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Assessing Halliburton's FCPA Settlement and Lessons Learned

By Keith M. Korenchuk, Samuel Witten, and E. Christopher Beeler*

The Securities and Exchange Commission charged the Halliburton Company and a former Halliburton vice president and manager of business operations in Angola with violating the Foreign Corrupt Practices Act's books and records and internal accounting controls provisions as part of a scheme to secure profitable oil contracts with the Angolan state oil company. This article explains the scheme, the resulting settlement, and the compliance issues.

The Securities and Exchange Commission ("SEC") charged the Halliburton Company and a former Halliburton vice president and manager of business operations in Angola with violating the Foreign Corrupt Practices Act's ("FCPA") books and records and internal accounting controls provisions as part of a scheme to secure profitable oil contracts with the Angolan state oil company.[1]

THE SETTLEMENT

To settle the matter, Halliburton agreed to pay $14 million in disgorgement, $1.2 million in prejudgment interest, and a civil penalty of $14 million, for a total payment of $29.2 million. Halliburton also agreed to retain an independent consultant for a period of 18 months to review and evaluate the company's anti-corruption policies and procedures for its business operations in Africa. Jeannot Lorenz, Halliburton's former vice president involved in the allegedly corrupt activities, was ordered to pay a $75,000 civil penalty.

WHAT HAPPENED?

To operate legally in Angola, foreign companies in the oil and gas sector are required by law to hire a certain percentage of Angolan workers and contract for

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[1] *In Re Halliburton Company and Jeannot Lorenz*, Exchange Act Release No. 81222 (July 27, 2017).

certain services from Angolan companies. These are referred to as local content requirements.

According to the SEC's order: In April 2009, Angola opened bidding for oil projects that Angola's state oil company, Sonangol, would jointly manage with an international oil company. Halliburton learned that Sonangol was extremely dissatisfied with Halliburton's local content efforts and that Sonangol might veto any recommendations that Angola award Halliburton with oil services contracts. In an effort to procure the contract, Lorenz proposed to Halliburton that it outsource $15 million of services to a local Angolan company that was owned by a former Halliburton employee who was also a friend and neighbor of the Angolan government official in a position to approve relevant contracts for Halliburton. Lorenz submitted this plan to Halliburton for review, but the company rejected the proposed fee arrangement and told Lorenz that the local company in Angola would be subject to a lengthy due diligence review to ensure FCPA compliance. Due to these obstacles, Lorenz abandoned the first plan he developed.

Still without a solution to fulfill Angola's local content requirements, Lorenz executed a plan to directly outsource to a local Angolan company some functions normally handled in-house by Halliburton, such as real estate maintenance and travel and ground transportation services. However, in so doing, Lorenz violated Halliburton's internal accounting controls regarding supplier qualification processes. Halliburton controls required that an initial assessment occur to identify the critical necessity of contracting for a material or service before opening the bid process for outside help. Lorenz inverted this process by identifying a supplier first that could help meet the local content requirements and then arranging for it to perform a service to Halliburton that was not critically necessary to outsource.

Lorenz was alleged by the SEC to have violated other aspects of Halliburton's internal control requirements. Halliburton required a competitive bidding process to outsource the responsibilities Lorenz sought to contract locally to meet Angolan content requirements. Since the bidding process for outside assistance would take many months, Lorenz entered into an interim consulting agreement for the local company to develop "reports with respect to findings and recommendations" about how Halliburton could fulfill local content requirements. The interim consulting agreement called for payments of $45,000 a month. However, the SEC alleged that the agreement was not actually for consulting services and the local company never produced any reports. Instead, the agreement was merely an instrument to provide payments as a show of good faith to the relevant Sonangol official and the local Angolan company until the latter could succeed in Halliburton's bidding process. To secure approval of this bridge payment agreement, Lorenz mispresented to Halliburton officials the real purpose of the contract, causing Halliburton to believe that it was receiving actual services.

In the meantime, the bidding process for local services continued and Lorenz's preferred local Angolan company was the least attractive bid. In fact, it failed to submit a bid for travel services and offered a price that was substantially higher than the next highest bid for property management.

When the local company refused to lower its bid and negotiate further, Lorenz yet again sought a new solution. Lorenz proposed a leasing agreement whereby the local company would lease commercial and residential real estate from Halliburton at a reduced rate and then sublease the properties back to Halliburton at a higher price. On February 23, 2010, Halliburton issued a letter of intent to enter into this contract. In doing so, Lorenz again violated Halliburton's internal controls.

- First, he identified a particular supplier and then backed it into a service without having an assessment completed to determine whether that service was critically needed.
- Second, Lorenz violated Halliburton's controls by circumventing the competitive bidding process and issuing a single source contract in violation of company protocols. The SEC found that his selection of the local company as a preferred vendor was not justified under Halliburton's sourcing rules.

From April 2010 through April 2011, Halliburton made payments to the local company totaling over $3.7 million. During that time period, Sonangol approved the award of seven subcontracts to Halliburton through which Halliburton profited nearly $14 million dollars.

FCPA COMPLIANCE ISSUES

This case raises a variety of FCPA compliance issues that companies must consider.

- First, Halliburton already had put in place stringent FCPA compliance controls resulting from its previous Department of Justice ("DOJ") and SEC settlement, but the controls failed to prevent the misconduct in this case. This demonstrates that no compliance system, even if strong in principle, can prevent all misconduct, particularly when an employee is determined to continue to look for ways to defeat the controls. For compliance professionals and legal counsel, the case demonstrates the need to communicate to senior management and the board that effective compliance involves prevention, detection, and response. In that regard, a program will not always be able to prevent all misconduct and management, and the board must be aware that response to potential misconduct is therefore an equally essential element in an effective program.

- Second, an effective compliance program needs to be able to detect wrongdoing and that is what happened in this case. Halliburton internal auditors identified the compliance issue during a year-end review, demonstrating the important role of compliance monitoring and auditing.
- Third, in any compliance matter, it is essential for a company to conduct a root cause analysis to assess how the misconduct occurred. In the Halliburton matter, the failures appeared to occur around the procurement and vendor selection processes. Enhancing those controls would be an important step in the remediation response. It is instructive to note that the procurement and vendor selection processes are often outside the remit of many compliance officers, meaning that collaboration with finance and procurement will be essential to design enhanced, practical, risk-based controls.
- Fourth, for other companies, a lesson learned from Halliburton is to review procurement and vendor selection processes on a risk basis to determine where gaps may exist and how controls can be enhanced. Requiring compensating controls with multiple approvals in high risk situations may be a prudent response without unduly burdening normal procurement and vendor processes.
- Fifth, issuance of a civil penalty against Lorenz is another example of the principles of the Yates Memorandum in action. On September 9, 2015, Deputy Attorney General Sally Yates issued a memorandum to DOJ titled "Individual Accountability for Corporate Wrongdoing." The memorandum emphasized that one of the most effective ways to combat corporate wrongdoing is by holding individuals accountable. While the Yates Memorandum only applied to the DOJ, this case is an example of SEC applying similar principles. As a result, this matter emphasizes the importance of corporate leaders taking a vested interest in the integrity of their corporation's compliance programs and to hold individuals accountable for misconduct.
- Finally, local content requirements are fertile ground for FCPA violations because they can create pressure to appease host government officials. To combat this effect, companies should establish and monitor compliance programs to manage fulfillment of those requirements to

avoid FCPA enforcement actions. At a minimum, this should include meaningful oversight of transactions in countries that require local content with both appropriate policies and internal controls that are reflective of the underlying risks. Conducting a risk assessment in these high risk environments will enable appropriate controls to be designed and implemented.