ARNOLD & PORTER LLP

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FCPA News and Insights

An Update on Recent Foreign Corrupt Practices Act and Anti-Corruption Enforcement, Litigation, and Compliance Developments

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Our Foreign Corrupt Practices Act and Anti-Corruption Practice

Arnold & Porter LLP regularly works with our clients to ensure compliance with the FCPA, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted in 1998 by the Organisation for Economic Co-operation and Development, and other US, UK, and EC anti-corruption compliance requirements. Our team provides the full spectrum of FCPA and anti-corruption related services, from counseling clients on FCPA compliance programs to reduce the risk of FCPA exposure to representing US and foreign companies and individuals before the two US enforcement agencies, the Justice Department and the SEC as well as other US, UK, and EC enforcement authorities when allegations of violations arise. We have experience advising on the impact that FCPA and other US, UK, and EC anti-corruption laws have on companies doing business in all regions of the world, including Asia, Latin America, the Middle East, Africa, and Europe. Our team includes lawyers who have government experience at the Justice Department and SEC, including a former Senior Counsel at the SEC, whose group had responsibility for the SEC's FCPA program. Where anti-corruption issues arise outside US or EC law, we also have experience working with lawyers who are admitted in the pertinent country and are knowledgeable on foreign laws.

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In the first half of 2010, the United States Department of Justice (Justice Department or Department) and the United States Securities and Exchange Commission (SEC or Commission) have charged six companies and 28 individuals in civil and criminal Foreign Corrupt Practices Act (FCPA) enforcement actions. As we reported in the last edition of our Newsletter,[1] the tally at the end of 2009 was 16 criminal prosecutions and civil enforcement actions against corporations and 24 enforcement actions against individuals. As the numbers reveal, the FCPA continues to be a top priority for the Justice Department and the SEC. It is too early to tell if 2010 will surpass 2009, but it is already apparent that the Justice Department's and SEC's zeal to prosecute in corruption cases has not diminished, particularly with regard to prosecution of individuals, although this year's statistic in that regard is inflated by the large number of individuals ensnared in the Justice Department's so-called "Shot Show" sting operation in Las Vegas.[2]

Awareness of potential FCPA traps is the first step towards being able to prevent or at least deter FCPA violations. Recurring enforcement themes, as well as some new ones, are discernible from the enforcement actions brought in the first half of 2010. In this issue of *FCPA News and Insights*, we discuss these themes, and then provide a report on some of the actions of the year.

Although there are many ways to analyze the cases that were brought in the first half of 2010, what follows is our focus on those themes that we believe to be the most important and most likely to shape the way the Justice Department and the Commission prosecute FCPA violations for the remainder of 2010 and beyond.

The Return of Super-Sized Penalties

Looking back, one can forgive FCPA trend forecasters in early 2009 for predicting a future of headline-worthy fines in FCPA enforcement actions. After all, December 2008 saw US$800 million levied against Siemens AG (Siemens) (in addition to the US$800 million imposed by German prosecutors) and early 2009 saw an additional US$579 million paid by Halliburton and Kellogg, Brown & Root LLC (KBR). In these two cases, over US$1.3 billion in penalties were paid to the US government. The trend did not continue, however. For the rest of 2009, only US$42.9 million in criminal and civil fines were imposed, with US$18.2 million of that paid by Control Components, Inc. It appeared as if the Siemens and Halliburton cases were destined to remain distant outliers.

Although no new records have been set in 2010, it seems as if 2009's early predictions are now being borne out. In the first six months of the year, several nine-digit settlements have been announced, including the US$338 million for Technip S.A. (Technip) and US$365 million for Snamprogetti Netherlands B.V. (Snamprogetti). These amounts rank fourth and fifth on the list of all-time highest FCPA penalties.

In addition, two other companies have previously announced that they have reserved similar sums to resolve FCPA violations. *First*, in December 2008, ASEA Brown Boveri, Ltd. (ABB) announced that it was booking approximately US$850 million in part for potential costs related to investigations by US and European authorities for suspect payments and anti-competitive practices.[3] In July 2007, ABB disclosed to the Justice Department and the SEC "suspect payments made by employees of subsidiaries in Asia, South America, and Europe, in particular Italy."[4] A year and a half after announcing the reserve, there is no indication of how close ABB is to a settlement. *Second*, French telecommunications giant Alcatel-Lucent announced in its 2009 year-end consolidated financial statement that it had reached an agreement in principle with the Justice Department and the SEC to pay a combined US$137 million

for FCPA offenses in Costa Rica, Taiwan, and Kenya.[5] Once again, it is unclear when (or whether) this settlement will be finalized.

Until these companies finalize their settlements, we will not know how large their settlements will be. Nevertheless, if the estimated amounts prove to be even approximately correct, the recent settlements—including, Technip, Snamprogetti, and possibly Alcatel-Lucent—will create a new mid-tier of FCPA penalties, dwarfing previously impressive settlements such as Baker Hughes (US$44.1 million), but dwarfed in turn by the top-tier constants of Siemens and Halliburton/KBR. Thus, the long-term effect of the Siemens and Halliburton/KBR settlements may not be to raise penalties to that level, but instead to anchor one end of a penalty spectrum. But as we learned from the prognosticators of early 2009, predictions on this subject should be taken with several grains of salt.

The "Shot Show" Investigation[6]

One of the themes we previewed in our last update was the increasingly aggressive tactics of the Justice Department and the SEC in prosecuting violations of the FCPA.[7] As further evidence of this growing trend, on January 19, 2010, the Federal Bureau of Investigation (FBI) arrested 22 executives and employees involved in the military and law enforcement products industry.[8] Twenty-one of these individuals were arrested while attending an industry trade show in Las Vegas, which gave rise to the investigation's popular name, the "Shot Show," while the final individual was arrested in Miami, Florida.[9] The arrests were the result of 16 indictments originally obtained on December 11, 2009 and unsealed on January 19, 2010, which alleged that the defendants engaged in a scheme to bribe foreign government officials in violation of the FCPA and charged the defendants with conspiracy to violate the FCPA, substantive violations of the FCPA, and money laundering.[10]

In coordination with the arrests, 150 FBI agents executed 14 different search warrants throughout the United States, including Bull Shoals, Arkansas; San Francisco, California; Miami, Florida; Ponte Vedra Beach, Florida; Sarasota, Florida; St. Petersburg, Florida; Sunrise, Florida; University Park, Florida; Decatur, Georgia; Stearns, Kentucky; Upper Darby, Pennsylvania; and Woodbridge, Virginia.[11] The United Kingdom's City of London Police also executed seven search warrants on companies involved in the foreign bribery conduct that formed the basis for the US indictments.[12] The original indictments for the 22 defendants were organized as follows: (1) Daniel Alvirez and Lee Allen Tolleson;[13] (2) Helmie Ashiblie;[14] (3) Andrew Bigelow;[15] (4) R. Patrick Caldwell and Stephen Gerard Giordanella;[16] (5) Haim Geri;[17] (6) Amaro Goncalves;[18] (7) John Gregory Godsey, a/k/a Greg Godsey, and Mark Frederick Morales;[19] (8) Saul Mishkin;[20] (9) John M. Mushriqui and Jeana Mushriqui;[21] (10) David R. Painter and Lee M. Wares;[22] (11) Pankesh Patel;[23] (12) Ofer Paz;[24] (13) Jonathan M. Spiller;[25] (14) Israel Weisler, a/k/a Wayne Weisler, and Michael Sachs;[26] (15) John Benson Wier III;[27] and (16) Yochanan R. Cohen.[28]

The charges against the 22 defendants rest on similar grounds. The defendants, with the assistance of an informant identified in the indictments as "Individual 1," allegedly devised a scheme with two other individuals, a purported self-employed sales agent working on behalf of the Minister of Defense of an unnamed African country and a purported procurement official of that Minister, whereby the defendants agreed to pay a 20 percent "commission" to the sales agent in order to win part of a US$15 million deal for military and law enforcement equipment for the African country's presidential guard.[29] Under the alleged scheme, half of the "commission" would go to the country's Minister of Defense and the other half would be split between the sales agent and "Individual 1."[30] The deal was to proceed in two phases. In Phase One, each defendant allegedly engaged in a small test sale designed to show the Minister that he would receive his 10 percent payment.[31] Next, in Phase Two,

the defendants and the sales agent allegedly met with the supposed procurement official who also worked for the Minister.[32] At this meeting the defendants allegedly agreed to purchase orders for the second sale, valued at US$15 million.[33]

Unbeknownst to the defendants, the entire transaction was a massive FBI sting operation. Both the sales agent and the government procurement official were undercover FBI agents. There was no involvement by any African Minister of Defense or any foreign government official at all.[34] Furthermore, the person identified in the indictment as "Individual 1," and now known to be Richard Bistrong, who was involved in introducing many of the defendants to the undercover FBI agents, was an FBI informant.[35] On January 22, 2010, Bistrong was charged with conspiring with others to violate the FCPA and the Commerce Department's export license rules.[36] Bistrong is currently acting as a cooperating witness in the broader investigation.[37]

As the Shot Show case has progressed, the nature of the conspiracy allegations has evolved considerably. At the first arraignment hearing, the Justice Department told Judge Leon of the US District Court for the District of Columbia that, "[w]e believe [the investigation] is one conspiracy."[38] According to press reports, that statement caught both Judge Leon and defense counsel off-guard, with Judge Leon stating that accusing a group of people of one conspiracy, even though they were charged separately, was "novel in my experience."[39] In the second arraignment hearing later that same day, Judge Leon was further reported to have told prosecutors that, "I'm not going to try a case, no judge can try a case with 22 defendants."[40] At a later hearing, on February 17, 2010, Judge Leon asked for greater clarification of the government's case, stating that he had "zero sense that there was an omnibus grand conspiracy."[41]

Subsequently, the Department filed a superseding indictment on April 16, 2010.[42] The superseding indictment, which names all 22 defendants, includes several additional details that allege a more direct connection among the defendants. According to the superseding indictment, "[t]he defendants would agree that the products they would supply in connection with Phase One would be consolidated for shipment to Country A."[43] Additionally, the superseding indictment alleges that 17 of the defendants, Bistrong, and one of the undercover FBI agents attended a reception at a restaurant in Washington, DC, where they celebrated their deal.[44] Furthermore, the superseding indictment alleges that the 21 defendants arrested in Las Vegas were actually in Las Vegas, Nevada not merely for the industry conference, but also "for the purpose of attending a meeting between the suppliers in [the African country] and the new Minister of Defense…at which time the suppliers expected to receive payment amounting to 60% of the inflated sales price of the products to be sold" in the second part of the transaction.[45] As the superseding indictment makes clear, the government views the entire Shot Show investigation as one over-arching conspiracy.

Additionally, at least one defendant, Daniel Alvirez, former president of Arkansas-based ALS Technologies Inc., has reportedly been in talks with the government regarding a possible guilty plea.[46] Perhaps as part of these negotiations, the government filed a superseding information against Alvirez on March 5, 2010 that makes additional allegations beyond Alvirez's involvement in the Shot Show investigation.[47] In particular, according to the superseding information, Alvirez conspired with Lee Allen Tolleson, the director of acquisitions and logistics at ALS Technologies Inc., and others to bribe Georgian defense officials through an Israeli sales agent in order to win contracts to sell ammunition and rations.[48] Whether these allegations represent the limit to which the investigation will expand from the original sting, or if this is just the beginning of an increasingly large and complex investigation, remains to be seen.

Further fallout from the investigation was evident on July 1, 2010 when Smith & Wesson Holding Corp. (Smith & Wesson), of which defendant Amaro Goncalves was a vice president of sales, disclosed in its annual 10-K filing that it was "under investigation by the U.S. Department of Justice for potential FCPA violations."[49] According to the Smith & Wesson press release, which did not specifically identify Goncalves, the company had already spent "$3.2 million in legal and consulting fees related to allegations against one of our employees under the [FCPA]."[50] The disclosure also stated, "[t]here could be additional indictments of our company, our officers, or our employees. If the [Department] determines that we violated FCPA laws, or if our employee is convicted of FCPA violations, we may face sanctions, including significant civil and criminal penalties. In addition, we could be prevented from bidding on domestic military and government contracts, and could risk debarment by the U.S. Department of State."[51]

As Assistant Attorney General Lanny Breuer has explained, "This ongoing investigation is the first large-scale use of undercover law enforcement techniques to uncover FCPA violations and the largest action ever undertaken by the Justice Department against individuals for FCPA violations."[52] It remains to be seen whether the application of these types of law enforcement techniques to the generally white-collar world of FCPA enforcement will increase the likelihood that the defendants will be able to successfully raise an entrapment defense to both the conspiracy and substantive FCPA charges. However, what is clear is that the government has chosen to take a broad view of the nature of FCPA conspiracies because, as several defense attorneys have stated in the media, "their clients barely knew each other beyond perhaps an occasional handshake when their paths happened to cross in the industry."[53] Thus, this case should serve as a warning and good evidence that the Department has ramped up its enforcement activities, particularly against individuals, and has FBI agents to support massive undercover investigations. Similar investigations, targeting different industries, should come as no surprise.

United Kingdom's Bribery Act Creates Another Set of Standards for Anti-Corruption Enforcement[54]

Background

The United Kingdom's Bribery Act of 2010 (Bribery Act) received Royal Assent on April 8, 2010, and is expected to become effective in Spring 2011.[55] While US enforcement actions against corruption under the FCPA have exploded over the past few years, UK enforcement has lagged behind. One potential reason for this was the lack of comprehensive legislation designed to address corruption. Historically, the United Kingdom combated corruption through a patchwork of common law offenses and offenses under the Public Bodies Corrupt Practices Act and the Prevention of Corruption Acts 1906 and 1916. A Corruption Bill was proposed in 2003 but failed to garner support.

This point was not lost on the Organization of Economic Cooperation and Development (OECD) when it cited deficiencies in the United Kingdom's efforts to reduce bribery in a 2005 report.[56] The OECD issued its Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in 1997, which was adopted by the United Kingdom in 1998.[57] The 2005 Report assessed the United Kingdom's efforts in advancing the OECD's anti-bribery goals, and found them lacking. In particular, the OECD noted that the United Kingdom had not prosecuted any person or any company for bribery of a foreign government official, and did not have a comprehensive law in place specifically prohibiting the bribery of foreign government officials. The OECD observed that the British press had reported on bribery cases, suggesting that the lack of prosecution was not for want of offenses. Indeed, the £43 billion (US$54 billion) Al-Yamamah contract, which involved sales of arms to Saudi

Arabia from BAE Systems plc (BAE), had been coming under significant scrutiny, and media stories of slush funds and official collusion in bribery were widespread.

The Bribery Act

The Bribery Act creates a consolidated framework that will allow UK corruption enforcement to enter the modern era. In that regard, the Bribery Act contains broader language than the FCPA, and it may give UK enforcement authorities more tools to fight bribery than their counterparts in the United States and other countries. For example, the Bribery Act creates a strict liability offense under which a company will be liable for bribery by its employees or third parties who perform services for or on behalf of the company, unless it can demonstrate that there were adequate procedures in place to prevent such conduct. The Act covers commercial bribery, and also makes it an offense to accept a bribe. Further, the Bribery Act does not contain any express exception for facilitation payments, which are excluded from the FCPA.[58] Of note, the Bribery Act extends the powers of the Serious Fraud Office (SFO) to a wider jurisdiction than the Justice Department. Under the Bribery Act, all businesses that are incorporated in or "carrying on business" in the United Kingdom, regardless of the country in which the corrupt conduct occurs, will be subject to the SFO's jurisdiction.

Under the Bribery Act, prosecutions will require the consent of the Director of the SFO or the Director of Public Prosecutions to proceed. As the SFO will be the investigating body in most instances, the aim is better coordination of investigations and enforcement actions. Previously, any prosecutions for bribery required the consent of the UK Attorney General. Following the SFO's decision to halt the 2006 investigation into BAE over its Al-Yamamah contract involving the sale of arms to Saudi Arabia, the political influence of the Attorney General and the SFO came under particular scrutiny. After facing criticism in the past, the SFO has spent recent months ramping up its efforts in the enforcement arena, bringing cases under existing laws, and increasing its visibility.

The SFO has also made clear that it will work closely with law enforcement agencies around the world, particularly with the Justice Department and the SEC. The SFO demonstrated its international approach through its work with United States enforcement authorities in reaching settlements in the Innospec Limited (Innospec) (discussed below) and BAE cases (brought under previous laws), both of which are international settlement arrangements.[59] Moreover, in its guidance on self-reporting, the SFO has stated that it expects to be told of any alleged bribery activity at the same time as the Justice Department.[60]

Despite these changes in enforcement tools and approach, there remain significant open questions for those facing liability or considering self-reporting. While the streamlining of investigation and enforcement now means that both lie within the SFO, UK courts have made clear that they still consider themselves the only body capable of determining punishments. In the recent Innospec and DePuy International Limited (DePuy) cases, negotiated plea agreements proposed by the SFO were heavily criticized by the UK courts because supposedly the SFO was overstepping its role in the settlements.

With respect to the Innospec case, in March 2010, the SFO announced that Innospec, a UK subsidiary of Innospec, Inc., a US corporation, had pleaded guilty to bribery charges in connection with sales of its fuel additive. The SFO had charged Innospec with "conspiracy to corrupt, contrary to Section 1 of the Criminal Law Act of 1977" after some of the company's "directors, executives, employees and agents" allegedly conspired to bribe Indonesian public officials and their representatives to win contracts for the supply of its fuel additive.[61] The SFO noted that the Justice Department had referred the case to it in October 2007, and that the SEC and the SFO had worked closely together to determine the

proper penalty of US$12.7 million.[62] The total fine to be paid to settle the Innospec case amounted to US$40.2 million, with US$14.1 million earmarked to the Justice Department, and US$11.2 and US$2.2 million respectively to the SEC and the US Treasury Department's Office of Foreign Assets Control (OFAC). The SFO "acknowledge[d] and expresse[d] its appreciation for the extensive coordination with the [Justice Department], SEC [and] the OFAC to allow companies to voluntarily disclose previous corrupt practices and dispose of this conduct in its totality."[63] Lord Justice Thomas, the second most senior criminal judge in the United Kingdom, approved the plea and the settlement but criticized Richard Alderman, director of the SFO, warning him that Thomas believed the penalty was inadequate, that Alderman had no authority to enter into such a deal, and that it should not happen again.[64]

The SFO's enforcement efforts in the DePuy case also began with a referral from the Justice Department in October 2007. DePuy is one of several orthopedic device makers that settled charges with the Department in 2007 that each paid illegal kickbacks to US doctors to convince the doctors to use their devices. An FCPA investigation followed. Robert John Dougall was in charge of marketing at DePuy, and allegedly participated in a scheme to bribe doctors in Greece through an intermediary. The SFO charged Dougall with conspiracy to corrupt in violation of the Criminal Law Act of 1977. In announcing his guilty plea, the SFO noted that Dougall is the "first 'co-operating defendant' in a major SFO corruption investigation."[65] The SFO urged leniency for Dougall, but he was sentenced to twelve months in prison, and granted leave to appeal.[66] The UK Court of Appeals suspended Dougall's sentence but cautioned that the prosecutors did not have the authority to enter into agreements to suspend a corruption defendant's sentence.[67]

This tension between the SFO and the UK judiciary casts considerable uncertainty on companies that are subject to the FCPA and the Bribery Act. While US judges retain discretion over sentencing and approval of government settlements and have been known to reject government settlements, instances of such judicial independence are relatively rare and the risks can be considered in deciding to settle with the government. The recent comments of UK judges raise serious questions whether the SFO agreements will be honored. In light of such uncertainty, should a company disclose potential FCPA violations to the US government, if those violations are also covered by the UK Bribery Act? Under the US enforcement regime, voluntary disclosure and the resultant cooperation may allow companies and individuals to avoid or reduce criminal sanctions, imprisonment, and hefty fines and penalties. The SFO clearly wants to be a part of this process. Companies typically favor global resolutions as well, but only those that are the product of negotiation with the enforcement authorities. The recent criticism by the UK courts appears to be taking that option off the table for now, by rejecting the SFO's authority to enter into plea agreements and settlements and resigning a company's ultimate fate to be decided instead by the courts. In this uncertain landscape, companies should carefully consider these risks as they navigate the decision to disclose voluntarily.

Cases and Developments From the First Six Months of 2010

NATCO Group, Inc. Settles Extortion-Related FCPA Charges

The year's first FCPA case came on January 11, 2010, in the form of a civil and administrative enforcement action by the Commission against NATCO Group, Inc. (NATCO), a Texas-based oil field services provider.[68] The complaint alleged that TEST Automation and Controls, Inc. (TEST), a wholly owned subsidiary of NATCO, had violated the books and records and internal controls provisions of the FCPA by "creat[ing] and accept[ing] false documents while paying extorted immigration fines and obtaining immigration visas in the Republic of Kazakhstan."[69] NATCO, without admitting or denying the complaint's allegations, agreed to pay a US$65,000 civil penalty to settle the Commission's charges.[70]

According to the SEC's complaint, Kazakh law required TEST to obtain immigration documentation for its expatriate workers, which Kazakh officials periodically audited to ensure compliance.[71] The complaint charges that in February and September 2007, Kazakh immigration prosecutors threatened to fine, jail, or deport TEST employees who prosecutors claimed lacked proper documentation unless TEST paid cash fines.[72] Apparently taking the threats seriously, TEST's senior management authorized making the cash fine payments.[73] Allegedly, TEST employees used personal funds to make two payments, US$25,000 in February 2007 and US$20,000 in September 2007, to the Kazakh prosecutors.[74] TEST then made wire transfers to reimburse the employees, incorrectly recording the first transfer as a salary advance and the second transfer as being for "visa fines."[75] Because of these payments, the Commission charged that NATCO's "system of internal accounting controls failed to ensure that TEST recorded the true purpose of the payments, and NATCO's consolidated books and records did not accurately reflect these payments."[76]

NATCO's settlement serves as an important reminder that the FCPA's books and records and internal controls provisions do not have a mens rea requirement. That is, even though the extortionate nature of the payments may have been a successful defense to a bribery charge, the same is not true for a books and records and internal controls violation. NATCO was charged not for paying the extorted fine, but concealing the payments' true nature.

That the Commission deemed it worthy to institute a civil and administrative enforcement action at all for these payments, which it acknowledged were made under threat of imprisonment and deportation, is yet another example of the government's zero-tolerance approach to FCPA enforcement more broadly. It also raises one of the hotly debated questions in FCPA enforcement: Should a company self-report potential FCPA violations? Here, NATCO not only discovered the potentially violative payments during a "routine audit review," it went on to conduct an internal investigation of the Kazakh allegations, which it then expanded to Nigeria, Angola, and China, supposedly because these countries were "geographic locations with historic FCPA concerns." The internal investigation did not unearth additional potentially violative payments. Nevertheless, the Commission deemed these facts, without any obvious programmatic goal, worthy of an enforcement action.

Nexus Technologies and Employees Plead Guilty in Vietnam Bribery Case

On March 16, 2010, Nexus Technologies Inc. (Nexus) founder and president Nam Nguyen, and Nguyen's siblings Kim Nguyen and An Nguyen, pleaded guilty in connection with allegations of conspiracy to bribe Vietnamese officials.[77] Nexus pleaded guilty to conspiracy, violations of the FCPA, violations of the Travel Act, and money laundering.[78] The three Nguyens pleaded guilty to conspiracy, substantive FCPA violations, and money laundering.[79] Nam and An Nguyen also pleaded guilty to a Travel Act violation.[80] The first Nexus employee to be convicted in connection with this scheme was Joseph Lukas, who in June 2009 pleaded guilty to conspiracy, a substantive FCPA violation, and money laundering.[81]

Nexus was a privately owned export company that supplied a wide variety of equipment and technology to, among others, the Vietnamese government, including underwater mapping equipment, bomb containment equipment, satellite communication parts, and air tracking systems.[82] Nexus and the three Nguyens admitted that from 1999 to 2008 they paid more than US$250,000 to Vietnamese officials in exchange for third-party contracts with Vietnamese agencies.[83] The payments were falsely described as "commissions" in the company's records.[84]

According to the indictment, Nam Nguyen was primarily responsible for negotiating contracts and bribes with Vietnamese agencies and employees.[85] Kim Nguyen handled the company's finances,

including money transfers, and identified and negotiated with potential US suppliers.[86] An Nguyen also worked with potential suppliers in the United States and arranged for shipments of goods.[87] Lukas had responsibility for overseeing and negotiating contracts with potential US suppliers.[88]

Before pleading guilty, Nexus and the Nguyens filed a motion to dismiss the original indictment, arguing that alleged improper payments to an entity "controlled" by governmental agencies did not satisfy the FCPA's criteria that corrupt payments be made to "foreign officials."[89] After the government issued a superseding indictment revising the description of the Vietnamese entities to "agencies and instrumentalities" of the Vietnamese government, the court denied the motion as moot.[90]

As a result of their guilty pleas, Nexus and the Nguyens face hefty penalties and other consequences. The maximum fine to Nexus is US$27 million.[91] Nam Nguyen and An Nguyen face maximum sentences of 35 years each, and Kim Nguyen faces a maximum of 30 years.[92] Additionally, as a condition of its plea Nexus admitted that it had operated primarily through criminal means and agreed to cease operations.[93] Sentencing was recently continued and is now scheduled for September 15, 2010.[94] The Nexus pleas demonstrate the government's continued willingness to target individuals in FCPA investigations and the severe penalties that may be imposed.

SFO Kicks Up Enforcement Activity with Expansion of Alstom Investigation

In an example of international cooperation and intensification of anti-corruption measures abroad, British authorities conducted a series of raids and arrests as part of the investigation into Alstom SA (Alstom), the French engineering group. On March 24, 2010, the SFO executed search warrants at five of Alstom's UK offices and four residential addresses in an investigation code-named Operation Ruthenium.[95] The SFO suspected that Alstom's British subsidiaries had paid bribes in order to win overseas contracts.[96] Three UK-based Alstom executives, Stephen Burgin, Alstom's UK president; Robert Purcell, finance director; and Altan Cledwyn-Davies, legal director, were arrested in the raids.[97] All three were later released without charge.[98]

Regardless of the outcome of the investigation, Operation Ruthenium is notable both for its scope and for the degree of international cooperation. As to the former, the operation involved 109 SFO staff and 44 police officers and civilian investigators.[99] This was "by far" the most officials deployed in a UK corruption case,[100] and is reminiscent of the Shot Show arrests in the United States in January 2010.[101] As for cooperation, the SFO announced that it had been working closely with the Office of the Attorney General and Federal Police in Switzerland.[102] Alstom has been under investigation in Switzerland, as well as in France, for several years.[103] Although Alstom reportedly believed that the SFO's investigation began at the request of Swiss prosecutors, the SFO maintains that the two governments are simply working closely and that Alstom may face parallel prosecution in England if the evidence warrants.[104] When combined with the BAE and Innospec settlements earlier in the year, the Alstom raids seem to solidify the SFO's recent activity as a trend rather than merely an aberration.

Warwick and Jumet Sentenced in Connection with Illicit Payments in Panama

On April 19, 2010, Charles Paul Edward Jumet was sentenced to 87 months in prison and fined US$15,000, followed by three years of supervised release, after pleading guilty in November 2009 to conspiring to violate the FCPA and making false statements to a federal agent.[105] As we discussed in the February 2010 edition of *FCPA News and Insights*,[106] Jumet, a former vice president and president of Ports Engineering Consultants Corporation (PECC), allegedly conspired to make corrupt payments to officials of the government of Panama in order to obtain a maritime contract for

PECC.[107] According to court documents, PECC was awarded a no-bid 20-year contract to service the lighthouses and buoys along Panama's waterways.[108] In return, Jumet and his co-conspirators, according to the government's allegations in the information, authorized corrupt payments totaling more than US$200,000 to Panamanian government officials, including the former administrator and deputy administrator of Panama's National Maritime Ports Authority and a former high-ranking elected official.[109] The false statements charge against Jumet resulted from his claim that one of the corrupt payments was simply a donation to the official's re-election campaign.[110]

In a related case, John W. Warwick pleaded guilty on February 13, 2010 to a one-count indictment charging him with playing a role in the same conspiracy to bribe Panamanian officials.[111] Warwick, like Jumet, was a president of PECC during the conspiracy.[112] As part of his plea, Warwick admitted that he conspired with Jumet and others to make corrupt payments of more than US$200,000 to government officials in Panama.[113] Warwick also agreed to forfeit US$331,000, the proceeds of the bribe.[114] On June 25, 2010, Warwick was sentenced to 37 months in prison, followed by two years of supervised release.[115]

Jumet's sentencing is notable because, as Assistant Attorney General Lanny Breuer noted, it is the longest ever prison term for an FCPA-related offense.[116] Breuer stated: "As this case confirms, foreign corruption carries with it very serious penalties, which can include substantial prison time for individuals who violate the law."[117] Although Jumet's case did not appear to involve particularly egregious behavior and involved relatively small amounts of money, it merited a record-setting sentence because, as the sentencing judge noted, Jumet lied to federal agents and, in doing so, obstructed justice.[118] The lesson Jumet's sentencing teaches us, then, is that even if one does not wish to assist the government in making its case, taking active steps to hinder the investigation may attract severe punishment.

Former Alliance One Executives Settle SEC Enforcement Action

On April 28, 2010, the SEC filed a civil injunctive action charging four former employees of Dimon, Inc. (Dimon), now Alliance One International, Inc. (Alliance One), with violating the anti-bribery provisions of the FCPA and aiding and abetting violations of the internal controls and books and records provisions of the federal securities laws.[119] All four defendants agreed to settle the SEC's charges.

According to the Commission, from 1996 through 2004, senior executives and employees of predecessor companies of Alliance One paid multiple bribes to foreign officials in Kyrgyzstan and Thailand.[120] From 1996 to 2004, Dimon's subsidiary in Kyrgyzstan allegedly paid more than US$3 million in bribes to various Kyrgyzstan government officials in order to purchase Kyrgyz tobacco.[121] The Commission alleged that Bobby J. Elkin, Jr., a former country manager for Kyrgyzstan, authorized, directed, and paid these bribes from a bank account held under his name.[122] The Commission further alleged that Baxter J. Myers, a former regional financial director, authorized fund transfers from a Dimon subsidiary's bank account to the account in Elkin's name.[123] In addition, Thomas G. Reynolds, a former corporate controller, recorded the payments made from the account in Elkin's name for purposes of internal reporting by Dimon.[124]

The Commission also alleged that, from 2000 to 2003, Dimon paid bribes of approximately US$542,590 to government officials of the Thailand Tobacco Monopoly in exchange for obtaining approximately US$9.4 million in sales contracts.[125] The Commission alleged that Tommy Lynn Williams, a former senior vice president of sales, directed tobacco sales from Brazil and Malawi to the Thailand Tobacco Monopoly through Dimon's agent in Thailand.[126] Williams is alleged to have authorized the payment of bribes to Thai government officials and characterized the payments as commissions paid to Dimon's agent in Thailand.[127]

Without admitting or denying the Commission's allegations, on April 28, 2010, all four defendants consented to the entry of final judgments permanently enjoining them from violating the anti-bribery provisions of the FCPA and aiding and abetting violations of the federal securities laws. Myers and Reynolds each agreed to pay civil monetary penalties of US$40,000.[128]

The Commission acknowledged that its settlement with Elkin took into account Elkin's cooperation with its investigation.[129] The investigation is continuing.

Businessmen and Former Haiti Government Official Sentenced in Haiti Teleco Bribery Scheme

As noted in the February 2010 edition of *FCPA News and Insights*[130] on December 7, 2009, the 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.[131] The five individuals charged in the indictment were (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 Telecommunications D'Haiti (Haiti Teleco), Haiti's state-owned national telecommunications company, 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 twelve 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.[132]

The Justice Department alleged that, from November 2001 to March 2005, the defendants conspired to pay more than US$800,000 to shell companies, which would then use the funds to bribe officials of Haiti Teleco.[133] 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.[134] The defendants allegedly used several shell companies to receive and forward payments in order to conceal the payments' improper nature and purpose.[135] Additionally, the government accused the defendants of creating false records stating that the bribes were for "consulting services."[136]

Of particular interest in this indictment were the government's charges against Antoine, a foreign government official. The government alleged that Antoine, who had primary responsibility for the relationships between US telecommunications companies and Haiti Teleco, had used his position to accept bribes from three US telecommunications companies, and thereby had defrauded Haiti Teleco.[137] However, Antoine could not be charged under the FCPA because he was a foreign official and the FCPA does not cover foreign official recipients of improper payments. Instead, the government charged Antoine with one count of conspiracy to commit money laundering because he was a part-time Florida resident and allegedly committed the offense in Florida. On March 12, 2010, Antoine pleaded guilty to conspiracy to commit money laundering.[138]

Further, Antoine admitted that US$800,000 of these bribes were intended to be given to him by a US telecommunications company of which Esquenazi was the president and director, Rodriguez was the

executive vice president, and Antonio Perez was, at times, the controller.[139] On April 27, 2009, Perez pleaded guilty to conspiring to commit FCPA violations and money laundering.[140]

As a result of his guilty plea, Antoine faced a maximum penalty of 20 years in prison and a fine of the greater of US$250,000 or twice the value of the property involved in the transaction. Antoine also agreed to a forfeiture order of US$1,580,771.[141] On June 1, 2010, Antoine was sentenced to 48 months in prison followed by three years of supervised release.[142] In addition, Antoine was ordered to pay US$1,852,209 in restitution in addition to the agreed forfeiture order of US$1,580,771.[143] The trial for Esquenazi, Rodriguez, Duperval, and Grandison, who were all indicted with Antoine, is scheduled to begin on December 6, 2010.[144]

Antoine admitted that, to disguise the origin of these funds, he laundered the illicit payments through intermediary companies, including J.D. Locator Services, Inc. (J.D. Locator).[145] Juan Diaz, the president of J.D. Locator, pleaded guilty to conspiracy to commit violations of the FCPA and money laundering on May 15, 2009. On July 30, 2010, Diaz was sentenced to 57 months in jail, followed by three years of supervised release. Additionally, Diaz was ordered to pay US$73,824 in restitution, and to forfeit US$1,028,851.[146]

A portion of the J.D. Locator funds also was laundered by Jean Fourcand, the president and director of Fourcand Enterprises Inc. On February 19, 2010, Fourcand pleaded guilty to engaging in monetary transactions involving property derived from a scheme to bribe former Haitian government officials.[147] In his guilty plea, Fourcand admitted that, between November 2001 and August 2002, he received funds originating from US telecommunications companies for the benefit of Antoine.[148] Fourcand admitted that some of these funds were received from J.D. Locator.[149] For example, Fourcand received a check drawn on a J.D. Locator bank account. The check reflected a false invoice number to make the payment appear to be for legitimate services. Fourcand deposited the check in an account in the name of Fourcand Enterprises, but in fact the money was intended for Antoine. Fourcand eventually used the money in a real estate transaction that benefited Antoine.[150]

After pleading guilty, Fourcand faced a maximum penalty of 10 years in prison and a fine of the greater of US$250,000 or twice the value of the property involved in the transaction.[151] In his guilty plea, Fourcand also agreed to forfeit US$18,500.[152] On May 3, 2010, Fourcand was sentenced to six months in prison followed by two years of supervised release. [153]

The prosecution of Antoine, Diaz, and Fourcand demonstrates that the Justice Department is committed to its anti-corruption stance and that, when the FCPA does not reach those involved in corruption, the government will use other charges to hold those individuals accountable. Third parties and recipients of bribes should be just as wary of government enforcement as those who are paying bribes.

Veraz Networks, Inc. Settles China and Vietnam Investigation

On June 28, 2010, Veraz Networks, Inc., a California-based telecommunications company, agreed to pay US$300,000 in monetary penalties to settle charges by the Commission that it violated the books and records and internal controls provisions of the FCPA.[154] The Commission alleged that Veraz hired a consultant in China who paid about US$40,000 in gifts and other improper payments to officials at a government-controlled telecommunications company in China. Additionally, the government alleged that a Veraz employee made similar payments to a telecommunications company in Vietnam.[155]

Joining KBR, Technip and Snamprogetti Settle Bonny Island Bribery Scandal

Technip, on June 28, 2010, and Snamprogetti, on July 7, 2010, joined their former joint-venture partner KBR in reaching nine-figure settlements with the SEC and Justice Department for their conduct relating to the actions of TSKJ Nigeria.

TSKJ was a joint venture owned equally by KBR, Technip, Snamprogetti, and JGC Corporation of Japan, which allegedly was responsible for paying over US$180 million in bribes to Nigerian government officials from 1995 to 2004 in order to secure a US$6 billion contract to build liquefied natural gas facilities on Bonny Island, Nigeria.[156] Allegedly, TSKJ hired two agents, Jeffrey Tesler and a currently unnamed Japanese trading company, to bribe various Nigerian government officials related to the oil and natural gas industries in order for TSKJ to obtain the Bonny Island engineering, procurement and construction contracts.[157] The government alleged further that senior sales executives from each of the joint venture partners formed a "cultural committee" designed to consider how to proceed with the alleged bribery scheme.[158]

On June 28, 2010, Technip, a Paris-based engineering and construction firm, settled with the Commission and the Justice Department by agreeing to pay US$338 million in fines and disgorgement.[159] As part of its criminal settlement, Technip agreed to pay a fine of US$240 million and entered into a deferred prosecution agreement, which requires the appointment of an independent monitor.[160] With respect to the Commission, Technip agreed to settle the SEC's charges by disgorging US$98 million in illegal profits.[161] Prior to the settlement, Technip had announced in a February 12, 2010 press release that it had set aside €245 million (roughly US$310 million) "reflecting the estimated costs of resolution" of the TSKJ investigation.[162]

About a week later, on July 7, 2010, Snamprogetti, a Dutch company, and its parent, ENI S.p.A. of Italy (ENI), settled with the Commission and the Justice Department for a total of US$365 million in fines and disgorgement.[163] Snamprogetti agreed to pay a US$240 million criminal fine and enter into a deferred prosecution agreement to settle its criminal charges with the Department and disgorge US$125 million in profits to settle with the SEC.[164] The deferred prosecution agreement does not require an independent compliance monitor. ENI had also previously disclosed in its 2009 Annual Report that it had accrued €250 million (roughly USUS$316 million) to settle FCPA charges with US authorities.[165]

Combined with KBR's February 2009 settlement of US$579 million in criminal fines and disgorgement,[166] the current total penalties arising from TSKJ's actions now total well over US$1 billion.[167] This total could increase in the near future, since JGC, the fourth member of the TSKJ joint venture, recently disclosed that it was in talks with the government "about a potential resolution" of the TSKJ-related charges.[168]

Additionally, this investigation has already led to the prosecution of several individual defendants, including Jack Stanley, the former CEO of KBR, who pleaded guilty in 2008.[169] Tesler, a UK lawyer hired as an agent for KBR and its joint-venture partners, and Wojciech Chodan, a former salesperson and consultant for a UK subsidiary of KBR, were both indicted together on February 17, 2009 for violations of the FCPA.

Tesler was allegedly hired in 1995 as an agent for TSKJ and, according to the indictment, was involved in bribing high-level Nigerian government officials, including top-level executive branch officials.[170] Tesler also allegedly worked with another agent to bribe lower-level Nigerian government officials in order to secure contracts for TSKJ.[171] According to the joint indictment, Chodan allegedly participated in so-called "cultural meetings," where "Chodan and other co-conspirators allegedly discussed the use of Tesler and other agents to pay bribes to Nigerian government officials to secure the officials' support for awarding the engineering, procurement, and construction contracts to the joint venture."[172]

Tesler was ordered to be extradited to the United States on March 25, 2010 after a UK judge rejected his argument that extradition would be unjust and oppressive because of the length of time it had taken US authorities to charge him. As the judge pointed out, Tesler was partly responsible for this delay because his lawyers had blocked US authorities from obtaining evidence from Switzerland.[173] Tesler has announced that he plans to appeal this decision.[174] Chodan was ordered to be extradited on April 21, 2010.[175] As of now, however, both men are still in the United Kingdom.

Sentencing Roll Call

As we discussed in the February 2010 edition of FCPA News and Insights, one of the recent developments in FCPA enforcement is the government's decision to prosecute individuals involved in the payment of bribes to foreign government officials.176 Consequently, the list of individuals prosecuted by the Justice Department, and thus those individuals awaiting sentencing, continues to grow. Below is a list of individuals awaiting sentencing and the currently scheduled sentencing dates.

Sentencing of Thai Bribery Scheme Collaborators Postponed

In September 2009, Gerald and Patricia Green were convicted of paying over US$1.8 million in bribes to a Thai official in return for contracts related to the Bangkok international film festival.[177] The Greens disguised the bribes as sales commissions and used dummy businesses to conceal the benefits they obtained.[178] In June 2010, a federal judge delayed sentencing the Greens for the fifth time.[179]

Attorney Who Testified Against Former Client Awaits Sentencing

Swiss national Hans Bodmer was indicted in 2003 for conspiring to violate the FCPA and money laundering.[180] Bodmer is a lawyer who represented Victor Kozeny, a well known FCPA fugitive, and testified against Kozeny's co-defendant, Frederic Bourke, at trial. As discussed in the February 2010 edition of *FCPA News and Insights,*[181] Bourke was convicted and sentenced to jail. The indictment alleged that Bodmer conspired to bribe Azeri officials in order to secure control of an oil company owned by the Azeri government, and specifically that he created shell companies, drafted legal documents, used Swiss bank accounts and client accounts to convey bribes, and otherwise conspired to bribe Azeri officials.[182] Although the FCPA charge was dismissed,[183] Bodmer pleaded guilty in 2004 to money laundering.[184] Bodmer's sentencing hearing is scheduled for February 17, 2011.[185]

Upcoming Sentencing of Former KBR CEO

The former CEO of KBR, Albert "Jack" Stanley, pleaded guilty in 2008 to conspiring to violate the FCPA by helping KBR and three other companies bribe Nigerian government officials.[186] Stanley faces up to ten years in prison and the Justice Department has recommended that the court order US$10.8 million in restitution.[187] A sentencing hearing is scheduled for September 23, 2010.[188]

July Sentencing Planned for Former Director of Sales for Pacific Consolidated

On September 3, 2009, Leo Winston Smith, former Director of Sales and Marketing for Pacific Consolidated Industries, pleaded guilty to FCPA violations arising from bribes paid to a UK Ministry of Defense (MOD) official in return for obtaining government contracts.[189] Smith and a colleague established a sham marketing agreement with a relative of the MOD official, which they used to facilitate the payment of more than US$70,000 in bribes.[190] Smith is scheduled to be sentenced on July 19, 2010.[191]

One Awaits Sentencing in Haitian Teleco Bribery Scheme

Antonio Perez pleaded guilty in 2009 to conspiring to make corrupt payments to a Haitian official in violation of the FCPA and money laundering laws in conjunction with the Haiti Teleco bribery scheme (discussed above).[192] Perez was the former controller of one of three Florida telecommunications companies that benefitted from the scheme.[193] He assisted with the processing of "side payments" and disguised the nature of the payments by recording them as "consulting services."[194] Perez is scheduled to be sentenced on August 17, 2010.[195]

Former Nexus Executive to be Sentenced this Fall

As discussed above, Joseph Lukas, a former executive of Nexus, pleaded guilty in 2009 to conspiracy to violate the FCPA and violations of the FCPA stemming from his participation in a Vietnamese bribery scheme.[196] Lukas admitted that from 1999 through 2005 he and others at Nexus bribed Vietnamese officials in order to secure contracts for US vendors related to supply equipment and technology.[197] In March 2010, Nexus and three other employees pleaded guilty to similar charges.[198] Lukas faces up to 10 years in prison and a US$350,000 fine.[199] He is scheduled to be sentenced on September 15, 2010.[200]

Schnitzer Steel Executive to be Sentenced for FCPA Violation

Si Chan Wooh, a senior executive of SSI International, Inc. (SSI), a Schnitzer Steel Industries, Inc. subsidiary, pleaded guilty in 2007 to conspiring to violate the anti-bribery provisions of the FCPA.[201] Wooh admitted that he conspired to violate the FCPA by bribing numerous officers and employees of government-owned steel mills in China for nearly a ten-year period in order to induce them to purchase scrap metal from SSI.[202] In related civil enforcement proceedings, Wooh, without admitting or denying the charges, agreed to pay approximately US$40,000 in disgorgement, interest, and penalties.[203] His sentencing is scheduled for September 13, 2010.[204]

Agent Involved in Bribing Mexican Utility Company Awaits Sentencing

Fernando Basurto of Mexico City is one of a growing number of foreign nationals targeted by FCPA investigations. Basurto allegedly conspired with US national Joseph O'Shea, the former general manager of an ABB subsidiary, and others to bribe Mexican officials in return for contracts to upgrade and maintain Mexico's electrical network system.[205] Basurto pleaded guilty in November 2009 to conspiring to violate the FCPA, money laundering, and falsification of records.[206] A recent scheduling order set Basurto's sentencing date for 30 days after O'Shea's trial.[207] A trial date for O'Shea has not been set.

Investor in Kozeny's Azerbaijan Privatization Scheme to be Sentenced

Clayton Lewis was a partner of Omega Advisors, Inc., a hedge fund that invested heavily in Viktor Kozeny's scheme to privatize the state-owned Azeri oil company, which was discussed in the February 2010 edition of *FCPA News and Insights*.[208] Lewis pleaded guilty to violating and conspiring to violate the FCPA.[209] He also testified in Frederic Bourke's trial. Lewis's sentencing date is set for October 4, 2010.[210]

Two Former CCI Executives to be Sentenced in Early 2011

In early 2009, Mario Covino, the former worldwide sales director of California-based Control Components, Inc. (CCI), a company that designs and produces valves used in the energy industry, pleaded guilty to conspiring to violate the FCPA.[211] Covino arranged for the payment of approximately US$1 million in bribes to foreign officials at state-owned enterprises in several countries including

China, India, and Brazil.[212] Former CCI finance director Richard Morlok also pleaded guilty to conspiring to violate the FCPA.[213] Sentencing in both cases has been set for February 14, 2011.[214]

Endnotes

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84 *Id.*

85 Superseding Indictment at 3, *United States v. Nexus Techs., Inc.,* No. 08-0522, Dkt. Entry No. 106 (E.D. Pa. Oct. 29, 2009).

86 *Id.*

87 *Id.*

88 Lukas Press Release, *supra* note 81.

89 *See* Gov. Response in Opposition to Defs.' Motion to Dismiss at 5-6, *United States v. Nguyen,* No. 08-0522l., Dkt. Entry No. 109 (Oct. 20, 2009).

90 *Id.; see also* Order at 1, *United States v. Nguyen,* No. 08-0522, Dkt. Entry No. 131 (E.D. Pa. Dec. 3, 2009).

91 Nexus Press Release, *supra* note 77.

92 *Id.*

93 *Id.*

94 Order at 1, *United States v. Nguyen,* No. 08-0522, Dkt. Entry No. 180 (E.D. Pa. June 3, 2010).

95 SFO Press Release, *Directors of ALSTOM Arrested in Corruption Investigation Following Raids on Nine Properties* (Mar. 24, 2010), *available at* http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/directors-of-alstom-arrested-in-corruption-investigation-following-raids-on-nine-properties.aspx [hereinafter ALSTOM Press Release].

96 *Id.*

97 Michael Peel, *SFO Quizzes Alstom UK Chiefs in Graft Probe,* Fin. Times, Mar. 24, 2010.

98 *Id.*

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100 Peel, *supra* note 98.

101 *See supra* Section II, The "Shot Show" Investigation, p. 2.

102 ALSTOM Press Release, *supra* note 95.

103 Peel, *supra* note 97.

104 Alex Spence, *Fraud Detectives Step Up Searches in Alstom Bribery Inquiry,* The Sunday Times, Mar. 26, 2010, *available at* http://business.timesonline.co.uk/tol/business/industry_sectors/transport/article7076007.ece.

105 Justice Department Press Release, *Virginia Resident Sentenced to 87 Months in Prison for Bribing Foreign Government Officials* (Apr. 19, 2010), *available at* http://www.justice.gov/opa/pr/2010/April/10-crm-442.html.

106 FCPA News and Insights, *supra* note 1.

107 Information at 5, *United States v. Jumet,* No. 3:09-cr-00397, Dkt. Entry No. 2 (E.D. Va. Nov. 10, 2009).

108 *Id.* at 5-8.

109 *Id.*

110 *Id.* at 8-9.

111 Plea Agreement, *United States v. Warwick,* No. 3:09-cr-00449, Dkt. Entry No. 15 (E.D. Va. Feb. 10, 2010) [hereinafter Warwick Plea Agreement].

112 Indictment at 2, *United States v. Warwick,* No. 3:09-cr-00449, Dkt. Entry No. 1 (E.D. Va. Dec. 15, 2009).

113 Justice Department Press Release, *Virginia Resident Charged with Conspiring to Bribe Former Panamanian Government Officials for Maritime Contract* (Dec. 16, 2009), *available at* http://www.justice.gov/opa/pr/2009/December/09-ag-1348.html [hereinafter Warwick Press Release].

114 Warwick Plea Agreement, *supra* note 111 at 9.

115 Warwick Press Release, *supra* note 113.

116 *Id.*

117 *Id.*

118 Transcript of Sentencing, *United States v. Jumet,* No. 3:09-cr-00397, Dkt Entry No. 23 (E.D. Va. Apr. 19, 2010).

119 SEC Litigation Release No. 21509, *SEC Files Anti-Bribery Charges Against Former Finance Executives and Senior Employees Of Global Tobacco Company* (Apr. 29, 2010), *available at* http://www.sec.gov/litigation/litreleases/2010/lr21509.htm [hereinafter Alliance One Press Release].

120 Complaint ¶ 3, *SEC v. Elkin*, No. 1:10-cv-00661 (D.D.C. Apr. 28, 2010), *available at* http://www.sec.gov/litigation/complaints/2010/comp21509.pdf.

121 *Id.*

122 *Id. ¶ 4.*

123 *Id.*

124 *Id.*

125 *Id. ¶ 5.*

126 *Id.*

127 *Id.*

128 SEC Litigation Release No. 21509, *SEC Files Anti-Bribery Charges Against Former Finance Executives and Senior Employees of Global Tobacco Company* (Apr. 29, 2010), *available at* http://www.sec.gov/litigation/litreleases/2010/lr21509.htm.

129 *Id.*

130 FCPA News and Insights, *supra* note 1.

131 *United States v. Esquenazi,* No. 09-21010 (Dec. 4, 2009) [hereinafter Haiti Indictment]*; see also* 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), *available at* http://www.justice.gov/opa/pr/2009/December/09-crm-1307.html.

132 Haiti Indictment, *supra* note 131.

133 *Id. ¶ 10.*

134 *Id. ¶ 6.*

135 *Id. ¶ 8.*

136 *Id. ¶ 9.*

137 *Id. ¶¶ 4, 10-13.*

138 Justice Department Press Release, *Former Haitian Government Official Pleads Guilty to Conspiracy to Commit Money Laundering in Foreign Bribery Scheme* (Mar. 12, 2010), *available at* http://www.justice.gov/opa/pr/2010/March/10-crm-260.html.

139 *Id.*

140 *Id.*

141 *Id.*

142 Justice Department Press Release No. 10-639, *Former Haitian Government Official Sentenced to Prison for His Role in Money Laundering Conspiracy Related to Foreign Bribery Scheme* (June 2, 2010), *available at* http://www.justice.gov/opa/pr/2010/June/10-crm-639.html.

143 *Id.*

144 Order Granting Defendant Joel Esquenazi's Motion to Continue Trial Date, *United States v. Esquenazi,* No. 09-21010, Dkt. Entry No. 238 (S.D. Fla. Jul. 16, 2010).

145 *Id.*

146 Justice Department Press Release, *Florida Businessman Sentenced to 57 Months in Prison for Role in Foreign Bribery Scheme* (July 30, 2010), *available at* http://www.justice.gov/opa/pr/2010/July/10-crm-883.html.

147 Justice Department Press Release No. 10-167, *Florida Businessman Pleads Guilty to Money Laundering in Foreign Bribery Scheme* (Feb. 19, 2010), *available at* http://www.justice.gov/opa/pr/2010/February/10-crm-167.html.

148 *Id.*

149 *Id.*

150 *Id.*

151 *Id.* The one count information noted that the amount at issue was US$18,500.

152 *Id.*

153 Sentencing Minutes, *United States v. Fourcand,* No. 10-20062 (S.D. Fla. May 3, 2010).

154 SEC Litigation Release No. 21581, *SEC Charges California Telecommunications Company with FCPA Violations* (June 29, 2010), *available at* http://www.sec.gov/litigation/litreleases/2010/lr21581.htm.

155 For our discussion of these issues in the context of doing business in China, see 2009 Year-End FCPA News and Insights, *supra* note 1.

156 Justice Department Press Release, *Snamprogetti Netherlands B.V. Resolves Foreign Corrupt Practices Act Investigation and Agrees to Pay $240 Million Criminal Penalty* (July 7, 2010), *available at* http://www.justice.gov/opa/pr/2010/July/10-crm-780.html [hereinafter Snamprogetti Press Release]; Justice Department Press Release, *Technip S.A. Resolves Foreign Corrupt Practices Act Investigation and Agrees to Pay $240 Million Criminal Penalty* (June 28, 2010), *available at* http://www.justice.gov/opa/pr/2010/June/10-crm-751.html.

157 *See* Snamprogetti Press Release, *supra* note 156.

158 SEC Litigation Release No. 21588, *SEC Charges Snamprogetti Netherlands, B.V. with Foreign Bribery and Related Accounting Violations and ENI, S.p.A. with Books and Records and Internal Controls Violations—ENI and Snamprogetti to Pay Jointly $125 Million in Disgorgement; Snamprogetti Also to Pay a Criminal Penalty of $240 Million* (July 7, 2010), *available at* http://www.sec.gov/litigation/litreleases/2010/lr21588.htm; SEC Litigation Release No. 21578, *SEC Charges Technip with Foreign Bribery and Related Accounting Violations—Technip to Pay $98 Million in Disgorgement and Prejudgment Interest; Company Also to Pay a Criminal Penalty of $240 Million* (June 28, 2010), *available at* http://www.sec.gov/litigation/litreleases/2010/lr21578.htm [hereinafter Technip Press Release].

159 Justice Department Press Release, *Technip S.A. Resolves Foreign Corrupt Practices Act Investigation and Agrees to Pay $240 Million Criminal Penalty* (June 28, 2010), *available at* http://www.justice.gov/opa/pr/2010/June/10-crm-751.html.

160 *Id.*

161 Technip Press Release, *supra* note 158.

162 Technip S.A. Press Release, *Technip: Charge for Potential Resolution of the TSKJ Nigeria Matter in the US; Q4-09 Operating Performance Above Expectations* (Feb. 12, 2010), *available at* http://www.technip.com/en/press/technip-charge-potential-resolution-tskj-nigeria-matter-us-q4-09-operating-performance-above-e.

163 Snamprogetti Press Release, *supra* note 156.

164 *Id.*

165 ENI S.p.A., 2009 Annual Report 255 (2009), *available at* http://eni.com/en_IT/attachments/publications/reports/reports-2009/annual-report-2009.pdf.

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167 Snamprogetti Press Release, *supra* note 156 (stating the TSKJ-related investigation "has led to more than $1.28 billion in criminal and civil penalties to date").

168 JGC Corp., 2009 Consolidated Financial Statement—Summary 2 (2010), *available at* http://www.jgc.co.jp/en/06ir/pdf/financial_statements-summary/FY09/fy09_yem.pdf.

169 Plea Agreement ¶¶ 1, 22, *United States v. Stanley,* No. H-08-00597, Dkt. Entry No. 9 (S.D. Tex. Sept. 3, 2008).

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171 *Id.*

172 *Id.*

173 Rob Evans, *British Solicitor Faces Bribe Laundering Trial in America,* Guardian, Mar. 25, 2010, *available at* http://www.guardian.co.uk/world/2010/mar/25/british-solicitor-laundering-trial-america (last visited on June 15, 2010).

174 *Id.*

175 Richard L. Cassin, *U.K. Court Approves Chodan Extradition,* FCPA Blog, April 21, 2010, *available at* http://www.fcpablog.com/blog/2010/4/21/uk-court-approves-chodan-extradition.html (last visited on June 15, 2010).

176 FCPA News and Insights, *supra* note 1.

177 Justice Department Press Release, *Film Executive and Spouse Found Guilty of Paying Bribes to a Senior Thai Tourism Official to Obtain Lucrative Contracts* (Sept. 14, 2009), *available at* http://www.justice.gov/opa/pr/2009/September/09-crm-952.html.

178 *Id.*

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180 Indictment ¶¶ 1-27, *United States v. Bodmer,* No. 03-CR-00947, Dkt. Entry No. 1 (S.D.N.Y. Aug. 3, 2003) [hereinafter Bodmer Indictment].

181 FCPA News and Insights, *supra* note 1.

182 Bodmer Indictment. *¶¶ 10-22, supra* note 180.

183 Order Dismissing Count I, *United States v. Bodmer,* No. 03-CR-00947, Dkt. Entry No. 33 (S.D.N.Y. July 23, 2004).

184 Plea Agreement, *United States v. Bodmer,* No. 03-CR-00947 (S.D.N.Y. Oct. 8, 2004)*; see also* Order Accepting Guilty Plea*, United States v. Bodmer,* No. 03-CR-00947, Dkt. Entry No. 47 (S.D.N.Y. May 19, 2009).

185 Endorsed Letter, *United States v. Bodmer,* No. 03-CR-00947, Dkt. Entry No. 53 (S.D.N.Y. Aug. 18, 2010).

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187 *Id. ¶¶ 3, 7.*

188 Notice of Resetting at 1, *United States v. Stanley,* No. H-08-597, Dkt. Entry No. 21 (S.D. Tex, Apr. 16, 2010).

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193 *Id.*

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195 Order Granting Motion to Reschedule Sentencing at 1, *United States v. Perez,* No. 1:09-CR-20347, Dkt. Entry No. 48 (S.D. Fla. May 13, 2010).

196 Lukas Press Release, *supra* note 81.

197 *Id.*

198 *Id.*

199 *Id.*

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201 Justice Department Press Release No. 07-474, *Former Senior Officer of Schnitzer Steel Industries Inc. Subsidiary Pleads Guilty to Foreign Bribes* (June 29, 2007), *available at* http://www.justice.gov/opa/pr/2007/June/07_crm_474.html.

202 *Id.*

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206 Plea Agreement at 1-2, *United States v. Basurto,* No. 09-0325, Dkt. Entry No. 43 (Nov. 23, 2009).

207 Order Granting Joint Motion to Continue Sentencing at 1, *United States v. Basurto,* No. 09-0325, Dkt. Entry No. 50 (Apr. 27, 2010).

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209 *Id.*

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