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Another Record Year Brings to an End a Decade That Saw the Explosion of FCPA Prosecution — Part II

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In this article, the author describes important developments in Foreign Corrupt Practices Act civil and criminal enforcement.

Several noteworthy cases and developments from 2009 represent a treasure trove of messages that prosecutors and regulators around the globe are sending to corporations and practitioners alike. In addition to those cases discussed in a prior article,[1] following is a summary of important cases and developments from 2009.

SEC CHARGES FORMER PRIDE INTERNATIONAL EXECUTIVE

On December 11, 2009, the United States Securities and Exchange Commission (the "SEC" or the "Commission") charged Bobby Benton, the former Vice President of Western Hemisphere Operations for Pride International, Inc., with Foreign Corrupt Practices Act ("FCPA") violations related to bribery of Mexican and Venezuelan government officials.[2] Pride International, based in Houston, Texas, is one of the world's larg-

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est offshore drilling companies.[3] Benton was charged with violations of the antibribery, internal controls, and books and records provisions of the FCPA, as well as a violation of Exchange Act Rule 13b2-2 regarding false representations to accountants.[4]

According to the complaint, from roughly 2003 to 2005 an unnamed employee of Pride International (the manager of the Venezuelan branch of a French subsidiary) authorized approximately $384,000 in payments to third party companies, with the understanding that the funds would be forwarded to an official of Venezuela's state-owned oil company in return for extensions of three drilling contracts.[5] For his part, Benton allegedly "redacted references to the Venezuelan payments in an action plan responding to an internal audit report" in an effort to conceal the payments from Pride International's internal and external auditors.[6]

Further, the complaint alleges that in late 2004 Benton himself authorized the payment of $10,000 to a third party, with the understanding that all or a portion of the money would be paid to a Mexican customs official in return for favorable treatment regarding customs deficiencies.[7]

Also in late 2004, Benton allegedly learned that a customs agent engaged by Pride International's Mexican subsidiaries had paid $15,000 to a Mexican customs official so that the export of a rig would not be delayed.[8]

Finally, in March 2005 and May 2006, Benton allegedly signed false certifications in connection with the company's 2004 and 2005 annual reports.[9] In each certification, Benton represented that he was not aware of any bribes or other violations of the FCPA when, according to the complaint, he was well aware of the bribes in Mexico and Venezuela.[10]

In a year where the government has concentrated on bringing individuals to task for their conduct, two of the charges against Benton illustrate the beginnings of a trend that perhaps ought to cause corporate executives some concern. First, the Commission charged Benton with covering up another employee's potentially violative conduct by redacting references to the Venezuelan payments in a "cleaned up" action plan addressing internal control weaknesses and directing that all "other draft versions should be deleted." Benton's email transmitting the "cleaned up" version also confirmed that his "revised" action plan was the version submitted to Pride's internal and external auditors. Second, the Commission charged Benton with failing to inform Pride's management, legal department, and internal

auditors of his knowledge of another employee's potentially improper payments and allowing false records relating to the payments to remain on the books and records. Third, Benton is charged with signing false certifications in connection with Pride's 2004 and 2005 annual reports. Allegedly, Benton represented that he knew of no bribes paid to government officials to obtain or retain business, when in fact he was aware of the Venezuelan and Mexico payments and, on one occasion, had authorized an illicit payment in Mexico. According to the Commission, "but for" Benton's false statements, Pride's management and internal and external auditors would have discovered the bribery schemes and the corresponding false books and records.

Given the current environment of aggressive prosecution of individuals and that Benton was responsible for "ensuring that Pride conducted its Western Hemisphere operations in compliance with the FCPA, that adequate controls were in place to prevent illegal payments, and that the company's books and records were accurate," it is not a surprise that the Commission charged Benton.[11] What is more pertinent here is what this case portends for the future for corporate executives with responsibility for operations in far-flung places.

FIVE INDICTED FOR SCHEME TO BRIBE HAITIAN TELECOM OFFICIALS

On December 7, 2009, the U.S. Justice Department announced that it had indicted two Florida businessmen, a Florida-based agent, and two former Haitian government officials for their roles in a foreign bribery scheme.[12] The Justice Department alleged that, from November 2001 to March 2005, the defendants conspired to pay more than $800,000 to shell companies, which would then use the funds to bribe officials of Haiti's state-owned national telecommunications company, Telecommunications D'Haiti ("Haiti Teleco").[13] The five individuals charged in the indictment are:

(1) Joel Esquenazi, the former president of an unnamed Miami-based telecommunications company, charged with one count of conspiracy to violate the FCPA and to commit wire fraud, seven counts of FCPA violations, one count of conspiracy to commit money laundering, and 12 counts of money laundering;

(2) Carlos Rodriguez, the former executive vice president of the same unnamed Miami telecommunications company, who faces the same charges as Esquenazi;

(3) Robert Antoine, a former director of international relations for telecommunications at Haiti Teleco, charged with one count of conspiracy to commit money laundering;

(4) Jean Rene Duperval, also a former director of international relations for telecommunications at Haiti Teleco, charged with one count of conspiracy to commit money laundering and 12 counts of money laundering; and

(5) Marguerite Grandison, Duperval's sister and the former president of Telecom Consulting Services Corp., who faces the same charges as Esquenazi and Rodriguez.[14]

Following their indictment, all five individuals made initial appearances before the court in Miami.[15] According to the indictment, the telecommunications company entered into a series of contracts with Haiti Teleco under which the company's customers could place telephone calls to Haiti.[16] The alleged corrupt payments were authorized by Esquenazi and Rodriguez and were allegedly paid to officials at Haiti Teleco.[17] The government maintains that these bribes were paid to obtain business advantages from Haitian officials, including preferred telecommunications rates, a reduction in the number of minutes for which payment was owed, and credits toward money owed.[18] The defendants allegedly used several shell companies to receive and forward payments in order to conceal the payments' improper nature and purpose.[19] Additionally, the government accuses the defendants of creating false records stating that the bribes were for "consulting services."[20]

The current indictments are related to the investigations of Antonio Perez and Juan Diaz, who entered guilty pleas in April and May 2009. Diaz was the president of J.D. Locator Services, one of the shell intermediary companies used by the current defendants.[21] Diaz served as an intermediary, using shell corporations to transfer more than $1 million from the Miami telecommunications companies to Haitian officials.[22] Perez was the former controller of the same telecommunications company as Esquenazi and

Rodriguez.[23] Perez recorded the payments to the shell corporations, with bank accounts opened and controlled by Diaz, as "consulting services."[24] According to court documents, the actions of Diaz and Perez violated the FCPA and money laundering laws.[25] Each faces a maximum penalty of five years in prison and a fine equal to the greater of $250,000 or twice the gross gain.[26] Diaz's sentencing was scheduled for March 31, 2010. Antonio Perez's sentencing scheduled for October 6, 2009, did not go forward.

It is interesting to note that the government charged Diaz and Perez with money laundering. As the government alleged, Diaz and Perez

> knowingly conduct[ed] a financial transaction affecting interstate and foreign commerce, which in fact involved the proceeds of specified unlawful activity, that is, a felony violation of the [FCPA]…knowing that the property involved in the financial transaction represented the proceeds of some form of unlawful activity, and that the financial transaction was designed…to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of said specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).[27]

Of special interest in this case is the fact that Antoine and Duperval, who were foreign government officials at the time of the alleged wrongdoing, cannot be charged under the FCPA as it does not apply to *recipients* of improper payments. They can, however, be charged with money laundering because they were part time residents of Florida and allegedly committed their offenses while in Florida. The Justice Department's decision to prosecute Antoine and Duperval provides a warning to other bribe recipients that the U.S. government is committed to its anticorruption stance, whether through use of the FCPA or otherwise.

OECD ADOPTS WORKING GROUP RECOMMENDATIONS

On November 26, 2009, the 38 member states of the Organisation for Economic Co-operation and Development ("OECD") agreed to implement new antibribery measures recommended by the OECD's Working Group on Bribery in International Business Transactions ("Working Group").[28]

According to OECD Secretary-General Angel Gurría, the "new Recommendation strengthens the legal framework for fighting bribery and corruption and ensures Parties to the Convention do more than enact laws to implement the Convention. They must put words into action."[29]

The Working Group's Recommendation for Further Combating Bribery of Foreign Public Officials called for member nations to:

(1) "[e]nsure companies cannot avoid sanctions by using agents and intermediaries to bribe for them;"

(2) "[p]eriodically review policies and approach on small facilitation payments;"

(3) "[i]mprove co-operation between countries on foreign bribery investigations and the seizure, confiscation and recovery of the proceeds of transnational bribery;"

(4) "[p]rovide effective channels for reporting foreign bribery to law enforcement authorities and for protecting whistleblowers from retaliation;" and

(5) "[work] more closely with the private sector to adopt more stringent internal controls, ethics and compliance programmes and measures to prevent and detect bribery."[30]

The Working Group began early this year to monitor member countries' progress in implementing the Recommendation's measures.[31] With the United States already at the forefront of the fight against international bribery, it remains to be seen whether the OECD measures will have a noticeable impact on FCPA enforcement. Nevertheless, the OECD's action is a clear sign that more countries are beginning to take the problem of corruption of government officials seriously.

FORMER GENERAL MANAGER OF ABB SUBSIDIARY CHARGED WITH FCPA VIOLATIONS

On November 23, 2009, the Justice Department announced that a former General Manager for a Texas-based subsidiary of ASEA Brown

Boveri, Ltd. ("ABB"), the Swiss electrical engineering company, had been arrested on charges of violating the FCPA.[32] John Joseph O'Shea was charged with one count of conspiracy to violate the FCPA, 12 counts of violating the FCPA, four counts of international money laundering, and one count of falsifying records in a federal investigation.[33] The Justice Department's announcement did not reveal the name of the Texas-based subsidiary, or identify ABB by name, but ABB later confirmed that O'Shea is a former employee who was terminated in the Fall of 2004 and that it "continue[d] to cooperate with US authorities."[34] The charges stem from allegations that O'Shea conspired to and did bribe Mexican government officials to secure contracts with the Comisión Federal de Electridad ("CFE"), a Mexican state-owned utility company.[35] The arrest coincides with the guilty plea of Fernando Maya Basurto, a Mexican citizen who acted as a middleman in the scheme.[36]

According to the indictment, in 1997 CFE awarded the Texas business unit of ABB a contract that would generate over $44 million in revenue.[37] In return, O'Shea and Basurto agreed to pay 10 percent of those revenues back to officials at CFE.[38] Then in 2003, CFE awarded the Texas business unit of ABB a contract worth over $37 million,[39] in return for which O'Shea and Basurto made approximately $1 million in corrupt payments to CFE officials.[40] The bribes were hidden with the use of Basurto's Mexican company as an intermediary, along with false invoices submitted to the Texas business unit of ABB by officials at CFE.[41] The money laundering counts allege that O'Shea "knowingly transported, transmitted, and transferred, and willfully caused others to transport, transmit, and transfer" monetary instruments and funds from the United States to bank accounts in Germany and Mexico with the intention that the transactions would "promote the carrying on of a specified unlawful activity, that is, a felony violation of the [FCPA]."[42]

Interestingly, ABB did not purchase the Texas business unit at issue in the O'Shea matter until 1999, two years after the alleged conspiracy had been entered into.[43] This fact alone would not shelter ABB from prosecution here, since successor liability in FCPA cases is well established. Moreover, many of the allegedly illegal acts took place after 1999, which also would serve as a basis for liability for ABB. ABB's case was surely

helped to some degree by discovering and disclosing the bribes, firing O'Shea in 2004, and cooperating with officials during the investigation.[44] O'Shea's arrest, however, is yet another example of the increased prosecution of individuals involved in FCPA violations.

GUILTY PLEA STEMMING FROM BRIBERY IN PANAMA

Two indictments, one resulting in a guilty plea, have been handed down concerning illicit payments in Panama. On November 13, 2009, the Justice Department announced that Charles Paul Edward Jumet, a former vice president and president of Ports Engineering Consultants Corporation ("PECC"), had pleaded guilty to a two count information charging him with conspiring to violate the FCPA and with making a false statement.[45] On December 15, 2009, John W. Warwick, another former president of PECC, was indicted on one count of conspiring to violate the FCPA.[46] Jumet admitted (and with respect to Warwick, the government alleges) that, from at least 1997 through July 2003, the two men and others conspired to make corrupt payments to officials of the government of Panama in order to obtain a maritime contract for PECC.[47] According to court documents, in December 1997, PECC was awarded a no-bid 20 year contract to service the lighthouses and buoys along Panama's waterways.[48] In return, the conspirators, according to the government's allegations in the information, authorized corrupt payments to Panamanian government officials, namely the former administrator and deputy administrator of Panama's National Maritime Ports Authority and a former high ranking elected executive official.[49] The payments, totaling more than $200,000, were made primarily through "dividends" to PECC's shareholders, which were shell companies owned by the Panamanian officials.[50] Jumet's false statement charge resulted from his claim to a government agent that one such "dividend" was a donation to the official's reelection campaign.[51]

The investigation in this case was initiated by the U.S. Department of Homeland Security, Immigration and Customs Enforcement, and was subsequently joined by the Federal Bureau of Investigation ("FBI").[52] Jumet faced up to five years in prison and a $250,000 fine for each count.[53]

Notably, the decision to charge Jumet with conspiracy to violate the

FCPA, as opposed to a substantive count, allowed the government to include criminal behavior whose statute of limitations period would have otherwise run. This is because "[c]onspiracy is a continuing offense" and the statute of limitations does not begin to run until "the date of the last overt act."[54] Thus, the definition of conspiracy effectively lengthens the statute of limitations for FCPA violations, at least as to acts in furtherance of the conspiracy.

CONGRESSMAN JEFFERSON SENTENCED FOR CORRUPTION

On August 5, 2009, the jury in former U.S. Representative William Jefferson's corruption trial voted to convict him of 11 of the 16 charges against him, but not for violating the FCPA.[55] On November 13, 2009, Jefferson was sentenced to 13 years in prison, well short of the 27 to 33 years recommended by the government.[56] The judge also ruled that Jefferson must repay the more than $470,000 and 30 million shares of stock obtained from his illegal acts.[57] Jefferson was charged with violating the FCPA by arranging bribes to Nigerian officials to win contracts for his family's companies, soliciting and accepting bribes, wire fraud, money laundering, and obstruction of justice.[58]

Jefferson made headlines in 2006 when the FBI found $90,000 in the freezer at the then-Representative's Washington, D.C. home.[59] The government contended that the money was part of $100,000 destined for the coffers of a Nigerian government official in exchange for giving business to Jefferson's family members.[60] The prosecution's key evidence on the FCPA charge was a recorded conversation between Jefferson and a wire-wearing Virginia businesswoman, Lori Mody, an investor in Jefferson's deals turned whistleblower.[61] On the tapes, Jefferson is caught saying that the Nigerian Vice President had agreed to pave the way for Representative Jefferson's telecommunications venture in return for a share of the profits.[62] Jefferson insisted that the statement was made solely to allay Mody's concerns about whether the deal would go through.[63]

Despite the notoriety surrounding the FCPA charge, the jury acquitted Jefferson on that count.[64] Jefferson was, however, convicted of "conspiracy to solicit bribes, deprive citizens of honest services by wire fraud and violate the [FCPA]."[65] But the law required that the jury find guilt on

only two of those three elements, and the verdict did not specify which elements the jury agreed on.[66] Thus, it is unclear whether the jury decided that Jefferson conspired to violate the FCPA. In the final analysis, the Jefferson case was more about domestic corruption than foreign. Nevertheless, the Jefferson conviction, along with the indictment and conviction of Frederic Bourke and Gerald and Patricia Green, illustrates the government's willingness to take these cases to trial.

WILLBROS CONSULTANT PLEADS GUILTY TO VIOLATING THE FCPA

On November 12, 2009, the Justice Department announced that Paul G. Novak, a former consultant for Willbros International, Inc., pleaded guilty to one count of conspiracy to violate the FCPA and one substantive count of violating the FCPA.[67] Willbros International is a subsidiary of Houston-based Willbros Group, Inc.[68] Novak admitted taking part in a conspiracy to pay more than $6 million in bribes to Nigerian government officials and officials from a Nigerian political party.[69] In exchange, the officials were to assist Willbros Group in obtaining the Eastern Gas Gathering System ("EGGS") Project, a natural gas pipeline system, which was valued at approximately $387 million.[70]

The bribes were made through the use of intermediary consulting companies represented by Novak.[71] The consulting companies would invoice Willbros West Africa, Inc., another subsidiary of Willbros Group, for supposed consulting services.[72] Once the money was received, Novak would use it to make corrupt payments to the Nigerian officials.[73]

Although Novak's sentencing will not take place until July 2010, Assistant Attorney General Lanny Breuer, in a speech shortly after Novak's guilty plea, remarked that a Willbros consultant had "agreed to a seven year, three month sentence, subject to a reduction for cooperation."[74] In addition to Novak, two other Willbros Group executives, Jim Bob Brown and Jason Steph, have pleaded guilty to FCPA charges stemming from bribery related to the EGGS Project.[75] Meanwhile, James K. Tillery, a Willbros executive indicted alongside Novak, remains at large.[76]

Novak's guilty plea serves as a reminder that Nigeria continues to be

a hotbed of corruption that has resulted in several FCPA cases.[77] Notably, Nigeria was also the country where Halliburton and KBR allegedly paid bribes that led to the $579 million in combined criminal and civil penalties. Also of note, though, is a statement by Assistant Attorney General Lanny Breuer, who announced the settlement for the Justice Department. Breuer insisted that the "use of intermediaries to pay bribes will not escape prosecution under the FCPA" and that the Department "will continue to hold accountable all the players in an FCPA scheme—from the companies and their executives who hatch the scheme, to the consultant they retain to carry it out."[78] While this policy is not a new stance on the part of the Justice Department, such a strong formulation should illustrate that there is no "getting around" the FCPA.

FREDERIC BOURKE SENTENCED TO ONE YEAR IN PRISON IN LONG RUNNING, HIGH PROFILE FCPA TRIAL

On July 10, 2009, a jury in the Southern District of New York returned a guilty verdict in the month long trial of Frederic Bourke, a wealthy U.S. entrepreneur and former member of the Ford family.[79] Although prosecutors had sought the maximum penalty of 10 years, on November 11, 2009, Bourke was sentenced to one year and one day in prison and a $1 million fine.[80] Bourke was charged with conspiracy to violate the FCPA and the Travel Act, conspiracy to violate money laundering laws, and making false statements to the FBI.[81] The jury voted to acquit on the money laundering allegations.[82]

The jury found that Bourke either knew or consciously avoided knowledge of evidence that his business partner in Azerbaijan, Victor Kozeny, had paid millions of dollars in bribes to senior Azeri government officials, including then-President Heidar Aliyev, in connection with a 1998 oil deal.[83] The bribes were paid in order to ensure that a venture formed by Kozeny would be allowed to purchase Azerbaijan's state oil company, Socar.[84] In addition, the Azeri government officials were to have a secret two-thirds interest in the venture in return for their cooperation.[85] The government did not allege that Bourke himself made any improper payments.[86] The key evidence against Bourke was the testimony of Kozeny's

former aide, Thomas Farrell, and former lawyer, Hans Bodmer,[87] each testifying that he had told Bourke about the bribes.[88] Bodmer testified that he explicitly told Bourke about the details of the scheme in March 1998 during a visit to Baku, Azerbaijan's capital, but suspected that Bourke already knew.[89] Regardless of Bourke's knowledge at that time, the improper payments continued for approximately a year afterwards.[90] Kozeny himself is currently residing in the Bahamas, having waged a (thus far) successful fight against extradition to the United States on charges that he conspired to, and did, violate the FCPA.[91]

Perhaps the most important lesson from the Bourke trial is that *actual knowledge* of improper payments is not required for an FCPA conviction. At trial, Bourke insisted that he knew nothing about Kozeny's bribes. The prosecution, however, introduced evidence that he did know. Judge Shira Scheindlin instructed the jury that it could convict whether Bourke actually knew about the bribes or consciously disregarded a high probability that bribes would be or were paid.[92] In other words, the "head in the sand" defense is no longer valid, if it ever was. An executive in a position to know something is amiss cannot shield himself from liability by choosing not to investigate further. This scenario must be distinguished, however, from an executive who, through negligence or incompetence, fails to acquire actual knowledge of FCPA violations.[93] In the latter case, criminal liability will likely not attach. The lesson is that once one knows that there *may* be violations of the FCPA, the best course of action is to investigate that possibility to a conclusion.

Initially, it seemed that Bourke would face even more liability than the charges he was eventually tried for. Bourke was originally charged with substantive violations of the FCPA, in addition to the conspiracy count on which he was eventually found guilty.[94] The conduct alleged in four of those counts occurred no later than early July 1998, and conduct alleged in the fifth took place in September 1998.[95] The statute of limitations for Bourke's alleged crimes is established by 18 U.S.C. § 3282(a), which requires that an indictment be found "within five years after such offense shall have been committed." Thus, the limitations period expired in early July 2003 for the first four charges and September 2003 for the fifth. On July 21, 2003, after the first limitations period had run, the government applied for, and subse-

quently received, an order tolling the statute of limitations while it waited on evidence it had requested from the Netherlands and Switzerland.[96] The indictment was eventually returned in May 2005.[97] In October 2006, Bourke moved to dismiss most of the charges against him, arguing that the statute of limitations cannot be suspended after it has already expired.[98] The district court, and later the Second Circuit, agreed. In the resulting superseding indictment, the government pared down the charges to conspiracy to violate the FCPA and the Travel Act, conspiracy to violate money laundering laws, and making false statements to the FBI.[99]

Another notable angle to the Bourke prosecution is that Bourke was apparently an early whistleblower against Kozeny. Bourke's lawyers laid out this narrative in 2005 in a memo supporting a motion to reassign all the Kozeny related cases to one judge.[100] According to Bourke, once he became suspicious that Kozeny was making improper payments, he began compiling evidence "to persuade law enforcement to investigate and prosecute Kozeny."[101] Bourke allegedly paid a visit, "at considerable personal risk," to Azeri President Aliyev to confront him with the collected evidence.[102] Bourke would eventually testify, in the role of fraud victim, before a New York state grand jury that indicted Kozeny on 15 counts of grand larceny and two counts of possession of stolen property.[103] Although Bourke's actions clearly did not prevent the government from aggressively prosecuting him, they may have influenced Judge Scheindlin in her decision not to impose the maximum sentence.

Bourke's conviction and sentencing may be the finale to the prosecution of Kozeny's associates and investors. To this point, the government has won every round except the battle to bring the man at the center of the corruption to justice. The extradition decision is on appeal. For his part, Kozeny, who admits paying bribes in Azerbaijan and who has been convicted in his native Czech Republic on unrelated charges, has other plans—to clear his name of all wrongdoing and run for the European Parliament by 2014.[104]

AGCO CORPORATION PLEADS GUILTY IN YET ANOTHER OIL-FOR-FOOD PROSECUTION

On September 30, 2009, AGCO Corporation, a manufacturer and supplier of agricultural equipment based in Duluth, Georgia, agreed to pay

more than $18.3 million to settle FCPA charges brought by the SEC, the Justice Department, and Danish authorities related to its business dealings in Iraq.[105] The SEC charged AGCO with violations of the FCPA's books and records and internal controls provisions.[106]

The SEC's complaint alleged that, between 2000 and 2003, AGCO subsidiaries paid approximately $5.9 million in illegal kickbacks to Iraqi officials in connection with the company's participation in the United Nations Oil-for-Food Program.[107] According to the complaint, AGCO's UK subsidiary, AGCO Ltd., marketed and negotiated the sale of equipment to Iraq through two other AGCO subsidiaries in France and Denmark.[108] These subsidiaries then made improper payments, in the form of "after sales service fees," via a third party agent based in Jordan.[109] To conceal the scheme, AGCO's employees created a fictional account in its books and records called "Ministry Accrual," set up to appear as if it was being used for paying the agent's commissions.[110] The complaint alleges that the dummy account was created by AGCO Ltd.'s marketing staff with almost no oversight from the finance department.[111] Indeed, according to the SEC, no one even questioned the existence of the account.[112] As with other Oil-for-Food cases, AGCO increased its bids to the United Nations by 10 percent in order to cover the cost of the improper payments.[113]

Under the settlement agreement, AGCO neither admitted nor denied the charges against it, but agreed to pay $13.9 million in disgorged profits plus $2 million in prejudgment interest and a civil penalty of $2.4 million.[114] AGCO will also pay a $1.6 million penalty under a deferred prosecution agreement with the Justice Department.[115] Finally, AGCO agreed to enter into a criminal disposition in which the Danish State Prosecutor for Serious Economic Crime will confiscate over $600,000.[116] The Denmark penalty marks another example of parallel prosecutions for international corruption. As more countries toughen their stances on overseas bribery, such instances of multiple prosecutions are likely to rise.

HUSBAND AND WIFE PRODUCERS CONVICTED OF BRIBES RELATED TO THAI FILM FESTIVAL

On September 11, 2009, husband and wife film producers Gerald and Patricia Green were convicted of conspiring to violate the FCPA and money

laundering laws, of nine counts of violating the FCPA, and of seven counts of money laundering.[117] Additionally, Patricia Green was found guilty of two counts of falsely subscribing to a U.S. income tax return, knowing that the false and overstated figure included the improper payments.[118]

The Greens had been charged, in a March 11, 2009 superseding indictment, with paying over $1.8 million to a Thai government official in return for $14 million in contracts.[119] The indictment alleged that the Greens, through several of their businesses, allegedly made corrupt payments to a governor of the Tourism Authority of Thailand, a government agency, often using the official's friend and daughter as intermediaries.[120] In return, the Greens received lucrative contracts related to staging the Bangkok International Film Festival.[121]

Gerald Green also faced an obstruction of justice count, which alleged that he, believing the bribe payments to be under investigation by the FBI, altered and falsified budgets to make the payments look like legitimate film production expenses.[122] The jury could not reach a verdict on this count.[123]

The maximum penalty for each of the conspiracy and FCPA charges is five years, while the money laundering charges each carry up to a 20-year term.[124] Patricia Green's false subscription conviction carries a maximum penalty of three years in prison and a fine of not more than $100,000.[125] In addition to prison terms, the Greens face forfeiture of any assets derived from proceeds traceable to their alleged offenses.[126] Sentencing was scheduled for April 29, 2010.[127]

After Bourke and Jefferson, the Greens' conviction marks the third FCPA trial of individuals this year to end in a guilty verdict. There have been no acquittals. In addition to demonstrating how difficult it is for a defendant to prevail in an FCPA trial, the prosecution of the Greens may be the first in a line of Hollywood-related cases. Other economic sectors, such as the pharmaceutical and oil and gas industries, have been targeted in the past, and if the Greens' practices are any indication, the film industry suffers from more than its share of international graft.

CALIFORNIA BUSINESSMAN PLEADS GUILTY TO BRIBING UK OFFICIALS

On September 3, 2009, Leo Winston Smith, former Director of Sales

and Marketing for Pacific Consolidated Industries, LP ("PCI"), pleaded guilty to violations of the FCPA stemming from bribes paid to an official in the UK Ministry of Defense.[128] This followed the May 2008 guilty plea of Martin Eric Self, part owner and former President of PCI, who was sentenced to two years' probation for essentially the same conduct.[129]

According to the facts stipulated to in the Plea Agreement, Smith and Self caused approximately $70,000 in bribes to be paid to a UK official in return for government contracts.[130] The bribes were funneled through a sham marketing agreement executed between Self and a relative of the official.[131] Smith was also charged with obstructing and impeding the due administration of tax laws by under-reporting his income and failing to file a tax return for his company, Design Smith, Inc.[132]

Smith's sentencing had been scheduled for December 18, 2009, but the court granted Smith's motion for a continuance. Smith's sentencing was scheduled for March 22, 2010.[133] The government is asking that the court impose a $200 special assessment, a fine of $75,000, and a sentence of 37 months imprisonment followed by a three year term of supervised release.[134]

SEC SETTLES WITH FORMER FARO EXECUTIVE

On August 28, 2009, the Commission settled with former Faro Technologies, Inc. executive Oscar Meza regarding violations of the FCPA's antibribery, books and records, and internal controls provisions, as well as aiding and abetting his former employer's violations of the FCPA.[135] Faro settled with both the Commission and the Justice Department in June 2008 over its own violations. With respect to its settlement with the Justice Department, Faro paid a $1.1 million criminal penalty and accepted the appointment of a compliance monitor for a two year term.[136] In settling with the Commission, Faro agreed to pay $1.85 million in disgorgement and prejudgment interest.[137]

For his part, Meza allegedly authorized a former employee of Faro's Chinese subsidiary, Faro Shanghai, Ltd, to make improper payments to employees of Chinese state-owned companies in order to obtain contracts.[138] According to the indictment, as a result of Meza's actions, Faro Shanghai paid a total of $444,492 in bribes from 2004 through 2006, resulting in approximately $4.5 million in sales and approximately $1.4 million in net

profits.[139] Additionally, to cover up the improper payments, Meza ordered the accounting staff to alter the books and records and authorized the use of third party distributors.[140]

Without admitting or denying the charges against him, Meza agreed to a final judgment under which he is permanently enjoined from further violations of the FCPA and will pay a $30,000 civil penalty and $26,707 in disgorgement and prejudgment interest.[141]

JUSTICE DEPARTMENT'S OPINION RELEASE 09-01 CLARIFIES REACH OF FCPA

On August 3, 2009, the Justice Department issued FCPA Opinion Release 09-01. The request was submitted by an unnamed U.S. company ("Requestor") that designs and manufactures a certain type of medical device. Requestor is one of only a small number of global companies to design and manufacture the type of medical device at issue. Requestor's competitors already operate and sell their products to the government of a certain foreign country, but Requestor is not well known to that country's government because its sales in that country to date have been mainly in the private sector.

In March 2009, a senior official of a government agency ("Senior Official") in the unspecified foreign country told Requestor about his government's plan to establish a program to provide the medical device to patients in need and what the Senior Official believed Requestor should do in order to participate successfully in the program. The government, the Senior Official said, intended to purchase the medical devices and then subsidize the cost when it resold them to patients, but would only purchase (and thus endorse) those medical devices which it had technically evaluated with favorable results.

Because the government was not familiar with Requestor's medical device, the Senior Official asked the company to provide sample medical devices to government health centers for evaluation. Requestor represented to the Justice Department that it had no reason to believe that the Senior Official would personally benefit from the donation of the medical devices. Together, the company and the government decided on a sample size of 100 units distributed among 10 health centers, with Requestor se-

lecting the participating centers. The approximate value of the medical devices and related items and services to be provided by Requestor was $19,000 per medical device, for a total of $1.9 million.

It was proposed that the 100 patient recipients would be selected from a list of candidates (provided by the participating medical centers) by a working group of healthcare professionals. Requestor's country manager, who received FCPA training in January 2008 and March 2009, would be a part of that working group. Close family members of the government agency's officers or employees, working group members, and employees of the participating medical centers would be ineligible for the trial unless (a) the government-employed relatives of the recipient held low level positions and could not influence patient selection or the testing process; (b) the requisite economic criteria were clearly met; and (c) the recipient was a more suitable candidate than those not selected for participation. As a further safeguard, Requestor's country manager would review the selection of any immediate family members of any other government officials (*e.g.*, those unaffiliated with the medical device project of the government agency) to ensure that the criteria were properly and fairly applied.

Evaluation of the donated medical devices would be based on standard and objective criteria. If the evaluation yielded favorable results, then Requestor's medical device would be eligible for the government's program, along with the medical devices of Requestor's other competitors, which had already been declared eligible. None of the company's medical devices would be promoted by the government over other qualified medical devices.

Based on these representations, the Justice Department opined that it had no intention of taking any enforcement action, reasoning that the proposed action fell outside the scope of the FCPA because the donated products would be provided to the foreign government, as opposed to individual government officials, for ultimate use by patient recipients selected in accordance with specific guidelines. The Justice Department's opinion appears to be consistent with the strictures of the FCPA because the prohibited conduct covers the giving of something of value to foreign government officials, as opposed to the foreign government itself.[142]

The most immediate comparison to Opinion Release 09-01 is Opinion Release 81-02, in which Iowa Beef Packers, Inc. wished to promote

sales by furnishing samples of its packaged beef products to officials of the Soviet Ministry of Foreign Trade.[143] As in Opinion Release 09-01, the Justice Department declined to take any enforcement action, although without providing a rationale. In Opinion Release 81-02, the individual sample packages were valued at no more than $250, for a total of less than $2,000—a far cry from the $1.9 million worth of high tech medical equipment at issue in Opinion Release 09-01.

In Opinion Release 09-01, the Justice Department was careful to note that the transaction fell "outside the scope of the FCPA." In other words, the donation could be made without implicating the FCPA at all. Opinion Release 81-02, on the other hand, can be read as falling within the FCPA's promotional expenses affirmative defense. That is, the transaction would have been a violation but for the defense provided by the statute. Under the FCPA, it is an affirmative defense that:

> the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to (A) the promotion, demonstration, or explanation of products or services; or (B) the execution or performance of a contract with a foreign government or agency thereof.[144]

What, one might ask, distinguishes Opinion Release 09-01 from Opinion Release 81-02? Opinion Release 09-01 can be factually distinguished from Opinion Release 81-02 in that, in the latter, Iowa Beef Packers provided its samples to *officials* of the Soviet Ministry of Foreign Trade in order to influence their purchasing decision. But because the sample packages were of a reasonable value and directly related to the promotion of products, the affirmative defense was deemed applicable. The same defense was implicated, but not explicitly mentioned, in Opinion Releases 82-01 and 83-03 (both involving Missouri's payment of travel expenses to promote its agricultural products to foreign officials), and Opinion Releases 83-02 and 85-01 (in which U.S. companies paid travel expenses for the visit of foreign officials to the companies' U.S. facilities). More recently, in Opinion Release 08-03, the Justice Department explicitly

cited the promotional expenses defense as the reason for declining any enforcement action against TRACE International, which proposed to pay the travel expenses of journalists at Chinese state-owned media outlets so the journalists could cover TRACE's press conference. Unlike Opinion Releases 81-02, 82-01, 83-02, 83-03, 85-01, and 08-03, Requestor in Opinion Release 09-01 did not need to resort to the promotional expenses defense, even though it was promoting its goods, because its donation was not "incurred by or on behalf of a foreign official, party, party official, or candidate."[145] Instead, the primary beneficiary of the donation was the government, rather than an individual government official or officials.

Companies that wish to provide sample products or pay for promotional expenses for foreign governments and/or foreign government officials in their individual capacity will be well served to familiarize themselves with these opinion releases and other relevant pronouncements by the Justice Department and the Commission to avoid inadvertently running afoul of the FCPA's antibribery provisions. Opinion Release 09-01 appears to suggest that, where possible, it is better to provide products and other things of value to the foreign government itself rather than to individual foreign government officials. Of course, whatever the structure, anything provided to a foreign government or individual foreign government officials must be clearly, accurately, and transparently recorded on the company's books and records.

CONTROL COMPONENTS SETTLES; TWO OFFICERS PLEAD GUILTY WHILE SIX OTHERS GET TRIAL DATES

On July 31, 2009, Control Components, Inc., ("CCI"), a California-based valve company, pleaded guilty to violations of the FCPA and the Travel Act.[146] This followed the January and February 2009 guilty pleas of two of the company's former executives, Mario Covino, the former worldwide sales director, and Richard Morlok, the former finance director, who are scheduled to be sentenced in February 2011.[147] Additionally, in April 2009, six former CCI executives were charged with violations of the same statutes and are scheduled for trial on November 2, 2010.[148]

CCI admitted that from 2003 through 2007, it made approximately

236 corrupt payments in 36 countries, totaling approximately $6.85 million, resulting in net profits of approximately $46.5 million from sales related to those corrupt payments.[149] The payments were made to officers and employees of CCI's state-and privately-owned customers around the world, including those in China, South Korea, Malaysia, and the United Arab Emirates, with the aim of obtaining or retaining business.[150]

Pursuant to the plea agreement, CCI will pay a criminal fine of $18.2 million; create, implement, and maintain a comprehensive antibribery compliance program; and retain an independent compliance monitor for three years to review the design and implementation of its compliance program and make periodic reports to CCI and the Justice Department. In addition, CCI agreed to a three year term of organizational probation. Moreover, CCI agreed to continue to cooperate with the Justice Department in its ongoing investigation.[151]

Morlok and Covino both pleaded guilty to conspiring to violate the antibribery provisions of the FCPA and agreed to cooperate with the government in its further investigation of the company.[152] Morlok and Covino were scheduled to be sentenced January 25, 2010, but their sentencing dates have been reset to February 14, 2011.[153]

The six former executives charged in April 2009 with conspiring to violate the antibribery provisions of the FCPA[154] include the company's former chief executive officer, the former director of sales for China and Taiwan, the former director of worldwide sales, the former vice president of worldwide customer service, the former vice president and head of sales for Europe, Africa, and the Middle East, and the former president of the company's Korean office.[155]

The current indictment charges that the six defendants, over a ten year period, conspired to, and did, pay approximately $4.9 million in bribes to officials of foreign state-owned companies, in violation of the FCPA.[156] They are also alleged to have paid $1.95 million in bribes to officers and employees of both foreign and domestic privately held companies, in violation of the Travel Act.[157] All told, between 2003 and 2007, the company allegedly made approximately 236 corrupt payments in over 30 countries, including China, South Korea, Malaysia, and the United Arab Emirates.[158] Additionally, one of the defendants is charged with destruction of records, which carries a maximum prison term of 20 years.[159]

On May 18, 2009, the court granted in part the defendants' joint motion for a bill of particulars.[160] The court held that the government had to provide within 20 days the following information for each of the 236 alleged bribes: (i) the date of the payment; (ii) the amount of the payment; and (iii) the name and business affiliation of the recipient, or if the recipient is an intermediary, the business affiliation of the person who was intended to benefit from the payment.[161] With a total of eight employees indicted, CCI is one of the premier examples of the government's increasing interest in prosecuting individual employees for FCPA violations.

CANADIAN NATIONAL WANTED ON FCPA CHARGES ARRESTED IN GERMANY

In keeping with the recent trend of FCPA enforcement actions against individuals, a Canadian national indicted in the United States for FCPA violations was arrested on July 30, 2009, in Germany.[162] The Justice Department immediately announced it would seek extradition to the United States. The individual, Ousama Naaman, was originally indicted on August 7, 2008, for one count of conspiracy to commit wire fraud and to violate the FCPA and two counts of violating the FCPA.[163]

According to the indictment, from 2001 to 2003, Naaman, acting on behalf of an unnamed U.S. chemical company, paid 10 percent kickbacks to Iraqi government officials in exchange for contracts under the Oil-for-Food Program.[164] The U.S. company, like other companies involved in the Oil-for-Food FCPA cases, inflated its contract price to cover the cost of the kickbacks.[165] Additionally, the indictment alleges that in 2006, Naaman paid $150,000 in bribes, on behalf of the same U.S. company, to officials in the Iraqi Ministry of Oil so that they would keep a competing product out of the Iraqi market.[166] If convicted on all the charges, Naaman faces up to 15 years in prison.[167]

HELMERICH & PAYNE SETTLES CHARGES OF FOREIGN BRIBERY IN SOUTH AMERICA

On July 30, 2009, Helmerich & Payne, Inc., an Oklahoma-based pro-

vider of oil drilling equipment and personnel, agreed to pay $1 million to settle FCPA charges brought by the Justice Department as part of a two year nonprosecution agreement.[168] On the same day, Helmerich & Payne settled with the SEC on related allegations, agreeing to pay over $375,000 in disgorgement and prejudgment interest.[169] The charges concerned improper payments purportedly made by Helmerich & Payne to customs officials in Argentina and Venezuela.[170] According to the Justice Department's announcement, the bribes were meant to allow Helmerich & Payne to "import and export goods that were not within regulations, to import goods that could not lawfully be imported, and to evade higher duties and taxes on the [imported] goods."[171] Helmerich & Payne made most of the improper payments indirectly through customs brokers.[172] After making the payments, the brokers would then bill Helmerich & Payne for phony expenses such as "additional assessments" or "urgent processing."[173] In addition to the $1 million criminal penalty, Helmerich & Payne also agreed to implement rigorous internal controls and cooperate fully with the Justice Department's ongoing investigation.[174] Because of Helmerich & Payne's voluntary disclosure, "thorough self-investigation," and "extensive remedial efforts," the government agreed not to prosecute provided the company continues its efforts for two years.[175]

The Helmerich & Payne settlement illustrates two recurring themes of FCPA enforcement and compliance. The first is that channeling improper payments through third party agents does not immunize a company from liability. The second is that the government will likely reward voluntary disclosure and full cooperation with a lighter penalty, although it is difficult to know the extent of such reward.

AVERY DENNISON SETTLES CHARGES OF BRIBES IN CHINA, INDONESIA, AND PAKISTAN

On July 28, 2009, office products giant Avery Dennison Corporation settled two FCPA enforcement proceedings with the SEC.[176] Both proceedings stemmed from improper payments (and promises of improper payments) made to foreign officials by Avery Dennison's Chinese subsidiary and other acquired entities.[177] In a civil enforcement action, Avery Dennison

agreed to pay a civil penalty of $200,000.[178] In the related administrative proceeding, the company was ordered to cease and desist its violations and to disgorge $273,313 and $45,457 in prejudgment interest.[179]

According to the complaint, between 2002 and 2005 Avery Dennison's Chinese subsidiary spent $30,000 on providing government officials with kickbacks, sightseeing trips, and other gifts.[180] In the largest of these payments, an Avery Dennison sales manager, to secure a sale to a state-owned end user, allegedly agreed to pay a $25,000 "commission" through a distributor to a project manager at the end user.[181] That payment resulted in $466,162 in sales, on which Avery turned a profit of $273,213.[182]

Additionally, after Avery Dennison acquired a company in June 2007, the acquired company continued its preacquisition practice of making illegal petty cash payments to officials in Indonesia, Pakistan, and China with the aim of influencing these officials to help Avery Dennison entities to obtain or retain business.[183] Together, these improper payments amounted to $51,000.[184] According to the complaint, "Avery Dennison failed to accurately record these payments and gifts in the company's books and records, and failed to implement or maintain a system of internal accounting controls sufficient to detect and prevent such illegal payments or promises of illegal payments."[185] In August 2009, the Justice Department informed Avery Dennison that it had declined to take action against the company.[186]

Although this is certainly neither the first nor the last case involving FCPA violations by a company's far-flung subsidiaries, it serves as a reminder of how even an attenuated connection can result in liability for the parent company. In Avery Dennison's case, the Chinese subsidiary is "owned by Avery Dennison Hong Kong BV, which is in turn wholly owned by Avery Dennison Group Denmark ApS, which is in turn wholly owned by Avery Dennison Corporation."[187] This far-reaching risk of liability reinforces the point that FCPA compliance programs must be instituted throughout an organization if they are to be truly effective.

SIEMENS PENALIZED BY WORLD BANK AND UNITED NATIONS

Siemens AG settled FCPA-related charges with the Justice Department and the Commission in December 2008 for a combined $800 mil-

lion. On July 2, 2009, the World Bank Group announced a settlement with Siemens that will require Siemens to pay $100 million over the next 15 years in support of anticorruption campaigns around the world.[188] Additionally, the settlement prescribes up to a four year debarment for Siemens' Russian subsidiary, as well as a two year shutout on World Bank contracts for Siemens AG and all of its affiliates.[189] The settlement follows a World Bank investigation into corrupt practices during a World Bank financed transportation project in Moscow. The Russian subsidiary allegedly paid about $3 million in bribes from 2005 through 2006 in relation to the Moscow Urban Transport Project.[190]

The World Bank penalty follows a lighter sentence imposed by the United Nations Secretariat Procurement Division in March 2009, which stemmed from Siemens' December 2008 guilty plea to FCPA violations.[191] The United Nations Secretariat Procurement Division suspended Siemens from its vendor database for a period of only six months.[192]

These penalties imposed by World Bank and the United Nations illustrate the collateral consequences of FCPA violations. Indeed, the United States' FCPA statute is simply one tool in the fight against international corruption. Like Siemens, a company may also face charges in its home country, or the home country of its subsidiary, or before an international body. Additionally, an investigation by one authority may encourage parallel prosecution by authorities with overlapping jurisdiction. Thus, the moral is that the consequences of international bribery can be much farther reaching than prosecution under the FCPA.

NEXUS TECHNOLOGIES EMPLOYEE PLEADS GUILTY

In September 2008 Nexus Technologies Inc., a Delaware export company with offices in Pennsylvania, New Jersey, and Vietnam, and four of its employees, Nam Nguyen, Joseph Lukas, Kim Nguyen, and An Nguyen, were charged with conspiracy to bribe Vietnamese government officials in exchange for contracts to supply equipment and technology to government agencies.[193]

On June 29, 2009, Lukas pleaded guilty to the charges, admitting that from 1999 to 2005, he and other Nexus employees conspired to, and did,

pay bribes to Vietnamese government officials.[194] Lukas, who was responsible for negotiating contracts with U.S. suppliers, now faces up to 10 years in prison. His sentencing was scheduled for April 6, 2010.[195] There is no word yet whether the other defendants plan to follow Lukas's lead and plead guilty. Lukas's plea and the indictments of the other Nexus employees are yet another example of the government's increasing willingness to prosecute individuals, and not simply the business entities they represent.

AEROSPACE AND DEFENSE SYSTEMS GIANT SETTLES WITH SEC OVER ACTIONS OF SUBSIDIARY'S PRESIDENT

On May 29, 2009, the Commission settled with Thomas Wurzel, the former president of ACL Technologies, Inc., a former subsidiary of United Industrial Corporation ("UIC"), providers of aerospace and defense systems.[196] While not admitting the allegations against him, Wurzel agreed to a final judgment that ordered him to pay a $35,000 civil penalty and permanently enjoined him from violating Sections 30A and 13(b)(5) of the Exchange Act and Rule 13b2-1 promulgated thereunder.[197] On the same day, UIC agreed to cease and desist its violations of Sections 30A and 13(b)(2)(A)(B) of the Exchange Act, and to pay $337,679.42 in disgorgement and prejudgment interest.[198]

The penalties result from the Commission's allegations that Wurzel authorized improper payments to an Egypt-based agent, knowing (or consciously disregarding the high probability) that the agent would use at least some of that money to bribe Egyptian Air Force officials in order to persuade the officials to award business related to a Cairo military aircraft depot to UIC.[199] Wurzel allegedly booked the payments to the Egypt-based agent as payments for labor subcontracting work, equipment and materials, and marketing services.[200] Wurzel later instructed his subordinates to create false invoices.[201] UIC, through its subsidiary ACL, won the contract, which resulted in gross revenues of $5.3 million and net profits of $267,000.[202] The settlements of Wurzel and UIC provide further illustrations of the government's focus on pursuing culpable individuals, as well as the reach of parent company liability.

FCPA FALSE ALARM OR FAUX PAS?

On May 8, 2009, Sun Microsystems filed a Form 10-Q with the SEC in which it acknowledged that it had "identified potential violations of the FCPA, the resolution of which could possibly have a material effect" on its business.[203] The announcement came less than a month after Oracle Corp. had agreed to buy Sun for $7.4 billion.[204] In its 10-Q, Sun went on to state that it had (a) initiated an internal investigation with the help of outside counsel; and (b) made a voluntary disclosure to the Justice Department, the SEC, and certain foreign government agencies regarding its own investigation.[205] Without any further public disclosure, Sun, on June 8, 2009, filed a Definitive Merger Proxy with the SEC, representing that it had "complied with the FCPA and other applicable anti-corruption laws."[206] Although the reasons for the seemingly inconsistent disclosures remain unknown, Sun's speedy disclosure continues a trend that has appeared in major deals over the last few years, which is that companies in the middle of preacquisition due diligence often, under the threat of successor liability, disclose their due diligence findings to the Justice Department and the SEC in an effort to resolve, before closing, any preacquisition FCPA related issues.

Another possibility, however, is that Sun's disclosures raise issues similar to those arising from the Titan Corporation's representations in connection with its proposed acquisition by Lockheed Martin Corporation. Titan's actions led the Commission to issue a Report of Investigation, pursuant to Section 21(a) of the Exchange Act. There, Titan affirmatively represented in the September 2003 Merger Agreement that "neither [the] Company nor any of its Subsidiaries, nor any director, officer, agent or employee of the Company or any of its Subsidiaries, has…taken any action which would cause the Company or any of its Subsidiaries to be in violation of the Foreign Corrupt Practices Act."[207] Titan referred to this FCPA representation in its proxy statement, to which was appended the complete Merger Agreement.[208] Subsequently, in March 2005, Titan settled with the Commission over FCPA violations in Benin.[209] While the Commission did not charge Titan with disclosure violations, the Report of Investigation stressed that the disclosure of merger agreement representations can lead to liability if such disclosure is false or misleading, even if the underlying contract was not prepared as a disclosure document.[210]

ROCKET SCIENTIST SENTENCED TO 51 MONTHS IN PRISON FOR OFFERING TO BRIBE CHINESE OFFICIALS

On April 7, 2009, Shu Quan-Sheng was sentenced to 51 months in prison, to be followed by two years of supervised release, after pleading guilty in November 2008 to violating the Arms Export Control Act and the antibribery provisions of the FCPA.[211] Quan-Sheng, a physicist and naturalized U.S. citizen, illegally exported technical data and defense services to China and offered and paid bribes to Chinese government officials.[212]

Quan-Sheng, acting for his company AMAC International, based in Newport News, Virginia, with offices in Beijing, and for a French company he represented, offered money to members of China's 101st Research Institute in order to secure a contract for the development of a liquid hydrogen tank system.[213] On three occasions in 2006, Quan-Sheng offered officials bribes in the form of "percentage points," totaling $189,300.[214] In January 2007, the French company won the contract for the $4 million project. Prior to sentencing, Quan-Sheng forfeited $386,740 to the federal government.[215] The sentencing order did not impose any further fines or restitution.[216]

NEW REPORT ON OECD ANTIBRIBERY CONVENTION PAINTS GLOOMY BUT HOPEFUL PICTURE

On June 23, 2009, Transparency International, an international nongovernmental organization based in Berlin, Germany, which describes itself as "the global civil society organisation leading the fight against corruption," released its *Progress Report 2009: Enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*.[217] The OECD adopted the Convention in 1997, and it now numbers 38 countries as signatories. The Convention requires all parties to make it an offense to "intentionally offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business."[218]

Despite the promise that such an international commitment to fight corruption represents, Transparency International's fifth annual Progress Report suggests the outlook appears grim.

The takeaway from the 2009 Progress Report is that enforcement of the Convention has been "extremely uneven." In the report, Transparency International grouped countries into three categories: "Active Enforcement," "Moderate Enforcement," and "Little or No Enforcement."[219] Only four countries—Germany, Norway, Sweden, and the United States—fall into the first category, whereas 21 countries (approximately 55 percent) fall into the third group. Even worse, the 2009 Progress Report found that there are already signs of backsliding, "with some government efforts to curtail the ability of investigative magistrates to bring cases, shorten statutes of limitations, and extend immunities from prosecution."[220] The risk of further regression is especially great in the current economic climate where "competition for decreasing numbers of orders has intensified greatly."[221] Transparency International's conclusion is that the cause of this bleak state of affairs, and the greatest threat to future progress in this area, is a lack of political will at the highest government levels.

The 2009 Progress Report makes a number of recommendations, addressed to both party countries and the OECD itself. First, the OECD's Ministerial Council should exercise more regular oversight to make sure that the Convention is meeting its objectives. Second, the Secretary General should meet with the Justice Ministers of underperforming parties to work out steps for improvement, with the failure to implement such steps resulting in suspension of membership in the Convention. Third, party governments should assign foreign corruption cases to specialized staffs with adequate resources. Fourth, the Ministerial Council should reaffirm that enforcement should not be influenced by claims of national economic security. Fifth, the Ministerial Council should encourage China, India, and Russia to accede to the Convention. Sixth, the OECD Working Group on Bribery should move on to the next phase of its monitoring program, with top priority given to country visits to ensure that identified deficiencies are corrected. Seventh, the Working Group should meet annually with prosecutors to gather input on the best means of overcoming obstacles to enforcement. Eighth, the Working Group on Bribery should begin to ad-

dress unresolved issues and loopholes in the Convention (and in parties' implementing legislation), "including bribe payments to political parties, lack of corporate criminal liability, inadequate statutes of limitations, and private-to-private corruption."[222]

Based on its analysis of corruption cases from around the world, Transparency International noted several emerging trends in the fight against corruption. First, there is an expanding range of how and to whom bribes are paid, including political parties, family members, charities run by government decision makers or their relatives, and private sector companies performing services under a government contract. Second, evidence can be discovered through a wide array of sources, including pre-takeover audits, anti-money laundering due diligence, and bank audits. Third, Transparency International observed that because of the complexity of these cases and the efforts taken by companies and officials to cover up evidence, enforcement authorities require adequate resources and long statutes of limitation to accomplish their enforcement objectives. Fourth, bribery often fits into larger anticompetitive activities (price fixing and market sharing cartels, for example), which suggests a need for anticorruption and antitrust agencies to cooperate. Fifth, international cooperation is often a sticking point, with numerous cases illustrating that failure to provide mutual legal assistance can impede international investigations.[223]

Transparency International concludes its 2009 Progress Report with summaries on enforcement efforts in each party country. Notably, the United States received a very positive review, with "no significant obstacles or inadequacies in [its] legal framework."[224] Nevertheless, the 2009 Progress Report includes four recommendations on ways in which the United States could improve. First, the United States should clarify the nature of the benefit for voluntary disclosures. Second, the United States should continue its efforts to prosecute offenders based outside the United States and to improve collaboration with other countries. Third, attorney-client privilege should be protected to encourage resolution of potential violations. Fourth, the United States should be more transparent with respect to closed cases and pending investigations.[225] As discussed, it appears the Justice Department and the Commission are taking these suggestions onboard and attempting to address them.

NOTES

[1] *See* "Another Record Year Brings to an End a Decade That Saw the Explosion of FCPA Prosecution," by Claudius Sokenu.
[2] SEC Litigation Release No. 21335, "SEC Charges Former Officer of Pride International with Violating the Foreign Corrupt Practices Act" (Dec. 14, 2009), http://www.sec.gov/litigation/litreleases/2009/lr21335.htm.
[3] Compl. ¶ 3, *SEC v. Benton*, No. 4:09-CV-03963 (S.D. Tex. Dec. 11, 2009) [hereinafter Benton Compl.].
[4] *Id.* ¶¶ 7-10.
[5] *Id.* ¶ 1. Note that all references to dollar amounts in this article are to US currency unless otherwise indicated.
[6] *Id.*
[7] *Id.* ¶¶ 1-2.
[8] *Id.* ¶ 2.
[9] *Id.* ¶ 7.
[10] *Id.*
[11] *Id.* ¶ 3.
[12] Justice Department Press Release, "Two Florida Executives, One Florida Intermediary and Two Former Haitian Government Officials Indicted for Their Alleged Participation in Foreign Bribery Scheme" (Dec. 7, 2009), http://www.justice.gov/opa/pr/2009/December/09-crm-1307.html.
[13] *United States v. Esquenazi, et al.*, No. 09-21010, ¶ 10 (Dec. 4, 2009) [hereinafter Haiti Indictment].
[14] *Id.* ¶¶ 2-4.
[15] Order on Initial Appearance as to Joel Esquenazi, *United States v. Esquenazi, et al*., No. 09-CR-21010, Dkt. Entry No. 53 (S.D. Fla. Jan. 11, 2010); Order on Initial Appearance as to Robert Antoine, *United States v. Esquenazi, et al*., No. 09-CR-21010, Dkt. Entry No. 26 (S.D. Fla. Dec. 14, 2009); Order on Initial Appearance as to Marguerite Grandison, *United States v. Esquenazi, et al*., No. 09-CR-21010, Dkt. Entry No. 16 (S.D. Fla. Dec. 7, 2009); Order on Initial Appearance as to Jean Rene Duperval, *United States v. Esquenazi, et al*., No. 09-CR-21010, Dkt. Entry No. 14 (S.D. Fla. Dec. 7, 2009); Order on Initial Appearance as to Carlos Rodriguez, *United States v. Esquenazi, et al.*, No. 09-CR-21010, Dkt. Entry No. 11 (S.D. Fla. Dec. 11, 2009).
[16] Haiti Indictment, *supra* note 13, ¶ 3.
[17] *Id.* ¶ 5.

[18] *Id.* ¶ 6.
[19] *Id.* ¶ 8.
[20] *Id.* ¶ 9.
[21] *Id.* ¶ 10.
[22] Information at 6-7, *United States v. Diaz*, No. 1:09-CR-20346, Dkt. Entry No. 1 (S.D. Fla. Apr. 22, 2009) [hereinafter Diaz Information].
[23] Haiti Indictment, *supra* note 13, ¶ 9.
[24] Information at 5-6, *United States v. Perez*, No. 1:09-CR-20347, Dkt. Entry No. 1 (S.D. Fla. Apr. 22, 2009) [hereinafter Perez Information].
[25] *See* Diaz Information, *supra* note 22; Perez Information, *supra* note 24.
[26] Justice Department Press Release No. 09-476, "Two Florida Businessmen Plead Guilty to Participating in a Conspiracy to Bribe Foreign Government Officials and Money Laundering" (May 15, 2009), http://www.justice.gov/opa/pr/2009/May/09-crm-476.html.
[27] Diaz Information, *supra* note 22 at 5; Perez Information, *supra* note 24 at 4.
[28] *OECD, Governments Agree to Step up Fight Against Bribery* (Dec. 9, 2009), http://www.oecd.org/document/35/0,3343,en_2649_34487_44232739_1_1_1_1,00.html.
[29] *Id.*
[30] *Id.* The full report can be found at http://www.oecd.org/dataoecd/11/40/44176910.pdf.
[31] *Id.*
[32] Justice Department Press Release No. 09-1265, "Former General Manager of Texas Business Arrested for Role in Alleged Scheme to Bribe Officials at Mexican State-Owned Electrical Utility" (Nov. 23, 2009), http://www.justice.gov/opa/pr/2009/November/09-crm-1265.html [hereinafter O'Shea Press Release].
[33] Indictment, *United States v. O'Shea*, No. 4:09-CR-00629, Dkt. Entry No. 1 (S.D. Tex. Nov. 16, 2009) [hereinafter O'Shea Indictment].
[34] *See* Nathan Vardi, *ABB Entangled in Corruption Case*, Forbes.com (Nov. 23, 2009), http://www.forbes.com/2009/11/23/abb-cfe-bribery-business-mexico-indictment.html.
[35] O'Shea Press Release, *supra* note 32.
[36] Plea Agreement, *United States v. Basurto*, No. 4:09-CR-00325, Dkt. Entry No. 43 (S.D. Tex. Nov. 23, 2009).
[37] O'Shea Indictment, *supra* note 33, at 5.

[38] *Id.* at 10.
[39] *Id.* at 5.
[40] *Id.* at 10-11.
[41] *Id.* at 11.
[42] *Id.* at 26-27.
[43] Vardi, *supra* note 34.
[44] *Id.*
[45] Justice Department Press Release No. 09-1229, "Virginia Resident Pleads Guilty to Bribing Panamanian Officials for Maritime Contract" (Nov. 13, 2009), http://www.justice.gov/opa/pr/2009/November/09-crm-1229.html [hereinafter Jumet Press Release].
[46] Justice Department Press Release No. 09-1348, "Virginia Resident Charged with Conspiring to Bribe Former Panamanian Government Officials for Maritime Contract" (Dec. 16, 2009), http://www.justice.gov/opa/pr/2009/December/09-ag-1348.html.
[47] Information at 5, *United States v. Jumet*, No. 3:09-cr-00397, Dkt. Entry No. 2 (E.D. Va. Nov. 10, 2009) [hereinafter Jumet Information]; Information at 4, *United States v. Warwick*, No. 3:09-cr-00449, Dkt. Entry No. 1 (E.D. Va. Dec. 15, 2009).
[48] Statement of Facts at 4, *United States v. Jumet*, No. 3:09-cr-00397, Dkt. Entry No. 7 (E.D. Va. Nov. 13, 2009).
[49] Jumet Information, *supra* note 47.
[50] *Id*.
[51] *Id.* at 8-9.
[52] *Id.* at 3.
[53] Jumet Press Release, *supra* note 45.
[54] United States Attorneys' Manual, Statute of Limitations for Conspiracy, Criminal Resource Manual 652 (2008).
[55] Bruce Alpert, "Jefferson Legal Saga Far From Being Over," *New Orleans Times-Picayune*, Aug. 8, 2009, at 1.
[56] Jonathan Tilove & Bruce Alpert, "Jefferson Gets 13 Years in Jail," *New Orleans Times-Picayune* (Nov. 14, 2009).
[57] *Id.*
[58] Indictment, *United States v. Jefferson,* No. 1:07-CR-00209, Dkt. Entry No. 1 (E.D. Va. June 4, 2007) [hereinafter Jefferson Indictment].
[59] Philip Shenon, "FBI Contends Lawmaker Hid Bribe in Freezer," *The New York Times*, May 22, 2006, at A1.

[60] Jefferson Indictment, *supra* note 58 at 33-34.
[61] Bruce Alpert, "Jefferson Tape Cites Nigerian Leader's Role," *New Orleans Times-Picayune* (July 7, 2009), at 1.
[62] *Id.*
[63] *Id.*
[64] Jonathan Tilove, "Guilty on 11 Counts: Jefferson Faces Lengthy Sentence, Possible Restitution," *New Orleans Times-Picayune*, Aug. 6, 2009, at 1.
[65] *Id.*
[66] *Id.*
[67] Justice Department Press Release No. 09-1220, "Former Willbros International Consultant Pleads Guilty to $6 Million Foreign Bribery Scheme" (Nov. 12, 2009), http://www.justice.gov/opa/pr/2009/November/09-crm-1220.html [hereinafter Novak Press Release].
[68] *Id.*
[69] *Id.*
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] *Id.*
[74] Lanny A. Breuer, Prepared Address to the 22nd National Forum on the Foreign Corrupt Practices Act, at 2 (Nov. 17, 2009), http://www.justice.gov/criminal/pr/speeches/2009/11/11-17-09aagbreuer-remarks-fcpa.pdf.
[75] Novak Press Release, *supra* note 67. On January 28, 2010, Brown was sentenced to a year and a day in prison and fined $17,500. Steph was sentenced to a prison term of 15 months and fined $2,000. Justice Department Press Release, "Former Willbros International Executives Sentenced to Prison for Their Roles in $6 Million Foreign Bribery Scheme" (Jan. 28, 2010), http://washingtondc.fbi.gov/dojpressrel/pressrel10/wfo012810a.htm.
[76] *Id.* Additionally, both Willbros Group and Willbros International entered into a deferred prosecution agreement with the Justice Department, under which they will pay a $22 million criminal penalty. *Id.*
[77] *See* Justice Department Press Release, "Two UK Citizens Charged by United States with Bribing Nigerian Government Officials to Obtain Lucrative Contracts as Part of KBR Joint Venture Scheme" (Mar. 5, 2009), http://www.justice.gov/criminal/pr/press_releases/2009/03/03-05-09tesler-charged.pdf; Justice Department Press Release, "Kellogg Brown & Root LLC Pleads Guilty to Foreign Bribery Charges and Agrees to Pay $402

Million Criminal Fee" (Feb. 11, 2009), http://www.justice.gov/criminal/pr/press_releases/2009/02/02-11-09kellogg-guilty.pdf; Justice Department Press Release, "Aibel Group Ltd. Pleads Guilty to Foreign Bribery and Agrees to Pay $4.2 Million in Criminal Fines" (Nov. 21, 2008), http://www.justice.gov/opa/pr/2008/November/08-crm-1041.html; Justice Department Press Release, "Three Vetco International Ltd. Subsidiaries Plead Guilty to Foreign Bribery and Agree to Pay $26 Million in Criminal Fines" (Feb. 6, 2007), http://www.justice.gov/opa/pr/2007/February/07_crm_075.html;*Deccan Value Advisors Fund, L.P. v. Panalpina World Transp. (Holding) Ltd*., No. 5:2009-CV_0080, Dkt. Entry No. 2 (S.D. Tex. July 23, 2009); Compl., *United States v. Siemens Aktiengesellschaft*, No. 1:08-CV-02167, Dkt. Entry No. 1 (D.D.C. Dec. 12, 2008).

[78] Breuer, *supra* note 74 at 2.

[79] David Glovin, "Bourke Convicted of Bribery in Azerbaijan Oil Deal," *Bloomberg* (July 10, 2009), http://www.bloomberg.com/apps/news?pid=20601205&sid=aseVHkj_VRMQ.

[80] David Glovin, "Bourke Gets One Year in Prison in Azerbaijan Bribery Case," *Bloomberg* (Nov. 11, 2009), http://www.bloomberg.com/apps/news?pid=20601087&sid=aFKqNJY2Vgt8&pos=7.

[81] *See* Second Superseding Indictment, *United States v. Bourke*, No. 05-cr-00518, Dkt. Entry No. 203 (S.D.N.Y. May 26, 2009) [hereinafter Bourke Indictment].

[82] Glovin, *supra* note 79.

[83] *See United States v. Kozeny,* No. 05-CR-518, 2009 WL 1514369, at *2 (S.D.N.Y. May 29, 2009) (holding that conscious avoidance of knowledge is sufficient for conviction).

[84] Bourke Indictment, *supra* note 81 at 10.

[85] *Id.*

[86] *See id*.

[87] Although Farrell pleaded guilty in 2003 and Bodmer in 2004, neither has been sentenced.

[88] Glovin, *supra* note 80.

[89] Adam Klasfeld, "Fed Witness Tells Tangled Tale of Bribery in Azerbaijan," *Courthouse News Service*, June 16, 2009, http://www.courthousenews.com/2009/06/16/Fed_Witness_Tells_Tangled_Tale_of_Bribery_in_Azerbaijan_.htm.

[90] Bourke Indictment, *supra* note 81 at 25-30.

[91] Glovin, *supra* note 79.
[92] *Kozeny*, 2009 WL 1514369, at *2 (noting that "the defendant must be shown to have decided not to learn the key fact, not merely *to have failed to learn it through negligence*" (emphasis in original) (quoting *United States v. Nektalov*, 461 F.3d 309, 315 (2d Cir.2006)).
[93] *Id.*
[94] *See United States v. Kozeny*, 541 F.3d 166, 168 (2d Cir. 2008).
[95] *Id.*
[96] *Id.* at 169.
[97] *Id.* at 170.
[98] *Id.*
[99] *See* Bourke Indictment, *supra* note 81.
[100] Memorandum of Law of Defendant Frederic A. Bourke, Jr. in Support of Motion for Reassignment of Related Pending Actions, *United States v. Kozeny*, No. 05-cr-00518, Dkt. Entry No. 24 (S.D.N.Y. Nov. 15, 2005).
[101] *Id.* at 7.
[102] *Id.* at 8.
[103] *Id.* at 9.
[104] David Glovin, "Pirate in Exile," *Bloomberg* (Nov. 2008), http://www.bloomberg.com/news/marketsmag/mm_1108_story3.html.
[105] SEC Litigation Release No. 21229, "SEC Files Settled Books and Records and Internal Controls Charges Against AGCO Corporation For Improper Payments to Iraq Under the U.N. Oil-For-Food Program—AGCO Agrees to Pay Over $18.3 Million in Disgorgement, Interest, and Penalties" (Sept. 30, 2009), http://www.sec.gov/litigation/litreleases/2009/lr21229.htm [hereinafter AGCO Release].
[106] Compl. ¶¶ 13-14, *SEC v. AGCO Corp.*, No. 1:09-CV-01865, Dkt. Entry No. 1 (D.D.C. Sept. 30, 2009).
[107] *Id.* ¶ 1.
[108] *Id.* ¶ 6.
[109] *Id.*
[110] *Id.* ¶ 8.
[111] *Id.*
[112] *Id.* ¶ 8-9.
[113] *Id.* ¶ 9-10.
[114] AGCO Release, *supra* note 105.
[115] *Id.*

[116] *Id.*
[117] Justice Department Press Release No. 09-952, "Film Executive and Spouse Found Guilty of Paying Bribes to a Senior Thai Tourism Official to Obtain Lucrative Contracts" (Sept. 14, 2009), http://www.justice.gov/criminal/pr/press_releases/2009/09/09-14-09green-guily.pdf [hereinafter Green Press Release].
[118] *Id.*
[119] *See* Second Superseding Indictment, *United States v. Green*, No. 2:08-CR-00059, Dkt. Entry No. 159 (C.D. Cal. Mar. 11, 2009) [hereinafter Green Indictment].
[120] *Id.*
[121] *Id.*
[122] *Id.*
[123] Green Press Release, *supra* note 117.
[124] *Id.*
[125] *Id.*
[126] Green Indictment, *supra* note 119.
[127] *See* Minutes of Status Conference Re sentencing, *United States v. Green*, No. 2:08-CR-00059, Dkt. Entry No. 340 (C.D. Cal. April 1, 2010).
[128] Justice Department Press Release No. 09-928, "Former Pacific Consolidated Industries LP Executive Pleads Guilty in Connection with Bribes Paid to U.K. Ministry of Defense Official" (Sept. 3, 2009), http://www.justice.gov/opa/pr/2009/September/09-crm-928.html.
[129] *Id.*
[130] Plea Agreement at 5, *United States v. Smith*, No. 8:07-CR-00069, Dkt. Entry No. 89 (C.D. Cal. Sept. 3, 2009) [hereinafter Smith Plea Agreement].
[131] *Id.*
[132] *Id.*
[133] *United States v. Smith*, No. 8:07-CR-00069, Dkt. Entry No. 103 (C.D. Cal. Dec. 14, 2009).
[134] Government's Response to the Presentence Report for Defendant Leo Winston Smith at 16, *United States v. Smith*, No. 8:07-CR-00069, Dkt. Entry No. 95 (C.D. Cal. Dec. 2, 2009).
[135] SEC Litigation Release No. 21190, "SEC Sues Former Sales Executive for Foreign Bribery" (Aug. 28, 2009), http://www.sec.gov/litigation/litreleases/2009/lr21190.htm [hereinafter Meza Release].
[136] Justice Department Press Release No. 08-505, "Faro Technologies Inc.

Agrees to Pay $1.1 Million Penalty and Enter Non-Prosecution Agreement for FCPA Violations" (June 5, 2008), http://www.justice.gov/opa/pr/2008/June/08-crm-505.html.

[137] *Id.*

[138] Compl. ¶ 4, *SEC v. Meza*, No. 1:09-CV-01648, Dkt. Entry No. 1 (D.D.C. Aug. 28, 2009).

[139] *Id.* ¶ 1.

[140] *Id.* ¶¶ 5-6.

[141] Meza Release, *supra* note 135.

[142] *See* 15 U.S.C. §§ 78dd-1(a), 78dd-2(a), 78dd-3(a) (prohibiting payments to "any foreign *official*" (emphasis added)). Indeed, it is for this very reason, at least in part, that the Oil-for-Food Program cases were charged as books and records and internal controls violations rather than antibribery violations, since the alleged "commissions" were, in the main, paid directly to the government of Iraq rather than individual Iraqi government officials. *See*, *e.g., United States v. AGCO Ltd.*, No. 09-CR-00249 (D.D.C. 2009) (charged with a books and records violation and conspiracy to commit wire fraud for payments made to the government of Iraq); *United States v. Novo Nordisk* A/S, No. 09-CR-00126 (D.D.C. 2009) (same); *United States v. Volvo Constr. Equip., AB*, No. 08-CR-00069 (D.D.C. 2008) (charged with books and records and internal controls violations for improper payments made to Iraqi government ministries); *United States v. Ingersoll-Rand Italiana S.p.A*., No. 07-CR-00294 (D.D.C. 2007) (charged with conspiracy to commit wire fraud and conspiracy to violate the FCPA's books and records provisions for payments to Iraqi government).

[143] Justice Department, FCPA Opinion Procedure Release 1981-02 (Dec. 11, 1981), http://www.justice.gov/criminal/fraud/fcpa/review/1981/r8102.html.

[144] 15 U.S.C. §§ 78dd-1(c), 78dd-2(c), 78dd-3(c).

[145] *Id.*

[146] Justice Department Press Release No. 09-754, "Control Components Inc. Pleads Guilty to Foreign Bribery Charges and Agrees to Pay $18.2 Million Criminal Fine" (July 31, 2009), http://www.justice.gov/opa/pr/2009/July/09-crm-754.html.

[147] *Id.*

[148] Joint Stipulation, *United States v. Carson,* No. 8:09-CR-00077, Dkt. Entry No. 130 (C.D. Cal. Nov. 24, 2009).

[149] Information at 4, *United States v. Control Components, Inc.*, No. 8:09-cr-

00162, Dkt. Entry No. 1 (C.D. Cal. July 22, 2009).
[150] *Id.*
[151] Plea Agreement, *United States v. Control Components, Inc.*, No. 8:09-cr-00162, Dkt. Entry No. 7 (C.D. Cal. July 24, 2009).
[152] Justice Department Press Release No. 09-322, "Six Former Executives of California Valve Company Charged in $46 Million Foreign Bribery Conspiracy" (Apr. 8, 2009) [hereinafter Control Press Release].
[153] Order Regarding Continuance of Sentencing Date, *United States v. Morlok*, No. 8:09-CR-00005, Dkt. Entry No. 20 (C.D. Cal. July 2, 2009); Order Regarding Continuance of Sentencing Date, *United States v. Covino*, No. 8:08-CR-00336, Dkt. Entry No. 19 (C.D. Cal. July 2, 2009); Order to Continue Sentencing, *United States v. Morlok*, No. 8:09-CR-00005, Dkt. Entry No. 22 (C.D. Cal. Dec. 4, 2009); Order to Continue Sentencing, *United States v. Covino*, No. 8:08-CR-00336, Dkt. Entry No. 26 (C.D. Cal. Nov. 23, 2009).
[154] Control Press Release, *supra* note 152.
[155] Indictment at 2-6, *United States v. Carson*, No. 8:09-CR-00077, Dkt. Entry No. 1 (C.D. Cal. Apr. 8, 2009).
[156] *Id.* at 7.
[157] *Id.*
[158] *Id.*
[159] *Id.* at 35-36.
[160] Minutes of Motion Hearing, *United States v. Carson*, No. 8:09-CR-00077, Dkt. Entry No. 75 (C.D. Cal. May 18, 2009).
[161] *Id.*
[162] Justice Department Press Release No. 09-757, "Canadian National Charged with Foreign Bribery and Paying Kickbacks Under the Oil for Food Program" (July 31, 2009), http://www.justice.gov/criminal/pr/press_releases/2009/07/07-31-09_naaman-indict.pdf [hereinafter Naaman Press Release].
[163] *See United States v. Naaman*, No. 1:08-cr-00246, Dkt. Entry No. 3 (D.D.C. Aug. 7, 2008).
[164] *Id.* at 8-15.
[165] *Id.* at 5, 7.
[166] *Id.* at 16-17.
[167] Naaman Press Release, *supra* note 162.
[168] Justice Department Press Release No. 09-741, "Helmerich & Payne Agrees

to Pay $1 Million Penalty to Resolve Allegations of Foreign Bribery in South America" (July 30, 2009), http://www.justice.gov/opa/pr/2009/July/09-crm-741.html.

[169] *Id.*

[170] *Id.*

[171] *Id.*

[172] Administrative Order, *In re Helmerich & Payne, Inc.*, Securities Exchange Act Release No. 60400 (July 30, 2009).

[173] *Id.*

[174] Helmerich & Payne Press Release, *supra* note 168.

[175] *Id.*

[176] SEC Litigation Release No. 21156, "SEC Files Settled Charges Against Avery Dennison Corporation for Violating the Books and Records and Internal Controls Provisions of the Foreign Corrupt Practices Act" (July 28, 2009), http://www.sec.gov/litigation/litreleases/2009/lr21156.htm.

[177] *Id.*

[178] *See SEC v. Avery Dennison Corp*., No. CV09-5493, Dkt. Entry No. 1 (C.D. Cal. July 28, 2009) [hereinafter Avery Compl.].

[179] Administrative Order, *In re Avery Dennison Corp.*, Securities Exchange Act Release No. 60393 (July 28, 2009).

[180] Avery Compl., *supra* note 178 ¶ 1.

[181] *Id.* ¶ 5.

[182] *Id.*

[183] *Id.* ¶¶ 1-2.

[184] *Id.* ¶ 1.

[185] *Id.* ¶ 2.

[186] Avery Dennison Corp., Quarterly Report (Form 10-Q), at 17 (Aug. 12, 2009).

[187] Avery Compl., *supra* note 178 at 3.

[188] World Bank Press Release, "Siemens to Pay $100m to Fight Corruption as Part of World Bank Group Settlement" (July 2, 2009), http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:22234573~pagePK:34370~piPK:34424~theSitePK:4607,00.html.

[189] *Id.*

[190] *Siemens Loses World Bank Business for Two Years,* Reuters (July 2, 2009), http://www.reuters.com/article/governmentFilingsNews/idUSL29877020090702.

[191] Siemens Press Release, "Legal Proceedings—First Six Months of Fiscal 2009" (July 30, 2009), http://w1.siemens.com/press/pool/de/events/2009-q3/2009-q3-legal-proceedings-e.pdf.
[192] *Id.*
[193] *See* Justice Department Press Release No. 09-635, "Former Executive of Philadelphia Company Pleads Guilty to Paying Bribes to Vietnamese Officials" (June 29, 2009), http://www.justice.gov/opa/pr/2009/June/09-crm-635.html.
[194] Plea Agreement, *United States v. Nguyen*, No. 2:08-CR-00522, Dkt. Entry No. 79 (E.D. Penn. July 9, 2009).
[195] Notice of Hearing, *United States v. Nguyen*, No. 2:08-CR-00522, Dkt. Entry No. 70 (E.D. Penn. June 29, 2009).
[196] SEC Litigation Release No. 21063, "SEC Sues Former President of United Industrial Corporation Subsidiary for Authorizing the Payment of Foreign Bribes" (May 29, 2009), http://www.sec.gov/litigation/litreleases/2009/lr21063.htm [hereinafter Wurzel Release].
[197] *Id.*
[198] *Id.*
[199] Compl., *SEC v. Wurzel*, No. 09-CV-01005, Dkt. Entry No. 1 (D.D.C. May 29, 2009).
[200] *Id.* ¶¶ 7-11.
[201] *Id.* ¶ 12.
[202] *Id.* ¶ 11.
[203] Sun Microsystems, Inc., Quarterly Report (Form 10-Q), at 40 (May 8, 2009) [hereinafter Sun 10-Q].
[204] Steve Lohr, "In Sun, Oracle Sees a Software Gem," *The New York Times* (Apr. 20, 2009), at B8.
[205] Sun 10-Q *supra* note 203 at 40.
[206] Sun Microsystems, Inc., Definitive Proxy Statement (Schedule 14A), at A-30 (June 8, 2009).
[207] Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and Commission Statement on Potential Exchange Act Section 10(b) and Section 14(a) Liability, Securities Exchange Act Release No. 51283 (Mar. 1, 2005).
[208] *Id.*
[209] *Id.*
[210] *Id.*

[211] Judgment in a Criminal Case, *United States v. Quan-Sheng*, No. 2:08-CR-00194, Dkt. Entry No. 41 (E.D. Va. Apr. 9, 2009) [hereinafter Quan-Sheng Sentencing Order].
[212] Justice Department Press Release No. 09-317, "Virginia Physicist Sentenced to 51 Months in Prison for Illegally Exporting Space Launch Data to China and Offering Bribes to Chinese Officials" (Apr. 7, 2009), http://www.justice.gov/opa/pr/2009/April/09-nsd-317.html.
[213] Information, *United States v. Quan-Sheng*, No. 2:08-CR-00194, Dkt. Entry No. 17 (E.D. Va. Nov. 12, 2008).
[214] *Id.* at 4.
[215] *Id.* at 5.
[216] Quan-Sheng Sentencing Order, *supra* note 211.
[217] Fritz Heimann & Gillian Dell, Transparency International, *Progress Report 2009: Enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (2009), http://www.transparency.org/content/download/44447/712572/.
[218] *Id.* at 6.
[219] The categories are defined as follows: Active Enforcement consists of (a) "Countries with a share of world exports over two per cent (the 11 largest exporters) that have at least ten major cases on a cumulative basis, of which at least three were initiated in the last three years, and at least three were concluded with substantial sanctions," and (b) "Countries with a share of world exports less than two percent that have brought at least three major cases including at least one concluded with substantial sanctions and have at least one case pending that was initiated in the last three years." The Moderate Enforcement group consists of "Countries that do not qualify for Active Enforcement but have at least one major case as well as active investigations." Finally, the Little or No Enforcement class is made up of "Countries that do not qualify for the previous two categories. This includes countries that have only brought minor cases, countries that only have investigations and countries that have neither."
[220] *Id*. at 6.
[221] *Id*.
[222] *Id*. at 9.
[223] *Id*. at 15.
[224] *Id*. at 53-55.
[225] *Id*. at 55.