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FCPA Update: Key Enforcement and Investigative Developments

CLAUDIUS O. SOKENU AND ARTHUR LUK

The authors analyze recent enforcement and investigative developments under the Foreign Corrupt Practices Act.

Albeit a drop from the heights of years gone by, the first six months of 2012 have been another busy period for enforcement of the Foreign Corrupt Practices Act ("FCPA"). In the first half of 2012, the government suffered high-profile stinging defeats in two separate criminal trials, as it lost the *SHOT Show* and *O'Shea* cases. Notwithstanding these stinging loses, the Department of Justice ("Justice Department) and the Securities and Exchange Commission ("Commission" or "SEC") have achieved some success in the first half of 2012, obtaining sanctions against a former senior executive of Morgan Stanley, Garth Peterson, and companies in the energy and pharmaceutical industries. And perhaps the most significant development in the first half of 2012 gained attention not because of the government, but from the *New York Times*' exposé of sensational allegations of corrupt payments at Wal-Mart de Mexico and an alleged cover-up involving certain senior Wal-Mart Stores, Inc. executives.

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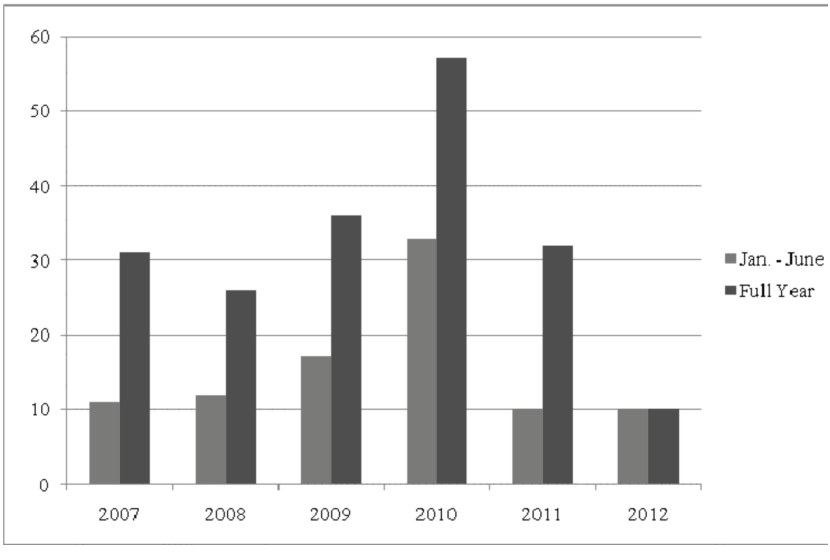
INTRODUCTION

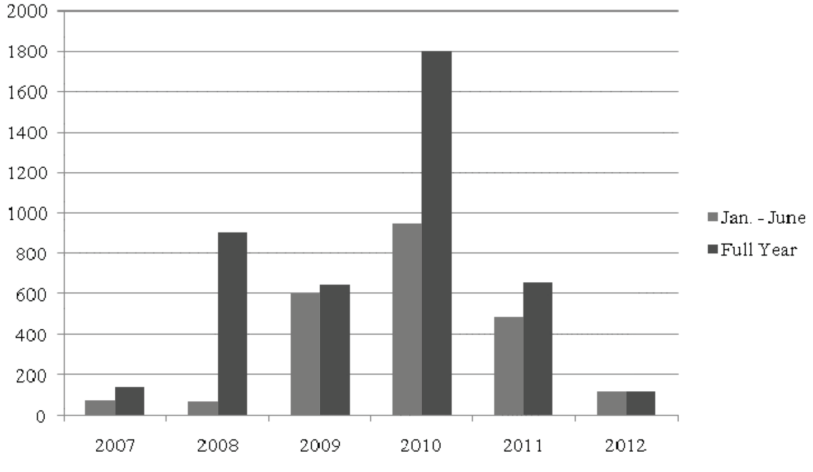
In the first half of 2012, the Justice Department and the Commission combined to charge five companies and five individuals in civil and/or criminal FCPA enforcement actions. This year's figures, when compared to the mid-year numbers for 2011, reflect a decrease in actions against companies — there had been nine enforcement actions against companies in the first half of 2011. The five actions against individuals, however, are an increase over the tally of one at the halfway point in 2011. More marked than the drop-off in enforcement actions against companies is the drastic decline in penalties assessed. At this stage last year, US$482 million in criminal fines, civil monetary penalties, and disgorgement had been imposed, which itself was a significant decrease from mid-way through 2010. This year, however, has seen only US$120 million in penalties assessed.

Table 1: Number of Enforcement Actions



Last year's declines in actions and penalty totals could potentially be explained by the record high number of trials, as well as the backlog of investigations started during the recent boom period. Such an explanation may still have some weight halfway through 2012. The first six months saw three acquittals, three mistrials, and the dismissal with prejudice of all remaining *SHOT Show* prosecutions. It also saw several significant enforcement actions and allegations of bribery at a leading retailer, which may reinvigorate the enforcement docket.

Table 2: FCPA Penalties Assessed (in millions)



UNPRECEDENTED LOSS

One of the Justice Department's highest-profile FCPA cases has now ended in a significant setback for the government. In January 2010, the Justice Department announced that it had arrested 22 individuals in the military and law enforcement products industry in a massive sting operation for allegedly conspiring to bribe foreign officials in West Africa. Known as the SHOT Show case because all but one of the defendants were arrested at the

Shooting, Hunting, Outdoor Trade Show and Conference in Las Vegas, the case was once heralded by the Justice Department as a "turning point" in FCPA enforcement.[1] But after two lengthy trials against 10 of the defendants revealed embarrassing details about the government's investigation, yet failed to produce a single conviction, the government has opted to dismiss the indictments against all defendants.[2]

The SHOT Show prosecution was the result of an undercover operation that the Justice Department once touted as its largest single FCPA investigation.[3] The operation involved 150 FBI agents, 14 search warrants executed in the US and seven search warrants executed in the United Kingdom, and hundreds of hours of video and audio recordings of phone calls and meetings between undercover agents and certain of the defendants.

The investigation relied heavily on the cooperation of an informant, Richard Bistrong, who had himself previously pled guilty to FCPA violations and other crimes. Defense attorneys later portrayed Bistrong as an "irredeemably corrupt con-man," and argued that Bistrong and his FBI handlers were "so personally invested in the operation and its outcome" that they engaged in misconduct, including preventing targets of the investigation from conveying concerns about the lawfulness of the transaction to others.[4] In this regard, defense attorneys introduced off-color communications between Bistrong and his FBI handlers, which cast doubt on the agents' professionalism and credibility.[5]

Three of the targets of this investigation — Daniel Alvirez, Jonathan Spiller, and Haim Geri — pled guilty in the Spring of 2011.[6] US District Court Judge Richard J. Leon then split the remaining 19 defendants into four groups for trial. The first group — Pankesh Patel, John Benson Weir III, Andrew Bigelow, and Lee Allen Tolleson — went to trial shortly thereafter. In July 2011, Judge Leon declared a mistrial when the jury failed to reach a verdict.[7] The second group — John N. Mushriqui, Jeana Mushriqui, R. Patrick Caldwell, Stephen Gerard Giordanella, John Gregory Godsey, and Marc Frederick Morales — went to trial in the Fall of 2011. After the government's 12-week presentation of its case-in-chief, Judge Leon granted the defense's Rule 29 motion for a judgment of acquittal on the charge of conspiracy to violate the FCPA, the sole charge against Giordanella.[8] When the trial of the remaining defendants concluded, the jury acquitted Caldwell and Godsey

and was unable to reach a verdict on the Mushriquis and Morales, resulting in a mistrial as to them.[9]

A report authored by the foreman of the jury in the second trial highlights problems with the government's case. Jurors apparently found that the government's witnesses lacked credibility and were troubled by vague language employed by Bistrong and the undercover agents during the sting, such as using the word "commission" instead of "bribe." The jurors also found little evidence that the defendants acted with the requisite state of mind and saw the government's investigative tactics as underhanded and overreaching.[10]

Faced with these setbacks, the government, in late February 2012, filed a motion to withdraw the indictments against all remaining SHOT Show defendants. The government noted that, of the 10 defendants it had tried so far, none had been convicted — mistrials were declared as to seven due to hung juries, and three had been acquitted (two by a jury and one by a judge). The government also observed that the court had prevented it from introducing certain evidence of other crimes the court determined were not sufficiently relevant, which it believed significantly weakened its case, and that four or more trials would require "substantial governmental resources, as well as judicial, defense, and jury resources,…given that the first two trials combined lasted approximately six months."[11]

Judge Leon granted the government's motion, criticizing the government's theory of the case and its investigation.[12] "This appears to be the end of a long and sad chapter of white-collar criminal enforcement," he stated.[13] In late March, the government moved to dismiss the indictments against the three defendants who had pled guilty — Alvirez, Spiller, and Geri — though it left open the possibility of re-filing conspiracy charges against Alvirez.[14] The judge granted the motion, ending the case.[15]

Though the Justice Department insists that its "[FCPA] enforcement efforts are broader than one case,"[16] there is no question that the dismissal of the SHOT Show indictments represents a blow to the government.

O'SHEA ACQUITTED ON ALL CHARGES

The prosecution of John Joseph O'Shea also ended in a defeat for the government. After the government presented its case on FCPA and relat-

ed conspiracy counts, Judge Lynn N. Hughes of the United States District Court for the Southern District of Texas granted the defense's Rule 29 motion and acquitted O'Shea on the 12 substantive FCPA charges.[17] The judge later granted the government's motion to dismiss the remaining non-FCPA charges against O'Shea.[18]

The government arrested O'Shea in November 2009 on allegations that he authorized bribes to officials at Comisión Federal de Electricidad ("CFE"), Mexico's state-owned electricity utility. A former manager for a Houston-based subsidiary of Swiss engineering firm ABB Ltd., O'Shea was accused of arranging US$1 million in corrupt payments in order to obtain US$81 million in contracts from CFE. He allegedly hired a Mexican citizen, Fernando Maya Basurto, to act as a middleman in the scheme.[19] Basurto pled guilty to conspiring to violate the FCPA, money laundering, and falsifying records, and he testified for the government against O'Shea.[20] Basurto was later sentenced to time served.[21]

After the government's four-day presentation of its case against O'Shea, the defense moved for acquittal on the 12 substantive FCPA counts and one conspiracy count. Judge Hughes granted the motion, reasoning that the government had not proven that the payments O'Shea made constituted bribes paid to CFE officials.[22] The court criticized the evidence proffered by the government's "principal witness," Basurto, as "abstract and vague, generally relating gossip" and concluded that Basurto knew "almost nothing" relating to O'Shea.[23] In response to this adverse ruling, the government moved to dismiss the remaining money laundering and false statements charges against O'Shea, citing Judge Hughes' "prior statements and rulings, as well as the resulting collateral estoppel issues associated with the [c]ourt's judgment of acquittal."[24] On February 9, 2012, Judge Hughes granted the motion, concluding the case.[25]

LINDSEY MANUFACTURING CASE ENDS

On November 29, 2011, United States District Judge Howard Matz dismissed with prejudice the indictment against Lindsey Manufacturing, its Chief Executive Officer, Keith Lindsey, and its Chief Financial Officer, Steven K. Lee, because of prosecutorial misconduct. These defendants had been convicted at trial for their roles in bribing employees of CFE but had their convictions vacated because of prosecutorial misconduct. The government had filed a notice

of appeal regarding Judge Matz's decision to preserve its ability to appeal, but on May 25, 2012, it voluntarily withdrew the appeal, thereby ending the entire saga.[26]

ALLEGATIONS OF BRIBERY COVER UP ROCK WAL-MART

On April 21, 2012, the *New York Times* reported a detailed account of "a campaign of bribery to win market dominance" undertaken by Wal-Mart de Mexico, the largest foreign subsidiary of Wal-Mart Stores, Inc. ("Wal-Mart ").[27] The *New York Times*' investigation — which included interviews with Sergio Cicero Zapata, a former Wal-Mart de Mexico lawyer who participated in the bribery scheme before resigning from Wal-Mart de Mexico in 2004 — uncovered evidence indicating that Wal-Mart de Mexico, in a rush to build stores before competitors, may have paid "more than [US]$24 million" in suspected bribes "to obtain permits in virtually every corner of the country."[28] Furthermore, according to the *New York Times*' report, Wal-Mart conducted an inquiry into what occurred that uncovered evidence of bribery, including evidence that certain of Wal-Mart de Mexico's top executives had taken steps to conceal the bribery from Wal-Mart . But rather than conduct "a full investigation," Wal-Mart allegedly closed its inquiry in short order and, in fact, promoted the Wal-Mart de Mexico chief executive whom Mr. Cicero identified as the "driving force" behind the bribes, Eduardo Castro-Wright, to vice chairman of Wal-Mart in 2008. Not surprisingly, Mr. Castro-Wright is retiring in July 2012. According to the *New York Times*, Wal-Mart 's leadership recognized that allegations of potential bribery could have "devastating consequences," and the company chose instead to focus "more on damage control than on rooting out wrongdoing."[29]

Wal-Mart de Mexico's Bribery Scheme

Wal-Mart de Mexico allegedly employed fixers — known as "gestores" — to deliver payments to "anyone with the power to thwart Wal-Mart's growth" and buy "zoning approvals, reductions in environmental impact fees, and the allegiance of neighborhood leaders."[30] Government documents reflected instances in which permits were given within days or weeks after illicit payments were allegedly given to government officials.

According to Mr. Cicero, Wal-Mart de Mexico reportedly increased its use of gestores after Mr. Castro-Wright was promoted to Wal-Mart de Mexico's top position in 2002. Allegedly, the increased use of illicit payments coincided with "very aggressive growth goals" the company set, which included opening stores "in record time" as Wal-Mart de Mexico executives faced internal "pressure to do 'whatever was necessary' to obtain permits."[31]

Furthermore, according to Mr. Cicero, the gestores submitted vaguely worded invoices that referred to illicit payments through a system of confidential codes. Supposedly, the company then "purified" the payments by booking them "in accounting records simply as legal fees."[32]

Wal-Mart 's Reported Failure to Investigate

On September 21, 2005, Mr. Cicero wrote an email to the general counsel of Walmart International, Maritza Munich, describing "irregularities" at the highest levels of management at Wal-Mart de Mexico. Wal-Mart initially considered retaining outside counsel to conduct an internal investigation, but the company rejected outside counsel's proposed investigation plan that called for a four-month review of all payments to anyone who had helped Wal-Mart de Mexico obtain a permit in the past five years. The company chose instead to assign internal resources to conduct a limited, two-week "preliminary inquiry" that would look at permits obtained by a few stores.

The internal preliminary inquiry found evidence that Wal-Mart de Mexico's senior management was aware of the payments to gestores for new store permits. Indeed, the internal review team found that in March 2004, a Wal-Mart de Mexico internal audit raised questions about the gestor payments. The internal auditors' recommendation that Wal-Mart corporate be notified about the gestor payments and certain other findings, however, was removed from the final internal audit report at the direction of Wal-Mart de Mexico's chief auditor, who was allegedly aware of the payments.

Despite uncovering information that gave rise to a "reasonable suspicion" that Mexican and US law had been violated, Wal-Mart reportedly declined to conduct a full investigation supported by professional investigators. As complaints from Wal-Mart de Mexico executives regarding the internal inquiry mounted, Wal-Mart allowed Wal-Mart de Mexico, through its general counsel who was allegedly aware of the payments, to complete the internal

preliminary inquiry. Wal-Mart de Mexico finished the preliminary inquiry within a matter of weeks, concluding that no further investigation was required.

The Fallout of the *New York Times'* Report

Wal-Mart disclosed in a quarterly report filed with the SEC on December 8, 2011, that it was conducting an internal investigation into possible violations of the FCPA, but that the company did not believe the matters under investigation would "have a material adverse effect on our business."[33] That disclosure apparently was prompted by the *New York Times*' investigation. In addition to ongoing investigations by the Justice Department and SEC alluded to in its December 8, 2011, disclosure, following the *New York Times*' report, members of Congress have demanded testimony from Wal-Mart executives and Wal-Mart shareholders that have filed a variety of lawsuits:

- On April 23, 2012, Congressmen Elijah Cummings (D-Md.), Ranking Member, Committee on Oversight and Government Reform, and Henry Waxman (D-Cal.), Ranking Member, Committee on Energy and Commerce, sent a letter to Wal-Mart 's Chief Executive Officer, Michael T. Duke, advising Wal-Mart that their Committee is initiating an investigation into the potential violations of the FCPA reported in the *New York Times'* article.[34] The Congressmen requested a meeting with company officials who could respond to the alleged violations of the FCPA.
- On April 25, 2012, Congressmen Cummings and Waxman sent a letter to the President and Chief Executive Officer of the US Chamber of Commerce, Thomas J. Donohue, inquiring about the two Wal-Mart executives who participated on the board of the Chamber's Institute for Legal Reform, which as discussed below has been an advocate for FCPA reform.[35] The Congressmen expressed concern about a potential conflict of interest for the Wal-Mart executives to advocate "on ways to weaken the [FCPA] at a time when the leadership of the company was apparently aware of corporate conduct that may have violated the law." The Congressman requested the production of information from the Chamber regarding, among other things, affiliations between the Chamber's Insti-

tute for Legal Reform, which worked on FCPA issues, and Wal-Mart .

- Also, on April 25, 2012, Congressmen Cummings and Waxman sent a letter to the Chairman of the Board of Directors of the Retail Industry Leaders Association, Gregg Steinhafel, that questioned the Retail Industry Leaders Association's lobbying with respect to the FCPA, particularly with respect to affiliations between it and Wal-Mart .[36]
- On May 17, 2012, Congressmen Cummings and Waxman sent a letter to Mr. Duke, noting that internal Wal-Mart documents provided previously "appear to confirm the accuracy of the *New York Times*' report and raise additional questions about your company's conduct."[37] The letter requests that the company authorize Ms. Munich, the Walmart International's former general counsel who resigned in 2006, to speak with congressional staff. The letter also requests that the company respond to the Congressmen's April 23, 2012 letter, noting that "a tentatively scheduled general briefing on Wal-Mart's 'going forward FCPA compliance monitoring programs'" will "not answer our questions about Wal-Mart's past actions."
- On June 12, 2012, Congressmen Cummings and Waxman sent a letter to Mr. Duke that asked Wal-Mart to have company officials "discuss fully the role Wal-Mart officials may have played in exposing or covering up bribery allegations and whether the alleged improper conduct was part of a broader problem with Wal-Mart's internal controls."[38] Notably, this letter also discloses that Wal-Mart's outside counsel briefed the Committee on May 21, 2012, stating that the outside counsel were retained to review Wal-Mart's operations in Mexico, Brazil and China, and that, based on their review, outside counsel is recommending that Wal-Mart also evaluate its operations in India and South Africa, and that Wal-Mart had requested counsel to perform a "worldwide assessment of the company's anti-corruption policies."
- Multiple lawsuits have been filed against Wal-Mart and its current and former directors and officers by the company's shareholders derivatively on behalf of the company. For example, the California State Teachers' Retirement Systems ("CalSTRS"), the largest teachers' retirement fund in the US, filed a suit on May 3, 2012, in Delaware Chancery Court alleging breach of fiduciary duty.[39] Wal-Mart has also been sued by a putative

class of Wal-Mart shareholders for allegedly engaging in securities fraud by issuing false statements regarding the company's compliance practices in violations of the federal securities laws.[40]

- Institutional shareholders also organized an unsuccessful attempt to oust Wal-Mart 's directors from the company's board.[41] Although the re-election of the company's directors at its annual meeting was never really in doubt — the Walton family owns almost half of the company's shares — several efforts to unseat members of the board gained attention in advance of the shareholders' vote, including the efforts of the New York City Pension Funds, which holds over 4.7 million shares;[42] Institutional Shareholder Services ("ISS"), which has approximately 1,700 clients including asset management firms and pension funds, and Glass Lewis & Co., which has approximately 900 clients including institutional investors;[43] and CalSTRS, which holds 5.3 million shares.[44]

Beyond the growing scrutiny Wal-Mart faces from Congress, the Justice Department, the SEC, and shareholders in the United States, the Mexican Attorney General has commenced an investigation.[45] Although the Mexican government initially dismissed bribery allegations as local in nature, Mexico's President Felipe Calderon has since expressed indignation over the payment of bribes to facilitate transactions amid increasing criticism in the Mexican media.[46]

Wal-Mart 's Response

In response, Wal-Mart announced that it was "working diligently" on FCPA compliance, that it had "taken a number of specific, concrete actions" to investigate alleged misconduct in Mexico and at company headquarters in Bentonville, Arkansas, and that it had named Tom Gean, a former United States Attorney for the Western District of Arkansas, to the newly-created position of Global FCPA Compliance Officer.[47]

More recently, in a Form 8-K filed with the SEC on May 17, 2012, Wal-Mart disclosed that its audit committee was conducting an internal investigation into the alleged misconduct at Wal-Mart de Mexico and whether prior allegations of that misconduct was handled properly by Wal-Mart corporate.[48]

The Form 8-K stated that Wal-Mart was "conducting a voluntary global review of its policies, practices and internal controls for FCPA compliance," was "engaged in strengthening its global anti-corruption compliance program through appropriate remedial anti-corruption measures," and was "cooperating with investigations being conducted" by the Justice Department and the SEC, and that Wal-Mart de Mexico was cooperating with Mexican government agencies.[49] The company concluded its discussion of the FCPA-related issues by recognizing the risk that these matters may have a material impact on the company's business: "Although [Wal-Mart] does not presently believe that these matters will have a material adverse effect on its business, given the inherent uncertainties in such situations, [Wal-Mart] can provide no assurance that these matters will not be material to its business in the future."[50]

PROVING THAT AN EFFECTIVE COMPLIANCE PROGRAM CAN BE A PANACEA, MORGAN STANLEY AVOIDS ENFORCEMENT ACTION

On April 25, 2012, Garth R. Peterson, a former Morgan Stanley real estate executive, resolved FCPA enforcement actions with both the Justice Department and the SEC. Peterson pled guilty to a one-count criminal information charging him with conspiracy to violate the FCPA's internal controls provision, allegedly circumventing Morgan Stanley's internal policies — including a prohibition on bribery — for his own personal enrichment.[51] He also agreed to settle a civil complaint brought by the SEC charging violations of the FCPA's anti-bribery, books and records, and internal control provisions, as well as aiding and abetting a violation of the federal securities laws relating to investment advisors.[52]

Peterson, a US citizen and resident of Singapore, used to run the Shanghai office of Morgan Stanley's global real estate business. During his time with Morgan Stanley in Asia, he developed a personal friendship and secret business relationship with the former chairman of the Yongye Enterprise (Group) Co., a Chinese state-owned entity that wielded substantial influence over real estate investments in Shanghai. Between 2004 and 2007, Peterson arranged to pay himself and the Chinese official a total of US$1.8 million, which he misrepresented to Morgan Stanley as "finder's fees" for real estate

deals.[53] Peterson also acquired for himself and the unnamed Chinese official "millions of dollars" in Shanghai real estate from a Morgan Stanley fund. In exchange for these payments and property interests, the Chinese official allegedly "helped" Morgan Stanley "obtain business."[54] Morgan Stanley fired Peterson in 2008 as a result of his FCPA-related misconduct.[55]

Peterson agreed to a settlement of the SEC's charges under which he will be permanently barred from the securities industry, pay approximately US$250,000 in disgorgement, and "relinquish his interest in the valuable Shanghai real estate (currently valued at approximately US$3.4 million) that he secretly acquired through his misconduct."[56] On May 2, 2012, United States District Judge Jack Weinstein of the Eastern District of New York entered a final judgment in the SEC's case against Peterson.[57] Judge Weinstein is scheduled to sentence Peterson in July.[58] According to the Justice Department, "Peterson faces a maximum penalty of five years in prison and a maximum fine of [US]$250,000 or twice his gross gain from the offense."[59]

Notably, the Justice Department and SEC declined to pursue enforcement actions against Morgan Stanley. In its press release announcing Peterson's guilty plea, the Justice Department stated that it had declined to prosecute Morgan Stanley after considering all the available facts and circumstances, noting the company's voluntary disclosure, cooperation with the investigation, and robust internal controls.[60] The Justice Department specifically cited Morgan Stanley's frequent training of employees about anti-bribery laws, regular updating of internal anti-bribery policies, monitoring of transactions, random audits, and extensive due diligence on new business partners. The Justice Department noted in particular that "Morgan Stanley trained Peterson on the FCPA seven times and reminded him to comply with the FCPA at least 35 times."[61] The SEC similarly declined to bring an enforcement action against Morgan Stanley, noting the firm had cooperated with the inquiry, "conducted a thorough internal investigation," and characterizing Peterson as a "rogue employee."[62]

CONTROL COMPONENTS, INC.: HUSBAND AND WIFE DEFENDANTS AND TWO OTHERS PLEAD GUILTY

On April 16, 2012, husband and wife Stuart and Hong (Rose) Carson

each pled guilty to one count of making a corrupt payment in violation of the FCPA.[63] Stuart Carson is the former president of Control Components, Inc. ("CCI"), and Rose Carson is CCI's former director of sales for China and Taiwan.[64]According to the Justice Department, Stuart Carson faces up to 10 months in prison and Rose Carson faces up to three years of probation, which may include six months of home confinement. The couple is scheduled to be sentenced in the Central District of California in October.[65]

CCI, a California-based valve company, pled guilty in 2009 to violations of the FCPA and the Federal Travel Act of 1961 ("Travel Act").[66] As part of the company's plea, CCI admitted that from 2003 through 2007 it made corrupt payments totaling US$6.85 million in more than 30 countries with the aim of securing lucrative contracts that resulted in net profits of US$46.5 million.[67] The bribes allegedly paid by CCI also form the basis of the actions against the Carson defendants.

Additionally, on May 29, 2012, Paul Cosgrove, the former director of Worldwide Sales for CCI, pled guilty to making a corrupt payment to a Chinese government official in violation of the FCPA.[68] According to the Justice Department, Cosgrove was scheduled to be sentenced in late August and faced up to 15 months imprisonment pursuant to his plea deal.[69] On June 14, 2012, another CCI executive, David Edmonds, also pled guilty to one count of violating the FCPA, with the government agreeing that an appropriate sentence would be a term of imprisonment of 15 months.[70]

Notably, in May 2012, Cosgrove and Edmonds lost a motion to suppress statements that they had made to CCI's outside counsel during an internal investigation into potential FCPA violations.[71] These defendants contended that because the company's lawyers cooperated with the government and informed the government about their interviews, the lawyers were state actors who were required to give *Miranda* warnings. Judge James Selna of the United States District Court for the Central District of California disagreed. In a tentative ruling, Judge Selna stated that "it was in CCI's interest and a legitimate activity to investigate potential criminal conduct in its business operations," but that interest did not convert CCI's investigation into a government action triggering the Fifth Amendment.[72] Moreover, Judge Selna found no evidence of the government's involvement in or coercion of the defendants' interviews.

Three other CCI executives — Flavio Ricotti, Mario Covino, and Rich-

ard Morlok — previously pled guilty to conspiring to violate the FCPA.[73] All five of the individual defendants associated with CCI discussed so far are believed to be cooperating with the government's investigation.

One other CCI executive — Han Yong Kim — has been indicted.[74] Kim, the former head of CCI's Korean business, remains at large in South Korea.[75]

The *Carson* case is also significant for its judicial interpretation of the terms "foreign official" and "instrumentality" under the FCPA. The defendants in *Carson* sought to shorten the FCPA's reach by arguing that certain state-owned enterprises and their employees do not fit within these definitions. On February 16, 2012, Judge Selna issued an order regarding select jury instructions on the meanings of "foreign official" and "instrumentality" of a foreign government.[76] Judge Selna's order rejected the defendants' proposal for a bright-line test in favor of a "fact-based finding in light of the totality of the circumstances."[77] This ruling followed Judge Selna's May 2011 order denying a motion to dismiss in which he sustained the government's interpretation of who qualifies as a "foreign official."[78] Similar to *United States v. Aguilar*,[79] *Carson* provides a non-exhaustive list of factors relevant to determining whether an entity is an "instrumentality" of a foreign government under the FCPA:

- the entity provides a service to the citizens — indeed, in many cases to all the inhabitants — of the jurisdiction;
- the key officers and directors of the entity are, or are appointed by, government officials;
- the entity is financed, at least in large measure, through governmental appropriations or through revenues obtained as a result of government-mandated taxes, licenses, fees or royalties, such as entrance fees to a national park;
- the entity is vested with and exercises exclusive or controlling power to administer its designated functions;
- the entity is widely perceived and understood to be performing official (i.e., governmental) functions;
- the foreign state's characterization of the entity and its employees;
- the foreign state's degree of control over the entity;

- the purpose of the entity's activities;
- the circumstances surrounding the entity's creation; and
- the status of employees under the foreign government's law, including whether employees are considered public employees or civil servants.

Judge Selna added the last factor — the status of employees — to the list in his February order.[80]

The *Carson* "foreign official" order is also noteworthy for addressing the issue of whether a defendant must know that a bribe recipient was a foreign official. Judge Selna ruled that to be found guilty of violating the FCPA, a defendant must have known or believed that the person sought to be influenced was a foreign official; however, the "[b]elief that an individual was a foreign official does not satisfy this element if the individual was not in fact a foreign official."[81]

GOVERNMENT OBTAINS ADDITIONAL CONVICTIONS IN THE *HAITI TELECO* CASE, WHILE TWO PREVIOUSLY CONVICTED DEFENDANTS APPEAL

In 2011 the Justice Department obtained convictions and lengthy sentences against Joel Esquenazi, Terra Telecommunications Corp.'s President (180 months imprisonment) and Carlos Rodriguez, Terra's Executive Vice President (84 months imprisonment) for bribing Haitian government officials at the state-owned Telecommunications D'Haiti S.A.M. ("Haiti Teleco"). In 2012, the Justice Department continued its pursuit of the Haiti Teleco case against other defendants, while Esquenazi and Rodriguez filed appeals, challenging the government's expansive definition of what it means to be an "instrumentality" of a foreign government, the resolution of which could have wide-ranging implications.

Government Adds Charges Against Another Defendant and Obtains Convictions Against Two Others

Through a second superseding indictment filed on January 19, 2012, prosecutors brought charges against Cecilia Zurita, Vice President of Cin-

ergy Telecommunications, Inc., adding her as a defendant to its pending case against Washington Vasconez Cruz, Cinergy's President and Zurita's husband; and Amadeus Richers, a Cinergy director, for allegedly participating in a scheme to bribe Haiti Teleco officials.[82] The indictment alleges that Zurita wrote checks for intermediaries that were used to bribe the Haitian officials and then participated in the cover-up of the bribes by creating false documentation.[83] Zurita, Cruz, and Richers are fugitives.[84]

In addition to bringing charges against Zurita, in the first half of 2012 the Justice Department obtained the convictions of two former Haiti Teleco officials who purportedly accepted bribes. Patrick Joseph, the former Director General of Haiti Teleco, pled guilty on February 8, 2012, to one count of conspiracy to commit money laundering.[85] Joseph was sentenced on July 9, 2012, to one year of imprisonment and ordered to forfeit almost US$1 million dollars.[86]

Furthermore, Jean Rene Duperval, the former Director of International Relations of Haiti Teleco, was found guilty by a jury, after less than three hours of deliberations, of money laundering and conspiracy on March 12, 2012. The indictment alleged that Duperval accepted a half-million dollars in payments from two Miami telecommunications companies in exchange for special treatment from Haiti Teleco, the sole provider of landline telephone service in Haiti. The Miami companies allegedly made the payments to shell companies controlled by Duperval, calling them compensation for "consulting services" and "international minutes," when no such services actually were rendered. The payments were then allegedly distributed to Duperval, who called them commissions or payroll. Duperval was sentenced on May 21, 2012, to nine years imprisonment, deportation upon completion of his confinement, and forfeiture of approximately US$500,000.[87] Duperval filed a notice of appeal on June 1, 2012.[88]

In one other development, on April 10, 2012, the Justice Department moved to reduce the sentence of Robert Antoine, a former Haiti Teleco director of international relations, who pled guilty in March 2010 to one count of conspiracy to commit money laundering. Antoine was sentenced originally on June 9, 2010 to 48 months imprisonment. Prosecutors requested a 50-percent reduction in his sentence in recognition of his substantial assistance to law enforcement, including his testimony on behalf of the government at trial in

subsequent Haiti Teleco proceedings.[89] On May 29, 2012, United States District Court Judge Jose Martinez of the Southern District of Florida granted the motion and amended Antoine's sentence to a term of 18 months imprisonment (a 62.5-percent reduction), much of which he has already served.[90]

Esquenazi and Rodriguez Challenge the Meaning of "Foreign Official" and "Instrumentality"

On May 9, 2012, Esquenazi and Rodriguez filed their opening appeal briefs in the United States Court of Appeals for the Eleventh Circuit, challenging multiple aspects of their trials and their sentencing.[91] The issues raised include what constitutes an "instrumentality" of a foreign government under the FCPA — an issue not yet addressed by any appellate court — and whether the prosecution violated its obligations under the Supreme Court's decision in *United States v. Brady*, which requires the government to disclose potential exculpatory evidence to defendants.

The FCPA prohibits making corrupt payments to "foreign officials," which the FCPA defines as including "any person acting in an official capacity for or on behalf of any such government or department, agency or instrumentality thereof."[92] The FCPA does not, however, define the term "instrumentality."

Esquenazi and Rodriguez argue that Haiti Teleco is not an "instrumentality" of a foreign government, and that Haiti Teleco's employees are thus not "foreign officials," because Haiti Teleco did not perform traditional government functions similar to a government department or agency. Esquenazi and Rodriguez further argue that no evidence of government functionality was ever presented at trial. Instead, it was undisputed that Haiti Teleco was not a department or agency of the Haitian government, and while the government presented evidence that the National Bank of Haiti owned shares of Haiti Teleco and the Haitian government appoints directors of Haiti Teleco, no evidence established that Haiti Teleco performed services similar to a government department or agency. Esquenazi and Rodriguez argue that the trial court erred by adopting the government's expansive ownership theory of instrumentality and by rejecting their proposed meaning of "instrumentality," limited to government-owned entities that perform some government function.

Other issues that Esquenazi and Rodriguez have raised on appeal include a challenge to the district court's refusal to hold an evidentiary hearing regard-

ing two contradictory declarations signed by Jean Max Bellerive, the Minister of Justice and Public Safety for Haiti. Bellerive initially signed a declaration stating that Haiti Teleco "has never been and until now is not a [s]tate enterprise." The declaration was dated July 26, 2011 — before the jury reached its verdict — but the prosecution did not disclose the declaration until August 9, 2011 — after the jury reached its verdict.

Rodriguez moved for a new trial based on newly discovered evidence and for an evidentiary hearing regarding the declaration, which Esquenazi joined. The defendants argued that a hearing was appropriate to determine whether the government violated *Brady* by failing to disclose that a Haitian official did not believe Haiti Teleco was a state enterprise. In response, the government submitted a second declaration from Bellerive, which the government helped prepare, that purported to clarify that Haiti Teleco was, in fact, a state enterprise. The trial court denied the motion, reasoning that, among other things, the declaration was provided by the government as it became aware of it and that any doubt created by the first declaration was clarified by the second declaration Bellerive signed. On appeal, defendants renewed their argument that an evidentiary hearing is required to determine when the government became aware of the substance underlying the first Bellerive declaration. This issue raises another question about whether prosecutors, as with those in the SHOT Show and Lindsey Manufacturing cases, allowed zealousness to obtain convictions to compromise their willingness to play by the rules.

SENTENCES IMPOSED IN THE LATIN NODE CASES

Latin Node Inc. ("LatiNode") pleaded guilty to violating the FCPA, and four of its former executives pleaded guilty to conspiring to violate the FCPA, in connection with LatiNode's payment between March 2004 and June 2007 of approximately US$1.1 million to third parties, with the knowledge that those monies would be used to bribe officials of the Honduran state-owned telecommunications company, Hondutel. In the first half of 2012, several of the former executives were sentenced.

On April 19, 2012, LatiNode's former vice president for business development, Manuel Caceres, was sentenced to 23 months imprisonment for his role in the conspiracy.[93] The court granted the Justice Department's motion

for a downward departure from the 60-month sentencing guidelines' range the government and Caceres agreed applied in recognition of his substantial assistance to the government, which included "meeting with the government on several occasions to provide information about LatiNode's conduct in South America and practices of the telecommunications industry in the region as well as providing testimony at the sentencing hearing of his co-defendant, Jorge Granados."[94] Granados was sentenced to 46 months imprisonment on September 8, 2011.

On April 25, 2012, LatiNode's former vice president of sales, vice president wholesale division, and chief commercial officer Juan Pablo Vasquez was sentenced to three years probation and a US$7,500 fine.[95] Vazquez, who facilitated payments to Honduran government officials in exchange for more competitive rates, pled guilty to conspiring to violate the FCPA.[96]

Finally, on June 8, 2012, LatiNode's former chief financial officer, *Manuel Salvoch*, was sentenced to 10 months imprisonment.[97] Salvoch pled guilty on January 12, 2011, to conspiracy to violate the FCPA and cooperated with the government.[98]

NOTES

[1] Press Release, Justice Dep't, Twenty-Two Executives and Employees of Military and Law Enforcement Products Companies Charged in Foreign Bribery Scheme (Jan. 19, 2010), *available at* http://www.justice.gov/opa/pr/2010/January/10-crm-048.html.

[2] *See* Government's Motion to Dismiss Pursuant to Fed. R. Crim. P. 48(a), *United States v. Goncalves*, No. 09-CR-00335 (D.D.C. Feb. 21, 2012), Dkt. Entry No. 629 [hereinafter "*Goncalves* Motion to Dismiss"]; Government's Unopposed Motion to Dismiss Pursuant to Fed. R. Crim. P. 48(a), *United States v. Goncalves*, No. 09-CR-00335 (D.D.C. Mar. 27, 2012), Dkt. Entry No. 693 [hereinafter "*Goncalves* Unopposed Motion to Dismiss"].

[3] Arnold & Porter LLP, FCPA & Global Anti-Corruption Insights (Winter 2012), at 10-13, *available at* http://www.arnoldporter.com/public_document.cfm?&id=18475&key=12F3.

[4] *See* Defendant Pankesh Patel's Opposition to Government's Motion To Preclude Certain Evidence, Impeachment and Arguments at 1, 2, *United States v. Goncalves*, No. 90-CR-00335 (D.D.C. May 12, 2011), Dkt. Entry No. 365.

[5] Del Quentin Wilbur, *Racy, vulgar texts hurt Justice Department's largest sting operation targeting foreign bribery*, Wash. Post (Feb. 13, 2012), *available at* http://www.washingtonpost.com/local/crime/racy-vulgar-texts-hurt-justice-departments-largest-sting-operation-targeting-foreign-bribery/2012/02/02/gIQAJZYtBR_story.html.

[6] *See* Minute Entry, *United States v. Goncalves*, No. 09-CR-00335 (D.D.C. Mar. 1, 2011) (Alvirez guilty plea); Minute Entry, *United States v. Goncalves*, No. 09-CR-00335 (D.D.C. Mar. 29, 2011) (Spiller guilty plea); Minute Entry, *United States v. Goncalves*, No. 09-CR-00335 (D.D.C. Apr. 28, 2011) (Geri guilty plea).

[7] *See* Minute Entry, *United States v. Goncalves*, No. 09-CR-00335 (D.D.C. July 7, 2010).

[8] *See* Minute Entry Granting Judgment of Acquittal, *United States v. Goncalves*, No. 09-CR-00335 (D.D.C. Dec. 22, 2011).

[9] *See* Minute Entry, *United States v. Goncalves*, No. 09-CR-00335 (D.D.C. Jan. 30, 2012) (Caldwell and Godsey verdict); Minute Entry, *United States v. Goncalves*, No. 09-CR-00335 (D.D.C. Jan. 31, 2012) (Mushriqui and Morales mistrial).

[10] *A Guest Post from the Africa Sting Jury Foreman*, FCPA Professor (Feb. 6, 2012), *available at* http://www.fcpaprofessor.com/a-guest-post-from-the-africa-sting-jury-foreman.

[11] *Goncalves* Motion to Dismiss at 1, *supra* note 2.

[12] *See* Order, *United States v. Goncalves*, No. 09-CR-00335 (D.D.C. Feb. 24, 2012), Dkt. Entry No. 632.

[13] Leslie Wayne, *Bribery Case Falls Apart, and Tactics Are Doubted*, N.Y. Times (Feb. 23, 2012), *available at* http://www.nytimes.com/2012/02/24/business/fbi-bribery-case-falls-apart-and-raises-questions.html?_r=1&pagewanted=all.

[14] *Goncalves* Unopposed Motion to Dismiss, *supra* note 2.

[15] Order, *United States v. Geri,* No. 09-CR-00335 (D.D.C. Mar. 30, 2012), Dkt. Entry No. 694; Order, *United States v. Spiller*, No. 09-CR-00335 (D.D.C. Mar. 30, 2012), Dkt. Entry No. 695; Order, *United States v. Alvirez*, No. 09-CR-00335 (D.D.C. Mar. 30, 2012), Dkt. Entry No. 696.

[16] Wayne, *supra* note 13 (quoting Justice Department spokesperson Laura Sweeney).

[17] Order on Acquittal, *United States v. O'Shea*, No. 4:09-CR-00629 (S.D. Tex. Jan. 16, 2012), Dkt. Entry No. 179 [hereinafter "*O'Shea* Acquittal Order"].

[18] Final Dismissal, *United States v. O'Shea*, No. 4:09-CR-00629 (S.D. Tex. Nov. 16, 2011), Dkt. Entry No. 191.

[19] Indictment, *United States v. O'Shea*, No. 4:09-CR-00629 (S.D. Tex. Nov. 16, 2009), Dkt. Entry No. 1.
[20] *See* Plea Agreement, *United States v. Basurto*, No. 4:09-CR-00325 (S.D. Tex. Nov. 23, 2009), Dkt. Entry No. 43.
[21] *See* Judgment in Criminal Case, *United States v. Basurto*, No. 4:09-CR-00325 (S.D. Tex. Apr. 5, 2012), Dkt. Entry No. 76.
[22] *O'Shea* Acquittal Order, *supra* note 17.
[23] *See* C.M. Matthews, *Cooperator In Failed Bribery Case Sentenced To Time Served*, Wall St. J. (Apr. 6, 2012), *available at* http://blogs.wsj.com/corruption-currents/2012/04/06/cooperator-in-failed-bribery-case-sentenced-to-time-served/.
[24] Motion to Dismiss Remaining Counts of Indictment at 1, *United States v. O'Shea*, No. 4:09-CR-00629 (S.D. Tex. Feb. 9, 2012), Dkt. Entry No. 190.
[25] *O'Shea* Acquittal Order, *supra* note 17.
[26] Government's Motion for Voluntarily Dismissal of Appeal, *United States v. Aguilar Noriega*, Case 11-50507 (9th Cir. May 25, 2012); *see also* Order re Application To Vacate Defendant Angela Maria Gomez Aguilar's Conviction, *United States v. Aguilar Noriega*, Case No. 10-01031 (C.D. Cal. June 1, 2012) (vacating the conviction of a third defendant, *Angela Maria Gomez Aguilar*, who was convicted for conspiracy to commit money laundering).
[27] David Barstow, *Vast Mexico Bribery Case Hushed Up by Wal-Mart After Top-Level Struggle*, N.Y. Times (Apr. 21, 2012), *available at* http://www.nytimes.com/2012/04/22/business/at-wal-mart-in-mexico-a-bribe-inquiry-silenced.html.
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *See* Wal-Mart Stores, Inc., Quarterly Report (Form 10-Q), at 26 (Dec. 8, 2011), *available at* http://investors.walmartstores.com/phoenix.zhtml?c=112761&p=irol-sec.
[34] Letter from Representatives Elijah Cummings and Henry Waxman to Michael Duke (Apr. 23, 2012), *available at* http://democrats.energycommerce.house.gov/sites/default/files/documents/Letter_Walmart_04.23.12.pdf.
[35] Letter from Representatives Elijah Cummings and Henry Waxman to Thomas J. Donohue (Apr. 25, 2012), *available at* http://democrats.energycommerce.

house.gov/sites/default/files/documents/Letter_Donohue_04.25.12.pdf.

[36] Letter from Representatives Elijah Cummings and Henry Waxman to Gregg Steinhafel (Apr. 25, 2012), *available at* http://democrats.energycommerce.house.gov/sites/default/files/documents/Letter_Steinhafel_04.25.12.pdf.

[37] Letter from Representatives Elijah Cummings and Henry Waxman to Michael Duke (May 17, 2012), *available at* http://democrats.energycommerce.house.gov/sites/default/files/documents/Letter_Walmart_05.17.12.pdf.

[38] Letter from Representatives Elijah Cummings and Henry Waxman to Michael Duke (May 17, 2012), *available at* http://democrats.energycommerce.house.gov/sites/default/files/documents/Letter_Walmart_06.12.12_0.pdf.

[39] *See*, *e.g.*, Verified Shareholder Derivative Complaint, *Cal. State Teachers' Ret. Sys. v. Alvarez*, Case No. 7490 (Del. Ch. May 3, 2012).

[40] *See City of Pontiac Gen. Employees' Ret. Sys. v. Wal-Mart Stores, Inc.*, Case 3:12-cv-00457 (M.D. Tenn. May 7, 2012), Dkt. Entry No. 1.

[41] Stephanie Clifford, *The Annual Shareholders' Meeting for Wal-Mart, Like Its Stock, Is Buoyant*, N.Y. Times (June 1, 2012), *available at* http://www.nytimes.com/2012/06/02/business/wal-mart-board-challenges-rebuffed.html.

[42] Press Release, John C. Liu, NYC Comptroller Liu, Pension Funds to Vote against Five Wal-Mart Directors (May 1, 2012), *available at* http://www.comptroller.nyc.gov/press/2012_releases/pr12-04-044.shtm.

[43] Anne D'Innocenzio, *2 key proxy firms urge shareholders oppose CEO*, Associated Press (May 21, 2012), *available at* http://www.usnews.com/news/business/articles/2012/05/21/2-key-proxy-firms-urge-shareholders-oppose-ceo.

[44] Press Release, CaLSTRS, CalSTRS to Vote 5.3 Million Shares Against Entire Wal-Mart Board (May 22, 2012), *available at* http://www.calstrs.com/Newsroom/2012/news052212.aspx.

[45] *See* Elisabeth Malkin, *Attorney General in Mexico Will Investigate Wal-Mart*, N.Y. Times (Apr. 26, 2012), *available at* http://www.nytimes.com/2012/04/27/business/global/attorney-general-in-mexico-to-investigate-wal-mart.html.

[46] *See id.*

[47] Press Release, Wal-Mart, Updated Wal-Mart Statement in Response to Recent *New York Times* Article about Compliance with the US Foreign Corrupt Practices Act (Apr. 24, 2012), *available at* http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTM2NzEyfENoaWxkSUQ9LTF8VHlwZT0z&t=1; *see also* Jessica Wohl, *Wal-Mart reveals lawyers, accountants on FCPA issues*, Reuters (Apr. 25, 2012), *available at* http://www.reuters.com/article/2012/04/25/us-walmart-idUSBRE83O0R520120425.

[48] Wal-Mart Stores, Inc., Current Report (Form 8-K) (May 17, 2012), *available at* http://investors.walmartstores.com/phoenix.zhtml?c=112761&p=irol-sec#8198557.
[49] *Id.* at 2
[50] *Id.* at 2-3.
[51] Press Release, Justice Dep't, Former Morgan Stanley Managing Director Pleads Guilty for Role in Evading Internal Controls Required by FCPA (Apr. 25, 2012), *available at* http://www.justice.gov/opa/pr/2012/April/12-crm-534.html [hereinafter "Peterson DOJ Press Release"]; *see also* Information, *United States v. Peterson*, Cr. No. 12-224 (E.D.N.Y. Apr. 25, 2012), Dkt. Entry No. 7.
[52] Press Release, SEC, SEC Charges Former Morgan Stanley Executive with FCPA Violations and Investment Adviser Fraud (Apr. 25, 2012), *available at* http://www.sec.gov/news/press/2012/2012-78.htm [hereinafter "Peterson SEC Press Release"]; *see also* Final Judgment as to Defendant Garth Peterson, *United States v. Peterson*, CV 12-2033, CR 12-224 (E.D.N.Y. May 3, 2012), Dkt. Entry No. 10 [hereinafter "Peterson Final Judgment"].
[53] *See* Peterson SEC Press Release, *supra* note 52.
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] Peterson Final Judgment, *supra* note 52.
[58] Memorandum & Order on Plea & Proposed Settlement Agreement, *United States v. Peterson*, Cr. No. 12-224 (E.D.N.Y. Apr. 25, 2012), Dkt. Entry No. 5.
[59] Peterson DOJ Press Release, *supra* note 51.
[60] *Id.*
[61] *Id.*
[62] Peterson SEC Press Release, *supra* note 52.
[63] Press Release, Justice Dep't, Two Former Executives of California Valve Company Plead Guilty to Foreign Bribery Offenses (Apr. 17, 2012), *available at* http://www.justice.gov/opa/pr/2012/April/12-crm-485.html.
[64] *Id.*
[65] *Id.*
[66] Press Release, Justice Dep't, Control Components Inc. Pleads Guilty to Foreign Bribery Charges and Agrees to Pay $18.2 Million Criminal Fine (July 31, 2009), *available at* http://www.justice.gov/opa/pr/2009/July/09-crm-754.html.
[67] *Id.*
[68] Press Release, Justice Dep't, Former Head of Worldwide Sales at California

Valve Company Pleads Guilty to Foreign Bribery Offense (May 29, 2012), *available at* http://www.justice.gov/opa/pr/2012/May/12-crt-682.html.

[69] *See id.*

[70] *See* Plea Agreement For Defendant David Edmonds, *United States v. Carson*, No. 8:09-CR-00077 (C.D. Cal. May 8, 2012), Dkt. Entry 827.

[71] Order Denying Defendants' Motion to Suppress, *United States v. Carson*, No. 09-cr-00077-JVS (C.D. Cal. May 22, 2012), Dkt. Entry 774.

[72] *Id.* at 7.

[73] Press Release, Justice Dep't, Italian Executive of California Valve Company Pleads Guilty to Foreign Bribery Offenses (Apr. 29, 2011) (Ricotti), *available at* http://www.justice.gov/opa/pr/2011/April/11-crm-545.html; Press Release, Justice Dep't, Former Executive at California Valve Company Pleads Guilty to Bribing Foreign Government Officials (Jan. 8, 2009) (Covino), *available at* http://www.justice.gov/opa/pr/2009/January/09-crm-016.html; Press Release, Justice Dep't, Former Finance Director of California Valve Company Pleads Guilty to Bribing Foreign Government Officials (Feb. 3, 2009) (Morlok), *available at* http://www.justice.gov/opa/pr/2009/February/09-crm-089.html.

[74] Indictment, *United States v. Carson*, No. 8:09-CR-00077 (C.D. Cal. Apr. 8, 2009), Dkt. Entry No. 1, *available at* http://www.justice.gov/criminal/fraud/fcpa/cases/carsons/04-08-09carson-indict.pdf.

[75] Amanda Bronstad, *Guilty Pleas to Bribing Overseas Officials*, Nat'l L.J. (Apr. 19, 2012), *available at* http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1334529157986&Guilty_Pleas_to_Bribing_Overseas_Officials.

[76] Criminal Minutes of Order Re Select Jury Instructions, *United States v. Carson*, No. 09-cr-00077-JVS (C.D. Cal. Feb. 16, 2012), Dkt. Entry No. 549 [hereinafter "*Carson* Jury Instruction Order"].

[77] *Id.* at 3.

[78] *United States v. Carso*n, No. 8:09-cr-00077-JVS, 2011 WL 5101701, at *4 (C.D. Cal. May 18, 2011).

[79] *United States v. Aguilar*, 783 F. Supp. 2d 1108 (C.D. Cal. 2011); *see also* Jury Instructions, *United States v. Noreiga*, No. CR10-1031-AHM (C.D. Cal. May 16, 2011), Dkt. Entry. No. 511.

[80] *Carson* Jury Instruction Order, *supra* note 76.

[81] *Id.* at 11.

[82] Second Superseding Indictment, *United States v. Cruz*, 1:09-CR-21010 (S.D. Fla. Jan. 19, 2012), Dkt. Entry 685.

[83] *Id.*

[84] Press Release, Justice Dep't, Former Haitian Government Official Convicted in Miami for Role in Scheme to Launder Bribes Paid by Telecommunications Companies (Mar. 13, 2012), *available at* http://www.justice.gov/opa/pr/2012/March/12-crm-310.html [hereinafter "Haiti Teleco Press Release"].

[85] Minute Entry re: Change of Plea, *United States v. Joseph*, 1:09-CR-21010 (S.D. Fla. Jan. 19, 2012), Dkt. Entry 705.

[86] Judgment as to Patrick Joseph, *United States v. Joseph*, No. 1:09 Cr. 21010 (S.D. Fla. July 9, 2012), Dkt. Entry No. 845; *see also* Plea Agreement, *United States v. Joseph*, No. 1:09 Cr. 21010 (S.D. Fla. Feb. 8, 2012), Dkt. Entry No. 706.

[87] *See* Minute Entry re: Judgment and Sentencing, *United States v. Esquenazi*, No. 1:09 Cr. 21010 (S.D. Fla. May 21, 2012), Dkt. Entry No. 814; Order for Entry of Forfeiture, *United States v. Duperval*, No. 1:09 Cr. 21010 (S.D. Fla. May 21, 2012), Dkt. Entry No. 815.

[88] *See* Notice of Appeal, *United States v. Esquenazi*, Case No. 09-CR-21010-JEM (S.D. Fla. June 1, 2012), Dkt. Entry No. 826.

[89] *See* United States' Motion for Reduction of Sentence Pursuant to Fed. R. Crim. Pro. 35, *United States v. Antoine*, Case No. 09-CR-21010 (S.D. Fla. Dec. 8, 2009), Dkt. Entry No. 797; *see also* Samuel Rubenfeld, *Prosecutors Move To Reduce Former Haitian Official's Sentence*, Wall St. J. (Apr. 11, 2012), *available at* http://blogs.wsj.com/corruption-currents/2012/04/11/prosecutors-move-to-reduce-former-haitian-officials-sentence/.

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[92] 15U.S.C. § 78dd-1(f)(1)(A).

[93] Minute Entry, *United States v. Granados*, Case No. 1:10CR20881 (S.D. Fla. Apr. 19, 2012), Dkt. Entry No. 111; *see also* Judgment in a Criminal Case, *United States v. Caceres*, Case No. 1:10CR20881 (S.D. Fla. Apr. 25, 2012), Dkt. Entry No. 112.

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[95] Judgment in a Criminal Case, *United States v. Vasquez*, Case No. 1:10CR20894 (S.D. Fla. Apr. 25, 2012), Dkt. Entry No. 52.

[96] Statement of Offense, *United States v. Vasquez*, Case No. 1:10CR20894 (S.D. Fla. Jan. 21, 2011), Dkt. Entry No. 18.
[97] Judgment in a Criminal Case, *United States v. Salvoch*, No. 10-CR-20893 (S.D. Fla. June 8, 2012), Dkt. Entry No. 62.
[98] Plea Agreement, *United States v. Salvoch*, No. 10-CR-20893 (S.D. Fla. Jan. 12, 2011), Dkt. Entry No. 22.