Inc. (KBR, Inc.) and the Halliburton Company (Halliburton). The DOJ brought a criminal action against Kellogg Brown & Root LLC while the SEC brought a civil action against KBR, Inc. and Halliburton. Kellogg Brown & Root LLC is a wholly-owned subsidiary of KBR, Inc., a publicly traded company. Kellogg Brown & Root LLC is the successor company to various entities (collectively, KBR LLC) and was controlled by Halliburton.
- The underlying conduct concerned a decade-long scheme to bribe Nigerian government officials to obtain contracts concerning natural gas facilities.
- KBR LLC and three other entities formed a joint-venture (JV) for the purposes of bidding on and, if successful, performing a series of contracts related to natural gas projects in Nigeria. The JV operated through three Portuguese corporations (individually, each a Portuguese Company and collectively, Portuguese Companies). JV parties evenly shared ownership of two Portuguese Companies.
- In respect to the third Portuguese Company, KBR LLC held its interest indirectly though M.W. Kellogg Ltd., an entity in which KBR LLC owned a 55

percent interest, with the remaining 45 percent owned by one of the other JV parties. KBR LLC avoided placing US citizens on the board of managers of the third Portuguese Company so as to further insulate itself from FCPA liability.

- KBR LLC pled guilty to one count of conspiring with JV parties and others to violate the FCPA by authorizing, promising and paying bribes to government officials including executive branch officials.
- KBR LLC also pled guilty to four counts of violating the FCPA's antibribery provisions related to the JV's payments of US$182 million in "consulting fees" to two "cultural advisors," used to make the bribe payments to government officials.
- KBR LLC admitted that prior to the award of the contracts, its former CEO, Albert Stanley, and others, met with senior executives in the Nigerian government to request the office holders to designate representatives with whom the JV should negotiate government officials' bribes. Stanley and others negotiated bribes with the representatives and agreed to hire two consultants to pay the bribes. The JV paid approximately US$132 million to a British consultant that used a Gibraltar corporation to enter into agent contracts with and receive payments from the JV. The JV also paid more than US$50 million to a consulting company based in Japan. KBR LLC admitted that it intended for these monies to be used, at least in part, for Nigerian government officials' bribes.
- The SEC's complaint charged KBR, Inc., KBR LLC's parent company, with violating the FCPA's antibribery, books and records, and internal controls provisions, as well as aiding and abetting Halliburton's violations of the books and records, and internal controls provisions.
- The SEC's complaint charged KBR LLC's former parent company, Halliburton, with books and records, and internal controls violations of the FCPA. Specifically, the complaint alleged that Halliburton failed to devise

adequate internal controls relating to non-US sales agents and the FCPA, and failed to enforce the internal controls that it had. As a result, Halliburton failed to detect, deter or prevent violations by its subsidiaries. The SEC represented that numerous books and records of Halliburton and subsidiaries possessed false information relating to bribe payments made by non-US agents.

Penalties

- KBR LLC agreed to pay a US$402 million fine to settle the DOJ's criminal charges. KBR LLC will also retain an independent compliance monitor for three years to review the design and implementation of the entity's compliance program and to make periodic reports to the DOJ. Further, KBR LLC also agreed to undergo three years of organizational probation. Finally, the company agreed to continue to cooperate with the DOJ's ongoing investigation.
- KBR, Inc. and Halliburton have agreed to pay US$177 million in disgorgement to settle the SEC's charges.
- KBR, Inc. is permanently enjoined from violating the antibribery provisions and from aiding and abetting violations of the books and records, and internal controls provisions of the FCPA. KBR, Inc. must also retain an independent monitor for three years to review its compliance program.
- Halliburton is permanently enjoined from violating the FCPA's books and records and internal controls provisions. In addition, Halliburton must retain an independent consultant to review its FCPA compliance policies and procedures.

Notes

- The combined US$579 million in penalties represent the largest penalties ever paid by a US-based company in the FCPA's history. Halliburton, as part of a prior agreement with KBR, Inc., will pay US$559 million of the penalties.

- KBR LLC received a reduction in the applicable fine range as a result of fully cooperating in the criminal investigation and accepting responsibility for its conduct. In addition, KBR LLC received a fine that was less than 10 percent above the USSG's minimum suggested fine and well below the US$753.6 million that the USSG allowed.
- The SEC's complaint highlighted four key challenges that Halliburton failed to meet when it acquired and operated KBR LLC:
  - Halliburton failed to devise and maintain internal controls to regulate non-US agents;
  - Halliburton failed to maintain and enforce the internal controls it had in place;
  - Halliburton was unable to detect or prevent bribery due to the fact that it conducted no or inadequate due diligence on the agents; and
  - as a result of these failures, Halliburton's books and records contained false information relating to agents' payments.
- US enforcement authorities acknowledged the significant assistance provided by authorities in Europe, Asia, Africa and the Americas.
- Jeffrey Tessler, a British lawyer, consultant and "cultural advisor" to the JV, has been indicted by the DOJ. Tessler is currently fighting extradition from the United Kingdom to the United States.
- Wojciech Chodan, a British citizen and former KBR, Inc. vice president and consultant, has also been indicted in the United States.

Latin Node, Inc.

Conduct

- Latin Node, Inc. (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 and Yemeni SOE telecommunications companies, officials in the Yemeni telecommunications ministry and the president of Yemen's son. 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 and Yemeni SOEs. Each payment was made from Latinode's Miami bank account and was approved by Latinode senior executives.

Penalty

- Latinode agreed to a pay a US$2 million criminal fine.

Notes

- 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.

Novo Nordisk A/S

Conduct

- Novo Nordisk A/s (Novo), a Danish corporation based in Bagsvaerd, Denmark, manufactures insulin, medicines and other pharmaceutical supplies. Novo trades American Depository Receipts on the New York Stock Exchange.
- The DOJ filed a criminal information charging one count of conspiracy to commit wire fraud and violate the FCPA's books and records provisions.
- The SEC filed a settled civil action alleging that Novo violated the FCPA's books and records, and internal controls provisions.
- According to documents filed in the US District Court for the District of Columbia, between 2001 and 2003 Novo paid approximately US$1.4 million and agreed to pay an additional US$1.3 million in kickbacks to Kimadia, the Iraq State Company for the Importation and Distribution of Drugs and Medical Appliances.
- Novo paid kickbacks by inflating the contracts' prices by 10 percent before submitting the contracts to the United Nations Oil for Food program for approval and payment to Novo. Novo engaged its Jordan-based agent and distributor (Agent) to submit bids on behalf of Novo to Kimadia. A Novo branch based in Greece and another branch based in Jordan handled sales to Iraq and provided the Agent with contract bid prices. In early 2000 or late 2001 a Kimadia import manager advised the Agent that Kimadia required Novo to pay a 10 percent kickback in order to obtain a contract under the Oil for Food program. Even though a Novo officer rejected the request and suggested that Novo find another way, a Novo senior vice president and managers at Novo's branches in both Greece and Jordan subsequently authorized the kickbacks. In April and August 2001 Novo paid increased commissions to the Agent so that the Agent could pay the kickbacks to

Kimadia. To hide the kickbacks, Novo increased the Agent's commission by 10 percent, under the guise that the Agent had experienced increased marketing and distribution costs.

- The DOJ and SEC alleged that Novo illegally recorded in the company's books and records the bribes as "commissions" or "after sales service fees."

Penalties

- Novo Nordisk has agreed to pay more than US$18 million to resolve the DOJ and SEC enforcement actions.
- To resolve the DOJ enforcement action, Novo agreed to pay a US$9 million criminal penalty and abide by the terms of a deferred prosecution agreement (DPA). If after three years the DOJ is satisfied that Novo has abided by the terms of the DPA, the DOJ will dismiss the information.
- To resolve the SEC enforcement action, Novo agreed to disgorge approximately US$4.3 in profits plus nearly US$1.7 in prejudgment interest, and pay a civil penalty of more than US$3 million. Novo further agreed to be permanently enjoined from violating the books and records and internal controls provisions of the FCPA.

Notes

- This enforcement action illustrates that the DOJ and SEC will enforce the books and records, and internal controls provisions even when the underlying kickbacks may not have violated the FCPA's antibribery prohibitions. According to documents filed with the Court, through its Agent, Novo made kickbacks to Kimadia, an SOE. While the FCPA's antibribery provisions prohibit payments to foreign officials, they do not prohibit payments to SOEs.
- In deciding whether to enter into a DPA, the DOJ acknowledged that Novo conducted a thorough review of the illicit payments and implemented enhanced compliance policies and procedures.

- Novo is the eleventh FCPA enforcement action arising out of the DOJ's and SEC's still ongoing Oil for Food investigations.

Juan Diaz and Antonio Perez

Conduct

- Diaz and Perez both pled guilty to one count criminal informations that charged each with conspiracy to violate the FCPA's antibribery provisions and commit money laundering in connection with the bribery scheme.
- Diaz, the president of a Florida-based intermediary company, and Perez, the former controller of a Florida-based telecommunications company, admitted to conspiring to make "side payments" to Telecommunications D'Haiti's (Telecom Haiti) then-director of international relations and then-general director, both "foreign officials" under the FCPA. In exchange for the illegal payments, Telecom Haiti allegedly provided Florida-based telecommunications companies with preferred telecommunication rates, reduced the minutes for which payment was owed and provided a variety of credits toward monies owed.
- Diaz admitted to conspiring to make and conceal more than US$1 million in corrupt payments to the Haitian officials on behalf of three Florida-based telecommunications companies for which he acted as an intermediary. Diaz concealed the payments by moving them through a shell company that he owned. He admitted to conspiring to use the shell company for the sole purpose of accepting, concealing, and forwarding the foreign officials' bribes. Diaz also admitted that he did not intend to and did not provide any lawful goods or services to anyone, but did keep US$73,824 as "commissions" for laundering the bribes.
- Perez admitted to conspiring to violate the FCPA's antibribery provisions and commit money laundering. Perez admitted that he assisted in paying US$36,375 in furtherance of the conspiracy, and that he helped conceal the

payments through the use of Diaz's shell company and by recording these payments as "consulting services." Perez's former employer paid approximately US$674,193 in corrupt payments to the foreign officials and allegedly recorded the payments as "commissions."

Penalties

- Sentencing of both Diaz and Perez will occur at a later date.
- The DOJ has sought the forfeiture of US$1,028,851.95 from Diaz.
- The DOJ has sought the forfeiture of US$36,375 from Perez.

Notes

- The guilty pleas of Diaz and Perez occurred less than two of months after Latinode resolved its FCPA enforcement action with the DOJ. The DOJ represented, in documents related to the Diaz and Perez matter, that its investigation continues.
- The DOJ acknowledged the "substantial assistance" and "significant cooperation" provided by the government of Haiti.

Thomas Wurzel and United Industrial Corporation

Conduct

- The SEC filed a settled civil action against Wurzel, the former president of ACL Technologies, Inc. (ACL), formerly an indirect subsidiary of United Industrial Corporation (UIC), and settled an administrative proceeding against UIC for related conduct the SEC alleged violated the FCPA.
- Wurzel initially engaged a former Egyptian Air Force (EAF) general in December 1996 as an agent and consultant, and in April 2000 also hired him as a subcontractor.

- The SEC alleged that Wurzel authorized illegal payments to the retired EAF general while Wurzel knew or should have known that the former EAF general would offer, provide or promise a portion of such payments to current EAF officials in order to influence the officials to award business to UIC. The SEC alleged that the purpose of his initial and subsequent engagements was to – in the former EAF general's words – "convince," "influence" and "motivate" high-level EAF officials to recommend contracts to ACL and ostensibly to provide subcontractor services.
- The illegal conduct arose out of non-US military sales and subsequent "add-on" projects awarded by the US Air Force (USAF) to ACL. The initial contract called for ACL to build an aircraft depot (the "Egyptian Depot") for the EAF and to provide, operate and train Egyptian labor to use equipment associated with the Egyptian Depot.
- Even though EAF was the ultimate customer for the Egyptian Depot, ACL's contractual obligations were not with the EAF. ACL's contractual obligations were with the USAF and ARINC, Inc., an Annapolis, Maryland-based defense contractor, who were the direct purchasers of ACL's products and services and supervised logistical and procurement matters.
- The EAF directed when, to what extent and how money would be spent on the project. The EAF, through "sole source" requests, asked the US Department of Defense (USDOD) and USAF to approve ACL as the sole contractor for the Egyptian Depot. The USDOD and USAF approved ACL as the "sole source" and awarded the contract in October 1999. Subsequently, ACL received additional "add-on" contracts.
- The SEC charged Wurzel with violations of the FCPA's antibribery, books and records, and internal controls provisions, as well as aiding and abetting UICs violations of the FCPA's antibribery, and books and records provisions. The SEC alleged that Wurzel authorized three forms of improper payments to the former EAF general: (1) payments ostensibly for labor subcontracting

services, (2) a US$100,000 advance payment for "equipment and materials" and (3) a US$50,000 payment for "marketing services." The former EAF general, the SEC alleged, used these monies in whole or in part to bribe current EAF officials to direct business to ACL.

- The SEC also alleged that Wurzel directed subordinates to violate the FCPA's books and records provisions by creating false invoices to conceal the fact that the US$100,000 advance payment was never repaid.
- The SEC further alleged that UIC violated the FCPA's antibribery, books and records, and internal controls provisions. In respect to internal controls, the SEC alleged that UIC authorized large payments to the former EAF general without meaningful substantiation, supporting documents or documentation describing the services purportedly provided by the former EAF general, all in violation of the FCPA's internal controls provisions.
- UIC, through ACL, received contracts that generated gross revenues of US$5.3 million and net profits of US$267,000.

Penalties

- Without admitting or denying the allegations, Wurzel agreed to pay a US$35,000 penalty to resolve the SEC's civil action. Wurzel also agreed to be permanently enjoined from violating the FCPA and from aiding and abetting violations of the FCPA's antibribery, and books and records provisions.
- UIC, without admitting or denying the allegations, agreed to an SEC order to disgorge US$337,679 in profits and prejudgment interest.

Notes

- ACL did not conduct any due diligence on the former EAF general and failed to document the services that he provided. These failures demonstrate the significance of taking the advice of US enforcement authorities who have

publicly stressed the importance of conducting due diligence prior to engaging a third-party, and of documenting the services they provide.

- UIC and its legal department failed to follow company due diligence policies. These policies required that UIC employees submit due diligence paperwork *prior* to engaging (or renewing the engagement of) a third-party. In addition, even though UIC policy required that the third-party represent that he was aware of the FCPA, would comply with the FCPA and allow UIC's auditors and accountants access to his books and records, the former EAF general did not certify his compliance with this UIC policy prior to his engagements with ACL. When he eventually signed, he refused to provide UIC access to his books and records. This should have been a red flag.

Joseph T. Lukas

Conduct

- Lukas, a US citizen, former executive and joint venture partner with Nexus Technologies, Inc. (Nexus), pled guilty in connection with his participation in a conspiracy to bribe Vietnamese government officials in exchange for contracts to supply equipment and technology to agencies and instrumentalities of the Government of Vietnam.
- Nexus was a privately held Delaware export company. It identified US-based vendors for contracts open for bidding by the Vietnamese government to purchase a variety of equipment and technology including underwater mapping equipment, bomb containment equipment, helicopter and satellite parts, chemical detectors and air tracking systems. At Nexus, Lukas' licit duties included oversight of Nexus' New Jersey office and identifying and negotiating with potential US-based suppliers.
- Lukas pled guilty to one count of conspiring to violate the FCPA and one substantive count of violating the FCPA. The indictment alleged Lukas was assisting a co-defendant in establishing "supporters" of Nexus who were

Vietnamese government officials, paying and causing to be paid "commissions" to these foreign officials and mischaracterizing these payments as "subcontract fees" in Nexus' books and records. The substantive count charged Lukas for his role in transferring US$18,854 from a Nexus account to the account of a Hong Kong company to facilitate a bribe to an official of an airport controlled by the Vietnamese Ministry of Transport.

- In addition to Lukas, the indictment charges three former Nexus employees and Nexus with criminal acts arising out of the bribery scheme. The cases against these other defendants are pending.

Penalties

- Lukas' sentencing is scheduled for April 6, 2010. At sentencing, he faces a maximum of 10 years in prison and a potential fine of US$500,000, or both.

Notes

- This enforcement action demonstrates the DOJ's continued emphasis on bringing criminal charges against individuals. More pointedly, this matter illustrates how the DOJ has focused on resolving individual defendants' criminal charges prior to doing so with corporate defendants, which often employ or employed the individual defendants. Lukas' extended sentencing date leads one to conclude that he will cooperate with the DOJ in its cases against his former co-defendants. This cooperation, if substantial in the DOJ's eyes, could result in the DOJ filing a motion before Lukas' sentencing whereby the government would ask the court to mitigate his sentence.

Frederic A. Bourke Jr.

Conduct

- A federal jury in New York City found Bourke guilty of conspiracy to violate the FCPA and Travel Act, and making false statements to the FBI.

- After the conviction, the DOJ publicly stated that evidence presented at trial established that Bourke knowingly participated in a plan to bribe senior government officials in Azerbaijan. The DOJ stated that Bourke and others sought to guarantee that the officials would privatize the State Oil Company of the Azerbaijan Republic (SOCAR) in an auction that only Bourke, fugitive Czech investor Viktor Kozeny and members of their investment consortium could win. The DOJ further stated that the plan involved the purchase of vouchers and options that could be used to bid for shares in SOCAR's privatization. Oily Rock Ltd. (Oily Rock), a company controlled by Kozeny, was to exercise the vouchers and options. Two-thirds of the vouchers and options purchased by Oil Rock were to be transferred to Azeri officials who would receive two-thirds of the profits arising from the investment consortium's participation in SOCAR's privatization. The DOJ satisfied the jury that Bourke knew that Kozeny arranged for Oily Rock to increase its shares by US$300 million and that Kozeny transferred this amount of money to one or more Azeri officials.
- According to the DOJ, Bourke invested approximately US$8 million in Oily Rock. Bourke also arranged for two of the Azeri officials to travel to New York to receive medical treatment, which Oily Rock paid for. Finally, in 2002, Bourke falsely stated to the FBI that he was not aware that Kozeny had paid the Azeri officials.

Penalties

- Bourke was sentenced to a year and a day in prison, a US$1 million fine and three years of probation upon release from prison.

Notes

- Bourke's conviction highlights the necessity of conducting effective due diligence on parties with whom you enter into a business relationship. If red flags appear, additional due diligence must be undertaken to resolve

concerns. Throughout the trial the government sought to demonstrate that Bourke satisfied the antibribery provision's knowledge requirement by arguing that he consciously disregarded, or remained willfully blind to, the illegal conduct of his alleged co-conspirator, Kozeny. The government's argument apparently persuaded jurors, who have reported to the press that they felt there were too many red flags waving around the deal and that Bourke consciously decided to ignore them.

Avery Dennison Corporation

Conduct

- The SEC filed two settled enforcement actions against the Avery Dennison Corporation (Avery) alleging FCPA violations in connection with improper payments and promises of additional improper payments to foreign officials by Avery's Chinese subsidiary and entities acquired by Avery.
- One of the enforcement actions was a civil action in US District Court for the Central District of California and the second administrative proceeding against Avery for allegedly violating the FCPA's books and records, and internal controls provisions.
- In both the federal civil action and the administrative proceeding, the SEC alleged that from 2002 through 2005 the Reflectives Division of Avery (China) Co. Ltd. (Avery China), a wholly-owned subsidiary of Avery, paid or authorized the payments of kickbacks, sightseeing trips and gifts to Chinese government officials with the intent of improperly influencing these officials' decisions to assist Avery China in obtaining or retaining business. Illegal payments actually made by Avery China totaled approximately US$30,000 and were improperly recorded in Avery China's books and records.
- According to the SEC, after Avery acquired two companies (an unnamed Indonesia contractor in 2005 and Paxar Corporation in June 2007), employees of the acquired companies continued their pre-acquisition practice

of making illegal petty cash payments to customs and other government officials in China, Indonesia, and Pakistan. These post-acquisition illegal payments totaled approximately US$51,000 and were improperly recorded in the acquired companies' books and records.

- In addition to failing to properly record these payments, the SEC alleged that Avery failed to devise and maintain internal controls sufficient to detect and prevent such illegal payments or promises of illegal payments.

Penalties

- In the federal civil action, Avery consented to the entry of a final judgment that required it to pay a penalty of US$200,000.
- In the administrative proceeding, the SEC ordered Avery to cease and desist from further violations of the FCPA's books and records and internal controls provisions, to disgorge US$273,213 and to forfeit US$45,257 in prejudgment interest.
- All totaled, Avery paid more than US$518,000 in penalties, disgorged profits and prejudgment interest.

Notes

- The SEC specifically noted Avery's global FCPA investigations and remedial actions including initial investigations in 27 countries and follow-up investigations in 10 particularly concerning markets.
- The enforcement action highlights the fact that payments need not be material to constitute an FCPA violation. For example, one series of illegal payments concerned an Avery China representative's gift to four Chinese officials of shoes collectively valued at US$500, while another concerned a US$10 daily petty cash withdrawal used to bribe three customs officials over a period of months.

- The enforcement action also highlights the need to conduct extensive due diligence on prospective employees who may be considered foreign officials or be closely related to foreign officials. In the Avery matter, Avery China hired a former Chinese official because his wife was an official at the same government agency as the former official/now Avery China employee. This employee's wife was in charge of two projects that Avery China wanted to pursue. Though never previously awarded contracts from this government agency, subsequent to the former official's hiring Avery China was awarded two contracts by the agency.

Helmerich & Payne, Inc.

Conduct

- The DOJ and SEC brought enforcement actions against Helmerich & Payne, Inc. (H&P) in response to payments allegedly paid by two wholly-owned H&P subsidiaries, Helmerich & Payne (Argentina) Drilling Company (H&P Argentina) and Helmerich & Payne de Venezuela, C.A. (H&P Venezuela), and alleged books and records, and internal controls violations related to the bribery scheme.
- The DOJ and SEC both alleged that from 2003 through 2008, H&P Argentina and H&P Venezuela made approximately US$185,673 in improper payments directly or indirectly through third-party customs brokers to customs officials in connection with the clearing of drilling equipment parts through customs.
- H&P Argentina and H&P Venezuela allegedly made these payments (1) to avoid potential delays typically associated with international transport of drilling parts, (2) to import and export goods that did not meet regulatory requirements, (3) to import goods that could not be lawfully imported and (4) to evade higher duties and taxes on the goods.
- H&P avoided an estimated US$320,604 in additional customs duties and expenses as a direct result of the improper payments.

- H&P's subsidiaries allegedly recorded the payments as "additional assessments," "extra costs," "extraordinary expenses," "urgent processing," "urgent dispatch" or "customs processing." Consequently, none of the payments were properly recorded in H&P's books and records, nor was H&P's system of internal controls sufficient to detect and prevent their occurrence.

Penalties

- In the DOJ enforcement action, the DOJ agreed not to prosecute H&P nor its subsidiaries for the allegedly improper payments, provided that H&P satisfies its obligations under the non-prosecution agreement (NPA) for a period of two years. The NPA, in part, requires H&P to pay a US$1 million penalty, implement of a FCPA compliance program, undertake an internal review of FCPA compliance and report to the government any questionable payments it might discover.
- In the SEC administrative proceeding, H&P agreed to disgorge US$320,604 in ill-gotten gains and pay US$55,077 in pre-judgment interest. H&P also agreed to cease and desist from any further violations of the FCPA's books and records and internal controls provisions.

Notes

- The DOJ noted H&P's voluntary disclosure and thorough self-investigation, the cooperation provided by the company, and the extensive remedial efforts undertaken by the company.

Nature's Sunshine Products, Inc., Douglas Faggioli and Craig Huff

Conduct

- The SEC filed a settled enforcement action against Nature's Sunshine Products, Inc. (NSP), a Utah Corporation, Douglas Faggioli, its chief executive officer, and Craig Huff, its former chief financial officer.
- The SEC alleged that NSP's wholly-owned Brazilian subsidiary, Natures Sunshine Produtos Naturais Ltda. (NSP Brazil), a manufacturer of nutritional and personal care products, violated the FCPA's antibribery provisions when it made payments to customs brokers, and some of these payments were later passed on to Brazilian customs officials to permit the importation of unregistered products into Brazil.
- To conceal the payments, NSP Brazil incorrectly recorded them as "importation advances" in its books and records.
- The SEC alleged that NSP failed to make and keep books, records and accounts that provided reasonable assurances that the transactions it had entered into had been accounted for in accordance with GAAP.
- The SEC also alleged that NSP knowingly failed to devise, implement and maintain a system of internal controls sufficient to ensure that the customs payments were properly accounted for on its financial statements.
- The SEC's complaint further alleged that Faggioli and Huff, directly or indirectly, in their capacities as control persons under Section 20(a) of the Securities Exchange Act of 1934, violated the FCPA in connection with the Brazilian cash payments, for failing to adequately supervise compliance of the FCPA books and records, and internal controls provisions.

Penalties

- NSP agreed to pay a civil penalty of US$600,000, while Faggioli and Huff agreed to pay civil penalties of US$25,000 each.

Notes

- Squire Sanders believes that this enforcement action is the first where individuals were charged with FCPA violations under the SEC's control person theory. a theory commonly used in other civil litigation matters involving corporate officers and directors. Notably, the SEC did not allege that Faggioli or Huff had affirmatively violated the FCPA or that either had knowledge of such violations. Instead, the SEC alleged that they failed to adequately supervise personnel in charge of ensuring FCPA compliance.
- NSP issued a press release in which it stated that it "anticipates no action by the Department of Justice in a previously disclosed investigation relating to these events."

Oscar H. Meza

Conduct

- The SEC filed a settled enforcement action against Meza, a former Asia-Pacific sales director for Faro Technologies, Inc. (Faro), a software development and manufacturing company.
- The SEC's complaint alleged that Meza authorized bribe payments to be made directly by a former employee of Faro Shanghai Co., Ltd. (Faro China), a Faro subsidiary, or indirectly through intermediaries, to employees of Chinese SOEs in order to obtain and retain contracts, and that Meza instructed that account entries be modified to conceal these payments.
- The SEC's complaint alleged that Meza's actions resulted in Faro China's payment or intermediaries' payment of US$444,492 in "referral fees" while

conducting business the "Chinese way" from 2004-2006, which generated approximately US$4.5 million in sales and approximately US$1.4 million in net profits.

- The SEC alleged that Meza violated the FCPA's antibribery, books and records, and internal controls provisions and that he also aided and abetted Faro's violations of these same provisions of the FCPA.

Penalties

- Meza, without admitting or denying the allegations, consented to the entry of a final judgment that permanently enjoined him from future violations and from aiding and abetting any violations of the FCPA.
- Meza also agreed to pay a US$30,000 civil penalty and to disgorge US$26,707 in ill-gotten gains and prejudgment interest.

Notes

- In 2008 Faro agreed to pay the DOJ and SEC a combined total of US$1.95 million and also entered into an NPA with the DOJ to settle related allegations of violating the FCPA.

William J. Jefferson

Conduct

- A jury in the Eastern District of Virginia convicted former US Congressman Jefferson of 11 corruption-related charges including one count of conspiracy to violate the FCPA's antibribery provisions.
- Prosecutors argued that Jefferson accepted more than US$400,000 in furtherance of a scheme to bribe officials in several West African governments, in order to secure contracts for entities in which his family members held interests.

- At trial prosecutors introduced audio and video recordings in which Jefferson discussed an illegal "goodwill present." This present, the government alleged, was all or part of US$100,000 given to Jefferson by a cooperating witness in order to bribe a former vice president of Nigeria to benefit a telecommunications business on whose behalf Jefferson acted. The government stated that the Nigerian official left Washington before Jefferson could deliver the money. The FBI later found US$90,000 of this "goodwill present" wrapped in tin foil in Jefferson's freezer.

Penalties

- At sentencing, Jefferson received a 13 year prison term and was ordered to forfeit approximately US$470,000 in cash and stock certificates.

Notes

- The jury acquitted Jefferson of a substantive charge of violating the FCPA's antibribery provision.
- Jefferson has appealed his conviction.

Leo Winston Smith

Conduct

- Smith, the former sales and marketing director for Pacific Consolidated Industries LP (PCI), pled guilty to a superseding criminal information that charged him with conspiracy to violate the FCPA's antibribery provisions.
- During the relevant time period, PCI was a privately held California-based company ("domestic concern") that contracted with defense departments throughout the world.
- According to the plea agreement, in 1999 Smith and Martin Self, PCI's former president, entered into a spurious marketing agreement between PCI and a relative of an official of the United Kingdom's Ministry of Defense (UK MOD)

in order to facilitate the UK MOD official's bribe payments. Smith admitted to causing more than US$70,000 in bribes to be paid using this arrangement in order to obtain UK MOD contracts.

Penalty

- At sentencing Smith faces up to five years in prison, a US$250,000 criminal fine or twice the gross gain or loss resulting from the offense, and three years of probation for the conspiracy to violate the FCPA count.

Notes

- In 2003, after Smith's alleged conduct had occurred, PCI was acquired by a group of investors and renamed Pacific Consolidated Industries LLC (PCI LLC). PCI LLC referred the matter to the DOJ and cooperated in the government's investigation.
- In 2008 Self pled guilty in the case and was sentenced to two years probation and ordered to pay a US$20,000 fine.
- In addition to the FCPA charge, Smith also pled guilty to under-reporting income on his 2003 tax return and to failing to file a 2003 tax return for Design Smith, Inc., a company he owned. For this conduct, Smith faces additional penalties at sentencing.
- The UK MOD official pled guilty in the United Kingdom to accepting more than US$300,000 in bribes from PCI and was sentenced to two years in prison.

Gerald and Patricia Green

Conduct

- A federal jury sitting in the District Court for the Central District of California found Gerald and Patricia Green guilty of one count of conspiracy to violate the FCPA and money laundering statutes, as well as eight counts of substantive violations of the FCPA and seven counts of substantive money

laundering violations. Patricia Green was also convicted of two counts of falsely subscribing US tax returns.

- The Greens were charged with bribing a former governor of the Tourism Authority of Thailand (TAT) in exchange for receiving contracts to manage and operate the yearly Bangkok International Film Festival as well as contracts to provide an elite tourism card to wealthy tourists visiting Thailand.
- The Greens paid and caused to be paid at least US$1.8 million in bribes to the former governor. They made the payments to the former governor through numerous accounts in Singapore, the United Kingdom and the Isle of Jersey, in the name of the former governor's daughter and a friend of the former governor.
- Businesses the Greens owned received more than US$14 million in revenue from the contracts that they received as a result of these bribes.

Penalty

- At sentencing the Greens each face five years in prison per count for their conspiracy and substantive FCPA convictions. The Greens also each face monetary penalties of US$250,000 or twice the gain or loss derived from the illegal conduct on these respective counts of conviction.

Notes

- During the summer of 2009 the DOJ secured FCPA-related convictions at trial of four individuals. The Greens' convictions, however, are the only instances where the DOJ secured convictions for both conspiracy to violate the FCPA and a substantive violation of the FCPA. In the Bourke case (discussed above), a jury convicted him of conspiracy to violate the FCPA. In the case of Jefferson (also discussed above), a jury convicted him of a conspiracy that included multiple objects, one of which was to violate the FCPA. Also, Jefferson was acquitted of a substantive violation of the FCPA.

- Patricia Green was found guilty of falsely subscribing US tax returns knowing that the false and overstated figures included the former governor's bribes. One of the DOJ's recent enforcement trends is to combine FCPA violations with violations of other criminal statutes such as conspiracy, mail and wire fraud, tax fraud and money laundering.

AGCO Corporation and AGCO Limited

Conduct

- AGCO Corporation (AGCO Corp.), a supplier and manufacturer of agricultural equipment headquartered in Duluth, Georgia, resolved FCPA charges brought by the DOJ and SEC.
- The DOJ filed a one count criminal information charging AGCO Limited (AGCO Ltd.), a wholly-owned British subsidiary of AGCO Corp., with conspiracy to commit wire fraud and violate the FCPA's books and records provisions. According to public documents, between 2000 and 2003 AGCO Corp., and subsidiaries AGCO Ltd., AGCO S.A. and AGCO Danmark A/S (collectively, AGCO Subsidiaries), agreed to cause a Jordanian agent to pay more than US$553,000 to the former government of Iraq to secure three contracts overseen by the United Nations' Oil for Food program. To generate the funds necessary to pay the kickbacks, AGCO Ltd. marketing staff – with no oversight – inflated the contracts' prices by 13-21 percent, recording the increases as "after sales service fees" in a fictitious "Ministry Accrual" account, before submitting the contracts to the United Nations for approval. AGCO Corp. acknowledged and accepted responsibility for the acts of its officers, employees, agents and those of the AGCO Subsidiaries.
- The SEC filed a civil complaint alleging that AGCO Corp. violated the FCPA's books and records, and internal controls provisions. The complaint alleged that from 2000-2003 the AGCO Subsidiaries made more than US$5.9 million in illegal payments in connection with the sale of equipment to the former

government of Iraq under 16 contracts administered under the Oil for Food program. The payments, according to the complaint, were recorded as "after sales service fees," but no *bona fide* services were performed. The SEC alleged that as a result of the extent of the improper "after sales service fees" payments, the incorrect recording of these payments and the failure of AGCO Corp.'s management to detect these irregularities, AGCO Corp. failed to keep accurate books and records as well as failed to devise and maintain an effective system of internal controls.

Penalties

- All totaled, AGCO Corp. will pay more than US$20 million in fines, penalties and disgorgement.
- In the criminal action, the DOJ and AGCO Corp. entered into a DPA, part of which requires AGCO Corp. to pay a US$1.6 million penalty. The DOJ stated that it offered the DPA in recognition of AGCO Corp.'s thorough review of the improper payments and implementation of enhanced compliance policies and procedures. The DPA has a three-year term and, notably, does not require the hiring of an internal corporate monitor.
- In the SEC civil action, AGCO Corp. agreed to pay a US$2.4 million penalty and more than US$15.9 million in disgorgement and prejudgment interest relating to the 16 Oil for Food contracts at issue.
- On the same day that these matters settled with the DOJ and SEC, AGCO Corp. resolved an ongoing investigation by the Danish State Prosecutor for Serious Crimes. The investigation concerned two contracts entered into by a Danish wholly-owned subsidiary, AGCO Danmark A/S. AGCO Corp. agreed to disgorge approximately US$630,000 in profits in connection with those contracts.

Notes

- The DOJ acknowledged the assistance provided by the Danish State Prosecutor for Serious Crimes and the SEC acknowledged the assistance provided by the United Nations' Independent Inquiry Committee.
- These matters highlight the need to follow best practices when dealing with third party agents. AGCO Corp. and the AGCO Subsidiaries repeatedly failed to follow best practices and ignored red flags evidencing FCPA risks. For example, no due diligence was done on the Jordanian agent; the agent was not required to undergo FCPA training; his contract did not contain any FCPA-specific representation and warranties or covenants language; the contract did not accurately explain the services to be provided or how the agent was to be paid; services were not documented once provided; payments were made into the "Ministry Account" which equaled approximately 10 percent of the contracts' value and were made in French francs or European Union euros, whereas all other payments made to the agent were in US dollars.
- To date, US enforcement authorities have resolved 12 cases in their ongoing Oil for Food program investigation often with substantial cooperation from non-US prosecutors.

Paul G. Novak

Conduct

- Novak, a former consultant for Willbros International, Inc. (Willbros International), pled guilty to one count of conspiracy to pay and one substantive count of paying bribes to Nigerian officials in violation of the FCPA.
- Public documents indicate that Novak conspired with Jim Bob Brown and Jason Steph, former Willbros Group, Inc. (Willbros Group) executives, Kenneth Tillery, a former Willbros International employee and executive, and

employees of a German construction company to make a series of corrupt payments to Nigerian officials.

- The payments totaled more than US$6 million and were designed to assist Willbros Group in obtaining and retaining the Eastern Gas Gathering System (EGGS) natural gas project valued at nearly US$400 million.
- Public documents indicate that Steph and others caused a Willbros Group subsidiary, Willbros West Africa, Inc. (WWA), to enter into "consultancy agreements" with two companies that Novak represented. The consulting agreements were used to facilitate the payment of bribes (or "commitments"). Public records further indicate that the consulting companies invoiced WWA for purported consulting services and received payment from Willbros International's Houston bank account. Payments were deposited in the consulting companies' Lebanon accounts. Novak then used these monies to fulfill "commitments" made to the Nigerian officials.
- The payments' recipients included government officials from the Nigerian National Petroleum Corporation, National Petroleum Investment Management Services, a senior member of the executive branch of the Nigerian federal government and members of a Nigerian political party.

Penalties

- Novak's sentencing is scheduled for February 19, 2010. For each of the two counts Novak faces five years in prison and three years of probation.
- Novak agreed, as part of his plea agreement, to pay a criminal fine of US$1 million at sentencing. The plea agreement states that "[s]hould the Court find that restitution is warranted and appropriate," the parties will recommend that the fine "or a portion thereof" be applied toward restitution, with any remainder paid as a criminal fine.

Notes

- Novak's guilty plea follows guilty pleas by both Brown and Steph. In 2006 Brown pled guilty to one count of conspiracy to violate the FCPA in connection with his role in making illegal payments to Nigerian government officials to obtain and retain the EGGS contract, and in connection with his role in making corrupt payments to Ecuadorian government officials. In 2007 Steph pled guilty to one count of conspiracy to violate the FCPA in connection with his role in making illegal payments to Nigerian government officials to obtain and retain the EGGS contract. Sentencing for Brown and Steph is scheduled for January 28, 2010.
- In an indictment unsealed on December 19, 2008 Tillery was charged for his alleged role in the Nigerian bribery scheme. He is considered a fugitive.
- Novak's guilty plea follows resolutions to FCPA enforcement actions initiated against Willbros International and Willbros Group in connection with the Nigerian bribery scheme. In 2008 Willbros Group and Willbros International entered into a three year DPA with the DOJ and agreed to pay a US$22 million criminal penalty. At the same time in 2008, Willbros Group agreed to pay US$10.3 million in disgorgement and prejudgment interest to the SEC.

Charles Paul Edward Jumet

Conduct

- Jumet pled guilty to a two count criminal information that charged him with one count of conspiracy to violate the FCPA and one count of making a false statement to a federal agent.
- Count one of the criminal information charged Jumet with conspiring to bribe Panamanian government officials for the purpose of securing business for Ports Engineering Consultants Corporation (PECC). PECC was a Panamanian company with an office in Richmond, Virginia. Jumet was vice

president and later president of PECC. PECC was affiliated with Overman Associates, a Virginia Beach, Virginia-based engineering firm. Jumet was also vice president of both Overman Associates and Overman de Panama, the latter being a Panamanian company organized to manage the Panamanian investments of its owner, Overman Associates. Overman de Panama had a management interest in PECC.

- In respect to the conspiracy, Jumet admitted that PECC was created so that Overman Associates and others could corruptly obtain a maritime contract from the Panamanian government. Jumet further admitted that he participated in a conspiracy to bribe Panamanian officials to award PECC contracts to maintain lighthouses and buoys along Panama's waterways. In exchange for receiving a 20-year no-bid contract from the Panamanian government, Jumet and others authorized bribes totaling more than US$200,000 to the former administrator and deputy administrator of Panama's National Maritime Ports Authority and to a former, high-ranking elected official of the Republic of Panama.
- Count two of the information charged Jumet with making a false statement to Special Agents of the Department of Homeland Security, Immigration and Customs Enforcement (ICE). In documents filed with the court, Jumet admitted that he knowingly and willfully made a material false statement to ICE Special Agents regarding the payment of an US$18,000 dividend check issued to the high-ranking elected Panamanian official. Jumet told the Special Agents that the check was a donation for the official's reelection campaign. Jumet knew that the official was not seeking reelection and that the check was a corrupt payment to the official in exchange for PECC receiving a contract from the Panamanian government.

Penalties

- Sentencing is February 12, 2010. For each of the two counts Jumet faces five years in prison, a fine of US$250,000 or twice the gain or loss realized from the illegal conduct, and three years of probation.
- In addition to these criminal penalties, Jumet also agreed in the plea agreement to file true and correct tax returns for the year 2004 and to pay all taxes, interest and penalties for that year.

Notes

- The information stated that in 2004 ICE initiated a criminal investigation into whether certain US citizens were involved in making corrupt payments to Panamanian officials in order to receive a contract from the government of Panama. The information further stated that FCPA investigations fall within the jurisdiction of ICE. The Jumet matter appears to be the first reported instance where ICE initiated the FCPA investigation.
- A Richmond grand jury returned a one count indictment against John W. Warwick, an alleged co-conspirator of Jumet. The indictment also included a notice of forfeiture of nearly US$800,000.

Fernando Maya Basurto

Conduct

- Basurto pled guilty to one count of conspiracy to violate the laws of the United States. The conspiracy had three objectives: (1) to violate the FCPA, (2) to commit international money laundering and (3) to falsify records in a federal investigation.
- In his plea agreement, Basurto admitted that he and a co-conspirator were principals of a Mexican company that acted as a sale representative for a Texas business unit of a subsidiary of a Swiss company. (ABB subsequently

acknowledged that it is the Swiss company and that the subsidiary and Texas business unit form part of ABB's corporate family.)

- Basurto admitted that through the "SITRACEN" and "Evergreen" contracts the Texas business unit provided network products and services to the Mexican Federal Electricity Commission (CFE), an SOE. The SITRACEN and Evergreen contracts generated more than US$44 million and more than US$37 million in revenue, respectively, for the Texas business unit.
- In respect to the SITRACEN contract, John J. O'Shea, formerly the Texas business unit's general manager, authorized the Texas business unit to make corrupt payments for the benefit of CFE officials through the use of an intermediary company. O'Shea also authorized Basurto and another co-conspirator to make corrupt payments to a CFE official on behalf of the Texas business unit. The money used in these bribes was generated from commission payments to Basurto from the Texas business unit.
- In respect to the Evergreen contract, Basurto and others met with CFE officials and agreed to pay those officials approximately 10 percent of the Evergreen contract's revenue in return for CFE officials awarding the contract to the Texas business unit. The conspirators further agreed that Basurto's Mexican company would serve as an intermediary for approximately US$1 million in corrupt payments over the course of the Evergreen contact, and that Basurto and another co-conspirator would retain a portion of these funds for their efforts. O'Shea caused the Texas business unit to wire these funds to Basurto and his family members for this purpose. Basurto then followed the CFE officials' instructions and transferred the funds to their officials. In addition, to conceal the remaining portion of the Evergreen contract's corrupt payments, CFE officials submitted false invoices to Basurto. Basurto then presented these false invoices to the Texas business unit for payment. The Texas business unit then deposited the payments for these false invoices in accounts in Germany and Mexico.

- Basurto and others sometimes referred to these payments as the "3WT" or "Third World Tax." The CFE officials were referred to as the "Good Guys."
- Basurto further admitted to facilitating the making of more than US$890,000 in corrupt payments to CFE officials or their designees and to structuring the payments to minimize concerns that might arise from large wire transfers.
- Finally, Basurto admitted that after the Texas business unit terminated O'Shea in August 2004, he and others engaged in a cover up to obstruct the DOJ's and SEC's investigation. As part of the cover up, Basurto and others created false, back-dated correspondence as well as documents purporting to demonstrate the provision of genuine services by the intermediaries used to bribe CFE officials.

Penalties

- Basurto's sentencing date has not been set. He faces a maximum of five years imprisonment, a fine of US$250,000 or twice the gain or loss realized from the illegal conduct, and three years supervised release.
- As part of his plea agreement, Basurto agreed to forfeit more than US$2 million in proceeds from the conspiracy.

Notes

- The DOJ charged Basurto, a Mexican citizen residing in Mexico City, as an agent of the Texas business unit.
- The DOJ's press release thanked German authorities for their assistance in the matter. Public documents also indicate substantial connections to Mexico and Switzerland.
- A Houston grand jury returned an 18 count indictment against O'Shea. The indictment also included a notice of forfeiture of nearly US$3 million.

UTStarcom Inc.

Conduct

- UTStarcom Inc. (UTSI) entered into a NPA with the DOJ and a settled civil action with the SEC to resolve various allegations related to providing money, travel and other things of value to government officials at state-owned telecommunications firms in violation of the FCPA.
- In the NPA, UTSI reportedly acknowledged responsibility for the conduct of its wholly-owned subsidiary, UTStarcom China Co. Ltd. (UTS-China) and UTS-China's employees and agents, who arranged and paid for employees of Chinese state-owned telecommunications firms to travel to tourist destinations in the United States. The trips were purportedly for individuals to participate in training at UTSI facilities. In reality, UTSI had no facilities at the destinations visited and no training took place. UTS-China recorded the trips as "training" expenses while the actual purpose was to obtain and retain business with the state-owned telecommunications firms.
- The SEC's complaint alleged violations of antibribery, books and records, and internal controls provisions of the FCPA.
- Specifically, the SEC alleged that UTS-China paid nearly US$7 million for the approximately 225 "training" trips.
- The SEC further alleged that UTSI paid more than US$4 million for executive education programs at US universities for mangers and employees of existing and potential Chinese state-owned telecommunications clients. The programs covered general management topics and were not specifically related to UTSI's products or business. UTSI recorded these expenditures as "marketing expenses."
- The complaint also alleges that UTSI "hired" individuals affiliated with Chinese and Thai state-owned telecommunications firms to work in the United States and provided them with work visas. In reality, the individuals did no work for

UTSI, but UTSI recorded the salary and benefits payments made to these individuals as "employee compensation."

- The SEC's complaint alleges that UTSI provided lavish gifts (such as French wines valued at nearly US$10,000) to agents of a Thai government customer and spent US$13,000 entertaining the Thai customer. UTSI recorded these expenditures as "marketing expenses."
- Finally, the complaint alleges that improper payments were made to consultants in China and Mongolia knowing they would use these payments to bribe foreign government officials.

Penalties

- To resolve the DOJ enforcement action, UTSI entered into an NPA. Under the reported terms of the agreement, the DOJ will not prosecute UTSI provided UTSI pays a US$1.5 million penalty, implements rigorous internal controls and cooperates fully with the DOJ.
- To resolve the SEC enforcement action, UTSI agreed to pay a US$1.5 million penalty, to be permanently enjoined from further violations of the FCPA and to provide the SEC with annual FCPA compliance reports and certifications for four years.

Notes

- The SEC's settlement provision requiring UTSI to provide annual FCPA compliance reports and certifications to the SEC for four years appears to be the first time such a provision has been publicly reported as part of an SEC settlement.
- The NPA, like that entered into by the DOJ and H&P in July 2009 to settle an FCPA enforcement action, allows UTSI to monitor and report to the DOJ its own remediation efforts without an independent monitor.