

## UNITED STATES

(Information as of 25 February 2013)

### ***Date of deposit of instrument of ratification/acceptance or date of accession***

Deposit of instrument of ratification/acceptance: December 8, 1998

Entry into force of the Convention: February 15, 1999

Entry into force of implementing legislation: November 10, 1998

### ***Implementing legislation***

Foreign Corrupt Practices Act (FCPA), 15 U.S.C. §§ 78dd-1, et seq.

### ***Other relevant laws, regulations, or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations***

- The Civil Asset Forfeiture Reform Act (CAFRA) of 2000 made it possible to seek civil and criminal forfeiture of the proceeds of foreign bribery.
- The President signed an executive order in March 2002 designating the European Union's organizations and Europol as public international organizations, making bribery of officials from these organizations a violation of the FCPA.
- The U.S. Sentencing Commission promulgated amendments, effective November 2002, making violations of the FCPA and violations of the domestic bribery law subject to the same sentencing guidelines.
- The Sarbanes-Oxley Act of 2002 made violations of foreign bribery laws as predicate offences under the Money Laundering Control Act, 18 U.S.C. § 1956, required internal reporting systems at public companies, and created whistleblower protections for employees of public companies who provide evidence of fraud.
- The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 enhanced whistleblower protections and authorized the U.S. Securities and Exchange Commission (SEC) to pay rewards to whistleblowers who provide the SEC with original information that leads to successful SEC enforcement actions and certain related actions.

### ***Other information***

In November 2012, the Department of Justice and the Securities and Exchange Commission released *A Resource Guide to the Foreign Corrupt Practices Act*. The *Guide* is a detailed compilation of information about the FCPA, its provisions, and enforcement. It's intended to provide insight into the act for businesses of all sizes. It covers all major aspects of the FCPA, including who and what is covered by the FCPA's anti-bribery and accounting provisions and the definition of a "foreign official." The *Guide* addresses the statutory requirements of the FCPA and also provides insight into DOJ and SEC enforcement practices through examples, hypothetical situations, and summaries of applicable case law and DOJ opinion releases. It is written in plain English and designed to be accessible to the businessman and non-lawyer. The

Guide can be accessed at <http://www.justice.gov/criminal/fraud/fcpa/guide.pdf> and <http://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf>.

*Relevant enforcement authorities*

U.S. Department of Justice (DOJ)  
Criminal Division, Fraud Section  
Bond Building  
1400 New York Avenue, NW  
Washington, D.C. 20530  
Tel: 202-514-7023  
Fax: 202-514-7021

U.S. Securities and Exchange Commission (SEC)  
Enforcement Division  
100 F. Street, N.E.  
Washington, DC 20549  
Tel: 202-551-4500  
Fax: 202-772-9279

*Relevant Internet links to national implementing legislation:*

[www.justice.gov/criminal/fraud/fcpa/statutes/regulations.html](http://www.justice.gov/criminal/fraud/fcpa/statutes/regulations.html) (FCPA in English and fifty other languages)

*Ratification of other relevant international instruments*

The United States has also ratified the United Nations Convention Against Corruption and the Inter-American Convention against Corruption, as well as the Agreement establishing the Group of States against Corruption.

***Working Group on Bribery Monitoring Reports***

Phase 1: Review of Implementation of the Convention and 1997 Recommendation

<http://www.oecd.org/dataoecd/16/50/2390377.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions

<http://www.oecd.org/dataoecd/52/19/1962084.pdf>

Phase 2: Follow-up Report on the Implementation of the Phase 2 Recommendations on the Application of the Convention and the 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions

<http://www.oecd.org/dataoecd/7/35/35109576.pdf>

Phase 3: Report on the Implementation Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Revised Recommendation on Combating Bribery in International Business Transactions  
<http://www.oecd.org/dataoecd/7/35/35109576.pdf>

### ***Judicial Decisions (Subsequent to the Phase 3 Review)***

“*Foreign Official*” Challenges (*United States v. Carson et al.*, No. 8:09cr77 (C.D. Cal. May 18, 2011); *United States v. Aguilar et al.*, 2011 U.S. Dist. LEXIS 43895 (C.D. Cal. April 20, 2011); *United States v. Esquenazi, et al.*, No. 1:09-21010 (S.D. Fla. November 19, 2010)<sup>1</sup>: Three courts issued opinions over the course of six months as to whether employees of state-owned and state-controlled enterprises are properly considered “foreign officials” under the FCPA.<sup>2</sup> The FCPA defines “foreign official” as “any officer or employee of a foreign government or any department, agency, or instrumentality thereof. . . .” The three challenges focused on whether state-owned and –controlled enterprises qualify as “agencies or instrumentalities” of a foreign government. In all three opinions, the Courts ruled that a plain reading of the statute show that state-owned and –controlled enterprises could<sup>3</sup> be agencies or instrumentalities under the FCPA.<sup>4</sup> In *Carson*, the Court also agreed that the statute is clear, and provided a non-exhaustive list of factors that should be considered in determining whether or not an entity is an “agency” or “instrumentality”:

Several factors bear on the question of whether a business entity constitutes a government instrumentality, including:

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<sup>1</sup> The opinions of District Court judges, while persuasive authority, are not binding on any court.

<sup>2</sup> There was also a challenge to the definition of “foreign official” in the Nexus Technologies matter, described in the U.S. response to the Phase 3 Report. The judge ruled in favor of the United States, but issued no written opinion.

<sup>3</sup> Because the three challenges were filed pre-trial, if there was a disagreement as to the facts, the court could not definitively rule on whether the enterprises at issue were agencies or instrumentalities. In *Carson* and *Esquenazi*, the United States will have to prove facts sufficient to establish the state ownership or control of the relevant entities. In *Aguilar*, there were no outstanding issues of fact, and thus the Court’s opinion states definitively that the entity at issue, the state-owned electricity company of Mexico, is an instrumentality of the Government of Mexico.

<sup>4</sup> The *Aguilar* Court notably also held that the FCPA should be read to conform to the OECD Convention, pursuant to a doctrine of statutory construction that requires that, where fairly possible, a U.S. statute should be read to conform with international obligations:

When Congress amended the FCPA in 1998, it meant “to conform it to the requirements of and to implement the OECD Convention.” S. Rep. No. 105-2177 (1998) at 2. In so doing, the *only* change Congress made to the FCPA’s definition of “foreign official” was to add officials of public international organizations. According to the Government, if the FCPA is to be construed [\*24] consistent with the OECD Convention, then the FCPA’s definition of “foreign official” should be understood to *include* “any person . . . exercising a public function for a foreign country, including for a public agency or public enterprise . . . .” Thus, high-ranking employees of certain state-owned corporations could fall within the scope of the FCPA.

*Aguilar* at 24 (emphasis in original).

- 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 entity’s obligations and privileges under the foreign state’s law, including whether the entity exercises exclusive or controlling power to administer its designated functions;
- The circumstances surrounding the entity’s creation; and
- The foreign state’s extent of ownership of the entity, including the level of financial support by the state (e.g., subsidies, special tax treatment, and loans).

Such factors are not exclusive, and no single factor is dispositive. As applicable here, their chief utility is simply to point out that several types of evidence are relevant when determining whether a state-owned company constitutes an “instrumentality” under the FCPA — with state ownership being only one of several considerations.

*Carson* at 5. The *Esquenazi* decision is currently on appeal to the Eleventh Circuit Court of Appeals; briefings are complete and oral argument is scheduled for April 2013. Related to *Esquenazi*, Jean Rene Duperval, the Haiti Telco official who received the bribes in the *Esquenazi* case, has also filed an appeal to his conviction for money laundering. *United States v. Duperval*, No. 12-13009 (11<sup>th</sup> Cir. February 4, 2013). While Duperval was not convicted of FCPA violations, the United States was required to prove an FCPA violation to establish that the money Duperval received was the proceeds of a specified unlawful activity, that is, the proceeds of an FCPA violation. Thus, even though it was a money laundering case against a Haitian official, the FCPA is the subject of the appeal from the defendant’s conviction. Duperval is alleging on appeal that he was not a foreign official.

*SEC v. Mark A. Jackson, et al.*, No. H-12-0563(KPE), 2012 WL 6137551, (S.D. Tex. December 11, 2012): In December, the United States District Court for the Southern District of Texas issued a decision in a SEC enforcement action addressing several issues of interpretation under the FCPA. First, the Court held that the government does not need to identify the specific foreign government official alleged to have been bribed. Second, citing the Fifth Circuit Court of Appeals’ decision in *United States v. Kay*, the Court held that the facilitation payments exception is a “very limited exception” applying only to a “very narrow category of largely non-discretionary, ministerial activities[.]” Third, the Court held that the government need not allege that the defendants knew that their actions would violate the FCPA; the government need only allege that the defendants acted with the wrongful purpose of influencing a foreign government official to misuse his official position. Finally, the court held that the FCPA is not unconstitutionally vague.

*SEC v. Elek Straub, et al.*, No. 11 Civ. 9645(RJS) (S.D. New York February 8, 2013): In February, the United States District Court for the Southern District of New York issued a decision in a SEC enforcement action brought against three foreign executives of a company, finding that the Court had jurisdiction over the foreign defendants and holding

that the five year statute of limitations applicable to enforcement actions brought by the SEC does not begin to run unless the defendants are physically present in the United States. The Court also addressed two issues of interpretation of the FCPA: First, the Court held that a defendant's use of email that went through a server in the United States was sufficient to satisfy the FCPA's requirement that the defendants make use of interstate commerce, regardless of whether the defendant personally knew or intended that their email would be routed through the U.S. Second, the Court found that the FCPA does not require that the identity of the foreign official involved in the interactions be known or identified. On February 22, 2013, the defendants filed an interlocutory appeal.

*SEC v. Uriel Sharef, et al.*, No. 11 Civ. 9073 (S.D. New York, February 19, 2013): In February, another judge in the United States District Court for the Southern District of New York dismissed the SEC's complaint against one of seven foreign defendants in the *Siemens* litigation, finding that the Court did not have personal jurisdiction over that defendant. The case is still pending against the remaining six defendants.

### ***Opinions<sup>5</sup> Issued by the Department of Justice (Subsequent to the Phase 3 Review)***

*Opinion Procedure Release No. 10-02*: In July 2010, the Department of Justice issued an Opinion Procedure Release in response to an inquiry from a non-profit, U.S.-based microfinance institution. The institution's Eurasian subsidiary sought to obtain a license to operate as a financial institution. As a condition to granting such license, the Eurasian country's Regulating Agency required the subsidiary make a grant to a local microfinance institution in the country. The question presented was whether the proposed grant would be appropriate under the FCPA considering that one board member of the local microfinance institution was a sitting government official, despite a law in this country barring government officials from receiving compensation for this type of board service. The Department determined that the subsidiary did appropriate due diligence and the controls it planned to institute were sufficient to prevent FCPA violations and indicated that it did not intend to take enforcement action.

*Opinion Procedure Release No. 10-03*: In September 2010, the Department of Justice issued an Opinion Procedure Release in response to an inquiry from a U.S. limited partnership. The partnership sought to contract with a consultant, who previously and currently holds contracts to represent a foreign government and act on its behalf. In light of the steps taken to wall off the employees working on the various representations from each other, the full disclosure of the relationships to the relevant parties, and the permissibility of the relationships under local law, the Department determined that the

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<sup>5</sup> Pursuant to the Department of Justice FCPA Opinion Procedure, 28 C.F.R. part 80, the Department provides guidance as to whether a specific, non-hypothetical, prospective transaction would violate the FCPA. If the Department affirms it will not take enforcement action based upon the requestor's description of the transaction, and the transaction thereafter takes place exactly as described, the requestor qualifies for a "safe harbor" and may not be prosecuted. Although the Department's Opinions are non-binding on other federal agencies, the SEC has stated that, as a matter of its prosecutorial discretion, it will not take enforcement action against an issuer with respect to a transaction concerning which the Department has rendered a favorable opinion. *See* SEC Interpretative Release No. 34-17099 (Aug. 28, 1980).

consultant was not a foreign official as defined by the FCPA. However, the Department noted that its opinion was limited to the holding on these narrow grounds, and expressed that the proposed relationship increased the risk of potential FCPA violations. The opinion did not foreclose the Department from taking enforcement action should an FCPA violation arise out of the consultancy.

*Opinion Procedure Release No. 11-01:* In June 2011, the Department of Justice issued an opinion in response to an adoption service provider in the United States, declining to take enforcement action if the company proceeded with sponsoring expenses for two foreign officials to travel to the United States for a two-day visit. The adoption service provider represented that the purpose of the visit would be to familiarize the officials with the nature and extent of the company's business operations; that it would not select the delegates; it would pay all costs directly to providers; and it does not currently non-routine matters before the sponsored officials.

*Opinion Procedure Release No. 12-01:* In September 2012, the Department of Justice issued an opinion in response to a lobbying firm in the United States, declining to take enforcement action if the company proceeded with retaining a consulting company, one of whose principals was a member of a foreign country's royal family. The Department concluded that a member of a royal family member is not *per se* a "foreign official" for purposes of the FCPA. Instead, the Department explained that whether a member of a royal family is a "foreign official" turns on such factors as (i) how much control or influence the individual has over the levers of governmental power, execution, administration, finances, and the like; (ii) whether a foreign government characterizes the individual as having governmental power; and (iii) whether and under what circumstances the individual may act on behalf of, or bind, the foreign government. The Department noted additional non-exclusive factors that should be considered in making the "foreign official" determination, such as the royal family's current and historical legal status and powers and the likelihood that the individual royal family member could ascend to a governmental position.

### ***Enforcement Resources***

Pursuant to the U.S. Attorney's Manual (USAM) 9-47.110, criminal violations of the Foreign Corrupt Practices Act are prosecuted only by the Fraud Section of the Criminal Division of the Department of Justice. In 2006, the Fraud Section formed a dedicated FCPA Unit within the Fraud Section to handle prosecutions, issue opinion releases, participate in interagency anticorruption policy development, work with foreign law enforcement and international organizations, participate in monitoring mechanisms, and to engage in public education about the FCPA and OECD Anti-Bribery Convention. The Unit consists of a Deputy Chief, four Assistant Chiefs, and a number of trial attorneys. Since the establishment of the Unit, prosecutions have increased significantly.

The International Corruption Unit (ICU) of the Federal Bureau of Investigation (FBI) was created in 2008 to oversee the increasing number of corruption and fraud investigations emanating overseas, which required extensive international coordination and increased

collaboration between FBI Headquarters (FBI-HQ) and other FBI divisions, Legal Attachés, other federal agencies, and host countries. Specifically, the ICU has program oversight for all fraud and corruption matters related to Overseas Contingency Operations (OCO), FCPA, and antitrust matters. Given the investigative and prosecutorial complexities associated with FCPA investigations, and to ensure and promote close coordination between FBI field offices, FBI-HQ, and Fraud Section, in 2008, the FBI created a national FCPA squad located in the FBI's Washington Field Office (WFO). This squad is responsible for investigating and/or providing investigative support for all FBI FCPA related investigations. The squad is staffed with a Supervisory Special Agent, 12 Special Agents, an Investigative Analyst, and an administrative support officer. The ICU also provides annual training in FCPA investigations to law enforcement agents from all over the United States, including agents from other agencies.

Immigration and Customs Enforcement of the Department of Homeland Security, Criminal Investigation of the Internal Revenue Service, and the Office of Export Enforcement of the Department of Commerce also have agents specifically trained in conducting FCPA investigations, who participate in investigating and prosecuting FCPA matters.

On January 13, 2010, the Enforcement Division of the SEC announced the creation of a specialized unit that will focus on violations of the FCPA. The FCPA Unit is comprised of approximately 30 attorneys from around the country. A primary mission of this Unit is to enhance the staff's expertise, to coordinate enforcement efforts, and to conduct efficient investigations. The Unit will also conduct more targeted sweeps and sector-wide investigations, alone and with other regulatory counterparts both in the U.S. and abroad. The FCPA Unit also has in-house experts, accountants, and other resources to ensure the SEC remains a very proactive organization in rooting out foreign bribery schemes. The SEC's budget ensures the FCPA unit members obtain adequate training, have state-of-the-art technological capability, and have an adequate travel budget to meet with foreign regulators and to speak with foreign witnesses.

***Enforcement Actions (Since Ratification)***

See attached.

**Summaries of Foreign Corrupt Practices Act Enforcement Actions  
by the United States  
January 1, 1998 – February 22, 2013**

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**Summaries of Foreign Corrupt Practices Act Enforcement Actions  
by the United States  
January 1, 1998 – February 22, 2013**

**1. Eli Lilly and Company**

Resulting Civil/Administrative Enforcement Action(s):

**A. SEC v. Eli Lilly and Company (D.D.C., December 20, 2012)**

Entities and Individuals:

- Eli Lilly and Company settled civil complaint filed in December 20, 2012.

Civil Charges:

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: China, 2006-2009; Brazil, 2007; Poland, 2000-2003; Russia, 1994-2005

Summary:

Eli Lilly, and Indianapolis-based pharmaceutical company violated the FCPA by its subsidiaries making improper payments to foreign government officials to win millions of dollars of business in Russia, Brazil, China, and Poland.

In Russia, Lilly's subsidiary in Russia paid millions of dollars to offshore entities for alleged "marketing services" in order to induce pharmaceutical distributors and government entities to purchase Lilly's drugs. Approximately \$2 million was paid to an offshore entity owned by a government official and approximately \$5.2 million was paid to offshore entities owned by a person closely associated with an important member of the Russian parliament. The complaint further alleged that Eli Lilly allowed its subsidiary to continue using the agreements for years even after it had come to know that the marketing agreements were being used to "create sales potential" with government customers, that there was no appearance of actual services rendered.

Eli Lilly's subsidiary in China falsified expense reports in order to provide spa treatments, jewelry, and other improper gifts and cash payments to government-employed physicians. With respect to Brazil, Lilly's Brazilian subsidiary allowed one of its pharmaceutical distributors to pay bribes to Brazilian government health officials to facilitate \$1.2 million in sales of an Eli Lilly drug to state government institutions. In Poland, the SEC complaint noted that Lilly's subsidiary in Poland made eight improper payments of approximately \$39, 000 to a small charitable foundation that was founded and administered by the head of the regional government health authorities in exchange for the official's support for placing Lilly's drugs on the government's reimbursement list.

Lilly and its subsidiaries failed to accurately account for the illicit payments in their books and records. Inadequate internal controls coupled with a 'check the box' mentality, Eli Lilly violated the internal controls provisions of the FCPA.

Civil Disposition:

On December 20, 2012, without admitting or denying the allegations, Lilly consented to the entry of a final judgment permanently enjoining the company from violating the anti-bribery, books and records, and internal controls provisions of the FCPA. Lilly also agreed to comply with certain undertakings including the retention of an independent consultant to review and make recommendations about its foreign corruption policies and procedures. Eli Lilly agreed to pay \$13,955,196 in disgorgement, a prejudgment interest of \$6,743,538, and a civil penalty of \$8.7 million, for a total payment of \$29,398,734.

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**2. Allianz SE**

Resulting Civil/Administrative Enforcement Action(s):

**A. In the Matter of Allianz SE (December 17, 2012)**

Entities and Individuals:

- Allianz SE, cease-and-desist order issued on December 17, 2012

Civil Charges:

- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: Indonesia, 2001-2008

Summary:

Allianz SE is a German based insurance and asset management company headquartered in Munich, Germany. According to the SEC's settled administrative proceeding against Allianz, the misconduct occurred from 2001 to 2008, at a time when the company's shares and bonds were registered with the SEC, and traded on the New York Stock Exchange. The first complaint submitted in 2005, reported unsupported payments to agents. A subsequent audit of accounting and records at the subsidiary, uncovered that managers were using "special purpose accounts" to make illegal payments to government officials to secure business in Indonesia. The misconduct according to the SEC's order, continued in spite of the audit. A second complaint was made to Allianz's external auditor in 2009. Allianz failed to account for certain payments in its books and records. These improper payments were disguised in invoices as an "overriding commission" for an agent who was not associated with the government insurance contract. Other improper payments were structured as an overpayment by the government insurance contract holder, who was reimbursed at a later date for the overpayment.

Civil Disposition:

Without admitting or denying the findings, Allianz agreed to cease and desist from further violations of the books and records and internal controls provisions of the FCPA, and to pay a disgorgement of \$5,315,649, prejudgment interest of \$1,765,125, and a civil penalty of \$5,315,649 for a total of \$12,396,423.

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### 3. **Tyco International Ltd.**

#### Resulting Criminal Enforcement Action(s):

- A. **In Re Tyco International, Ltd. (September 21, 2012)**
- B. **United States v. Tyco Valves & Controls Middle East, Inc. (E.D. Va., September 24, 2012)**

#### Resulting Civil/Administrative Enforcement Action(s):

- C. **SEC v. Tyco International, Ltd. (D.D.C., September 24, 2012)**
- D. **SEC v. Tyco International Ltd. (S.D.N.Y., April 17, 2006)**

#### Entities and Individuals:

- Tyco International, Ltd., non-prosecution agreement announced September 24, 2012; civil complaint filed, September 24, 2012.
- Tyco Valves & Controls Middle East, Inc., charged September 24, 2012.
- Tyco International Ltd., civil complaint filed April 17, 2006.

#### Criminal Charges:

- Falsification of books and records (Tyco)
- Conspiracy
  - To bribe foreign officials (Tyco Middle East)

#### Civil Charges:

- Bribery of foreign officials
- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: As to Tyco International, Ltd.: China, India, Thailand, Laos, Indonesia, Bosnia, Croatia, Serbia, Slovenia, Slovakia, Iran, Saudi Arabia, Libya, Syria, the United Arab Emirates, Mauritania, Congo, Niger, Madagascar, Turkey, Poland, Malaysia, Egypt, 1998-2009; Brazil, 1998; Korea, 1996-2000; As to Tyco Valves & Controls Middle East: Saudi Arabia, Iran, United Arab Emirates, 2003-2006

#### Summary:

On September 21, 2012, Tyco International Ltd. (“Tyco”), a Switzerland based company that manufactures and sells products related to security, fire protection and energy, entered into a three-year non-prosecution agreement (“NPA”) with the Department of Justice to resolve violations of the FCPA. On September 24, 2012, in the U.S. District Court for the District of Columbia, the Securities and Exchange Commission (“SEC”) filed a civil complaint charging Tyco with violations of the anti-bribery, books and records, and internal control provisions of the FCPA. On the same date, Tyco Valves & Controls Middle East, Inc. (“Tyco Middle East”), an indirect, wholly owned subsidiary of Tyco that sold and marketed valves and other industrial equipment throughout the Middle East, pleaded guilty in the U.S. District Court for the Eastern District of Virginia, to one count of conspiracy to violate the anti-bribery provision of the FCPA.

According to the NPA, a number of Tyco’s subsidiaries made illicit payments, both directly and indirectly, to government officials in various countries in order to obtain and retain business and falsely recorded those payments in Tyco’s corporate books and records as legitimate “commission” charges. In

addition, during the relevant time period, Tyco knowingly conspired with its subsidiaries to falsify its books and records in connection with these improper payments.

According to the criminal information to which Tyco Middle East pleaded guilty, the company paid bribes to officials employed by Saudi Aramco, an oil and gas company controlled and managed by the government of the Kingdom of Saudi Arabia, in order to obtain contracts with Saudi Aramco.

The SEC's complaint alleges that Tyco's books and records were misstated as a result of the misconduct, and that Tyco failed to devise and maintain internal controls sufficient to detect the violations. The complaint also alleges that the payments made by the sales agents to foreign government officials violated the anti-bribery provisions of the FCPA.

According to court documents, more than \$10.5 million of illicit payments were paid during the bribery scheme, which resulted in a profit of more than \$4.6 million.

In 1998, Tyco, then headquartered in Bermuda, acquired Earth Tech Brazil notwithstanding the fact that it knew Earth Tech had made various illegal payments to Brazilian officials to obtain business. Another one of Tyco's acquisitions, Dong Bang, a South Korean firm, spent \$32,000 entertaining various South Korean officials and paid \$7,500 to an employee of a nuclear power plant to obtain contracts. Despite the fact that Tyco knew such payments were common in Brazilian and South Korean business practices, it did not have an FCPA compliance program and its system of internal controls failed to prevent subsequent bribes.

*Criminal Disposition:*

On September 21, 2012, Tyco entered into a three-year non-prosecution agreement with the Department and was ordered to pay a \$13.68 million criminal penalty. The agreement also requires Tyco to periodically report to the Department regarding its compliance efforts, and to continue to implement an enhanced compliance program and internal controls designed to prevent and detect FCPA violations.

On September 24, 2012, Tyco Middle East pleaded guilty to one count of conspiracy to violate the anti-bribery provisions of the FCPA. On September 26, 2012, the company was sentenced to pay a criminal penalty of \$2.1 million, which was included as part of the \$13.68 million penalty imposed on Tyco.

*Civil Disposition:*

On April 17, 2006, the Commission filed a settled complaint against Tyco and imposed a \$50 million penalty for a range of violations of the federal securities laws, including violations of the FCPA by Tyco's operations in Brazil and South Korea. Tyco also paid \$1 million in disgorgement.

On September 24, 2012, Tyco consented to the entry of a final judgment permanently enjoining the company from violating the anti-bribery, books and records, and internal controls provisions of the FCPA. In addition, Tyco was ordered to pay \$10,564,992 in disgorgement and \$2,566,517 in prejudgment interest.

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#### **4. Oracle Corporation**

*Resulting Civil/Administrative Enforcement Action(s):*

**A. Oracle Corporation (N.D. Cal., August 16, 2012)**

Entities and Individuals:

- Oracle Corporation, civil complaint filed August 16, 2012.

Civil Charges:

- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: India, 2005-2007.

Summary:

On August 16, 2012, the Securities and Exchange Commission (“SEC”) filed civil charges in the U.S. District Court for the Northern District of California San Francisco Division, charging Oracle Corporation (“Oracle”), a California based Software Company and provider of computer hardware products and services, with violations of the books and records and internal controls provisions of the FCPA.

According to the SEC’s complaint, between 2005 and 2007, Oracle’s India based subsidiary, Oracle India Private Limited (“Oracle India”) sold software licenses and services to India's government through local distributors, and then had the distributors "park" excess funds from the sales outside Oracle India's books and records.

The SEC's complaint alleges that Oracle violated the FCPA's books and records provisions and internal controls provisions by failing to accurately record the side funds that Oracle India maintained with its distributors. In addition, the complaint alleges that Oracle failed to devise and maintain a system of effective internal controls that would have prevented the improper use of company funds.

Civil Disposition:

On August 16 2012, without admitting or denying the SEC’s allegations, Oracle consented to the entry of a final judgment ordering the company to pay a \$2 million penalty and permanently enjoining it from future violations of the FCPA.

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**5. Pfizer**

Resulting Criminal Enforcement Action(s):

- A. United States v. Pfizer H.C.P. Corporation (D.D.C., August 7, 2012)**

Resulting Civil/Administrative Enforcement Action(s):

- B. SEC v. Pfizer Inc. (D.D.C., August 7, 2012)**  
**C. SEC v. Wyeth LLC (D.D.C., August 7, 2012)**

Entities and Individuals:

- Pfizer H.C.P. Corporation, charged and deferred prosecution agreement entered August 7, 2012.
- Pfizer Inc., civil complaint filed August 7, 2012.
- Wyeth LLC, civil complaint filed August 7, 2012.

Criminal Charges:

- Bribery of foreign officials
- Conspiracy
  - To bribe foreign officials

Civil Charges:

- Falsification of books and records (both defendants)
- Internal controls violations (both defendants)

Location and Time Period of Misconduct: As to Pfizer H.C.P. Corporation: Bulgaria, Croatia, Kazakhstan, Russia, 1997-2006; As to Pfizer Inc.: Bulgaria, China, Croatia, Czech Republic, Italy, Kazakhstan, Russia, Serbia, 2001-2007; As to Wyeth LLC: Indonesia, Pakistan, China, Saudi Arabia, 2005-2010.

Summary:

*Pfizer H.C.P. Corporation:*

Pfizer H.C.P.'s indirect parent company Pfizer was a global pharmaceutical, animal health and consumer Product Company headquartered in New York, New York. According to the criminal information, between 1997 and 2006, Pfizer H.C.P., through its employees and agents, agreed to make improper payments and to provide benefits, to include kickbacks, cash payments, gifts, entertainment and travel expenses, to government officials, including physicians, pharmacologists and senior government officials, to induce the purchase of Pfizer products and to obtain regulatory approvals for Pfizer products.

According to court documents, Pfizer H.C.P., through its employees, falsely recorded the improper transactions in their books and records as educational or charitable support payments in an effort to conceal the improper nature of the transactions. The falsely recorded transactions were incorporated into the books and records of Pfizer.

During the relevant time period, Pfizer H.C.P. paid more than \$2 million of illegal payments to officials in Bulgaria, Croatia, Kazakhstan, and Russia in exchange for improper business advantages.

*Pfizer Inc.*

According to the SEC's complaint, Pfizer, a global pharmaceutical company, made a voluntary disclosure of violations of the FCPA by its subsidiaries to the SEC and the Department of Justice in October 2004 and fully cooperated with the investigations. According to the complaint, between 2001 and 2007, employees and agents of Pfizer's subsidiaries made illegal payments to foreign government officials in Bulgaria, China, Croatia, Czech Republic, Italy, Kazakhstan, Russia and Serbia, for the purpose of influencing regulatory and formulary approvals, purchase decisions, prescription decisions, and to clear customs.

These improper payments were inaccurately recorded in the books and records of Pfizer's subsidiaries and were consolidated in the financial reports of Pfizer. Although Pfizer did not know of or consent to the illegal payments, it failed to devise and maintain an adequate system of internal accounting controls to prevent or detect the payments.

### *Wyeth LLC*

Wyeth was a global pharmaceutical company headquartered in Madison, New York, and was later acquired by Pfizer in October 2009. According to the SEC's complaint, Wyeth's subsidiaries engaged in FCPA violations primarily before but also after the company's acquisition by Pfizer. It is alleged that from 2005 to 2010, subsidiaries marketing Wyeth nutritional products in China, Indonesia, and Pakistan bribed government doctors to recommend their products to patients by making cash payments or in some cases providing cell phones or travel incentives. It is also alleged that Wyeth's subsidiary in Saudi Arabia made an improper cash payment to a customs official to secure the release of a shipment of promotional items used for marketing purposes.

According to the SEC, Wyeth's subsidiaries inaccurately recorded the improper payments in their books and records, which were consolidated in Wyeth's financial reports, and, after the 2009 acquisition, those payments were consolidated in financial reports of Pfizer. The SEC alleges that Wyeth failed to maintain adequate internal controls to detect or prevent an FCPA violation.

#### *Criminal Disposition:*

On August 7 2012, Pfizer H.C.P. entered into a two-year deferred prosecution agreement with the Department. As part of this agreement, the company was required to pay a \$15 million criminal penalty, to continue to implement rigorous internal controls and to fully cooperate with the Department. The agreement recognizes the timely voluntary disclosure of Pfizer H.C.P.'s parent company, Pfizer. Additionally, Pfizer H.C.P. received a reduction in its penalty as a result of Pfizer's cooperation.

#### *Civil Disposition:*

On August 7, 2012, Pfizer consented to the entry of a final judgment by the SEC which ordered the company to pay disgorgement of \$16,032,676, and prejudgment interest of \$10,307,268. On the same date, without admitting or denying the allegations, Wyeth consented to the entry of a final judgment ordering the company to pay disgorgement of \$17,217,831 and prejudgment interest of \$1,658,793. Wyeth is also required to report to the SEC on the status of its remediation and implementation of compliance measures over a two-year period and is permanently enjoined from further violations of the books and records and internal controls provisions of the FCPA.

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## **6. NORDAM Group Inc.**

### *Resulting Criminal Enforcement Action(s):*

#### **A. In Re NORDAM Group Inc. (July 17, 2012)**

### *Entities and Individuals:*

- NORDAM Group Inc., non-prosecution agreement announced July 17, 2012.

### *Criminal Charges:*

- Bribery of foreign officials

*Location and Time Period of Misconduct:* People's Republic of China, 1999 - 2008

Summary:

On July 17, 2012, NORDAM Group Inc. (“NORDAM”), a Tulsa, Oklahoma headquartered corporation that designs and manufactures aircraft parts and provides aircraft maintenance, repair and overhaul (MRO) services, entered into a three-year non-prosecution agreement (“NPA”) with the Department of Justice to resolve violations of the Foreign Corrupt Practices Act (“FCPA”).

According to the agreement, between 1999 and 2008, NORDAM, its subsidiary NORDAM Singapore Pte Ltd. (“NSPL”) and affiliate World Aviation Associates Pte Ltd. (“WAAPL”) paid bribes to employees of airlines created, controlled and exclusively owned by the People’s Republic of China. The bribes were paid both directly and indirectly to airline employees of state owned entities in order to obtain and retain MRO business with those customers.

According to court documents, NORDAM employees were made aware of and approved the payment of these bribes and internally referred to them as “commissions” or “facilitator fees” in an effort to disguise the payments. In an attempt to further disguise the bribes paid, three WAAPL employees entered into sales representation agreements with fictitious entities. The commissions NORDAM paid to the fictitious entities were used, at least in part, to pay employees of customers to assist in securing contracts for NORDAM and NSPL.

Criminal Disposition:

On July 17, 2012, NORDAM entered into a three-year non-prosecution agreement with the Department and was ordered to pay a \$2 million criminal penalty. The agreement also requires NORDAM to periodically report to the Department regarding its compliance efforts, and to continue to implement an enhanced compliance program and internal controls designed to prevent and detect FCPA violations.

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**7. Orthofix International, N.V.**

Resulting Criminal Enforcement Action(s):

- A. United States v. Orthofix International, N.V. (E.D. Tex., July 10, 2012)**

Resulting Civil/Administrative Enforcement Action(s):

- B. SEC v. Orthofix International, N.V. (E.D. Tex., July 10, 2012)**

Entities and Individuals:

- Orthofix International, N.V., charged and deferred prosecution agreement entered July 10, 2012; civil complaint filed July 10, 2012.

Criminal Charges:

- Internal controls violations

Civil Charges:

- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: Mexico, 2003-2010.

Summary:

On August 10, 2012, the U.S. District Court for the Eastern of Texas unsealed a case in which Orthofix International, N.V. (“Orthofix”), a publicly traded corporation involved in the design, development, manufacture, marketing, and distribution of medical devices, was charged in a criminal information, filed under seal on July 10, 2012, with one count of violating the internal accounting controls provisions of the Foreign Corrupt Practices Act (“FCPA”). To resolve the violations, Orthofix and the Department of Justice entered into a three-year deferred prosecution agreement (“DPA”), also filed under seal on July 10, 2012. Also on July 10, 2012, the Securities and Exchange Commission (“SEC”) filed a civil complaint, which was not under seal, charging Orthofix with violations of the books and records and internal control provisions of the FCPA.

According to the criminal information, between 2003 and March 2010, Orthofix’s wholly-owned Mexican subsidiary, Promeca S.A. de C.V. (“Promeca”), paid bribes in excess of \$300,000 to Mexican officials in order to obtain and retain sales contracts from Instituto Mexicano del Seguro Social (“IMSS”), the Mexican government-owned healthcare and social services institution. These payments were frequently referred to as “chocolates” by Promeca personnel, who commonly understood that term to describe bribes.

The civil complaint further provides that the improper payments made by Orthofix’s subsidiary were falsely recorded in the company’s books and records as cash advances to Promeca executives or training and promotion expenses. In addition, the complaint alleges that Orthofix generated a profit of approximately \$4.9 million as a result of the illicit payments.

Both the DPA and civil complaint acknowledges Orthofix’s voluntary disclosure of the FCPA violations to the Department of Justice and SEC.

Criminal Disposition:

On July 10, 2012, Orthofix entered into a three-year deferred prosecution agreement with the Department. As part of this agreement, the company was required to pay a \$2.22 million criminal penalty, to periodically report to the Department regarding its compliance efforts, and to continue to implement an enhanced compliance program and internal controls designed to prevent and detect FCPA violations.

Civil Disposition:

On July 10, 2012, Orthofix consented to the entry of a final judgment permanently enjoining the company from violating the books and records, and internal controls provisions of the FCPA. In addition, Orthofix was ordered to pay \$4,983,644 in disgorgement and more than \$242,000 in prejudgment interest. Orthofix also agreed to certain undertakings, including monitoring its FCPA compliance program and reporting back to the SEC for a two-year period.

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**8. Data Systems & Solution LLC**

Resulting Criminal Enforcement Action(s):

**A. United States v. Data Systems & Solutions LLC (June 18, 2012)**

Entities and Individuals:

- Data Systems & Solutions LLC, charged and deferred prosecution entered June 18, 2012.

Criminal Charges:

- Bribery of foreign officials
- Conspiracy
  - To bribe foreign officials

Location and Time Period of Misconduct: Lithuania, 1999 - 2004

Summary:

On June 18, 2012, Data Systems & Solution LLC (“DS&S”), a Reston, Virginia headquartered corporation that designs, installs and maintains instrumentation and control systems at nuclear and fossil fuel power plants, was charged in the U.S. District Court for the Eastern District of Virginia, with conspiracy and anti-bribery violations of the Foreign Corrupt Practices Act (“FCPA”). On the same date, DS&S entered into a two-year deferred prosecution agreement (“DPA”) with the Department to resolve the violations.

According to the agreement, between 1999 and 2004, DS&S paid bribes and provided other things of value to officials employed by the Ignalina Nuclear Power Plant (“INPP”), a state owned power plant in Lithuania, in order to obtain and retain multi-million dollar instrumentation and control contracts. In an effort to disguise the improper payments made, DS&S funneled payments through several subcontractors located in the United States and abroad.

According to court documents, during the relevant time period, INPP awarded DS&S a number of contracts valued over \$20 million.

Criminal Disposition:

On June 18, 2012, DS&S entered into a two-year DPA with the Department and was ordered to pay an \$8.82 million criminal penalty. The agreement also requires DS&S to periodically report to the Department regarding its compliance efforts, and to continue to implement an enhanced compliance program and internal controls designed to prevent and detect FCPA violations. The agreement acknowledges DS&S’s cooperation with the Department’s investigation.

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**9. Garth Peterson (Morgan Stanley)**

Resulting Criminal Enforcement Action(s):

- A. United States v. Garth Peterson (E.D.N.Y., April 25, 2012)**

Resulting Civil/Administrative Enforcement Action(s):

- B. SEC v. Garth Peterson (E.D.N.Y., April 25, 2012)**

Entities and Individuals:

- Garth Peterson, former Managing Director of Morgan Stanley’s Real Estate Group, charged March 26, 2012; civil complaint filed April 25, 2012.

Criminal Charges:

- Conspiracy:
  - to circumvent internal controls

Civil Charges:

- Bribery of foreign officials
- Circumvention of internal controls
- Falsification of books and records
- Aiding and Abetting
  - anti-fraud provisions of the Investment Advisers Act

Location and Time Period of Misconduct: China, 2004-2007.

Summary:

On March 26, 2012, the Department of Justice filed a criminal information against Garth Peterson (“Peterson”) in the United States District Court for the Eastern District of New York. Peterson worked for Morgan Stanley, a global financial-services firm, from 2002 to 2008, holding various positions, including Managing Director in charge of Morgan Stanley Real Estate Group’s (“MSRE”) Shanghai Office in the People’s Republic of China. The criminal information charges Peterson with one count of conspiracy to circumvent Morgan Stanley’s internal accounting controls in violation of the FCPA. On April 25, 2012, the Securities Exchange Commission (“SEC”) filed a civil complaint against Peterson, charging him with violations of the anti-bribery, books and records and internal control provisions of the FCPA, and with aiding and abetting violations of the anti-fraud provisions of the Investment Advisers Act of 1940.

According to court documents, Morgan Stanley maintained a system of internal controls to ensure accountability for its assets and to prevent employees from offering, promising or paying anything of value to foreign government officials. Morgan Stanley’s internal policies, which were updated regularly to reflect regulatory developments and specific risks, prohibited bribery and addressed corruption risks associated with the giving of gifts, business entertainment, travel, lodging, meals, charitable contributions and employment. Morgan Stanley frequently trained its employees on its internal policies, the FCPA and other anti-corruption laws. Between 2002 and 2008, Morgan Stanley trained various groups of Asia-based personnel on anti-corruption policies 54 times. During the same period, Morgan Stanley trained Peterson on the FCPA seven times and reminded him to comply with the FCPA at least 35 times.

According to the criminal information, Peterson conspired with others to circumvent Morgan Stanley’s internal controls in order to transfer a multi-million dollar ownership interest in a Shanghai building to himself and a Chinese public official with whom he had a personal friendship. It is alleged that Peterson encouraged Morgan Stanley to sell an interest in a Shanghai real-estate deal to Shanghai Yongye Enterprise Co. Ltd. (“Yongye”), a state-owned and state-controlled entity. Peterson falsely represented to others within Morgan Stanley that Yongye was purchasing the real-estate interest, when in fact, Peterson knew the interest would be conveyed to a shell company controlled by him, a Chinese public official associated with Yongye and a Canadian attorney. After Peterson and his co-conspirators falsely represented to Morgan Stanley that Yongye owned the shell company, Morgan Stanley sold the real-estate interest in 2006 to the shell company at a discount to the interest’s actual 2006 market value.

Peterson and his co-conspirators continued to claim falsely that Yongye owned the shell company, and in the years since, they have periodically accepted equity distributions. As a result of the scheme, the conspirators profited more than \$2.5 million.

Criminal Disposition:

On April 25, 2012, Peterson pleaded guilty to one count of conspiracy to circumvent internal controls. On August 16, 2012, he was sentenced to 9 months' imprisonment, followed by 3 years' supervised release.

Civil Disposition:

Peterson consented to the entry of a final judgment permanently enjoining him from violating the anti-bribery, books and records, and internal controls provisions of the FCPA. In addition, Peterson was ordered to disgorge \$254,589, and was required to relinquish to a court-appointed receiver the interest he secretly acquired from Morgan Stanley's funds. Peterson has also consented to permanent industry bars based on the anticipated entry of the injunctions against him and his criminal conviction.

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**10. Biomet Inc.**

Resulting Criminal Enforcement Action(s):

**A. United States v. Biomet Inc. (D.D.C., March 26, 2012)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. Biomet Inc. (D.D.C., March 26, 2012)**

Entities and Individuals:

- Biomet, Inc., charged and deferred prosecution agreement announced March 26, 2012; civil complaint filed March 26, 2012.

Criminal Charges:

- Conspiracy:
  - to bribe foreign officials
  - to falsify books and records
- Bribery of foreign officials
- Falsification of books and records

Civil Charges:

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: Argentina, 2000-2008; Brazil, 2001-2008; China, 2001-2006.

Summary:

On March 26, 2012, the Department of Justice and the Securities and Exchange Commission ("SEC") filed simultaneous criminal and civil charges against Biomet, Inc. ("Biomet"), in the United States District Court for the District of Columbia. Biomet, an Indiana headquartered company that manufactures and sells orthopedic medical devices worldwide, was charged in connection with alleged violations of the anti-bribery, books and records and internal controls provisions of the FCPA. On the

same day, Biomet entered into a three-year deferred prosecution agreement with the Department to resolve the FCPA violations.

According to the criminal information, Biomet, its subsidiaries, employees and agents made various improper payments from approximately 2000 to 2008 to publicly-employed health care providers in Argentina, Brazil and China to secure lucrative business with hospitals. During this time, it is alleged that more than \$1.5 million in direct and indirect corrupt payments were made to public doctors in the respective countries. According to court records, Biomet, its executives, employees and agents falsely recorded the payments on its books and records as “commissions,” “royalties,” “consulting fees” and “scientific incentives” to conceal the true nature of the payments.

The SEC further alleges that Biomet failed to implement internal controls to detect or prevent bribery. Additionally, that false documents which concealed improper payments, were routinely created or accepted by Biomet employees and managers of all levels throughout the almost decade long bribery scheme.

Criminal Disposition:

On March 26, 2012, Biomet entered into a three-year deferred prosecution agreement with the Department. As part of this agreement, the company was required to pay a \$17.28 million criminal penalty, as well as ordered to continue implementing rigorous internal controls, cooperate fully with the Department and retain an independent compliance monitor for 18 months.

Civil Disposition:

On March 26, 2012, without admitting or denying the SEC’s allegations, Biomet consented to the entry of a court order requiring payment of more than \$4.4 million in disgorgement and approximately \$1.14 million in prejudgment interest. Additionally, Biomet was ordered to retain an independent compliance monitor for a period of 18 months to review its FCPA compliance program.

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**11. Bizjet International Sales and Support, Inc. and Lufthansa Technik AG**

Resulting Criminal Enforcement Action(s):

- A. In Re Lufthansa Technik AG (March 14, 2012)**
- B. United States v. Bizjet International Sales and Support, Inc. (March 14, 2012)**

Entities and Individuals:

- Lufthansa Technik AG, non-prosecution agreement announced March 14, 2012.
- Bizjet International Sales and Support, Inc., charged and deferred prosecution agreement announced March 14, 2012.

Criminal Charges:

- Conspiracy:
  - to bribe foreign officials (Bizjet International Sales and Support, Inc.)
- Bribery of foreign officials (Lufthansa Technik AG)

Location and Time Period of Misconduct: Mexico, 2004-2010; Panama, 2004-2010.

Summary:

On March 14, 2012, the Department of Justice filed a one-count information in the Northern District of Oklahoma against Bizjet International Sales and Support, Inc. (“Bizjet”), an Oklahoma based provider of aircraft maintenance, repair and overhaul, charging the company with conspiracy to bribe foreign officials in violation of the FCPA. On the same date, Bizjet entered into a three-year deferred prosecution agreement with the Department of Justice to resolve the FCPA violations, and Lufthansa Technik AG (“Lufthansa”), a German based provider of aircraft-related services and indirect parent company of Bizjet, entered into a three-year non-prosecution agreement with the Department related to the conduct of Bizjet.

According to court records, between 2004 and 2010, BizJet employees paid bribes to public officials employed by the Mexican Policia Federal Preventiva, the Mexican Coordinacion General de Transportes Aereos Presidenciales, the air fleet for the Gobierno del Estado de Sinaloa, the air fleet for the Gobierno del Estado de Sonora and the Republica de Panama Autoridad Aeronautica Civil. Bizjet made unlawful payments to officials in Mexico and Panama in order to obtain and retain contracts to perform aircraft maintenance, repair and overhaul in Latin America. In many instances, BizJet paid the bribes directly to the foreign officials. In other instances, BizJet funneled the bribes through a shell company owned and operated by a BizJet sales manager. BizJet executives orchestrated, authorized and approved the unlawful payments which they called “commissions,” “incentives” or “referral fees.”

Criminal Disposition:

On March 14, 2012, Bizjet entered into a three-year deferred prosecution agreement with the Department. As part of the agreement, Bizjet was required to pay an \$11.8 million criminal penalty. The agreement also requires Bizjet to report to the Department in no less than twelve-month intervals regarding the company’s remediation and implementation of an enhanced compliance program.

On the same day, Lufthansa entered into a three-year non-prosecution agreement with the Department. The agreement requires Lufthansa to adhere to rigorous compliance, book-keeping and internal controls standards and to periodically report to the Department regarding its remediation and implementation of a strengthened compliance program.

Both agreements acknowledge respectively Bizjet’s and Lufthansa’s voluntary disclosure of the FCPA violations to the Department and their extraordinary cooperation during the investigation.

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**12. Smith & Nephew**

Resulting Criminal Enforcement Action(s):

- A. United States v. Smith & Nephew, Inc. (D.D.C., February 6, 2012)**

Resulting Civil/Administrative Enforcement Action(s):

- B. SEC v. Smith & Nephew Plc (D.D.C., February 6, 2012)**

Entities and Individuals:

- Smith & Nephew, Inc., charged February 6, 2012.
- Smith & Nephew Plc., civil complaint filed February 6, 2012.

Criminal Charges:

- Conspiracy:

- to bribe foreign officials
- to falsify books and records
- Bribery of foreign officials
- Falsification of books and records

Civil Charges:

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: Greece, 1997-2008.

Summary:

On February 6, 2012, the Department of Justice and the Securities and Exchange Commission filed simultaneous criminal and civil charges in the United States District Court for the District of Columbia against Smith & Nephew, Inc. and its parent company, Smith & Nephew, plc. Smith & Nephew manufactures and sells medical devices globally, with headquarters in London, England and Memphis, Tennessee. The criminal charges were filed in connection with a deferred prosecution agreement, alleging violations of the anti-bribery, books and records and internal control provisions of the FCPA; the civil complaint charged the same conduct and was in conjunction with a settlement agreement. Smith & Nephew admitted to the conduct charged.

According to the criminal information, Smith & Nephew, through certain executives, employees and affiliates, agreed to sell products at full list price to a Greek distributor based in Athens, and then pay the amount of the distributor discount to an off-shore shell company controlled by the distributor. These off-the-books funds were then used by the distributor to pay cash incentives and other things of value to publicly-employed Greek health care providers to induce the purchase of Smith & Nephew products. In total, from 1998 to 2008, Smith & Nephew, its affiliates and employees authorized the payment of approximately \$9.4 million to the distributor's shell companies, some or all of which was passed on to physicians to corruptly induce them to purchase medical devices manufactured by Smith & Nephew.

Criminal Disposition:

On February 6, 2012, Smith & Nephew Inc. entered into a three-year deferred prosecution agreement with the Department. As part of this agreement, the company was required to pay a \$16.8 million criminal penalty, as well as to continue implementing rigorous internal controls, cooperate fully with the Department and retain an independent compliance monitor for 18 months.

Civil Disposition:

Smith & Nephew plc consented to a court order permanently enjoining it from future violations of the FCPA. The company was also ordered to pay more than \$4 million in disgorgement and approximately \$1.3 million in prejudgment interest. Additionally, S&N plc was ordered to retain an independent compliance monitor for a period of 18 months to review its FCPA compliance program.

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### **13. Bonny Island Liquefied Natural Gas Bribe Scheme**

#### Resulting Criminal Enforcement Action(s):

- A. United States v. JGC Corporation (S.D. Tex., April 6, 2011)**
- B. United States v. Snamprogetti Netherlands B.V. (S.D. Tex., July 7, 2010)**
- C. United States v. Technip S.A. (S.D. Tex., June 28, 2010)**
- D. United States v. Jeffrey Tesler, et al. (S.D. Tex., February 17, 2009)**
- E. United States v. Kellogg Brown & Root, LLC (S.D. Tex., February 6, 2009)**
- F. United States v. Albert Jackson Stanley (S.D. Tex., August 29, 2008)**
- G. United States v. Marubeni Corporation (S.D. Tex., January 17, 2012)**

#### Resulting Civil/Administrative Enforcement Action(s):

- H. SEC v. ENI, S.p.A., et al. (S.D. Tex., July 7, 2010)**
- I. SEC v. Technip (S.D. Tex., June 28, 2010)**
- J. SEC v. Halliburton Company, et al. (S.D. Tex., February 6, 2009)**
- K. SEC v. Albert Jackson Stanley (S.D. Tex., September 3, 2008)**

#### Entities and Individuals:

- JGC Corporation, charged April 6, 2011.
- ENI, S.p.A., civil complaint filed July 7, 2010.
- Snamprogetti Netherlands, B.V., charged July 7, 2010; civil complaint filed July 7, 2010.
- Technip S.A., charged June 28, 2010; civil complaint filed June 28, 2010.
- Kellogg Brown & Root LLC, charged February 6, 2009.
- Halliburton Company, civil complaint filed February 6, 2009.
- KBR, Inc., civil complaint filed February 6, 2009.
- Albert “Jack” Stanley, former CEO of KBR, charged September 3, 2008; civil complaint filed September 3, 2008.
- Jeffrey Tesler, agent of KBR, indicted February 19, 2009.
- Wojciech Chodan, Vice President, MW Kellogg Ltd. (KBR subsidiary), indicted February 19, 2009.
- Marubeni Corporation, charged January 17, 2012.

#### Criminal Charges:

- Conspiracy:
  - to bribe foreign officials (all defendants)
  - to commit wire fraud (Stanley)
  - to commit mail fraud (Stanley)
- Bribery of foreign officials (all defendants except JGC)
- Falsification of books and records (KBR, Inc. and Halliburton Company)
- Aiding and abetting the bribery of foreign officials (Snamprogetti, JGC, and Marubeni)

#### Civil Charges:

- Bribery of foreign officials (KBR, Technip, Snamprogetti, and Stanley)
- Internal controls violations (Halliburton, ENI, Snamprogetti, and Technip)
- Falsification of books and records (Halliburton, ENI, Snamprogetti, and Technip)

- False accounting (KBR and Stanley)
- Aiding and abetting Halliburton's internal controls violations (KBR and Stanley)
- Aiding and abetting Halliburton's falsification of books and records (KBR and Stanley)

Location and Time Period of Misconduct: Nigeria, 1995-2004.

Summary:

From 1995-2004, Kellogg Brown & Root Inc. (KBR), Technip S.A. (Technip), Snamprogetti Netherlands B.V. (Snamprogetti), and JGC were each part of the TSKJ joint venture that was awarded four contracts related to the construction of the Bonny Island liquefied natural gas facility by Nigeria LNG Ltd. (NLNG), which is 49 percent owned by the government-owned Nigerian National Petroleum Corporation (NNPC). In exchange for being awarded the contracts, valued at more than \$6 billion, the joint-venture partners used two agents, Jeffrey Tesler, a British lawyer, and Marubeni Corporation, a Japanese trading company, to pay bribes totaled in excess of \$182 million to a range of Nigerian government officials, including officials of the executive branch of the Nigerian government and officials at NNPC and NLNG.

At crucial junctures preceding the award of the contracts, KBR's CEO, Albert "Jack" Stanley, and other representatives of the joint venture, met with three successive former holders of a top-level office in the executive branch of the Nigerian government to ask the office holders to designate a representative with whom TSKJ should negotiate bribes to Nigerian government officials. Ultimately, TSKJ paid approximately \$132 million to a Gibraltar corporation controlled by Tesler and more than \$50 million to Marubeni during the course of the bribery scheme. Wojciech Chodan, a former salesperson and consultant for a United Kingdom subsidiary of KBR, has also been charged for his role in the bribery scheme.

Criminal Disposition:

On September 3, 2008, Stanley pleaded guilty to the charges contained in the two count information filed against him. Stanley was sentenced on February 23, 2012, to 30 months' imprisonment, followed by three years' supervised release and ordered to pay a criminal penalty of \$10.8 million.

KBR LLC pleaded guilty in Houston, Texas before U.S. District Judge Keith P. Ellison on February 11, 2009. Under the terms of its plea agreement, KBR LLC agreed to pay a \$402 million criminal fine, to retain an independent compliance monitor for a three-year period to review the design and implementation of KBR's compliance program, and to make periodic reports to the Department. KBR LLC also agreed to cooperate with the Department in its ongoing investigations.

On June 28, 2010, Technip entered into a two-year deferred prosecution agreement with the Department and agreed to pay a criminal penalty of \$240 million. In addition, Technip agreed to retain an independent compliance monitor for a two-year period to review the design and implementation of Technip's compliance program.

Snamprogetti entered into a two-year deferred prosecution agreement with the Department on July 7, 2010, and agreed to pay a \$240 million criminal penalty. As part of the agreement, Snamprogetti, its current parent company, Saipem S.p.A., and its former parent company, ENI, also agreed to ensure that their compliance programs satisfied certain standards and to cooperate with the department in ongoing investigations.

Wojciech Chodan was extradited from the United Kingdom to the United States on December 3, 2010. He pleaded guilty to one count of conspiracy to violate the FCPA on December 6, 2010, and

agreed to forfeit \$726,885. Chodan was sentenced on February 22, 2012, to one year probation and ordered to pay a criminal penalty of \$20,000.

Jeffrey Tesler was extradited from the United Kingdom to the United States on March 10, 2011. He pleaded guilty to one count of conspiracy to violate the FCPA on March 11, 2011, and agreed to forfeit \$148,964,568. Tesler was sentenced on February 23, 2012, to 21 months' imprisonment, followed by two years' supervised release and ordered to pay a criminal penalty of \$25,000.

On April 6, 2011, JGC Corporation entered into a two-year deferred prosecution agreement with the Department, which requires JGC to retain an independent compliance consultant for a term of two years and to pay a criminal penalty of \$218.8 million.

On January 17, 2012, Marubeni Corporation entered into a two-year deferred prosecution agreement with the Department to resolve pending FCPA charges. The agreement requires Marubeni to retain a corporate compliance monitor and to pay a criminal penalty of \$5.4 million.

Civil Disposition:

On September 3, 2008, without admitting or denying the allegations in the complaint, Stanley consented to the entry of a final judgment in the SEC's civil case, which permanently enjoins him from violating the provisions named above. As part of both his criminal and civil settlements, Stanley agreed to cooperate with the Government's ongoing investigation.

On February 11, 2009, KBR LLC's parent company, KBR, and its former parent company, Halliburton, settled a related civil complaint with the SEC by jointly agreeing to the entry of an order enjoining them from future violations of the FCPA, to each obtain an independent compliance monitor for three years, and to jointly pay \$177 million in disgorgement of profits

Without admitting or denying the SEC's allegations, on June 28, 2010 Technip consented to the entry of a court order permanently enjoining the company from violating the anti-bribery, books and records, and internal controls provisions of the FCPA. In addition, Technip was ordered to disgorge \$98 million in ill-gotten profits from the scheme and prejudgment interest.

Without admitting or denying the SEC's allegations, on July 7, 2010, ENI consented to the entry of a court order permanently enjoining the company from violating the books and records and internal controls provisions of the FCPA. Similarly, Snamprogetti consented to the entry of a court order permanently enjoining the company from violating the anti-bribery, books and records, and internal controls provisions of the FCPA. Both companies also consented to the entry of court orders that require them, jointly and severally, to pay \$125 million in disgorgement.

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#### **14. Magyar Telekom, PLC and Deutsche Telekom AG**

Resulting Criminal Enforcement Action(s):

- A. In Re Deutsche Telekom AG (December 29, 2011)**
- B. United States v. Magyar Telekom Plc. (December 29, 2011)**

Resulting Civil/Administrative Enforcement Action(s):

- C. SEC v. Deutsche Telekom AG and Magyar Telekom Plc (S.D.N.Y., December 29, 2011)**
- D. SEC v. Straub, et al., (S.D.N.Y., December 29, 2011)**

Entities and Individuals:

- Deutsche Telekom AG, non-prosecution agreement announced December 29, 2011.

- Magyar Telekom Plc., charged December 29, 2011.
- Elek Straub, former Chairman and Chief Executive Officer, civil complaint filed December 29, 2011
- Andras Balogh, former Director of Strategic Operations, civil complaint filed December 29, 2011
- Tamas Morvai, former Director of Business Development and Acquisitions, civil complaint filed December 29, 2011

Criminal Charges:

- Bribery of foreign officials (Magyar Telekom, Plc.)
- Falsification of books and records (Magyar Telekom, Plc. and Deutsche Telekom AG)

Civil Charges:

- Aiding and Abetting:
  - Bribery of foreign officials (all defendants)
  - Falsification of books and records (all defendants)
  - Internal controls violations (all defendants)
- Bribery of foreign officials (all defendants)
- Falsification of books and records (all defendants)
- False or misleading statements to accountant or auditor (all defendants)

Location and Time Period of Misconduct: Republic of Macedonia, 2005-2006; Republic of Montenegro, 2005.

Summary:

On December 29, 2011, a three-count information was filed in the Eastern District of Virginia against Magyar Telekom Plc. (“Magyar”), a Hungarian telecommunications company, charging the company with violations of the anti-bribery and books and records provisions of the FCPA. On the same date, Magyar entered into a two-year deferred prosecution agreement (“DPA”) with the Department of Justice to resolve the FCPA violations, and Deutsche Telekom AG (“Deutsche”), a German telecommunications company and majority owner of Magyar, entered into a two-year non-prosecution agreement (“NPA”) with the Department for its failure to keep books and records that accurately detailed the details of Magyar. On December 29, 2011, The U.S. Securities Exchange Commission (“SEC”) also filed civil charges in the United States District Court for the Southern District of New York, against Magyar, Deutsche, as well as three former Magyar executives, Elek Straub, Andras Balogh, and Tamas Morvai, alleging violations of the anti-bribery, books and records and internal control provisions of the FCPA.

According to court records, three senior executives—Straub, Balogh, and Morvai—at Magyar Telekom Plc. orchestrated, approved, and executed a plan to bribe Macedonian officials in 2005 and 2006 to prevent the introduction of a new competitor and gain other regulatory benefits. Magyar Telekom’s subsidiaries in Macedonia made illegal payments of approximately \$6 million under the guise of bogus consulting and marketing contracts. The same executives orchestrated a second scheme in 2005 in Montenegro related to Magyar Telekom’s acquisition of the state-owned telecommunications company there. Magyar Telekom paid approximately \$9 million through four sham contracts to funnel money to government officials in Montenegro.

Magyar Telekom entered into a secret agreement entitled the “Protocol of Cooperation” with senior Macedonian government officials to delay or preclude the issuance of a license to a new competitor and mitigate other adverse effects of the new law. To win their support, Magyar Telekom paid €4.875 million to a third-party intermediary under a series of sham contracts with the intention that the intermediary would forward money to the government officials.

Magyar Telekom used intermediaries to pay bribes to government officials in return for their support of Magyar Telekom’s acquisition of the state-owned telecommunications company on terms favorable to Magyar Telekom. Magyar Telekom also promised a Macedonian political party the opportunity to designate the beneficiary of a business venture in exchange for the party’s support.

Criminal Disposition:

On December 29, 2011, Magyar entered into a two-year deferred prosecution agreement with the Department. As part of this agreement, Magyar was required to pay a \$59.6 million criminal penalty, as well as to continue implementing rigorous internal controls. On the same day, Deutsche entered into a two-year non-prosecution agreement with the Department and agreed to pay a \$4.36 million criminal penalty.

Civil Disposition:

As part of its settlement with the SEC, Magyar and Deutsche consented to the entry of a permanent injunction against further violations of the FCPA and Magyar agreed to pay more than \$31.2 million in disgorgement and prejudgment interest.

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**15. Aon Corporation**

Resulting Criminal Enforcement Action(s):

**A. In Re Aon Corporation (December 20, 2011)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. Aon Corporation (D.D.C., December 20, 2011)**

Entities and Individuals:

- Aon Corporation, non-prosecution agreement announced and settled civil complaint filed December 20, 2011.

Criminal Charges:

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

Civil Charges:

- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: Costa Rica, 1990-2005; Egypt, 1983-2009; Vietnam, 2003-2007; Indonesia, 2002-2007; United Arab Emirates, 1997-2007; Myanmar, 1999-2005; Bangladesh, 2002-2007.

Summary:

On December 20, 2011, Aon Corporation (“Aon”), a publicly traded corporation headquartered in Chicago, Illinois, and one of the world’s largest insurance brokerage firms, entered into a two-year non-prosecution agreement (NPA) with the Department of Justice, alleging that the company had committed violations of the anti-bribery, books and records, and internal control provisions of the FCPA. On the same date, the SEC filed a settled civil complaint against Aon in the U.S. District Court for the District of Columbia, charging the company with violations of the books and records, and internal controls provisions of the FCPA.

According to the NPA Aon’s subsidiaries made over \$3.6 million in improper payments to various parties between 1983 and 2007 as a means of obtaining or retaining insurance business in those countries. Some of the improper payments were made directly or indirectly to foreign government officials who could award business directly to Aon subsidiaries, who were in position to influence others who could award business to Aon subsidiaries, or who could otherwise provide favorable business treatment for the company’s interests. These payments were not accurately reflected in Aon’s books and records, and that Aon failed to maintain an adequate internal control system reasonably designed to detect and prevent the improper payments. According to court documents, the improper payments made by Aon’s subsidiaries fall into two general categories: (i) training, travel, and entertainment provided to employees of foreign government-owned clients and third parties; and (ii) payments made to third-party facilitators. Aon subsidiaries made these payments in various countries around the world, including Costa Rica, Egypt, Vietnam, Indonesia, United Arab Emirates, Myanmar, and Bangladesh. Aon realized over \$11.4 million in profits from these improper payments.

Criminal Disposition:

On December 20, 2011, Aon Corporation entered into a two-year non-prosecution agreement with the Department of Justice and was ordered to pay a \$1.76 million criminal penalty. The agreement also requires Aon to adhere to rigorous compliance, book-keeping and internal controls standards and cooperate fully with the Department.

Civil Disposition:

On December 20, 2011, without admitting or denying the SEC’s allegations, Aon Corporation consented to the entry of a final judgment that permanently enjoins the company from violating the anti-bribery, books and records, and internal controls provisions of the FCPA. In addition, Aon was ordered to pay \$11,416,814 in disgorgement and \$3,218,206 in prejudgment interest.

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**16. Siemens Aktiengesellschaft (Siemens AG)**

Resulting Criminal Enforcement Action(s):

- A. United States v. Siemens Aktiengesellschaft (D.D.C., December 12, 2008)**
- B. United States v. Siemens S.A. (Argentina) (D.D.C., December 12, 2008)**
- C. United States v. Siemens Bangladesh Limited (D.D.C., December 12, 2008)**
- D. United States v. Siemens S.A. (Venezuela) (D.D.C., December 12, 2008)**

- E. United States v. Uriel Sharef, et al. (S.D.N.Y., December 12, 2011)**  
**F. United States v. Mizanur Rahman (E.D. Va., October 4, 2012)**

Resulting Civil/Administrative Enforcement Action(s):

- G. United States v. All Assets Held in the Name of Zasz Trading and Consulting Pte Ltd., et al. (D.D.C., January 8, 2009)**  
**H. SEC v. Siemens Aktiengesellschaft (D.D.C., December 12, 2008)**  
**I. SEC. v. Uriel Sharef, et, al. (S.D.N.Y., December 13, 2011)**

Entities and Individuals:

- Siemens Aktiengesellschaft, charged December 12, 2008; civil complaint filed December 12, 2008.
- Siemens S.A. - Argentina, charged December 12, 2008.
- Siemens Bangladesh Limited, charged December 12, 2008.
- Siemens S.A. - Venezuela, charged December 12, 2008.
- Uriel Sharef, former member of the Central Executive Committee of Siemens AG, indicted December 12, 2011; civil complaint filed December 13, 2011.
- Herbert Steffen, former Chief Executive Officer of Siemens Argentina, indicted December 12, 2011; civil complaint filed December 13, 2011.
- Andres Truppel, former Chief Financial Officer of Siemens Argentina, indicted December 12, 2011; civil complaint filed December 13, 2011.
- Ulrich Bock, former Senior Executive of Siemens Business Services, indicted December 12, 2011; civil complaint filed December 13, 2011.
- Stephan Signer, former Senior Executive of Siemens Business Services, indicted December 12, 2011; civil complaint filed December 13, 2011.
- Eberhard Reichert, former Senior Executive of Siemens Business Services, indicted December 12, 2011.
- Carlos Sergi, former intermediary and agent of Siemens, indicted December 12, 2011; civil complaint filed December 13, 2011.
- Miguel Czysch, former intermediary and agent of Siemens, indicted December 12, 2011.
- Bernd Regendantz, former CFO of Siemens Business Services, civil complaint filed December 13, 2011.
- Minazur Rahman, indicted October 4, 2012.

Criminal Charges:

- Conspiracy:
  - to bribe foreign officials (Siemens S.A. - Venezuela Siemens Bangladesh Limited, and Sharef, et al.)
  - to falsify books and records (Siemens S.A. – Argentina, and Sharef, et al.)
  - to commit internal controls violations (Sharef, et al.)
  - to commit money laundering (Sharef, et al.)
  - to commit fraud (Sharef, et al.)
- Falsification of books and records (Siemens Aktiengesellschaft)
- Wire fraud (Sharef, et al.)
- Filing false tax returns (Rahman)

Civil Charges:

- Bribery of foreign officials (Siemens AG and Sharef, et al.)
- Internal controls violations (Siemens AG and Sharef, et al.)
- Falsification of books and records (Siemens AG and Sharef, et al.)
- Forfeiture (Zasz Trading and Consulting, et al.)

Location and Time Period of Misconduct: Argentina, 1998-2007; Nigeria, 2000-2001; Iraq, 2000-2002; Russia, 2000-2007; Bangladesh, 2001-2006; Venezuela, 2001-2007; Vietnam, 2002 and 2005-2006; Israel, 2002-2005; China, 2002-2007; Mexico, 2004.

Summary:

On December 11, 2008, Siemens Aktiengesellschaft (Siemens AG), a German corporation, and three of its subsidiaries were charged in separate criminal informations filed in the U.S. District Court for the District of Columbia for their roles in a scheme to bribe foreign officials in several countries. Siemens AG was charged with two counts of violating the internal controls and books and records provisions of the FCPA, while Siemens S.A. - Argentina was charged with conspiracy to violate the books and records provisions. In addition, Siemens Bangladesh Limited (Siemens Bangladesh) and Siemens S.A. – Venezuela (Siemens Venezuela) were each charged with one count of conspiracy to violate the anti-bribery and books and records provisions of the FCPA.

Between March 12, 2001 and September 30, 2007, Siemens violated the FCPA by engaging in a widespread and systematic practice of paying bribes to foreign government officials to obtain business. Siemens created elaborate payment schemes to conceal the nature of its corrupt payments, and the company's inadequate internal controls allowed the conduct to flourish. The misconduct involved employees at all levels, including former senior management, and revealed a corporate culture long at odds with the FCPA.

During this period, Siemens made thousands of payments to third parties in ways that obscured the purpose for, and the ultimate recipients of, the money. At least 4,283 of those payments, totaling approximately \$1.4 billion, were used to bribe government officials in return for business to Siemens around the world.

Among others, Siemens paid bribes on transactions to design and build metro transit lines in Venezuela; metro trains and signaling devices in China; power plants in Israel; high voltage transmission lines in China; mobile telephone networks in Bangladesh; telecommunications projects in Nigeria; national identity cards in Argentina; medical devices in Vietnam, China, and Russia; traffic control systems in Russia; refineries in Mexico; and mobile communications networks in Vietnam. Siemens also paid kickbacks to Iraqi ministries in connection with sales of power stations and equipment to Iraq under the United Nations Oil for Food Program. Siemens earned over \$1.1 billion in profits on these transactions.

An additional approximately 1,185 separate payments to third parties totaling approximately \$391 million were not properly controlled and were used, at least in part, for illicit purposes, including commercial bribery and embezzlement.

From 1999 to 2003, Siemens' Managing Board or "Vorstand" was ineffective in implementing controls to address constraints imposed by Germany's 1999 adoption of the Organization for Economic Cooperation and Development ("OECD") anti-bribery convention that outlawed foreign bribery. The Vorstand was also ineffective in meeting the U.S. regulatory and anti-bribery requirements that Siemens was subject to following its March 12, 2001, listing on the New York Stock Exchange. Despite

knowledge of bribery at two of its largest groups — Communications and Power Generation — the company's tone at the top was inconsistent with an effective FCPA compliance program and created a corporate culture in which bribery was tolerated and even rewarded at the highest levels of the company. Employees obtained large amounts of cash from cash desks, which were sometimes transported in suitcases across international borders for bribery. Authorizations for payments were placed on post-it notes and later removed to eradicate any permanent record. Siemens used numerous slush funds, off-books accounts maintained at unconsolidated entities, and a system of business consultants and intermediaries to facilitate the corrupt payments.

Siemens failed to implement adequate internal controls to detect and prevent violations of the FCPA. Elaborate payment mechanisms were used to conceal the fact that bribe payments were made around the globe to obtain business. False invoices and payment documentation was created to make payments to business consultants under false business consultant agreements that identified services that were never intended to be rendered. Illicit payments were falsely recorded as expenses for management fees, consulting fees, supply contracts, room preparation fees, and commissions. Siemens inflated U.N. contracts, signed side agreements with Iraqi ministries that were not disclosed to the U.N., and recorded the ASSF payments as legitimate commissions despite U.N., U.S., and international sanctions against such payments.

*Criminal Disposition:*

On December 15, 2008, Siemens AG and its three subsidiaries each pleaded guilty before U.S. District Judge Richard J. Leon in the District of Columbia. Subsequently, the Court imposed fines, as agreed to in the plea agreements, of \$448.5 million on Siemens AG and of \$500,000 each on Siemens Argentina, Siemens Bangladesh, and Siemens Venezuela, for a combined total criminal fine of \$450 million. Under the terms of the plea agreement, Siemens AG agreed to retain an independent compliance monitor for a four-year period to oversee the continued implementation and maintenance of a robust compliance program and to make reports to the company and the Department of Justice.

*Civil Disposition:*

Also on December 15, 2008, Siemens AG reached a settlement of the related civil complaint filed by the SEC. Without admitting or denying the Commission's allegations, Siemens consented to the entry of a court order permanently enjoining it from future violations of the FCPA. The court also ordered Siemens to pay \$350 million in disgorgement of wrongful profits.

Simultaneous with the settlement of the U.S. enforcement actions, Siemens AG agreed to a disposition resolving an ongoing investigation by the Munich Public Prosecutor's Office of Siemens AG's operating groups other than the Telecommunications group. Siemens AG agreed to pay €395 million, or approximately \$569 million, including a €250,000 corporate fine and €394.75 million in disgorgement of profits. Previously, in October 2007, in connection with charges related to corrupt payments to foreign officials by Siemens AG's Telecommunications operating group, Siemens AG settled and agreed to pay €201 million, or approximately \$287 million, including a €1 million fine and €200 in disgorgement of profits. On April 7, 2010, U.S. District Judge John D. Bates granted the Government's motion for default judgment and judgment of forfeiture in the civil forfeiture action filed against the approximately \$3 million in bribe proceeds being held in various bank accounts in Singapore.

On December 13, 2011, without admitting or denying the SEC's allegations, Bernd Regendantz consented to the entry of a final judgment that permanently enjoins him from future violations of the

anti-bribery, books and records, and internal controls provisions of the FCPA. He was also ordered to pay a civil penalty of \$40,000.

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## **17. Watts Water Technologies, Inc.**

### Resulting Civil/Administrative Enforcement Action(s):

#### **A. In the Matter of Watts Water Technologies, Inc. and Leesen Chang (October 13, 2011)**

### Entities and Individuals:

- Watts Water Technologies, Inc., cease-and-desist order issued October 13, 2011.
- Leesen Chang, cease-and-desist order issued October 13, 2011.

### Civil Charges:

- Falsification of books and records
- Internal controls violations.

### Location and Time Period of Misconduct: China, 2006-2009

### Summary:

On October 13, 2011, Watts Water Technologies, Inc., a Delaware corporation headquartered in North Andover, Massachusetts, and Leesen Chang, a U.S. citizen and the former interim general manager of CWV and vice president of sales for Watts' management subsidiary in China, entered into a settlement with the SEC regarding the company's alleged violations of the books and records and internal controls provisions of the FCPA.

The charges against Watts Water Technologies, Inc. and Leesen Chang stemmed from the alleged conduct of Watts Valve Changsha Co., Ltd., a wholly-owned Chinese subsidiary of Watts, headquartered in China. Watts Valve Changsha Co., Ltd. produced and supplied large valve products for infrastructure projects in China are mostly developed, constructed, and owned by state-owned entities ("Project SOEs"). Project SOEs routinely retain state-owned design institutes to assist in the design and construction of their projects.

According to the SEC's order, from 2006 to 2009, employees of Watts Valve Changsha made improper payments to employees of certain design institutes to influence the design institutes to recommend CWV valve products to Project SOEs and to create design specifications that favored CWV valve products. CWV's improper payments generated profits for Watts of more than \$2.7 million. These payments were improperly recorded in CWC's books and records as sales commissions. Watts failed to devise and maintain a system of internal accounting controls sufficient to prevent and detect the payments. Respondent Leesen Chang, approved many of the payments to the design institutes and knew or should have known that the payments were improperly recorded on Watts' books as commissions.

### Civil Disposition:

On October 13, 2011, without admitting or denying the SEC's allegations, Watts Water Technologies Inc. and Lessen Chang agreed to cease-and-desist from future violations of the books and records and internal controls provisions of the FCPA. In addition, Watts Water Technologies Inc agreed to pay disgorgement of \$2,755,815, prejudgment interest of \$820,791 and a civil money penalty of

\$200,000. Leesen Chang also agreed to pay to the United States Treasury a civil money penalty of \$25,000.

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**18. Bid-Rigging in the International Market for Marine Hose**

*Resulting Criminal Enforcement Action(s):*

**A. United States v. Bridgestone Corporation (S.D. Tex., September 15, 2011)**

*Entities and Individuals:*

- Bridgestone Corporation, charged September 15, 2011.

*Criminal Charges:*

- Conspiracy:
  - to violate the Sherman Antitrust Act
  - to bribe foreign officials

*Location and Time Period of Misconduct:* Latin America, 1999-2007

*Summary:*

Bridgestone, a Tokyo-headquartered manufacturer of marine hose and other industrial products, conspired to rig bids, fix prices and allocate market shares of marine hose in the United States and elsewhere and, separately, conspired to make corrupt payments to government officials in various Latin American countries to obtain and retain business. The Department of Justice said Bridgestone participated in the conspiracies from as early as January 1999, and continuing until as late as May 2007.

According to the antitrust charge, Bridgestone and its co-conspirators agreed to allocate shares of the marine hose market and to use a price list for marine hose in order to implement the conspiracy. The department also charged that, in order to secure sales of marine hose in Latin America, Bridgestone authorized and approved corrupt payments to foreign government officials employed at state-owned entities. Bridgestone's local sales agents agreed to pay employees of state-owned customers a percentage of the total value of proposed sales. When Bridgestone secured a sale, it would pay the local sales agent a "commission" consisting of not only the local sales agent's actual commission but also the corrupt payments to be made to employees of the state-owned customer. The local sales agent then was responsible for passing the agreed-upon corrupt payment to the employees of the customer.

*Criminal Disposition:*

On September 15, 2011, Bridgestone Corporation agreed to plead guilty for its role in conspiracies to rig bids and to make corrupt payments to foreign government officials in Latin America related to the sale of marine hose and other industrial products manufactured by the company and sold throughout the world. Pursuant to its plea agreement, Bridgestone Corporation was sentenced to a criminal fine of \$28 million.

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## 19. Diageo plc

### Resulting Civil/Administrative Enforcement Action(s):

#### A. **In the Matter of Diageo plc (July 27, 2011)**

### Entities and Individuals:

- Diageo plc, cease-and-desist order issued July 27, 2011.

### Civil Charges:

- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: India, 2003-2009; Thailand, 2004-2008; South Korea, 2003-2006.

### Summary:

On July 27, 2011, Diageo plc (“Diageo”), one of the world’s largest producers of premium alcoholic beverages, entered into a settlement with the SEC regarding the company’s alleged six years of improper payments to government officials in India, Thailand, and South Korea. Specifically, the SEC found that London-based Diageo plc paid more than \$2.7 million through its subsidiaries to obtain lucrative sales and tax benefits relating to its Johnnie Walker and Windsor Scotch whiskeys, among other brands. Diageo and its subsidiaries failed to account accurately for these illicit payments in their books and records. Diageo also failed to devise and maintain internal accounting controls sufficient to detect and prevent the payments.

In India, from 2003 through mid-2009 Diageo made over \$1.7 million in illicit payments to hundreds of Indian government officials responsible for purchasing or authorizing the sale of its beverages. Increased sales from these payments yielded more than \$11 million in ill-gotten gains. In Thailand, from 2004 through mid-2008, Diageo paid approximately \$12,000 per month – totaling nearly \$600,000 – to retain the consulting services of a Thai government and political party official. This official lobbied extensively on Diageo’s behalf in connection with multi-million dollar pending tax and customs disputes, contributing to Diageo’s receipt of certain favorable dispositions by the Thai government. With respect to South Korea, in 2004, Diageo paid 100 million won (KRW) (over \$86,000) to a customs official as a reward for his role in the government’s decision to grant Diageo significant tax rebates. Diageo also paid over \$100,000 in travel and entertainment expenses for South Korean customs and other government officials involved in these tax negotiations. Separately, Diageo made hundreds of gift payments totaling over \$230,000 to South Korean military officials in order to obtain and retain liquor business.

### Civil Disposition:

On July 27, 2011, without admitting or denying the SEC’s allegations, Diageo agreed to cease-and-desist from further violations of the books and records and internal controls provisions of the FCPA. In addition, Diageo agreed to pay \$11,306,081 in disgorgement, prejudgment interest of \$2,067,739, and a financial penalty of \$3,000,000.

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**20. Armor Holdings, Inc.**

Resulting Criminal Enforcement Action(s):

**A. In Re Armor Holdings, Inc. (July 13, 2011)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. Armor Holdings, Inc. (D.D.C., July 13, 2011)**

Entities and Individuals:

- Armor Holdings, Inc., non-prosecution agreement and civil complaint filed July 13, 2011.

Criminal Charges:

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

Civil Charges:

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: United Nations, 2001-2007.

Summary:

On July 13, 2011, Armor Holdings, Inc, which was a Delaware corporation headquartered in Jacksonville, Florida, whose operating subsidiaries specialized in the manufacture and sale of military, law enforcement, and personnel safety equipment, entered into a two-year non-prosecution agreement with the Department of Justice regarding alleged violations of the anti-bribery, books and records, and internal controls provisions of the FCPA. On the same date, the SEC filed a settled civil complaint against Armor Holding in the U.S. District Court for the District of Columbia, charging the company with violations of the anti-bribery, books and records, and internal controls provisions of the FCPA.

According to the agreements, Armor Holding's U.K. subsidiary, Armor Products International, Ltd. ("API"), wired at least 92 payments, totaling over \$200,000, in commissions to a third party sales agent. Armor Holdings knew that a portion of these payments would be offered to a United Nations procurement official to induce the official to award two separate U.N. contracts to API. In addition, agents of Armor Holdings caused API to enter into a sham consulting agreement with the intermediary for purportedly providing legitimate services in connection with the sale of goods to the U.N. API ultimately received contracts for the sale of approximately \$6 million of body armor, which resulted in a total profit to API of approximately \$1 million.

The record additionally shows that Armor acknowledged it falsely recorded the commission payments in its books and records. The company further admitted to keeping off its books and records approximately \$4.4 million in additional payments to agents and other third-party intermediaries used by Armor Holdings Product Group, a wholly owned subsidiary of Armor, to assist it in obtaining business from foreign government customers. Armor Holdings generated more than \$7.1 million in improper revenue and \$1.5 million in improper profits from the illegal conduct of its subsidiaries between 2001 and 2007.

Criminal Disposition:

On July 13, 2011, Armor Holdings, Inc., entered into a two-year non-prosecution agreement with the Department of Justice. As part of this agreement, Armor was required to pay a criminal penalty of \$10.29 million, as well as to continue implementing rigorous internal controls and continue cooperating fully with the Department. Due to Armor's implementation of BAE's due diligence protocols and review processes, its application of BAE's compliance policies and internal controls to all Armor businesses, its extensive remediation and improvement of its compliance systems and internal controls, as well as the enhanced compliance undertakings included in the agreement, Armor was not required to retain a corporate monitor. However, Armor was required to report to the Department on implementation of its remediation and enhanced compliance efforts every six months for the duration of the agreement.

Civil Disposition:

As part of its settlement with the SEC, Armor Holdings, Inc. consented to the entry of a permanent injunction against further violations of the FCPA and agreed to pay \$1,552,306 in disgorgement, \$458,438 in prejudgment interest, and a civil penalty of \$3,680,000.

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**21. Tenaris S.A.**

Resulting Criminal Enforcement Action(s):

**A. In Re Tenaris S.A. (May 17, 2011)**

Resulting Civil/Administrative Enforcement Action(s):

**B. In Re Tenaris S.A. (May 17, 2011)**

Entities and Individuals:

- Tenaris, S.A., non-prosecution agreement with the DOJ and deferred prosecution agreement with the SEC announced May 17, 2011.

Criminal Charges:

- Bribery of foreign officials
- Falsification of books and records

Civil Charges:

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: Uzbekistan, 2006-2008.

Summary:

On May 17, 2011, Tenaris, S.A., a publicly traded corporation headquartered in Luxembourg and a global manufacturer and supplier of steel pipe products and related services to the oil and gas industry, entered into a two-year non-prosecution agreement (NPA) with the Department of Justice, which alleged

that the company had committed violations of the anti-bribery and books and records provisions on the FCPA. On the same date, Tenaris entered into a two-year deferred prosecution agreement (DPA) with the SEC in order to resolve allegations of violations of the anti-bribery, books and records, and internal controls provisions of the FCPA. This enforcement action marked the first-ever use of a DPA to facilitate and reward cooperation in a SEC investigation.

According to court records, between 2006-2007, Tenaris bid on a series of contracts with OJSC O'ztashqineftgaz (OAO), a state-controlled oil and gas production company in Uzbekistan, to supply OAO with pipeline for use in the development and production of oil and natural gas in Uzbekistan. To help Tenaris bid on certain contracts with OAO, the company acquired an agent who provided the company with the bid information of competitors, which the agent obtained, from officials at OAO's tender department. Regional sales personnel at Tenaris subsequently used this confidential competitor bid information to submit revised bids in order to increase the likelihood of Tenaris being awarded the underlying contracts.

The records indicate that Tenaris paid the agent 3.5 percent of the value of four separate contracts they were awarded, equaling approximately \$32,140, through an intermediary bank. It is alleged that Tenaris was aware that a portion of the commissions paid to the agent would be used to pay OAO officials for, opening competitors' bids, providing confidential bid information to Tenaris, and replacing Tenaris's original bids with its revised bids. Tenaris's total profit from the four contracts was approximately \$4,786,438.

In or about March 2009, a third party disclosed to Tenaris that it had become aware of the improper payments made by the company. Tenaris then voluntarily disclosed this information regarding the company's conduct to the Department of Justice. At that time, Tenaris conducted an internal investigation, provided thorough, real-time cooperation to the Department and the SEC and undertook extensive remediation, including voluntary enhancements to its compliance program.

According to the NPA, Tenaris admitted that its employees and agents offered and made improper payments to officials of OAO, and failed to record such payments accurately in company books and records. The SEC's DPA further alleges that Tenaris failed to maintain internal controls to ensure that the transactions in Uzbekistan were properly authorized by management and that the financial statements were prepared in conformity with generally accepted accounting principles and in compliance with provisions of the FCPA.

*Criminal Disposition:*

On May 17, 2011, Tenaris, S.A., entered into a two-year non-prosecution agreement with the Department of Justice and was ordered to pay a \$3.5 million criminal penalty.

*Civil Disposition:*

On May 17, 2011, without admitting or denying the SEC's allegations, Tenaris, S.A., entered into a two-year deferred prosecution agreement with the SEC and agreed to pay \$5,428,338 in disgorgement and prejudgment interest. Tenaris is the first company to enter into a DPA with the SEC, whereby the SEC agreed to refrain from prosecuting Tenaris in a civil action if the company complies with certain undertakings regarding its FCPA compliance program and continues to fully cooperate with the SEC in its investigation.

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## **22. Rockwell Automation, Inc.**

### Resulting Civil/Administrative Enforcement Action(s):

#### **A. In the Matter of Rockwell Automation, Inc. (May 3, 2011)**

### Entities and Individuals:

- Rockwell Automation, Inc., cease-and-desist order issued May 3, 2011.

### Civil Charges:

- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: China, 2003-2006.

### Summary:

On May 3, 2011, Rockwell Automation, Inc. (Rockwell), a global company engaged in the design and manufacturing of industrial automation products and services, entered into a settlement with the SEC regarding the company's alleged violations of the books and records and internal controls provisions of the FCPA. These charges stemmed from the alleged conduct of Rockwell Automation Power Systems (Shanghai) Ltd. ("RAPS-China"), a wholly-owned subsidiary of Rockwell, headquartered in Shanghai, China. During 2003, RAPS-China opened a manufacturing facility in Shanghai. Among other products, RAPS manufactured a Controlled Start Transmission ("CST"), which is used in the mining industry. The CST product was sold by RAPS-China primarily to Chinese government-owned coal mining and processing plants.

According to the SEC's order, from 2003 to 2006, RAPS-China paid approximately \$615,000 to employees of Chinese Design Institutes, which were typically state-owned enterprises that provided design engineering and technical integration services that can influence contract awards by end-user state-owned customers. These payments made through third-party intermediaries at the request of Design Institute employees and at the direction of RAPS-China's Marketing and Sales Director. In addition, from 2003 to 2006, employees of RAPS-China paid approximately \$450,000 to fund trips not directly related to business purposes for employees of Design Institutes and state-owned customers. These trips were improperly recorded in Rockwell's books and records as business expenses, without any designation that there were reasons not directly connected to the negotiation or execution of contracts or to the promotion of the company's products.

The SEC's order also notes that Rockwell netted approximately \$1.7 million in profits on sales contracts with end-user Chinese government-owned companies that were associated with payments to the Design Institutes.

### Civil Disposition:

As part of its settlement with the SEC, Rockwell was ordered to cease-and-desist from committing or causing any violations and any future violations of books and records and internal controls violations of the FCPA. Rockwell was also ordered to pay disgorgement of \$1,771,000, prejudgment interest of \$590,091, and a civil money penalty of \$400,000.

## **23. Johnson & Johnson**

### Resulting Criminal Enforcement Action(s):

#### **A. United States v. DePuy, Inc. (D.D.C., April 8, 2011)**

### Resulting Civil/Administrative Enforcement Action(s):

#### **B. SEC v. Johnson & Johnson (D.D.C., April 8, 2011)**

### Entities and Individuals:

- DePuy, Inc., charged April 8, 2011.
- Johnson & Johnson, deferred prosecution agreement and civil complaint filed April 8, 2011.

### Criminal Charges:

- Conspiracy:
  - to bribe foreign officials
  - to falsify books and records
- Bribery of foreign officials

### Civil Charges:

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: Greece, 1997-2006; Poland, 2000-2007; Romania, 2005-2008; Iraq, 2000-2003.

### Summary:

On April 8, 2011, Johnson & Johnson (J&J) entered into a deferred prosecution agreement with the Department of Justice that included the filing of charges against DePuy, Inc., a wholly-owned subsidiary of Johnson & Johnson (J&J) and global manufacturer and supplier of orthopedic medical devices headquartered in Warsaw, Indiana, of one count of conspiracy to violate the anti-bribery and books and records provisions of the FCPA, as well as one substantive count of violating the FCPA's anti-bribery provisions. On the same date, the SEC filed a settled civil complaint in the U.S. District Court of the District of Columbia, charging J&J with violating the anti-bribery, books and records, and internal controls provisions of the FCPA. The criminal and civil charges against J&J and its subsidiary relate to a series of schemes to pay bribes to officials in various countries from approximately 1997 to 2008, including Greece, Poland, Romania, and Iraq.

### Bribery of Greek Officials from 1997-2006:

According to court records, from approximately 1997 to 2006, DePuy, and its subsidiaries and employees, authorized the payment, directly or indirectly, of approximately \$16.4 million in cash to two Greek agents, knowing that a significant portion was used to pay cash incentives to healthcare providers who work at publicly-owned hospitals ("HCPs") to induce them to purchase DePuy's line of medical devices. Greece has a national healthcare system wherein most Greek hospitals are publicly owned and operated. HCPs who work at these publicly-owned hospitals in Greece are government employees, providing health care services in their official capacities and are "foreign officials" as that term is

defined in the FCPA. In addition to the payments by Greek agents, from approximately 2002 to 2006, approximately €500,000 was withdrawn by a DePuy employee and repaid within days. These withdrawals were used to cover payments owed to HCPs by the agents but not yet paid. According to the SEC's complaint, J&J earned \$24,258,072 in profits on sales obtained through this bribery scheme. In order to conceal the bribe payments, J&J and its subsidiaries falsely recorded the payments in their books and records as "commissions," "support," or "professional education" payments.

*Bribery of Polish Officials from 2000-2007:*

Similar to Greece, Poland has a national healthcare system whereby most Polish hospitals are owned and operated by the government and most Polish HCPs are government employees providing health care services in their official capacities. Therefore, most HCPs in Poland are "foreign officials" as defined by the FCPA.

According to court records, employees of J&J Poland, a J&J subsidiary, made payments and provided things of value to publicly-employed Polish HCPs, in the form of "civil contracts," travel sponsorships, and donations of cash and equipment, to corruptly influence the decisions of HCPs on tender committees to purchase medical products from J&J Poland. Between 2000 and 2006, there were approximately 4,400 civil contracts for which the company paid HCPs approximately \$3.65 million, some of which were used to make improper payments to HCPs, including direct payments and travel, all made to induce purchase of J&J products. In addition to the civil contracts, J&J Poland sponsored some publicly-employed Polish HCPs to attend conferences in order to corruptly influence them, in their official capacities as members of tender committees, in order to induce HCPs to select, or favorably influence the selection of J&J Poland as the winning supplier in tender processes. In total, from in or around 2000 to in or around 2007, J&J Poland and its employees authorized the payment, directly or indirectly, of approximately \$775,000 in improper payments, including direct payments and travel, to publicly-employed Polish HCPs to induce the purchase of J&J products.

*Bribery of Romanian Officials from 2005-2008:*

The national healthcare system in Romania is almost entirely state-run. The healthcare system is funded by the National Health Care Insurance Fund ("CNAS"), to which employers and employees make mandatory contributions. Most Romanian hospitals are owned and operated by the government and most HCPs in Romania are government employees. Therefore, most HCPs in Romania are "foreign officials" as defined by the FCPA. According to court records, from at least 2005 through 2008, J&J Romania employees made arrangements with J&J Romania distributors for the distributors, on behalf of J&J Romania, to provide cash payments and gifts, including laptops, electronics and other gifts, to publicly-employed Romanian HCPs in exchange for prescribing certain pharmaceuticals manufactured by J&J subsidiaries and operating companies. Specifically, J&J employees worked with distributors to deliver envelopes of cash and gifts to the publicly-employed Romanian HCPs in exchange for prescriptions. The HCP then issued a prescription and gave it directly to the distributor, who would then deliver the drug and a percentage of the price to the doctor. The HCP kept the cash and gave the drug directly to the patient. The distributor then took the prescription and had it approved by the local state insurance office, before delivering it to the pharmacy. The pharmacy then paid the distributor for the drug and submitted the prescription for reimbursement. In total, from approximately July 2005 through mid-2008, J&J Romania and its employees authorized the payment, directly or indirectly, of approximately \$140,000 in incentives to publicly-employed Romanian HCPs to induce the purchase of pharmaceuticals manufactured by J&J subsidiaries and operating companies.

*Bribery of Iraqi Officials under the United Nations Oil-for-Food Program (OFFP):*

J&J participated in the OFFP through two of its subsidiaries, Cilag AG International (Cilag) and Janssen Pharmaceutica N.V. (Janssen). According to court records, between 2000 and 2003, Janssen and Cilag were awarded 18 contracts for the sale of pharmaceuticals to the Iraqi Ministry of Health State Company for Marketing Drugs and Medical Appliances (“Kimadia”) under the OFFP, with a total contract value of approximately \$9.9 million. Janssen and Cilag secured these contracts through the payment of approximately \$857,387 in kickbacks to the government of Iraq through its agent in Lebanon. J&J’s total profits on the contracts were \$6,106,255. J&J’s books and records did not reflect the true nature of the payments made to the Iraqi government.

*Criminal Disposition:*

On April 8, 2011, J&J entered into a three-year deferred prosecution agreement with the Department of Justice in order to resolve both the criminal charges filed against DePuy, Inc. and additional criminal conduct referenced in the Statement of Facts attached to the agreement. Under the terms of the agreement, J&J was required to pay a criminal penalty of \$21.4 million. J&J received a reduction in its criminal fine as a result of its cooperation in the ongoing investigation of other companies and individuals. Due to J&J’s pre-existing compliance and ethics programs, extensive remediation, and improvement of its compliance systems and internal controls, as well as the enhanced compliance undertakings included in the agreement, J&J was not required to retain a corporate monitor. However, J&J must report to the Department on implementation of its remediation and enhanced compliance efforts every six months for the duration of the agreement.

*Civil Disposition:*

On April 8, 2011, without admitting or denying the SEC’s allegations, J&J reached a settlement with the SEC in which it agreed to pay \$38,227,826 disgorgement and \$10,438,490 in prejudgment interest. J&J also consented to the entry of a court order permanently enjoining the company from future violations of the anti-bribery, books and records, and internal controls violations of the FCPA.

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**24. Comverse Technology, Inc.**

*Resulting Criminal Enforcement Action(s):*

**A. In Re Comverse Technology, Inc. (April 7, 2011)**

*Resulting Civil/Administrative Enforcement Action(s):*

**B. SEC v. Comverse Technology, Inc. (E.D.N.Y., April 7, 2011)**

*Entities and Individuals:*

- Comverse Technology, Inc., non-prosecution agreement announced and civil complaint filed April 7, 2011.

*Criminal Charges:*

- Falsification of books and records

*Civil Charges:*

- Falsification of books and records

- Internal controls violations

Location and Time Period of Misconduct: Athens, Greece, 2003-2006.

Summary:

On April 7, 2011, Comverse Technology, Inc. (CTI), which is headquartered in New York City and is a global provider of software and software systems for communications and billing services, entered into a non-prosecution agreement with the Department of Justice. The non-prosecution agreement related to CTI's alleged violations of the books and records provisions of the FCPA with regard to certain improper payments in Greece. On the same date, the SEC filed a settled civil complaint against CTI in the U.S. District Court for the Eastern District of New York, charging the company with violations of the books and records and internal controls provisions of the FCPA.

According to the non-prosecution agreement and the SEC's complaint, CTI violated the books and records provisions of the FCPA by failing record accurately certain improper payments that were made between 2003 and 2006 by employees and a third-party agent of Comverse Inc. subsidiaries to individuals connected to OTE, a Greek telecommunications provider that is partially owned by the Greek Government, in order to obtain purchase orders. The payments, totaling approximately \$536,000, were inaccurately characterized as legitimate agent commissions in the books and records of Comverse Ltd., a wholly owned subsidiary of Comverse Inc. that is based in Tel Aviv, Israel. These payments allegedly resulted in contracts worth approximately \$10 million in revenues and ill-gotten gain of approximately \$1.2 million.

Additionally, the SEC's complaint alleged that CTI failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions at all levels of the organization were properly recorded. For example, neither CTI nor Comverse Ltd. had a process, formal or otherwise, for conducting due diligence of sales agents or for the independent review of agent contracts outside the sales departments.

Criminal Disposition:

On April 7, 2011, Comverse Technology entered into a two year non-prosecution agreement with the Department of Justice. As part of this agreement, CTI was required to pay a criminal penalty of \$1.2 million, fully cooperate with investigations by law enforcement authorities of the company's corrupt payments, and continue the implementation of rigorous internal controls.

Civil Disposition:

On April 7, 2011, without admitting or denying the SEC's allegations, CTI consented to a conduct-based injunction that prohibits the company from having books and records that do not accurately reflect, or from having internal controls that do not prevent or detect, any illegal payments made to obtain or retain business. In addition, CTI consented to pay \$1,249,614 in disgorgement and \$358,887 in prejudgment interest.

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## 25. Ball Corporation

Resulting Civil/Administrative Enforcement Action(s):

**A. In the Matter of Ball Corporation (March 24, 2011)**

Entities and Individuals:

- Ball Corporation, cease-and-desist order issued March 24, 2011.

Civil Charges:

- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: Argentina, 2006-2007.

Summary:

On March 24, 2011, Ball Corporation, an Indiana corporation based in Broomfield, Colorado, which manufactures metal packaging for beverages, foods and household products, entered into a settlement with the SEC pertaining to the company's alleged violations of the books and records and internal controls provisions of the FCPA.

According to the SEC's cease-and-desist order, after Ball acquired an Argentine company, Fornamental, S.A. in March 2006, certain accounting personnel at Ball learned that Fornamental employees may have made questionable payments and caused other compliance problems before the acquisition. Despite learning of these payments after the acquisition, Ball failed to take sufficient action to ensure that such activities did not recur at Fornamental.

Within months of Ball's acquisition of Fornamental, two Fornamental executives –the then-Fornamental President and then-Fornamental Vice President of Institutional Affairs—authorized improper payments to Argentine officials. Specifically, in the period between July 2006 and October 2007, Fornamental's senior officers authorized at least ten unlawful payments totaling approximately \$106,749 to Argentine government officials. These payments were intended to induce government custom officials to circumvent Argentine laws prohibiting the importation of prohibited used machinery, equipment and parts and also to secure the exportation of raw materials at reduced tariffs.

Fornamental's bribes were funneled through a third party customs agent, who often included the bribes on invoices sent to the company. The bribes often appeared on the invoices as separate line items described inaccurately as "fees for customs assistance," "customs advisory services," "verification charge," or simply "fees." According to the SEC's order, the true nature of these payments was then mischaracterized as ordinary business expenses on Fornamental's books and records.

Civil Disposition:

Ball Corporation was ordered to cease-and-desist from committing or causing any violations and any future violations of the books and records and internal controls provisions of the FCPA. In addition, the company was ordered to pay a civil penalty of \$300,000.

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**26. International Business Machines Corporation (IBM)**

Resulting Civil/Administrative Enforcement Action(s):

- A. SEC v. International Business Machines Corporation (D.D.C., March 18, 2011)**

Entities and Individuals:

- International Business Machines, settled civil complaint filed March 18, 2011.

Civil Charges:

- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: South Korea, 1998-2003; China, 2004-2009.

Summary:

On March 18, 2011, the SEC filed a settled civil complaint in the United States District Court for the District of Columbia, against International Business Machines Corporation (IBM), a New York corporation that develops and manufactures information technology products and services worldwide, charging violations of the books and records, and internal controls provisions of the FCPA. The civil charges against IBM relate to a series of schemes to pay bribes to officials in South Korea and China, from approximately 1998-2009.

Bribery of South Korean Officials from 1998-2003:

The SEC's alleges that from 1998 to 2003, employees of IBM Korea, Inc., an IBM subsidiary, and LG IBM PC Co., Ltd., a joint venture in which IBM held a majority interest, paid cash bribes and provided improper gifts and payments of travel and entertainment expenses to various government officials in South Korea in order to secure the sale of IBM products. Court records indicate that IBM-Korea and LG-IBM employees paid a total of approximately \$135,558 and \$71,599 in cash bribes, respectively.

The complaint alleges six specific instances of improper payments made to South Korean government entities ("SKGE") by the IBM subsidiaries. The record indicates that between 1998 and 2002, IBM Korea managers made cash payments totaling KRW 102 million (\$97,372) to SKGE 1 officials who were responsible for purchasing mainframe computers for SKGE 1. The cash payments were made in exchange for SKGE 1 maintaining IBM Korea as their computer supplier and to help an IBM Korea business partner win contract bids.

In 2002, it is alleged that an IBM Korea manager paid KRW 40 million (\$38,186) to a manager of the government controlled SKGE 2 which resulted in IBM Korea winning a contract with SKGE 2 worth approximately KRW 13.7 billion (\$13 million).

The complaint provides that in 2000, a Special Sales Manager for LG IBM directed his business partner to "express his gratitude" to a SKGE 3 official by providing KRW 15 million (\$14,320) to that official. In turn, the LG-IBM business partner was "adequately compensated by generous installation fees" paid by LG-IBM. The SEC additionally alleges that these transactions were not accurately recorded within LG-IBM's books and records. Another LG-IBM employee is alleged to have made an improper payment of KRW 10 million (\$9,546) to a SKGE 4 manager. The purpose of the bribe was to win a computer supply contract valued at KRW 1,448,700,000 (\$1,383,007).

In 2002, a bribe in the amount of KRW 20 million (\$19,093) is alleged to have been made to a SKGE 5 official in exchange for providing LG-IBM with certain confidential information regarding the product specifications on SKGE 5's request for procurement and which resulted in LG-IBM winning a contract which paid KRW 1.74 billion (\$1.7 million).

The final specific allegation in the SEC's complaint with regard to South Korea government officials indicates that a Direct Sales Manager of LG-IBM entertained and provided gifts to employees of SKGE 6. These included payments to the bank account of a "hostess in a drink shop," as well as on travel and entertainment expenses for employees of SKGE 6. The purposes of these improper payments were to persuade employees of SKGE 6 to purchase IBM products. LG-IBM is also suspected to have

provided free computers and computer equipment to key decision makers at ten other SKGEs to entice them to purchase IBM products or to provide information to assist LG-IBM in the bidding process.

*Bribery of Chinese Officials from 2004-2009:*

According to court records, between 2004 to early 2009, IBM China, a Hong Kong company owned by IBM, employees created slush funds at local travel agencies in China that were used to pay for overseas and other travel expenses incurred by Chinese government officials. In addition, IBM-China employees created slush funds at its business partners to provide a cash payment and improper gifts, such as cameras and laptop computers, to Chinese government officials. It is alleged that IBM failed to record accurately these payments in its books and records and that the company's internal controls failed to detect at least 114 violations.

Civil Disposition:

On March 18, 2011, without admitting or denying the SEC's allegations, IBM consented to the entry of a final judgment that permanently enjoins the company from violating the books and records and internal control provisions of the FCPA. In addition, IBM consented to pay disgorgement of \$5,300,000, \$2,700,000 in prejudgment interest, and a \$2,000,000 civil penalty.

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**27. Tyson Foods, Inc.**

Resulting Criminal Enforcement Action(s):

**A. United States v. Tyson Foods, Inc. (D.D.C., February 10, 2011)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. Tyson Foods, Inc. (D.D.C., February 10, 2011)**

Entities and Individuals:

- Tyson Foods Inc., deferred prosecution agreement and civil complaint filed February 10, 2011.

Criminal Charges:

- Conspiracy :
  - to bribe foreign officials
  - to falsify books and records
- Bribery of foreign officials

Civil Charges:

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: Mexico, 2004-2006.

Summary:

On February 10, 2011, the Department of Justice charged Tyson Foods, Inc. (Tyson Foods), which produces prepared food products and is headquartered in Springdale, Arkansas, with one count of

conspiracy to violate the anti-bribery and books and records violations of the FCPA, as well as one substantive count of violating the FCPA's anti-bribery provisions. On the same date, the SEC filed a settled civil complaint against Tyson Foods in the U.S. District Court of the District of Columbia, charging the company with violating the anti-bribery, books and records, and internal controls provisions of the FCPA. The criminal and civil charges against Tyson Foods stem from an alleged scheme to make improper payments to government-employed veterinarians in Mexico.

According to court records, Tyson Foods' subsidiary, Tyson de Mexico, made improper payments during fiscal years 2004 to 2006 to two Mexican government veterinarians responsible for certifying its chicken products for export sales. Tyson de Mexico initially concealed the improper payments by putting the veterinarians' wives on its payroll while they performed no services for the company. The wives were later removed from the payroll and payments were then reflected in invoices submitted to Tyson de Mexico by one of the veterinarians for "services." Tyson de Mexico paid the veterinarians a total of \$100,311. It was not until two years after Tyson Foods' officials first learned about the subsidiary's illicit payments that its counsel instructed Tyson de Mexico to cease making the payments.

The SEC alleges that in connection with these improper payments, Tyson Foods failed to keep accurate books and records and failed to implement a system of effective internal controls to prevent the salary payments to phantom employees and the payment of illicit invoices. The improper payments were improperly recorded as legitimate expenses in Tyson de Mexico's books and records and included in Tyson de Mexico's reported financial results for fiscal years 2004, 2005 and 2006. Tyson de Mexico's financial results were, in turn, a component of Tyson Foods' consolidated financial statements filed with the SEC for the years 2004, 2005, and 2006.

Criminal Disposition:

On February 10, 2011, Tyson Foods entered into a two-year deferred prosecution agreement with the Department of Justice. The agreement requires that Tyson pay a \$4 million criminal penalty, implement rigorous internal controls, and cooperate fully with the Department. The agreement recognized Tyson's voluntary disclosure and thorough self-investigation of the underlying conduct.

Civil Disposition:

As part of its settlement with the SEC, without admitting or denying the SEC's allegations, Tyson Foods consented to the entry of a final judgment ordering disgorgement plus pre-judgment interest of more than \$1.2 million and permanently enjoining the company from violating the anti-bribery, books and records, and internal controls provisions of the FCPA.

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**28. Maxwell Technologies, Inc.**

Resulting Criminal Enforcement Action(s):

**A. United States v. Maxwell Technologies, Inc. (S.D. Cal., January 31, 2011)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. Maxwell Technologies, Inc. (D.D.C., January 31, 2011)**

Entities and Individuals:

- Maxwell Technologies, Inc., deferred prosecution agreement and civil complaint filed January 31, 2011.

Criminal Charges:

- Bribery of foreign officials
- Falsification of books and records

Civil Charges:

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: China, 2002-2009.

Summary:

On January 31, 2011, the Department of Justice charged Maxwell Technologies, Inc. (Maxwell), a publicly-traded manufacturer of energy-storage and power-delivery products based in San Diego, with one count each of violating the anti-bribery and books and records provisions of the FCPA. On the same date, the SEC filed a settled civil complaint, alleging that the company had violated the anti-bribery, books and records, and internal controls provisions of the FCPA. The criminal and civil charges against Maxwell stem from a nearly seven year scheme to pay bribes to Chinese government officials.

According to court documents, Maxwell's wholly-owned Swiss subsidiary, Maxwell S.A., engaged a Chinese agent to sell Maxwell's products in China. From at least July 2002 through May 2009, Maxwell S.A. paid more than \$2.5 million to its Chinese agent to secure contracts with Chinese customers, including contracts for the sale of Maxwell's high-voltage capacitor products to state-owned manufacturers of electrical-utility infrastructure. The agent in turn used Maxwell S.A.'s money to bribe officials at the state-owned entities in connection with the sales contracts. Maxwell S.A. paid its Chinese agent approximately \$165,000 in 2002 and increased the payments to the agent to \$1.1 million in 2008. In its books and records, Maxwell mischaracterized the bribes as sales-commission expenses.

According to court documents, the illicit payments were made with the knowledge and tacit approval of certain former Maxwell officials. As described in the SEC's complaint, former management at Maxwell knew of the bribery scheme in late 2002 when an employee indicated in an e-mail that a payment made in connection with a sale in China appeared to be "a kick-back, pay-off, bribe, whatever you want to call it, . . . in violation of US trade laws." A U.S.-based Maxwell executive replied that "this is a well know[n] issue" and he warned "[n]o more e-mails please."

As a result of this bribery scheme, Maxwell SA was awarded contracts that generated over \$15 million in revenues and \$5.6 million in profits for Maxwell. These sales and profits helped Maxwell offset losses that it incurred to develop new products now expected to become Maxwell's future source of revenue growth.

Criminal Disposition:

On January 31, 2011, Maxwell entered into a three-year deferred prosecution agreement with the Department of Justice. The agreement requires Maxwell to pay a criminal penalty of \$8 million, to implement an enhanced compliance program and internal controls capable of preventing and detecting FCPA violations, to report periodically to the department concerning the company's compliance efforts, and to cooperate with the department in ongoing investigations.

Civil Disposition:

On January 31, 2011, without admitting or denying the SEC's allegations, Maxwell consented to the entry of a final judgment that permanently enjoins the company from violating the anti-bribery, books and records, and internal controls provisions of the FCPA. In addition, Maxwell was ordered to pay \$5,654,576 in disgorgement and \$696,314 in prejudgment interest under a payment plan. Maxwell was also required to comply with certain undertakings regarding its FCPA compliance program.

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**29. Innospec Inc.**

Resulting Criminal Enforcement Action(s):

- A. **United States v. Innospec Inc. (D.D.C., March 17, 2010)**
- B. **United States v. Ousama Naaman (D.D.C., August 7, 2008)**

Resulting Civil/Administrative Enforcement Action(s):

- C. **SEC v. Paul W. Jennings (D.D.C., January 24, 2011)**
- D. **SEC v. David P. Turner, et al. (D.D.C., August 5, 2010)**
- E. **SEC v. Innospec Inc. (D.D.C., March 18, 2010)**

Entities and Individuals:

- Innospec Inc. (Innospec), charged March 17, 2010; civil complaint filed March 18, 2010.
- Ousama Naaman, Innospec's agent, indicted August 7, 2008; civil complaint filed August 5, 2010.
- David P. Turner, Business Director, civil complaint filed August 5, 2010.
- Paul W. Jennings, CEO, civil complaint filed January 24, 2011.

Criminal Charges:

- Conspiracy:
  - to bribe foreign officials (all defendants)
  - to falsify books and records (all defendants)
  - to commit wire fraud (all defendants)
- Bribery of foreign officials (all defendants)
- Falsification of books and records (Innospec)
- Wire fraud (Innospec)

Civil Charges:

- Bribery of foreign officials (all defendants)
- Falsification of books and records (all defendants)
- Internal controls violations (all defendants)
- Aiding and abetting Innospec's falsification of books and records (Turner, Naaman, Jennings)
- Aiding and abetting Innospec's internal controls violations (Turner, Naaman, Jennings)

Location and Time Period of Misconduct: Iraq, 2000-2008; Indonesia, 2000-2005; Cuba, 2001-2004.

Summary:

On August 7, 2008, Ousama Naaman, a Canadian/Lebanese dual national, who served as Innospec Inc.'s agent in the Middle East, was indicted for his alleged participation in an eight-year conspiracy to defraud the OFFP and to bribe Iraqi government officials in connection with the sale of a chemical additive used in the refining of leaded fuel. Naaman was charged with one count of conspiracy to commit wire fraud and to violate the FCPA and two counts of violating the FCPA. On March 17, 2010, Innospec was charged in a twelve-count criminal information with conspiracy, foreign bribery in violation of the FCPA, foreign bribery related accounting misconduct in violation of the FCPA, and wire fraud. On March 18, 2010, the SEC filed a settled civil complaint against Innospec, charging the company with violating the FCPA's anti-bribery, internal controls, and books and records provisions.

The SEC subsequently filed a civil complaint against Naaman and David Turner, Innospec's former Business Director, on August 5, 2010. On January 24, 2011, the SEC filed a civil complaint against Paul W. Jennings, Innospec's former CEO. In its complaints, the SEC charged Naaman, Turner, and Jennings with violating the anti-bribery, books and records, and internal controls provisions of the FCPA, as well as with aiding and abetting Innospec's books and records and internal controls violations.

*Bribery of Iraqi Officials under the United Nations Oil-for-Food Program (OFFP):*

According to court documents, from 2000 to 2003, Innospec's Swiss subsidiary, Alcor, was awarded five contracts valued at more than €40 million to sell tetraethyl lead (TEL) to refineries run by the Iraqi Ministry of Oil (MoO) under the OFFP. To obtain these contracts, Innospec, Alcor, Turner and Naaman, paid or promised to pay at least \$4 million in kickbacks to the former Iraqi government. As Innospec's Business Director, Turner allegedly authorized or approved these kickback payments. For his role in routing the kickbacks to Iraqi officials, Naaman received 2% of the contract value, in addition to the 2% commission he was paid for securing the contracts. In order to cover the cost of the kickbacks to the Iraqi officials, Innospec would inflate its prices in contracts approved by the OFFP.

When later questioned by Innospec's internal auditors about the nature of the commission payments that were made to Naaman under the OFFP, Turner allegedly made a series of false statements and concealed the fact that the commission payments to Naaman included kickbacks to the Iraqi government in return for contracts.

*Bribery of Iraqi Officials from 2004 to 2008:*

According to the SEC's complaints, Jennings learned of the company's longstanding practice of paying bribes to win orders for sales of TEL in mid- to late 2004 while serving as the CFO. After Jennings became CEO in 2005, he and Turner continued to approve bribery payments to officials at the MoO. Ultimately, from 2004-2008, Innospec, Turner, Jennings, and Naaman paid more than \$3 million in bribes, in the form of cash, travel, gifts and entertainment, to officials of the MoO and the Trade Bank of Iraq to secure continued sales of TEL and to secure more favorable exchange rates on the sales contracts and letters of credit. Naaman subsequently provided Innospec with false invoices, on the basis of which Innospec reimbursed him for the bribes.

In addition to the bribe payments to secure sales of TEL, in 2006, Turner, Jennings, and other senior Innospec officials directed Naaman to pay a bribe of \$150,000 to officials within the MoO to ensure that a competing product manufactured by a different company failed a field test keeping the competing product out of the Iraqi market.

According to the complaints, Jennings and other senior Innospec officials also offered to pay nearly \$850,000 in bribes to Iraqi officials in order to secure a 2008 Long Term Purchase Agreement

with the MoO. However, this agreement did not go forward due to the investigation and ultimate discovery by U.S. regulators of widespread bribery by Innospec.

*Bribery of Indonesian Government Officials:*

According to court documents, Turner and other senior Innospec officials also caused the payment of more than \$2.8 million in bribes to Indonesian government officials from at least 2000 to 2005 in order to win contracts worth more than \$48 million from state-owned oil and gas companies in Indonesia. Jennings allegedly became aware of and approved these payments beginning in mid- to late 2004.

*Illicit Sales of TEL to State-Owned Power Plants in Cuba:*

As part of its plea agreement, Innospec also admitted that, from 2001 to 2004, a subsidiary of the company sold nearly \$20 million in oil soluble fuel additives to state-owned Cuban power plants without a license from the Treasury Department's Office of Foreign Assets Control (OFAC), in violation of the Trading with the Enemy Act.

*Criminal Disposition:*

Naaman was arrested in Frankfurt, Germany on July 30, 2009. The Department of Justice succeeded in securing Naaman's extradition from the Federal Republic of Germany on April 30, 2010. On June 25, 2010, Naaman pleaded guilty to a superseding information charging him with one count of conspiracy to commit wire fraud, violate the FCPA, and falsify the books and records of a U.S. issuer, and one count of violating the FCPA. On December 22, 2011, Naaman was sentenced to 30 months' imprisonment followed by 36 months' supervised probation and ordered to pay a \$250,000 criminal penalty.

On March 18, 2010, Innospec pled guilty before District Judge Ellen Segal Huvelle in the U.S. District Court for the District of Columbia. As part of its plea agreement, Innospec agreed to pay a \$14.1 million criminal fine and retain an independent compliance monitor for a minimum of three years to oversee the implementation of a robust anti-corruption and export control compliance program.

In order to resolve related charges brought by the United Kingdom's Serious Fraud Office in connection with the Indonesian bribery, Innospec's British subsidiary, Innospec Ltd., pleaded guilty on March 18, 2010, in the Southwark Crown Court in London. Accordingly, Innospec Ltd. agreed to pay a criminal penalty of \$12.7 million.

On January 17, 2012, Turner pleaded guilty in the United Kingdom to four counts of conspiracy to corrupt and offer bribes to public officials and agents. His sentencing has not yet been scheduled. On June 11, 2012, Jennings pleaded guilty in the United Kingdom to two counts of conspiracy to corrupt and offer bribes to public officials and agents. He has also not yet been sentenced.

Dennis Kerrison, former CEO of Innospec, and Miltos Papachristos, a former sales director, have both also been charged with conspiracy to corrupt in the United Kingdom. They are scheduled to stand trial in May 2013.

*Civil Disposition:*

On the same day as its guilty plea, Innospec settled the civil complaint filed by the SEC by agreeing to disgorge \$60 million, with all but \$11.2 million waived due to the company's financial condition. In the SEC matter, Innospec was enjoined from future violations and ordered to retain an independent FCPA compliance monitor for three years. Innospec also agreed to pay \$2.2 million to resolve outstanding matters with OFAC.

Without admitting or denying the SEC's allegations, Turner, Naaman, and Jennings each consented to the entry of final judgments permanently enjoining them from future violations of the anti-bribery, books and records, and internal controls provisions of the FCPA, as well as from aiding and abetting such violations. As part of his settlement with the SEC, Turner agreed to disgorge \$40,000. Naaman agreed to disgorge \$810,076 plus prejudgment interest of \$67,030, and pay a civil penalty of \$438,038, which would be deemed satisfied by a criminal order requiring him to pay a criminal fine that is at least equal to the civil penalty amount. Similarly, Jennings agreed to disgorge \$116,092 plus prejudgment interest of \$12,945, and pay a civil penalty of \$100,000.

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### **30. Alcatel-Lucent, S.A.**

#### Resulting Criminal Enforcement Action(s):

- A. United States v. Alcatel-Lucent, S.A. (S.D. Fla., December 27, 2010)**
- B. United States v. Alcatel-Lucent France, S.A., et al. (S.D. Fla., December 27, 2010)**

#### Resulting Civil/Administrative Enforcement Action(s):

- C. SEC v. Alcatel-Lucent, S.A. (S.D. Fla., December 27, 2010)**

#### Entities and Individuals:

- Alcatel-Lucent, S.A., deferred prosecution agreement and settled civil complaint filed December 27, 2010.
- Alcatel-Lucent France, S.A., deferred prosecution agreement and settled civil complaint filed December 27, 2010.

#### Criminal Charges:

- Falsification of books and records (all defendants)
- Internal controls violations (all defendants)

#### Civil Charges:

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: Costa Rica, 2001-2004; Honduras, 2002-2006; Taiwan, 2003-2004; Malaysia, 2004-2006.

#### Summary:

On December 27, 2010, Alcatel-Lucent, S.A. (Alcatel) and its subsidiary Alcatel-France, S.A. entered into a deferred prosecution agreement with the Department of Justice related to alleged violations of the books and records and internal controls provisions of the FCPA. On the same date, the SEC filed a settled civil complaint, in the U.S. District Court for the Southern District of Florida, to resolve charges that Alcatel-Lucent, S.A. violated the anti-bribery, books and records, and internal controls provisions of the FCPA. The criminal and civil charges against Alcatel, a French headquartered corporation that is one of the world's largest providers of telecommunications equipment and services, stem from a five year scheme of paying bribes to foreign government officials to obtain or retain

business in Latin America and Asia. All of the bribery payments were undocumented or improperly recorded as consulting fees in the books of Alcatel's subsidiaries and then consolidated into Alcatel's financial statements. The leaders of several Alcatel subsidiaries and geographical regions, including some who reported directly to Alcatel's executive committee, either knew or were severely reckless in not knowing about misconduct.

*Bribery of Costa Rican Government Officials:*

The Instituto Costarricense de Electricidad (ICE) is the Costa Rican government-owned company that provides telecommunications services, evaluates bids, and awards telecommunications contracts in Costa Rica.

According to court documents, in late 2000, Alcatel employees, Edgar Valverde and Christian Sapsizian, enlisted two consultant companies that had contacts at ICE. Alcatel paid commissions to the consultants, part of which, were used to bribe government officials in Costa Rica. This conduct went on from 2001 to 2004 and enabled Alcatel to obtain telecommunication contracts with ICE worth more than \$300 million, from which Alcatel profited more than \$23 million.

In addition, according to court documents, senior executives at Alcatel approved the retention of and payments to the consultants despite obvious indications that the consultants were performing little or no legitimate work and despite such alerts that the payments were unlawful, such as the large size of the commissions.

*Bribery of Honduran Government Officials:*

Similarly as with in Costa Rica, in 2002, Alcatel obtained a Honduran Consultant to assist the company in obtaining telecommunications contracts in the country. According to court documents, from 2002 to 2006, Alcatel executives knew that a significant portion of the money paid to the consultant was being paid to the family of a senior Honduran government official in exchange for favorable treatment of Alcatel. Alcatel also allegedly bribed other Honduran officials with cash payments and expensive trips without having any legitimate business purposes. As a result of the bribes paid, Alcatel obtain at least five telecommunication contracts valued at approximately \$48 million.

Additionally, according to court records, Alcatel failed to conduct adequate due diligence about the Honduran Consultant and did not uncover the relationship the consultant had with high ranking Honduran officials despite the number of red flags, including the fact the consultant had no experience in telecommunications.

*Bribery of Taiwan Government Officials:*

Taiwan Railway Administration (TRA), a Taiwanese government-owned authority, was responsible for awarding and administering public tenders for contracts to manufacture and install axle counting systems to facilitate rail traffic in Taiwan. TRA was an agency of Taiwan's Ministry of Transportation and Communications, a cabinet-level governmental body responsible for the regulation of transportation and communications networks and operations.

As with in Costa Rica and Honduras, it is alleged that Alcatel employees hired two Taiwanese Consultants to pressure TRA to act in Alcatel's favor in the bid process. Both consultants, hired by Alcatel, were used to funnel payments to Taiwanese legislators who had an influence in the award of the contract. According to court records, the bribes made through the consultants resulted in Alcatel obtaining a contract valued at approximately \$27 million.

*Bribery of Malaysian Government Officials:*

Telekom Malaysia is the Malaysian government-owned telecommunications company that provides telecommunications services, evaluates bids, and awards telecommunications contracts in Malaysia. According to the SEC's complaint, between 2004 and 2006, Alcatel personnel paid bribes to employees of Telekom Malaysia in exchange for non-public information, including important documents and budget information relating to ongoing bids and competitor pricing information. Alcatel's management allegedly consented to these payments. The bribes resulted in Alcatel obtaining a contract valued at approximately \$85 million.

*Criminal Disposition:*

On December 27, 2010, Alcatel and its subsidiary, entered into a deferred prosecution agreement with the Department of Justice. As part of this agreement, Alcatel was required to pay a criminal penalty of \$92 million and agreed to retain an independent compliance monitor for three years to oversee the company's implementation and maintenance of an enhanced FCPA compliance program.

*Civil Disposition:*

Without admitting or denying the SEC's allegations, Alcatel has consented to a court order permanently enjoining it from future violations of the FCPA. The company was also ordered to pay \$45.372 million in disgorgement of wrongfully obtained profits, and ordered to comply with certain undertakings including retaining an independent FCPA compliance monitor for three years.

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**31. LatiNode Inc.**

*Resulting Criminal Enforcement Action(s):*

- A. United States v. Manuel Salvoch (S.D. Fla., December 17, 2010)**
- B. United States v. Juan Pablo Vasquez (S.D. Fla., December 17, 2010)**
- C. United States v. Jorge Granados, et al. (S.D. Fla., December 14, 2010)**
- D. United States v. Latin Node Inc. (S.D. Fla., March 23, 2009)**

*Entities and Individuals:*

- Latin Node Inc., charged March 23, 2009.
- Jorge Granados, CEO and Chairman of the Board, indicted December 14, 2010.
- Manuel Caceres, Vice-President of Business Development, indicted December 14, 2010.
- Manuel Salvoch, CFO, charged December 17, 2010.
- Juan Pablo Vasquez, Vice President of Sales, Vice President of Wholesale Division, and CCO, charged December 17, 2010.

*Criminal Charges:*

- Conspiracy:
  - to bribe foreign officials (all defendants except Latin Node)
  - to commit international money laundering (Granados, Caceres)
- Bribery of foreign officials (Latin Node, Granados, Caceres)
- International Money Laundering (Granados, Caceres)

*Location and Time Period of Misconduct:* Honduras, 2004-2007; Yemen, 2005-2006.

Summary:

On March 23, 2009, Latin Node Inc. (Latin Node) was charged with one count of violating the anti-bribery provisions of the FCPA in connection with improper payment in Honduras and Yemen. According to court documents, Latin Node was a privately held Florida corporation that provided wholesale telecommunications services using Internet protocol technology in a number of countries throughout the world, including Honduras and Yemen.

On December 14, 2010, Latin Node's former CEO and Vice President for Business Development, Jorge Granados and Manuel Caceres, were indicted by a Grand Jury in the Southern District of Florida on 19 counts of conspiracy, violations of the FCPA, and money laundering. Subsequently, on December 17, 2010, Manuel Salvoch, Latin Node's former CFO, and Juan Pablo Vasquez, a former senior commercial executive at Latin Node, were each charged with one count of conspiracy to violate the anti-bribery provisions of the FCPA.

*Bribery of Honduran Officials:*

According to court records, in December 2005, Latin Node learned that it was the sole winner of an "interconnection agreement" with Empresa Hondureña de Telecomunicaciones (Hondutel), the wholly state-owned telecommunications authority in Honduras. The agreement permitted Latin Node to use Hondutel's telecommunications lines in order to establish a network between Honduras and the United States, and to provide long distance services between the two countries. According to court documents, Granados, Salvoch, Caceres and Vasquez agreed to a secret deal to pay bribes to Hondutel officials, including the general manager, a senior attorney for Hondutel and a minister of the Honduran government who became a representative on the Hondutel Board of Directors.

Accordingly, between September 2006 and June 2007, these executives paid or caused to be paid more than \$500,000 in bribes to the Honduran officials. In all, according to court documents filed in the case against Latin Node, between March 2004 and June 2007, the company paid or caused to be paid approximately \$1,099,889 in payments to third parties, knowing that some or all of those funds would be passed on as bribes to officials of Hondutel. In addition to the payments for the interconnection agreement, Latin Node admitted that these payments were also, in part, intended to secure reduced call termination rates for the company's traffic.

Each of these illicit payments originated from Latin Node's Miami bank account, and many of the payments were concealed by laundering the money through Latin Node subsidiaries in Guatemala and through accounts in Honduras controlled by Honduran government officials.

*Bribery of Yemeni Officials:*

As part of its plea agreement Latin Node also admitted that it made a series of improper payments to Yemeni officials. Latin Node admitted that from approximately July 2005 through April 2006, the company made 17 payments totaling approximately \$1,150,654 to a third-party consultant with the knowledge that some or all of the money would be passed on to Yemeni officials in exchange for favorable interconnection rates in Yemen. Each of these payments was also made from Latin Node's Miami bank account. Company e-mails indicated that company executives believed that potential recipients of these payments included Yemeni government officials.

Criminal Disposition:

On April 7, 2009, Latin Node pleaded guilty before U.S. District Judge Paul Courtney Huck in the Southern District of Florida. As part of its plea agreement, Latin Node agreed to pay a \$2 million criminal fine during a three-year period.

Salvoch pleaded guilty to one count of conspiracy to violate the FCPA's anti-bribery provisions on January 12, 2011. On June 6, 2012, he was sentenced, in a 5K1.1 downward departure, to 10 months' imprisonment, followed by 3 years' supervised release, which includes 6 months of home confinement, 35 hours of community service per week while in home confinement, and from 400-1200 hours of community service thereafter depending on whether he is employed or unemployed.

Vasquez pleaded guilty to one count of conspiracy to violate the FCPA's anti-bribery provisions on January 21, 2011. On April 25, 2012, Vasquez was sentenced, in a 5K1.1 downward departure, to 3 years' probation, which includes 6 months' of home confinement and 500 hours of community service. He was also ordered to pay a criminal penalty of \$7,500.

On May 19, 2011, Granados pleaded guilty to one count of conspiracy to violate the FCPA's anti-bribery provisions. On September 7, 2011, he was sentenced to 46 months in prison, followed by 2 years supervised release.

Caceres pleaded guilty to one count of conspiracy to violate the FCPA's anti-bribery provisions on May 18, 2011. On April 19, 2012, Caceres was sentenced, in a 5K1.1 downward departure, to 23 months' imprisonment, followed by 1 year supervised release.

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**32. RAE Systems Inc.**

Resulting Criminal Enforcement Action(s):

**A. In Re RAE Systems Inc. (December 10, 2010)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. RAE Systems Inc. (D.D.C., December 10, 2010)**

Entities and Individuals:

- RAE Systems, Inc., non-prosecution agreement announced and civil complaint filed December 10, 2010.

Criminal Charges:

- Falsification of books and records
- Internal controls violations

Civil Charges:

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: People's Republic of China, 2005-2008.

Summary:

On December 10, 2010, RAE Systems, Inc. entered into a non-prosecution agreement with the Department of Justice regarding alleged violations of the books and records and internal controls provisions of the FCPA. On the same date, the SEC filed a settled civil complaint against RAE Systems in the U.S. District Court for the District of Columbia, charging the company with violations of the anti-bribery, books and records, and internal controls provisions of the FCPA.

RAE Systems, a publicly-traded United States corporation headquartered in San Jose, California, developed and manufactured rapidly deployable, multi-sensor chemical and radiation detection monitors and networks. According to court records, from 2004 to 2008, the company had significant operations in the People's Republic of China (PRC), and sold its products and services primarily through two subsidiaries organized as joint ventures with local Chinese entities: RAE-KLH (Beijing) Co. Limited (RAE-KLH) and RAE Coal Mine Safety Instruments (Fushun) Co. Ltd. (RAE Fushun). A significant number of RAE-KLH's and RAE Fushun's customers were PRC government departments and bureaus, and large state-owned agencies and instrumentalities, including regional fire departments, emergency response departments and entities under the supervision of the provincial environmental agency.

RAE Systems accepted responsibility for violating the internal controls and books and records provisions of the FCPA arising from and related to improper benefits corruptly paid by employees of RAE-KLH and RAE Fushun to foreign officials in the PRC. As a result of due diligence conducted by RAE Systems before acquiring the majority of the joint venture that became known as RAE-KLH, RAE Systems was aware of improper commissions, kickbacks and "under table greasing to get deals" by employees. Yet, according to information contained in the agreement, the company chose to implement internal controls only "halfway" so as not to "choke the sales engine and cause a distraction for the sales guys." As a result, improper payments continued at RAE-KLH. In acquiring the majority of RAE Fushun, RAE Systems did not conduct any pre-acquisition corruption due diligence in spite of a number of red flags. It was later confirmed that corrupt benefits were also being provided by RAE Fushun. In both instances, RAE Systems learned of corrupt practices at RAE-KLH and RAE Fushun and knowingly failed to implement effective systems of internal controls and failed to properly classify the improper payments in its books and records.

In addition to the internal controls and books and records violations, the SEC's complaint specifically alleged that employees of RAE-KLH and RAE Fushun paid approximately \$400,000 to Chinese government officials in violation of the FCPA's anti-bribery provisions. These employees typically made these illicit payments by obtaining cash advances from RAE-KLH and RAE Fushun accounting personnel. In all, these payments resulted in contracts worth approximately \$3 million in revenues and profits of \$1,147,800.

Criminal Disposition:

On December 10, 2010, RAE Systems, Inc., entered into a non-prosecution agreement with the Department of Justice. As part of this agreement, RAE Systems was required to pay a criminal penalty of \$1.7 million, fully cooperate with investigations by law enforcement authorities of the company's corrupt payments, adhere to a set of enhanced corporate compliance and reporting obligations, and to submit periodic reports to the department regarding RAE Systems' compliance with its obligations under the agreement.

Civil Disposition:

On December 10, 2010, RAE Systems reached a settlement with the SEC, in which RAE Systems consented to the entry of a permanent injunction against FCPA violations and agreed to pay

\$1,147,800 in disgorgement and \$109,212 in prejudgment interest. RAE also agreed to comply with certain undertakings regarding its FCPA compliance program.

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### **33. Bribery by Oil Services and Freight Forwarding Companies (Panalpina)**

#### **Resulting Criminal Enforcement Action(s):**

- A. United States v. Panalpina Inc. (S.D. Tex., November 4, 2010)**
- B. United States v. Panalpina World Transport (Holding) Ltd. (S.D. Tex., November 4, 2010)**
- C. United States v. Shell Nigeria Exploration and Production Company Ltd. (S.D. Tex., November 4, 2010)**
- D. United States v. Transocean Inc. (S.D. Tex., November 4, 2010)**
- E. United States v. Tidewater Marine International Inc. (S.D. Tex., November 4, 2010)**
- F. United States v. Pride International Inc. (S.D. Tex., November 4, 2010)**
- G. United States v. Pride Forasol S.A.S. (S.D. Tex., November 4, 2010)**
- H. In Re Noble Corporation (November 4, 2010)**

#### **Resulting Civil/Administrative Enforcement Action(s):**

- I. SEC v. Panalpina, Inc. (S.D. Tex., November 4, 2010)**
- J. SEC v. Pride International, Inc. (S.D. Tex., November 4, 2010)**
- K. SEC v. Tidewater Inc. (E.D. La., November 4, 2010)**
- L. SEC v. Transocean Inc. (D.D.C., November 4, 2010)**
- M. SEC v. GlobalSantaFe Corp. (D.D.C., November 4, 2010)**
- N. SEC v. Noble Corporation (S.D. Tex., November 4, 2010)**
- O. In the Matter of Royal Dutch Shell plc (November 4, 2010)**
- P. SEC v. Mark A. Jackson and James J. Ruehlen (S.D. Tex., February 24, 2012)**
- Q. SEC v. Thomas F. O'Rourke (S.D. Tex., February 24, 2012)**

#### **Entities and Individuals:**

- Panalpina, Inc., guilty plea and settled civil complaint entered November 4, 2010.
- Panalpina World Transport (Holding) Ltd., deferred prosecution agreement and settled civil complaint entered November 4, 2010.
- Tidewater Inc., settled civil complaint entered November 4, 2010.
- Tidewater Marine International Inc., deferred prosecution agreement entered November 4, 2010.
- Royal Dutch Shell plc, cease-and-desist-order filed November 4, 2010.
- Shell Nigeria Exploration and Production Company Ltd., cease-and-desist order and deferred prosecution agreement entered November 4, 2010.
- Pride International, Inc., deferred prosecution agreement and settled civil complaint entered November 4, 2010.
- Pride Forasol S.A.S., guilty plea entered November 4, 2010.
- Transocean Inc., deferred prosecution agreement and settled civil complaint entered November 4, 2010.
- GlobalSantaFe Corp., settled civil complaint filed November 4, 2010.
- Noble Corporation, non-prosecution agreement settled civil complaint and entered November 4, 2010.

- Mark A. Jackson, former Chief Executive Officer of Noble Corporation, civil complaint filed February 24, 2012.
- James J. Ruehlen, former Director and Division Manager of Noble's Nigerian subsidiary, civil complaint filed February 24, 2012.
- Thomas F. O'Rourke, former Controller and head of Internal Audit, paid a penalty and settled civil complaint February 24, 2012.

Criminal Charges:

- Conspiracy:
  - To bribe foreign officials (Tidewater Inc., SNEPC, Pride Forasol, Pride International Inc., Panalpina World Transport)
  - to falsify of books and records (Transocean, Inc., Tidewater Inc., SNEPC, Pride International Inc., Panalpina Inc.,)
- Aiding and Abetting:
  - Falsification of books and records (Panalpina Inc., SNEPC, Transocean, Inc., Pride Forasol S.A.S.)
- Bribery of foreign officials (Transocean, Inc., Pride Forasol S.A.S.)
- Falsification of books and records (Tidewater Inc.)

Civil Charges:

- Bribery of foreign officials (all defendants)
- Falsification of books and records (all defendants)
- Internal controls violations (all defendants)
- Aiding and Abetting:
  - the bribery of foreign officials (Panalpina Inc., O'Rourke)
  - the falsification of books and records (Panalpina Inc.)

Location and Time Period of Misconduct: Angola, Azerbaijan, Brazil, Kazakhstan, Nigeria, Russia, Turkmenistan, 2002-2007.

Summary:

*Panalpina World Transport (Holding) Ltd. And Panalpina Inc.*

Both Panalpina World Transport Ltd., a global freight forwarding and logistics services firm based in Switzerland, and its U.S. subsidiary Panalpina Inc. (collectively Panalpina), were criminally charged with conspiracy to violate the books and records provisions of the FCPA and with aiding and abetting certain customers in violating the books and records provisions of the FCPA. On November 4, 2010, Panalpina World Transport entered into a deferred prosecution agreement with the Department of Justice regarding the alleged violations of the FCPA.

On the same date, Panalpina, Inc. pled guilty to the criminal charges and settled with the SEC regarding the civil complaint filed in the U.S. District Court for the Southern District of Texas Houston Division, charging the company with violations of the anti-bribery, books and records, and internal controls provisions of the FCPA and with aiding and abetting certain customers in violating the books and records and internal control provisions of the FCPA.

According to court documents, Panalpina admitted that the companies, through subsidiaries and affiliates engaged in a scheme to pay bribes to numerous foreign officials on behalf of many of its

customers in the oil and gas industry. They did so in order to circumvent local rules and regulations relating to the importation of goods and materials into numerous foreign jurisdictions. Panalpina admitted that between 2002 and 2007, it paid thousands of bribes totaling at least \$27 million to foreign officials in at least seven countries, including Angola, Azerbaijan, Brazil, Kazakhstan, Nigeria, Russia and Turkmenistan.

In addition, according to court documents, Panalpina employees, including managers, knew and understood as part of these in-country services, local affiliates would often need to bribe government officials in order to secure the importation or preferential customs treatment requested by its customers, and they knowingly and substantially assisted the its customers' violations of the FCP A's books and records and internal controls provisions.

*Tidewater, Inc. and Tidewater Marine International Inc.:*

On November 4, 2010, Tidewater Marine International Inc., a global operator of offshore service and supply vessels for energy exploration headquartered in New Orleans, a subsidiary of Tidewater Inc. and a customer of Panalpina, entered into a deferred prosecution agreement with the Department of Justice regarding alleged charges of conspiracy to violate the anti-bribery and books and records provisions of the FCPA, and with violating the books and records provisions of the FCPA. On the same date, the SEC filed a settled civil complaint against Tidewater Inc., in the U.S. District Court for the Eastern District of Louisiana, charging the company with violations of the anti-bribery, books and records, and internal controls provisions of the FCPA.

According to court documents, the charges relate to approximately \$160,000 in bribes paid through Tidewater's employees and agents to tax inspectors in Azerbaijan to improperly secure favorable tax assessments and approximately \$1.6 million in bribes paid through Panalpina to Nigerian customs officials to induce the officials to disregard Nigerian customs regulations relating to the importation of vessels into Nigerian waters.

According to the complaint filed, these improper payments were authorized by senior employees at Tidewater and its subsidiaries while knowing, or ignoring red flags which indicated a high probability that such payments would be passed to government officials. Additionally, that Tidewater failed to maintain sufficient internal controls to prevent such payments and that the company inaccurately recorded the payments in its books and records.

*Shell Nigeria Exploration and Production Company Ltd.:*

On November 4, 2010, Shell Nigeria Exploration and Production Company, Ltd. (SNEPC), a Nigerian subsidiary of Royal Dutch Shell plc and customer of Panalpina, Inc., entered into a deferred prosecution agreement with the Department of Justice regarding alleged charges of conspiracy to violate the anti-bribery and books and records provisions of the FCPA, and with aiding and abetting a violation of the books and records provisions. On the same date, the SEC filed a cease-and-desist order against SNEPC in an administrative hearing for alleged violations of anti-bribery and books and records and internal controls provisions of the FCPA.

According to court documents, SNEPC paid approximately \$2 million to its subcontractors with the knowledge that some or all of the money would be paid as bribes to Nigerian customs officials by Panalpina, in order to import materials and equipment into Nigeria. Additionally, SNEPC admitted that the company falsely recorded the bribes made on their behalf as legitimate business expenses in their corporate books, records and accounts.

*Royal Dutch Shell plc:*

On November 4, 2010, the SEC filed a cease-and-desist order against Royal Dutch Shell plc (Shell), and oil company headquartered in the Netherlands, for violations of the anti-bribery, books and records, and internal control provisions of the FCPA.

According to court documents, between 2002 and 2005, Shell and its subsidiary SNEPC, violated the FCPA by funneling illegal payments of approximately \$ 3.5 million through their customs brokers to Nigerian officials in order to obtain preferential treatment during the customs process for the purpose of assisting Shell obtain or retain business in Nigeria. Shell profited approximately \$14 million from the illegal payments. Court documents also allege that none of the improper payments were accurately reflected in Shell's books and records and that Shell's system of internal controls was not adequate at the time to detect and prevent the suspicious payments.

*Pride International Inc. and Pride Forasol S.A.S:*

On November 4, 2010, Pride International Inc. (Pride) entered into a deferred prosecution agreement with the Department of Justice regarding charges of conspiring to violate the anti-bribery and books and records provisions of the FCPA; violating the anti-bribery provisions of the FCPA; and violating the books and records provisions of the FCPA. On the same date, the SEC filed a settled civil complaint against Pride in the U.S. District Court for the Southern District of Texas Houston Division, charging the company with violations of the anti-bribery, books and records, and internal controls provisions of the FCPA. Pride Forasol S.A.S, a wholly owned French subsidiary of Pride, pled guilty on November 4, 2010 to criminal charges of conspiracy to violate the anti-bribery provisions of the FCPA; violating the anti-bribery provisions of the FCPA; and aiding and abetting the violation of the books and records provisions of the FCPA.

According to court documents, in or about early 2006, Pride, a Houston-based corporation and one of the world's largest offshore drilling companies, discovered evidence of improper payments made to foreign officials in Venezuela, India and Mexico, between 2003 and 2005. Additionally, that employees of Pride were aware of the illegal payments totaling approximately \$800,000.

According to court documents, the bribes were paid to extend drilling contracts for three rigs operating offshore in Venezuela; to secure a favorable administrative judicial decision relating to a customs dispute for a rig imported into India; and to avoid the payment of customs duties and penalties relating to a rig and equipment operating in Mexico.

Pride made a voluntary disclosure to the SEC promptly after the discovery of the improper. During the course of the investigation, Pride provided information and substantially assisted in the investigation of Panalpina Inc.

*Transocean Inc.:*

On November 4, 2010, Transocean, Inc., a global provider of offshore oil drilling services and equipment based in Vernier, Switzerland, entered into a deferred prosecution agreement with the Department of Justice regarding alleged charges of conspiracy to violate the anti-bribery and books and records provisions of the FCPA; violating the anti-bribery provision of the FCPA; and aiding and abetting the violation of the books and records provisions of the FCPA. On the same date, the Sec filed a settled civil complaint against Transocean Inc. in the U.S. District Court for the District of Columbia, charging the company with violations of the anti-bribery, books and records, and internal controls provisions of the FCPA and with aiding and abetting certain customers in violating the books and records and internal control provisions of the FCPA.

According to court documents, Transocean made approximately \$90,000 in illicit payments between at 2002 to 2007 through its customs agents to Nigerian government officials in order to extend the company's temporary importation status of its drilling rigs.

It is further alleged that Transocean failed to maintain internal controls to detect and prevent unlawful payments to customs officials in Nigeria and improperly recorded the illicit payments to Nigerian customs officials in its accounting books and records.

*GlobalSantaFe Corp.:*

On November 4, 2010, the SEC filed a settled civil complaint against GlobalSantaFe Corp. (GSF), in the U.S. District Court for the District of Columbia, charging the company with violations of the anti-bribery, books and records, and internal controls provisions of the FCPA and with aiding and abetting certain customers in violating the books and records and internal control provisions of the FCPA.

According to court documents, GSF, which was incorporated in the Cayman Islands and headquartered in Texas and provided offshore oil and gas drilling services for oil and gas exploration companies, made illegal payments to officials of the Nigerian Customs Service through its customs brokers between 2002 and 2007. It is alleged these payments were made to secure documentation showing that its rigs had left Nigerian waters when the rigs had in fact never moved.

The SEC's complaint alleges that the bribes allowed GSF to avoid approximately \$1.5 million in cost from not physically moving the rigs and gain a profit of approximately \$619,000 from not interrupting operations to move the rigs. These payments were not properly recording within GSF's books and records.

*Noble Corporation:*

On November 4, 2010, Noble Corporation (Noble), a Swiss corporation and offshore drilling services provider, entered into a non-prosecution agreement with the Department of Justice. On the same day the SEC filed a settled civil complaint against Noble, in the U.S. District Court for the Southern District of Texas Houston Division, charging the company with violations of the anti-bribery, books and records, and internal controls provisions of the FCPA.

In 2007, after discovering possible violations through its own internal processes, Noble voluntarily disclosed its findings to the department and SEC. Noble admitted to the department that it had paid approximately \$74,000 to a Nigerian freight forwarding agent, acknowledged that certain employees knew that some of the payments would be passed on as bribes to Nigerian customs officials, and admitted that the company falsely recorded the bribe payments as legitimate business expenses in its corporate books, records and accounts. According to court documents, Noble authorized illicit payments to Nigerian officials in order to obtain permits based on false documents. The illegally obtained permits allowed Noble to remain operating rigs in Nigeria and avoid cost of approximately, \$4,294,933.

In a February 24, 2012 complaint against Mark A. Jackson and James J. Ruehlen, the SEC alleged that the two former Noble executive officers bribed Nigerian customs officials to process false paperwork purporting to show the export and re-import of oil rigs when in fact the rigs never moved.

Thomas F. O'Rourke, a former controller and head of internal audit at Noble, was separately charged aiding and abetting the bribery of foreign officials by helping approve the bribe payments and by allowing the bribe payments to be improperly booked as legitimate operating expenses for the company.

Criminal Disposition:

On November 4, 2010, Panalpina Inc., pled guilty and was ordered to pay a criminal penalty in the amount of \$70.56 million. On the same date, Pride Forasol pleaded guilty and Noble Corporation entered into a non-prosecution agreement with the Department of Justice and agreed to pay a \$2.59 million criminal penalty.

Additionally, on November 4, 2010, Panalpina World Transport, SNEPC, Pride International, Tidewater Marina International., and Transocean, Inc entered into deferred prosecution agreements with the Department of Justice and agreed to pay criminal penalties as follows: SNEPC paid \$30 million; Pride International paid \$32.625 million; Tidewater Marina International paid \$7.35 million; and Transocean, Inc. paid \$13.44 million.

Civil Disposition:

On November 4, 2010, without admitting or denying the SEC's allegations, all defendants consented to the entry of a judgment permanently enjoining them from future FCPA violations. All defendants were ordered to pay monetary penalties as follows: Panalpina paid disgorgement of \$11,329,369; Pride International paid disgorgement and prejudgment interest of \$23,529,718; Tidewater paid \$8,104,362 in disgorgement and a \$217,000 civil penalty; Transocean, Inc. paid disgorgement and prejudgment interest of \$7,265,080; GlobalSantaFe, Corp. paid disgorgement of \$3,758,165 and a penalty of \$2.1 million; and Noble Corporation paid disgorgement and prejudgment interest of \$5,576,998. SNEPC and Royal Dutch Shell plc paid disgorgement of \$14,153,536 and prejudgment interest of \$3,995,923.

O'Rourke agreed to settle the SEC's charges and pay a penalty. In a recent motion to dismiss filed in the District Court for the Southern District of Texas, Jackson and Ruehlen are challenging the SEC complaint against them.

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**34. ABB Ltd<sup>1</sup>**

Resulting Criminal Enforcement Action(s):

- A. United States v. ABB Inc. (S.D. Tex., September 29, 2010)**
- B. United States v. ABB Ltd – Jordan (S.D. Tex., September 29, 2010)**
- C. United States v. Enrique Aguilar, et al. (C.D. Cal., September 15, 2010)**
- D. United States v. John Joseph O'Shea (S.D. Tex., November 16, 2009)**
- E. United States v. Fernando Maya Basurto (S.D. Tex., June 10, 2009)**
- F. United States v. Ali Hozhabri (S.D. Tex., November 1, 2007)**

Resulting Civil/Administrative Enforcement Action(s):

- G. SEC v. ABB Ltd (D.D.C., September 29, 2010)**
- H. SEC v. Ali Hozhabri (D.D.C., August 6, 2008)**

Entities and Individuals:

- ABB Ltd, deferred prosecution agreement and civil complaint filed September 29, 2010.
- ABB Inc., charged September 29, 2010.
- ABB Ltd – Jordan, charged September 29, 2010.

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<sup>1</sup> Also see Cases 90 and 94.

- John Joseph O’Shea, General Manager of ABB Inc., indicted November 16, 2009.
- Fernando Maya Basurto, Agent/Intermediary, indicted June 10, 2009.
- Ali Hozhabri, Project Manager for ABB Inc., indicted November 1, 2007; civil complaint filed August 6, 2008.

Criminal Charges:

- Conspiracy:
  - to bribe foreign officials (ABB Inc., O’Shea, Basurto)
  - to falsify books and records (ABB Ltd – Jordan)
  - to commit currency transfer structuring (Basurto)
  - to commit international money laundering (O’Shea, Basurto)
  - to falsify records in a federal investigation (Basurto, O’Shea)
  - to commit wire fraud (ABB Ltd – Jordan and Hozhabri)
- Bribery of foreign officials (ABB Inc., O’Shea)
- Money laundering (all defendants except Basurto)
- Falsification of records in a federal investigation (O’Shea)
- Currency transaction structuring (Basurto)
- Bulk Cash Smuggling (Hozhabri)
- Failure to File Report Regarding Monetary Instrument (Hozhabri)

Civil Charges:

- Bribery of foreign officials (ABB Ltd)
- Books and records violations (all defendants)
- Internal controls violations (all defendants)
- Aiding and abetting ABB’s falsification of books and records (Hozhabri)

Location and Time Period of Misconduct: Mexico, 1997-2008; Iraq, 2000-2004.

Summary:

*Bribery of CFE Officials by Employees of ABB Inc.:*

On April 18, 2005, ABB Ltd., an energy equipment and services company based in Switzerland and listed on the New York Stock Exchange, self-reported to the SEC and the DOJ that its Sugar Land, Texas subsidiary, ABB Inc., may have made corrupt payments to public officials in Mexico to obtain contracts with the Comisión Federal de Electricidad (CFE), a Mexican state-owned utility company. ABB Inc., which does business as ABB Network Management (“ABB NM”), provided products and services to electrical utilities, many of them foreign state-owned utilities, for network management in power generation, transmission, and distribution.

According to court documents, while acting as the general manager of ABB NM, John Joseph O’Shea arranged and authorized payments to multiple officials at CFE in exchange for lucrative contracts. In order to conceal these bribes, ABB NM hired a Mexican company, of which Fernando Basurto was a principal, to serve as its sales representative in Mexico. In exchange for channeling the bribes, the Mexican company received a percentage of the revenue generated from business with Mexican governmental utilities, including CFE. ABB NM also allegedly paid bribes through Sorvill International, S.A., a company controlled by Enrique and Angela Aguilar.

In December 1997, CFE awarded ABB NM the SITRACEN contract, which called for significant upgrades to Mexico's electrical network system. This contract generated more than \$44 million in revenue for the company. In October 2003, CFE awarded ABB NM the Evergreen contract, a multi-year contract for the maintenance and upgrading of the SITRACEN contract.

In exchange for the Evergreen contract, O'Shea, Basurto, and officials at CFE allegedly agreed that approximately 10 percent of the revenue that ABB NM received from CFE would be returned to CFE officials as corrupt payments and that one percent of the contract revenue would be received by O'Shea as kickback payments. The Evergreen contract ultimately generated more than \$37 million in revenue for the ABB NM. O'Shea, Basurto, and others also allegedly used false invoices from Mexican companies as a basis to make international wire transfers that purported to be legitimate payments for "technical services" and "maintenance support services," but which were actually corrupt payments. Additional "commission payments" made to Basurto and his family were later transferred to CFE officials. Altogether, O'Shea allegedly authorized more than \$900,000 in corrupt payments to CFE officials before an internal investigation by ABB Ltd stopped the transfers.

After O'Shea was subsequently terminated from ABB NM, O'Shea, Basurto, and others allegedly engaged in a cover up. As part of this conspiracy, O'Shea and Basurto fabricated documents that purported to be evidence of a legitimate business relationship between ABB NM and the Mexican companies that provided the false invoices.

For his role in the scheme to bribe CFE officials and his attempts to cover-up the bribery, O'Shea was charged in November 2009 in an 18-count indictment with conspiracy, bribery of foreign officials in violation of the FCPA, international money laundering, and falsifying records in a federal investigation. On June 10, 2009, Basurto was charged in a four count indictment with conspiracy and structuring transactions to avoid reporting requirements. Subsequently, on November 23, 2009, Basurto was charged in a superseding information with conspiracy to bribe foreign officials in violation of the FCPA, to commit international money laundering, and to falsify records in a federal investigation.

On September 29, 2010, the Department charged ABB NM with one count of violating the anti-bribery provisions of the FCPA and one count of conspiracy to violate the anti-bribery provisions of the FCPA. On the same date, the SEC filed a settled civil complaint against ABB Ltd, charging the company with violating the anti-bribery, books and records, and internal controls provisions of the FCPA in connection with the CFE bribery scheme. According to court documents, ABB NM paid \$1.9 million in bribes to CFE officials for in order to win the SITRACEN and Evergreen contracts.

#### *Other Misconduct by Employees of ABB Inc.:*

On November 1, 2007, Ali Hozhabri, a former ABB NM project manager, was indicted in the Southern District of Texas on three counts of bulk cash smuggling and three counts of failure to file reports regarding the foreign transportation of monetary instruments of more than \$10,000. Subsequently, in August 2008, the SEC charged Hozhabri in a civil complaint with books and records and internal controls violations. According to the SEC's complaint, between 2002 and 2004, Hozhabri fraudulently submitted approximately \$468,714 in cash and check disbursement requests to ABB NM for purported business expenses associated with projects in Brazil, Paraguay, and the United Arab Emirates. These purported expenses were phony and were inaccurately recorded as legitimate business expenses in ABB's books and records.

#### *Kickbacks to the former Iraqi Government by Employees of ABB Ltd - Jordan:*

On September 29, 2010, the Department also charged ABB Ltd's Jordanian subsidiary, ABB Ltd – Jordan, with one count of conspiracy to commit wire fraud and to violate the books and records

provisions of the FCPA. According to court documents, from 2000 to 2004, ABB Ltd – Jordan and other ABB subsidiaries paid, or caused to be paid, more than \$800,000 in kickbacks to the former Iraqi government to secure 27 contracts under the U.N. Oil-for-Food Program (OFFP). For example, from 2001 to 2002, ABB Ltd – Jordan paid more than \$300,000 in kickbacks to three regional companies of the Iraqi Electricity Commission, an Iraqi government agency, in order to secure 11 purchase orders worth more than \$5.9 million. All together, ABB subsidiaries allegedly earned more than \$13,500,000 in revenue and \$3,800,000 in profits from contracts obtained through illegal kickbacks under the OFFP.

Criminal Disposition:

ABB Inc. (ABB NM) pleaded guilty on September 29, 2010, and was fined \$17.1 million. In order to resolve the pending criminal charges against its Jordanian subsidiary, ABB Ltd entered into a three-year deferred prosecution agreement on the same date. As part of the agreement, ABB Ltd agreed to pay \$1.92 million and to adhere to a set of enhanced corporate compliance and reporting obligations, which include the recommendations of an independent compliance consultant.

On January 17, 2012, O’Shea was acquitted of charges two through thirteen of the indictment. Upon motion of the Government, the remaining counts were dismissed with prejudice on February 9, 2012. Basurto pleaded guilty on November 16, 2009. On April 5, 2012, he was sentenced to time served. Ali Hozhabri pleaded guilty on June 23, 2008, to a one-count superseding information charging him with conspiracy to commit wire fraud. On July 11, 2012, Hozhabri was sentenced to one year probation, and ordered to pay \$234,357.14 in restitution.

Civil Disposition:

Without admitting or denying the SEC’s allegations, ABB Ltd and Hozhabri each consented to the entry of a judgment permanently enjoining them from future FCPA violations. ABB Ltd also agreed to pay \$17,141,474 in disgorgement, \$5,662,788 in prejudgment interest, and a \$16,510,000 penalty.

Hozhabri was also ordered him to pay \$234,357 in disgorgement. The disgorgement amount will be deemed satisfied by his payment of that amount in the form of a criminal fine.

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**35. Lindsey Manufacturing Company**

Resulting Criminal Enforcement Action(s):

**A. United States v. Enrique Aguilar, et al. (C.D. Cal., September 15, 2010)**

Entities and Individuals:

- Enrique Faustino Aguilar Noriega, Agent/Intermediary, indicted September 15, 2010.
- Angela Maria Gomez Aguilar, Agent/Intermediary, indicted September 15, 2010.
- Lindsey Manufacturing Company, indicted October 21, 2010.
- Keith E. Lindsey, President, indicted October 21, 2010.
- Steve K. Lee, Vice President and CFO, indicted October 21, 2010.

Criminal Charges:

- Conspiracy:
  - to bribe foreign officials (all defendants except Angela Aguilar)
  - to commit international money laundering (Enrique Aguilar and Angela Aguilar)
- Bribery of foreign officials (all defendants except Angela Aguilar)

- Money laundering (Enrique Aguilar and Angela Aguilar)

Location and Time Period of Misconduct: Mexico, 2002-2009.

Summary:

On August 10, 2010, Angela Aguilar, of Cuernavaca, Mexico, was arrested on a criminal complaint charging her with violating the anti-bribery provisions of the FCPA when she traveled to Houston from Mexico. Aguilar and her husband, Enrique Aguilar, were subsequently indicted on September 15, 2010. The seven-count indictment charged Enrique Aguilar with conspiracy to violate the FCPA, FCPA violations, money laundering conspiracy, and money laundering, while Angela Aguilar was charged with money laundering conspiracy and money laundering.

On October 21, 2010, a Grand Jury in the Central District of California returned a superseding indictment against Enrique Aguilar, Angela Aguilar, Lindsey Manufacturing Company (Lindsey Manufacturing), Keith E. Lindsey, and Steve K. Lee. While Enrique and Angela Aguilar were charged the same violations as in the original indictment, the superseding indictment added conspiracy and FCPA charges against the Azusa, California-based company, its President (Lindsey), and its Vice President (Lee).

According to the superseding indictment, Lindsey Manufacturing, which makes emergency restoration systems and other equipment used by electrical utility companies, engaged in a scheme from 2002 until 2009 to pay bribes to officials of the Comisión Federal de Electricidad (CFE), a Mexican state-owned electrical utility company. From approximately February 2002 until March 2009, Lindsey Manufacturing, Lindsey, and Lee conspired to pay bribes to CFE officials using a Mexican intermediary company named Grupo Internacional de Asesores S.A. (Grupo), a company directed by Enrique and Angela Aguilar, which purported to provide sales representation services for companies doing business with CFE. According to court records, Grupo received 30 percent commission on all the goods and services Lindsey Manufacturing sold to CFE, even though this was a significantly higher commission than previous sales representatives for the company had received. Lindsey and Lee were alleged to have understood that all or part of the 30 percent commission would be used to pay bribes to senior officials of CFE in exchange for CFE awarding contracts to the their company. The costs of goods and services sold to CFE were then allegedly increased by 30 percent to ensure that the added cost of paying Enrique Aguilar and Angela Aguilar was absorbed by CFE and not Lindsey Manufacturing.

As part of the scheme, Enrique Aguilar allegedly caused fraudulent invoices to be submitted from Grupo to Lindsey Manufacturing for 30 percent of the contract price. According to the superseding indictment, Lindsey and Lee then caused the money requested in the fraudulent invoices to be wired into Grupo's brokerage account, allegedly knowing that the invoices were fraudulent and the funds were being used as bribes.

Enrique and Angela Aguilar allegedly then laundered the money in the Grupo brokerage account to make concealed payments for the benefit of CFE officials. According to the superseding indictment, Enrique and Angela Aguilar purchased a yacht for approximately \$1.8 million named the *Dream Seeker* and a Ferrari for \$297,500 for a CFE official. According to the indictment, Enrique and Angela Aguilar also paid more than \$170,000 worth of American Express bills for a CFE official and sent approximately \$600,000 to relatives of a CFE official.

According to court documents, CFE Mexico ultimately awarded 19 government contracts to the California-based company worth approximately \$14.9 million.

Criminal Disposition:

On May 10, 2011, a jury in the Central District of California convicted Lindsey Manufacturing, Keith Lindsey, and Steve Lee of one count of conspiracy to violate the FCPA and five counts of FCPA violations. On the same date, Angela Aguilar was found guilty of one count of money laundering conspiracy. The court entered a judgment of acquittal prior to the jury's verdict on one substantive count of money laundering against Angela Aguilar. On June, 3, 2011, she was sentenced to the Bureau of Prisons for time served and supervised release for a term of 3 years. The convictions against Lindsey Manufacturing, Lindsey and Lee were subsequently dismissed on November 29, 2011. Enrique Aguilar remains a fugitive.

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**36. Alliance One International, Inc.**

Resulting Criminal Enforcement Action(s):

- A. In Re Alliance One International, Inc. (August 6, 2010)**
- B. United States v. Alliance One Tobacco Osh, LLC (W.D. Va., August 6, 2010)**
- C. United States v. Alliance One International AG (W.D. Va., August 6, 2010)**
- D. United States v. Bobby Jay Elkin, Jr. (W.D. Va., August 3, 2010)**

Resulting Civil/Administrative Enforcement Action(s):

- E. SEC v. Alliance One International, Inc. (D.D.C., August 6, 2010)**
- F. SEC v. Bobby Jay Elkin, Jr., et al. (D.D.C., April 28, 2010)**

Entities and Individuals:

- Alliance One International, Inc. (Alliance One), non-prosecution agreement announced and civil complaint filed August 6, 2010.
- Alliance One Tobacco Osh, LLC (AOI-Kyrgyzstan), charged August 6, 2010.
- Alliance One International AG (AOIAG), charged August 6, 2010.
- Bobby J. Elkin, Jr., Country Manager for Kyrgyzstan, charged August 3, 2010; civil complaint filed April 28, 2010.
- Baxter J. Myers, Regional Financial Director, civil complaint filed April 28, 2010.
- Thomas G. Reynolds, Corporate Controller, civil complaint filed April 28, 2010.
- Tommy L. Williams, Senior Vice President of Sales, civil complaint filed April 28, 2010.

Criminal Charges:

- Conspiracy to bribe foreign officials (all defendants)
- Bribery of foreign officials (AOI-Kyrgyzstan, AOIAG)
- Falsification of books and records (AOI-Kyrgyzstan, AOIAG)

Civil Charges:

- Bribery of foreign officials (all defendants)
- Falsification of books and records (Alliance One)
- Internal controls violations (Alliance One)
- Aiding and abetting Alliance's books and records violations (Elkin, et al.)
- Aiding and abetting Alliance's internal controls violations (Elkin, et al.)

Location and Time Period of Misconduct: Kyrgyzstan, 1996-2004; Thailand, 2000-2004; Malawi, 2002-2003; Greece, 2003; Indonesia, 2003; Mozambique, 2004-2007; China and Thailand, 2005.

Summary:

*Kyrgyzstan*

According to court documents, AOI-Kyrgyzstan admitted that employees of Dimon's Kyrgyz subsidiary paid a total of approximately \$3 million in bribes from 1996 to 2004 to various officials in the Republic of Kyrgyzstan, including officials of the Kyrgyz Tamekisi, a government entity that controlled and regulated the tobacco industry in Kyrgyzstan. Employees of Dimon's Kyrgyz subsidiary also paid bribes totaling \$254,262 to five local provincial government officials "known as "Akims," to obtain permission to purchase tobacco from local growers during the same period. In addition, the employees paid approximately \$82,000 in bribes to officers of the Kyrgyz Tax Police in order to avoid penalties and lengthy tax investigations.

As a country manager for Kyrgyzstan, Bobby J. Elkin, Jr. authorized, directed, and made these bribes in Kyrgyzstan through a bank account held under his name called the Special Account. According to the SEC's complaint, Baxter J. Myers, a former Regional Financial Director, authorized all fund transfers from a Dimon subsidiary's bank account to the Special Account and Thomas G. Reynolds, a former Corporate Controller, formalized the accounting methodology used to record the payments made from the Special Account for purposes of Dimon's internal reporting.

*Thailand*

From 2000 to 2004, Dimon, Standard, and another competitor, Universal Leaf Tabacos Ltda., sold Brazilian-grown tobacco to the Thailand Tobacco Monopoly (TTM). Each of these three companies retained sales agents in Thailand, and collaborated through those agents to apportion tobacco sales to the TTM among themselves, coordinate their sales prices, and pay kickbacks to officials of the TTM in order to ensure that each company would share in the Thai tobacco market. These companies made annual sales to the TTM, and in order to secure these sales contracts, each company paid kickbacks to certain TTM representatives based on the number of kilograms of tobacco they sold to the TTM. To obtain these contracts, Dimon paid bribes totaling \$542,590 and Standard paid bribes totaling \$696,160, for a total of \$1,238,750 in bribes to TTM officials during this period. In addition, these companies then falsely characterized these corrupt payments on each of the companies' respective books and records as "commissions" paid to their sales agents.

According to the SEC's complaint, Tommy L. Williams, a former Senior Vice President of Sales, directed the sales of tobacco from Brazil and Malawi to the TTM through Dimon's agent in Thailand. In this capacity, Williams authorized the payment of bribes to the TTM officials.

*Other*

In addition, the SEC's complaint alleged that employees of Standard and Dimon improperly provided things of value to foreign government officials: (a) China and Thailand: By at least May 2005, Standard provided gifts, travel, and entertainment expenses to government officials in China and Thailand. For example, in 2002 and 2003, contemporaneous documents show that Standard employees provided watches, cameras, laptop computers, and other gifts to Chinese and Thailand tobacco officials. Standard also paid for dinner and sightseeing expenses during non-business related travel to Alaska, Los Angeles, and Las Vegas for Chinese and Thailand government delegations. (b) Greece: A 2003 internal audit of two Dimon subsidiaries in Greece revealed a \$96,000 cash payment to a Greek tax official in

April 2003 by the country manager of Dimon Greece. The Greek tax official was conducting an audit of Dimon Greece at the time of the payment, and as a result of the payment, Dimon Greece's tax payment was reduced from €2.5 million to approximately €600,000. (c) Indonesia: In August 2004, the controller of Dimon's Indonesian subsidiary made a cash payment of approximately \$44,000 to an Indonesian tax official in exchange for terminating an audit of the Indonesian subsidiary and obtaining a tax refund of \$67,000.

Criminal Disposition:

On August 6, 2010, Alliance One entered into a non-prosecution agreement with the Department and agreed to retain an independent compliance monitor for a minimum of three years.

On the same date, AOI-Kyrgyzstan and AOIAG each pleaded guilty to separate three-count criminal informations. As part of their plea agreements, AOIAG agreed to pay a fine of \$5,250,000 and AOI-Kyrgyzstan agreed to pay a fine of \$4,200,000, for a total fine of \$9.45 million. On October 22, 2010, AOIAG was sentenced to pay the agreed upon \$5,250,000 criminal fine. On the same date, AOI-Kyrgyzstan was sentenced to pay the agreed upon \$4,200,000 criminal fine.

Elkin pleaded guilty on August 3, 2010, to a one-count criminal information charging him with conspiracy to violate the FCPA. He was sentenced on October 21, 2010, to three years' probation and a total fine of \$5,000.

Civil Disposition:

Without admitting or denying the SEC's allegations, Alliance One consented to the entry of a final judgment permanently enjoining the company from future violations of the anti-bribery, books and records, and internal controls provisions of the FCPA. Alliance One was also ordered to pay disgorgement of \$10,000,000 and to retain an independent compliance monitor for three years. On April 28, 2010, the SEC filed a settled civil action against Elkin, Myers, Reynolds, and Williams, which permanently enjoined them from future violations of the FCPA. Myers and Reynolds were each required to pay a \$40,000 civil penalty. The settlement against Elkin takes into account his cooperation with the Commission's investigation.

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**37. Universal Corporation**

Resulting Criminal Enforcement Action(s):

- A. In Re Universal Corporation (August 6, 2010)**
- B. United States v. Universal Leaf Tabacos Ltda. (E.D. Va., August 6, 2010)**

Resulting Civil/Administrative Enforcement Action(s):

- C. SEC v. Universal Corporation (D.D.C., August 6, 2010)**

Entities and Individuals:

- Universal Corporation, non-prosecution agreement announced August 6, 2010; civil complaint filed August 6, 2010.
- Universal Leaf Tabacos Ltda., charged August 6, 2010.

Criminal Charges:

- Conspiracy:

- to bribe foreign officials
- to falsify books and records
- Bribery of foreign officials

Civil Charges:

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: Thailand, 2000-2004; Malawi, 2002-2003; Mozambique, 2004-2007.

Summary:

On August 6, 2010, Universal Leaf Tabacos Ltda. (Universal Brazil), the Brazilian subsidiary of Universal Corporation (Universal), was charged in the Eastern District of Virginia with conspiring to violate the anti-bribery and books and records provisions of the FCPA, and with violating the anti-bribery provisions of the FCPA. On the same date, the SEC filed a settled civil action against Universal in the District of Columbia, charging the parent company with violations of the anti-bribery, books and records, and internal controls provisions of the FCPA. The criminal and civil charges against Universal and its subsidiary stem from schemes to bribe foreign officials in Thailand, Mozambique, and Malawi.

From 2000 to 2004, Universal Brazil and two of its competitors, Dimon Incorporated and Standard Commercial Corporation, sold Brazilian-grown tobacco to the Thailand Tobacco Monopoly (TTM). Each of these three companies retained sales agents in Thailand, and collaborated through those agents to apportion tobacco sales to the TTM among themselves, coordinate their sales prices, and pay kickbacks to officials of the Thailand Tobacco Monopoly in order to ensure that each company would share in the Thai tobacco market. These companies made annual sales to the TTM, and in order to secure these sales contracts, each company paid kickbacks to certain TTM representatives based on the number of kilograms of tobacco they sold to the TTM. To obtain these contracts, Universal Brazil paid approximately \$697,000 in bribes to TTM officials during this period. In addition, Universal Brazil employees then falsely characterized the corrupt payments on the company's books and records as "commissions" paid to the company's sales agents.

According to the SEC's complaint, between October 2002 and November 2003, Universal's African subsidiary also paid \$750,000 in bribes to two high ranking Malawian government officials and \$100,000 to a political opposition leader. Those payments were authorized by, among others, two successive regional heads for Universal's African operations. Universal also failed to accurately record these payments in its books and records.

In addition, the SEC's complaint alleged that from March 2004 through September 2007, Universal subsidiaries made a series of payments in excess of \$165,000 to government officials in Mozambique, through corporate subsidiaries in Belgium and Africa. Among other things, the payments were made to secure an exclusive right to purchase tobacco from regional growers and to procure legislation beneficial to the Company's business.

Criminal Disposition:

On August 6, 2010, Universal entered into a non-prosecution agreement with the Department and Universal Brazil pleaded guilty to a two-count information. As part of the non-prosecution and plea agreements, Universal and Universal Brazil agreed to retain an independent compliance monitor for a

minimum of three years. Universal Brazil was sentenced on September 1, 2010, to 3 years' organizational probation and a fine of \$4,400,000.

Civil Disposition:

Without admitting or denying the SEC's allegations, Universal consented to the entry of a final judgment permanently enjoining the company from violating the anti-bribery, books and records, and internal controls provisions of the FCPA. In addition, Universal was ordered to disgorge \$4,581,276.51 and to retain an independent compliance monitor for three years.

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**38. Pride International, Inc.**

Resulting Civil/Administrative Enforcement Action(s):

- A. SEC v. Joe Summers (S.D. Tex., August 5, 2010)**
- B. SEC v. Bobby Benton (S.D. Tex., December 11, 2009)**

Entities and Individuals:

- Bobby Benton, Pride International, Inc.'s Vice President of Western Hemisphere Operations, civil complaint filed December 11, 2009.
- Joe Summers, Pride International, Inc.'s Venezuela Country Manager, civil complaint filed August 5, 2010.

Civil Charges:

- Bribery of foreign officials (all defendants)
- Falsification of books and records (all defendants)
- False statements to accountants (all defendants)
- Aiding and abetting Pride International's bribery of foreign officials (all defendants)
- Aiding and abetting Pride International's falsification of books and records (all defendants)
- Aiding and abetting Pride International's internal controls violations (all defendants)

Location and Time Period of Misconduct: Venezuela, 2003-2005; Mexico, 2004.

Summary:

On December 11, 2009, the SEC charged Bobby Benton, the former Vice President of Western Hemisphere Operations for Pride International, Inc. (Pride), in a civil complaint that alleged violations of the anti-bribery, internal controls, and accounting provisions of the FCPA. As Vice President of Western Hemisphere Operations, Benton was responsible for, among other things, ensuring that Pride conducted its Western Hemisphere operations in compliance with the FCPA, that adequate controls were in place to prevent illegal payments, and that the company's books and records were accurate.

Subsequently, on August 5, 2010, the SEC filed a civil complaint against Joe Summers, Pride's former Venezuela Country Manager. The SEC alleged that Summers had violated the anti-bribery, books and records, and internal controls provisions of the FCPA and had aided and abetting Pride's violations of the same provisions in connection with a scheme to bribe Venezuelan government officials.

According to the complaints filed against Benton and Summers, from 2003 to 2005, Summers authorized or allowed payments totaling \$384,000 to third-party companies believing that all or a portion of the funds would be given to an official of Venezuela's state-owned oil company in order to

secure extensions of three drilling contracts. Summers also authorized the payment of approximately \$30,000 to a third party believing that all or a portion of the funds would be given to an employee of Venezuela's state-owned oil company in order to obtain the payment of receivables.

In addition to the illicit payments to Venezuelan officials, in December 2004, Benton allegedly authorized the bribery of a Mexican customs official in return for favorable treatment regarding customs deficiencies identified during an inspection of a supply boat. The complaint further alleges that Benton had knowledge of a second bribe paid to a different Mexican customs official that same month.

In an effort to conceal these payments, Benton also redacted references to bribery in an action plan responding to an internal audit report and signed two false certifications in connection with audits and reviews of Pride's financial statements, denying any knowledge of bribery.

Civil Disposition:

Without admitting or denying the SEC's allegations, Benton consented to the entry of a final judgment on August 9, 2010, which permanently enjoined him from any future violations of the anti-bribery, books and records, or internal controls provisions of the FCPA, as well as SEC Rule 13b2-2, which regulates representations and conduct in connection with the preparation of required reports and documents. In addition, Benton was ordered to pay a civil penalty in the amount of \$40,000.

Summers, without admitting or denying the SEC's allegations, consented to the entry of an order permanently enjoining him from knowingly circumventing or failing to implement a system of internal accounting controls or knowingly falsifying books and records of an issuer. The order also enjoined Summers from violating the anti-bribery provisions of the FCPA and from aiding and abetting violations of the anti-bribery, books and records, and internal controls provisions of the FCPA. In addition to the permanent injunction, Summers was ordered to pay a civil penalty of \$25,000.

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### **39. General Electric Company**

Resulting Civil/Administrative Enforcement Action(s):

**A. SEC v. General Electric Company, et al. (D.D.C., July 27, 2010)**

Entities and Individuals:

- General Electric Company, civil complaint filed July 27, 2010.
- Ionics, Inc., civil complaint filed July 27, 2010.
- Amersham plc, civil complaint filed July 27, 2010.

Civil Charges:

- Falsification of books and records (all defendants)
- Internal controls violations (all defendants)

Location and Time Period of Misconduct: Iraq, 2000-2003.

Summary:

*Payments by GE Subsidiaries*

According to the SEC's Complaint, from approximately 2000 to 2003, two GE subsidiaries, Marquette-Hellige ("Marquette") and OEC-Medical Systems (Europa) AG ("OEC-Medical"), made

approximately \$2.04 million in kickback payments in the form of computer equipment, medical supplies, and services to the Iraqi Ministry of Health.

Marquette, based in Germany, manufactures and sells cardiology monitoring equipment and has been a GE subsidiary since 1998. Marquette entered into three OFFP contracts in which it either paid or agreed to pay illegal kickbacks in the form of computer equipment, medical supplies, and services after declining to make the payments in cash. The contracts were for the supply of disposable electrodes, transducers, and fetal monitors to the Iraqi Health Ministry, and they generated a combined gross profit to Marquette of \$8.8 million. In order to obtain two of the contracts, Marquette's Iraqi agent made in-kind kickback payments of goods and services worth approximately \$1.2 million to the Iraqi Health Ministry in violation of UN regulations. In order to obtain the third contract, the agent offered to make an additional in-kind kickback payment worth approximately \$250,000. The illegal kickbacks were made or offered with the knowledge and approval of Marquette officials.

OEC-Medical, based in Switzerland, manufactures and sells medical equipment. In 2000, OEC-Medical entered into an OFFP contract to provide C-Arms (C-shaped armatures used to support X ray equipment) to the Iraqi Ministry of Health. OEC made an in-kind kickback payment worth approximately \$870,000 on the contract and earned a wrongful profit of \$2.1 million. The OEC-Medical contract was negotiated by the same third party agent that handled the Marquette contracts. As was done with the Marquette contracts, the Iraqi agent agreed to make the payment on behalf of OEC-Medical in the form of computer equipment, medical supplies, and services, rather than cash. In order to conceal from UN inspectors the fact that the agent's commission had been increased to cover an illegal kickback, OEC-Medical and the agent entered into a fictitious "services provider agreement," purporting to identify services the agent would perform to justify his increased commission.

*Payments by subsidiaries of other public companies that have since been acquired by GE*

Two other current GE subsidiaries, Ionics Italba S.r.L. ("Ionics Italba"), and Nycomed Imaging AS ("Nycomed"), made approximately \$1.55 million in cash kickback payments under the OFFP prior to GE's acquisition of their parent companies.

During the OFFP, Nycomed was a Norway-based subsidiary of publicly-registered Amersham plc, which was acquired by GE in 2004. Between 2000 and 2002, Nycomed entered into nine contracts involving the payment of cash "after-sale-service-fee" kickbacks. The contracts were all direct agreements between Nycomed and the Iraqi Ministry of Health for the provision of Omnipaque and Omniscan. Omnipaque is an injectible contrast agent used in conjunction with X-rays; and Omniscan is a contrast agent used in conjunction with magnetic resonance imaging (MRI). Nycomed paid approximately \$750,000 in kickbacks on the nine contracts and earned approximately \$5 million in wrongful profits. The contracts were negotiated by Nycomed's Jordanian agent, and the kickback payments were explicitly authorized by Nycomed's salesman in Cyprus. The Nycomed salesman increased the agent's commission from 17.5% to 27.5% of the contract price, and artificially increased the U.N. contract prices by 10%, all to cover the cost of the kickbacks.

During the OFFP, Ionics Italba was an Italy-based subsidiary of publicly-listed Ionics, Inc., which GE acquired in 2005. Ionics Italba manufactures and sells water purification equipment. Between 2000 and 2002, Ionics Italba paid \$795,000 in kickbacks and earned \$2.3 million in wrongful profits on five OFFP contracts to sell water treatment equipment to the Iraqi Oil Ministry. Four of the five contracts were negotiated with side letters documenting the commitment of Ionics Italba to make cash kickback payments. The side letters were concealed from UN inspectors in violation of an OFFP requirement to provide all contract documentation for inspection and UN approval. On the majority of

the Ionics Italba contracts, invoices provided by the sales agent included fictitious activities to justify the agent's inflated commission.

Civil Disposition:

In order to settle the SEC's charges against GE and the two subsidiaries for which GE assumed liability upon their acquisition, GE agreed to pay disgorgement of \$18,397,949, prejudgment interest in the amount of \$4,080,665, and a civil penalty in the amount of \$1,000,000, for a total monetary penalty of \$23,478,614. In addition, without admitting or denying the SEC's allegations, GE, Ionics, and Amersham consented to the entry of a final judgment permanently enjoining the companies from future violations of the books and records and internal controls provisions of the FCPA.

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**40. Veraz Networks, Inc.**

Resulting Civil/Administrative Enforcement Action(s):

**A. SEC v. Veraz Networks, Inc. (N.D. Cal., June 29, 2010)**

Entities and Individuals:

- Veraz Networks, Inc., civil complaint filed June 29, 2010.

Civil Charges:

- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: China and Vietnam, 2007-2008.

Summary:

On June 29, 2010, the SEC filed a settled civil complaint against Veraz Networks, Inc. ("Veraz"), a San Jose, California-based telecommunications company. The SEC alleged that Veraz violated the books and records and internal controls provisions of the FCPA in connection with improper payments to foreign officials in China and Vietnam. These payments took place after the company went public in 2007. Specifically, the SEC alleged that Veraz engaged a consultant in China who in 2007 and 2008 gave gifts and offered improper payments together valued at approximately \$40,000 to officials at a government controlled telecommunications company in China in an attempt to win business for Veraz. A Veraz supervisor who approved the gifts described them in an internal Veraz email as the "gift scheme." Similarly, the SEC alleged that in 2007 and 2008, a Veraz employee made improper payments to the CEO of a government controlled telecommunications company in Vietnam in order to win business for Veraz.

Civil Disposition:

Without admitting or denying the SEC's allegations, Veraz consented to the entry of a final judgment permanently enjoining the company from future violations of the books and records and internal controls provisions of the FCPA. In addition, Veraz was ordered to pay a civil penalty of \$300,000.

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## 41. Daimler AG

### Resulting Criminal Enforcement Action(s):

- A. **United States v. Daimler AG (D.D.C., March 22, 2010)**
- B. **United States v. DaimlerChrysler Automotive Russia SAO (D.D.C., March 22, 2010)**
- C. **United States v. Daimler Export and Trade Finance GmbH (D.D.C., March 22, 2010)**
- D. **United States v. DaimlerChrysler China Ltd. (D.D.C., March 22, 2010)**

### Resulting Civil/Administrative Enforcement Action(s):

- E. **SEC v. Daimler AG (D.D.C., March 22, 2010)**

### Entities and Individuals:

- Daimler AG, charged March 22, 2010; civil complaint filed March 22, 2010.
- DaimlerChrysler Automotive Russia SAO (DCAR), charged March 22, 2010.
- Daimler Export and Trade Finance GmbH (ETF), charged March 22, 2010.
- DaimlerChrysler China Ltd. (DCCL), charged March 22, 2010.

Location and Time Period of Misconduct: At least 22 countries, 1998-2008.

### Criminal Charges:

- Conspiracy:
  - to bribe foreign officials (DCAR, ETF, DCCL)
  - to falsify books and records (Daimler AG)
- Bribery of foreign officials (DCAR, ETF, DCCL)
- Falsification of books and records (Daimler AG)

### Civil Charges:

- Bribery of foreign officials (Daimler AG)
- Falsification of books and records (Daimler AG)
- Internal controls violations (Daimler AG)

### Summary:

On March 22, 2010, criminal charges were filed in the District of Columbia against Daimler AG, a German corporation, and three of its subsidiaries. On the same date, the SEC filed a settled civil complaint against Daimler AG charging it in relation to alleged violations of the FCPA. According to court documents, Daimler AG, whose shares trade on multiple exchanges in the United States, engaged in a long-standing practice of paying bribes to foreign government officials through a variety of mechanisms, including the use of corporate ledger accounts known as “third-party accounts” or “TPAs,” corporate “cash desks,” offshore bank accounts, deceptive pricing arrangements and third-party intermediaries. In some cases, Daimler AG or its subsidiaries wire transferred these improper payments to U.S. bank accounts or to the foreign bank accounts of U.S. shell companies, in order for these entities to pass on the bribes.

The court documents alleged that Daimler and its subsidiaries made hundreds of improper payments worth tens of millions of dollars to foreign officials in at least 22 countries – including China, Croatia, Egypt, Greece, Hungary, Indonesia, Iraq, Ivory Coast, Latvia, Nigeria, Russia, Serbia and Montenegro, Thailand, Turkey, Turkmenistan, Uzbekistan, Vietnam and others – to assist in securing

contracts with government customers for the purchase of Daimler vehicles. In addition, Daimler AG admitted that it agreed to pay kickbacks to the former Iraqi government in connection with contracts to sell vehicles to Iraq under the U.N.'s Oil for Food program. The contracts were valued in the hundreds of millions of dollars. In all cases, Daimler AG improperly recorded these corrupt payments in its corporate books and records.

*Criminal Disposition:*

On April 1, 2010, Daimler AG and DCCL entered into deferred prosecution agreements with the Department of Justice. On the same date, DCAR and ETF pled guilty and agreed to pay criminal fines of \$27.26 million and \$29.12 million, respectively. In total, Daimler AG and its subsidiaries agreed to pay \$93.6 million in criminal fines and penalties.

*Civil Disposition:*

Simultaneous with the criminal settlement, U.S. District Court Judge Richard J. Leon entered a separate judgment against Daimler AG resolving the civil complaint filed by the SEC. This judgment enjoined Daimler from future violations, required Daimler AG to pay \$91,432,867 million in disgorgement of profits relating to those violations, and required Daimler obtain an independent FCPA compliance monitor for a three-year period.

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**42. BAE Systems plc**

*Resulting Criminal Enforcement Action(s):*

**A. United States v. BAE Systems plc (February 4, 2010)**

*Entities and Individuals:*

- BAE Systems plc, charged February 4, 2010.

*Criminal Charges:*

- Conspiracy:
  - to defraud the United States by impairing and impeding its lawful functions;
  - to make false statements; and
  - to violate the Arms Export Control Act and International Traffic in Arms Regulations.

*Location and Time Period of Misconduct:* Czech Republic, Hungary, Saudi Arabia, 2000-2002.

*Summary:*

On February 4, 2010, BAE Systems plc (BAES), a multinational defense contractor with headquarters in the United Kingdom, was charged in a one-count criminal information with conspiracy to defraud the United States by impairing and impeding its lawful functions, to make false statements about its FCPA compliance program, and to violate the Arms Export Control Act (AECA) and International Traffic in Arms Regulations (ITAR). These charges alleged that from 2000 to 2002, BAES represented to various U.S. government agencies, including the Departments of Defense and Justice, that it would create and implement policies and procedures to ensure its compliance with the anti-bribery provisions of the FCPA, as well as similar, foreign laws implementing the Organisation for Economic Co-operation and Development (OECD) Anti-bribery Convention.

In pleading guilty, BAES acknowledged that, despite its representations to the U.S. government to the contrary, BAES knowingly and willfully failed to create sufficient compliance mechanisms to ensure compliance with these legal prohibitions on foreign bribery. BAES admitted that it regularly used and encouraged the establishment of shell companies and third party intermediaries to assist in securing sales of defense articles. From May 2001 onward, BAES made a series of substantial payments to these shell companies and third party intermediaries that were not subjected to the degree of scrutiny and review to which BAES told the U.S. government the payments would be subjected. BAES was aware there was a high probability that part of some of the payments would be used to ensure that BAES was favored in foreign government decisions regarding the purchase of defense articles. BAES knowingly and willfully failed to identify commissions paid to third parties for assistance in soliciting, promoting or otherwise securing sales of defense articles, in violation of the AECA and ITAR.

Criminal Disposition:

On March 1, 2010, BAES pled guilty to the charges filed against it on February 4, 2010. As part of its guilty plea, BAES was sentenced to a criminal fine of \$400,000,000, which was the statutory maximum fine. BAES also agreed to retain an independent compliance monitor for three years and maintain a compliance program that is designed to detect and deter violations of the FCPA, the AECA, ITAR, and similar foreign anti-corruption and export control laws.

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**43. Bribery of Officials at Telecommunications D’Haiti (Haiti Teleco)**

Resulting Criminal Enforcement Action(s):

- A. **United States v. Jean Fourcand (S.D. Fla., February 1, 2010)**
- B. **United States v. Joel Esquenazi, et al. (S.D. Fla., December 4, 2009)**
- C. **United States v. Juan Diaz (S.D. Fla., April 22, 2009)**
- D. **United States v. Antonio Perez (S.D. Fla., April 22, 2009)**
- E. **United States v. Washington Vasconez Cruz (S.D. Fla., July 13, 2011)**
- F. **United States v. Amadeus Richers (S.D. Fla., July 13, 2011)**
- G. **United States v. Cinergy Telecommunications, Inc. (S.D. Fla., July 13, 2011)**
- H. **United States v. Patrick Joseph (S.D. Fla., July 13, 2011)**
- I. **United States v. Jean Rene Duperval (S.D. Fla., July 13, 2011)**
- J. **United States v. Marguerite Grandison (S.D. Fla., July 13, 2011)**

Entities and Individuals:

- Joel Esquenazi, President, indicted December 4, 2009, convicted August 5, 2011.
- Carlos Rodriguez, Executive Vice President, indicted December 4, 2009, convicted August 5, 2011.
- Robert Antoine, Director of International Relations at Haiti Teleco, indicted December 4, 2009.
- Jean Rene Duperval, Director of International Relations at Haiti Teleco, indicted December 4, 2009, subsequently charged July 13, 2011.
- Antonio Perez, Controller, charged April 22, 2009.
- Juan Diaz, President of Intermediary Company, charged April 22, 2009.
- Jean Fourcand, President of Intermediary Company, charged February 1, 2010.
- Marguerite Grandison, President of Telecom Consulting Services Corp., indicted December 4, 2009, subsequently charged July 13, 2011.

- Cinergy Telecommunications, Inc., charged July 13, 2011.
- Washington Vasconez Cruz, President and Chief Operating Officer of Cinergy and President of Uniplex, indicted July 13, 2011.
- Amadeus Richer, former Director of Cinergy and Uniplex, indicted July 13, 2011
- Patrick Joseph, former Director General for Telecommunications at Haiti Teleco, charged July 13, 2011.

Criminal Charges:

- Conspiracy:
  - to bribe foreign officials (Perez, Diaz, Esquenazi, Rodriguez, Grandison, Cinergy, Cruz and Richer)
  - to commit money laundering (all defendants except Fourcand)
  - to commit wire fraud (Esquenazi, Rodriguez, Grandison, Cinergy, Cruz and Richer)
- Bribery of foreign officials (Esquenazi, Rodriguez, Grandison, Cinergy, Cruz and Richer)
- Money laundering (Fourcand, Esquenazi, Rodriguez, Duperval, Grandison, Cinergy, Cruz and Richer)

Location and Time Period of Misconduct: Haiti, 1998-2006.

Summary:

On December 4, 2009, two former executives of a Florida-based telecommunications company, the president of a Florida-based intermediary company, and two former Haitian government officials were charged in an indictment for their alleged roles in a foreign bribery, wire fraud, and money laundering scheme that lasted from at least November 2001 through March 2005. Joel Esquenazi, the former president of the telecommunications company; Carlos Rodriguez, the former executive vice-president of the telecommunications company; Marguerite Grandison, the former president of Telecom Consulting Services Corp.; Robert Antoine, a former director of international relations at the Republic of Haiti's state-owned national telecommunications company, Telecommunications D'Haiti (Haiti Teleco); and Jean Rene Duperval, another former director of international relations at Haiti Teleco, were charged in connection with a scheme whereby the telecommunications company paid more than \$800,000 to shell companies, including Grandison's Telecom Consulting Services Corp., to be used for bribes to foreign officials of Haiti Teleco. The purpose of these bribes was to obtain various business advantages from the Haitian officials for the telecommunications company, including issuing preferred telecommunications rates, reducing the number of minutes for which payment was owed, and giving a variety of credits toward owed sums, as well as to defraud the Republic of Haiti of revenue.

Previously, on April 22, 2009, Juan Diaz, the president of J.D. Locator Services Inc., a Florida-based intermediary, and Antonio Perez, the former controller of the Florida-based telecommunications company, were charged in connection with their roles in the alleged foreign bribery scheme. According to court documents, from 1998 to 2003, Diaz and Perez conspired to make "side payments" totaling \$1 million to the Haitian government officials through a shell company belonging to Diaz, all on behalf of the Florida-based telecommunications company.

On February 1, 2010, Jean Fourcand, the president of Fourcand Enterprises, Inc., another intermediary company, was charged in a one-count criminal information with engaging in monetary transactions involving property derived from the scheme to bribe the former Haitian government officials. Specifically, between November 2001 and August 2002, Fourcand received funds originating from this and other U.S. telecommunications companies for the benefit of Robert Antoine. A portion of

these funds came in the form of a check from J.D. Locator Services Inc., and a portion of these funds were used to engage in a real estate transaction that benefitted Antoine.

Subsequently, on July 13, 2011, Cinergy Telecommunications Inc., Cinergy's president and director, the president of Florida-based Telecom Consulting Corp., and two former Haitian government officials were charged in a superseding indictment for their alleged roles in a foreign bribery, wire fraud and money laundering scheme that lasted from December 2001 through January 2006. Cinergy, a privately owned telecommunications company headquartered in Miami, Florida; Washington Vasconez Cruz, president and chief operating officer of Cinergy and president of Uniplex; Amadeus Richers, former director of Cinergy and Uniplex; Patrick Joseph, former director general for telecommunications at Haiti Teleco; Jean Rene Duperval, another former director of international relations at Haiti Teleco; and Marguerite Grandison, the former president of Telecom Consulting Services Corp., were charged in connection with a scheme whereby Cinergy and its related company, Uniplex Telecommunications Inc., allegedly paid more than \$1.4 million to shell companies to be used for bribes to foreign officials of Haiti Teleco.

According to court documents, Cinergy and Uniplex, executed a series of contracts with Haiti Teleco that allowed the companies' customers to place telephone calls to Haiti. The bribe payments were allegedly authorized by Washington Vasconez Cruz and Amadeus Richers, and were allegedly paid to Haitian government officials at Haiti Teleco, including Patrick Joseph and Jean Rene Duperval. According to the superseding indictment, the purpose of these bribes was to obtain various business advantages from the Haitian officials for Cinergy and Uniplex, including preferred telecommunications rates and credits toward sums owed. To conceal the bribe payments, the defendants allegedly used various shell companies to receive and forward the payments, including J.D. Locator Services, Fourcand Enterprises and Telecom Consulting Services.

The superseding indictment also charges Jean Rene Duperval and Marguerite Grandison with laundering corrupt payments authorized by Joel Esquenazi and Carlos Rodriguez on behalf of another Florida based telecommunications company.

On January 19, 2012, Cinergy Telecommunications Inc., Cinergy's president, vice-president, and director, the president of Florida-based Telecom Consulting Corp., and two former Haitian government officials were charged in a superseding indictment for their alleged roles in a foreign bribery, wire fraud and money laundering scheme that lasted from December 2001 through January 2006.

#### *Criminal Disposition:*

On May 15, 2009, Juan Diaz and Antonio Perez pleaded guilty in the U.S. District Court for the Southern District of Florida. Juan Diaz was sentenced on July 30, 2010, to 57 months' imprisonment and ordered to pay \$73,824 in restitution and to forfeit \$1,028,851. Antonio Perez was sentenced on January 21, 2011, to 24 months' imprisonment followed by two years' supervised release, and he was ordered to forfeit \$36,375. Diaz's and Perez's terms of imprisonment were later reduced following a Rule 35 motion.

On February 19, 2010, Jean Fourcand pleaded guilty to a one count criminal information charging him money laundering and agreed to forfeit \$18,500. Fourcand was sentenced to six months' imprisonment on May 3, 2010. Fourcand's term of imprisonment was later reduced following a Rule 35 motion.

On March 12, 2010, Robert Antoine pleaded guilty to conspiracy to commit money laundering. By pleading guilty, Antoine became the first foreign official ever convicted of money laundering in the United States where the specified unlawful activity to which the laundered funds related was a felony violation of the FCPA. On June 1, 2010, Antoine was sentenced to 48 months' imprisonment and

ordered to pay \$1,852,209 in restitution and to forfeit \$1,580,771. Antoine's term of imprisonment was later reduced following a Rule 35 motion.

Joel Esquenazi and Carlos Rodriguez went to trial on July 18, 2011, in the U.S. District Court for the Southern District of Florida. On August 5, 2011, Esquenazi and Rodriguez were found guilty on all charged counts. On October 25, 2011, Joel Esquenazi was sentenced to a term of 180 months' imprisonment followed by 3 years' supervised release. This is the longest sentence ever imposed in a case involving the FCPA. Carlos Rodriguez was sentenced to 84 months in prison followed by 3 years' supervised release. The defendants were also ordered to forfeit \$3.09 million. Both Esquenazi and Rodriguez have appealed their convictions.

Patrick Joseph pleaded guilty to one count of conspiracy to commit money laundering on February 8, 2012. On July 6, 2012, he was sentenced, in a 5K1.1 downward departure, to 1 year and 1 day in prison, followed by 1 year of supervised release, and was ordered to forfeit \$955,596.69.

Jean Rene Duperval went to trial on March 1, 2012, in the U.S. District Court for the Southern District of Florida. On March 13, 2012, he was found guilty of two counts of conspiracy to commit money laundering and 11 counts of money laundering. On May 21, 2012, Duperval was sentenced to 108 months' imprisonment, followed by three years' supervised release and ordered to forfeit more than \$497,000. Duperval has appealed his conviction.

Marguerite Grandison received pre-trial diversion. The Department dismissed charges against Cinergy Telecommunications Inc.

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#### **44. Military and Law Enforcement Products Industry (Shot Show)**

##### *Resulting Criminal Enforcement Action(s):*

**A. United States v. Richard T. Bistrong (D.D.C., January 21, 2010)**

**B. United States v. Amaro Goncalves, et al. (D.D.C., December 11, 2009)**

##### *Entities and Individuals:*

- Richard T. Bistrong, Vice President for International Sales, charged January 21, 2010.
- Daniel Alvarez, President, indicted December 11, 2009.
- Lee Allen Tolleson, Director of Acquisitions and Logistics, indicted December 11, 2009.
- Andrew Bigelow, Managing Partner and Director of Government Programs, indicted December 11, 2009.
- Pankesh Patel, Managing Director, indicted December 11, 2009.
- John Benson Wier III, President, indicted December 11, 2009.
- David R. Painter, Chairman, indicted December 11, 2009.
- Lee M. Wares, Director, indicted December 11, 2009.
- Jonathan M. Spiller, Owner and President, indicted December 11, 2009.
- Michael Sacks, Owner and co-CEO, indicted December 11, 2009.
- Israel (Wayne) Weisler, Owner and co-CEO, indicted December 11, 2009.
- R. Patrick Caldwell, CEO, indicted December 11, 2009.
- Stephen Giordanella, CEO, indicted December 11, 2009.
- John M. Mushriqui, Director of International Development, indicted December 11, 2009.
- Jeana Mushriqui, General Counsel and U.S. Manager, indicted December 11, 2009.
- John Gregory (Greg) Godsey, Owner, indicted December 11, 2009.

- Mark Frederick Morales, Agent, indicted December 11, 2009.
- Helmie Ashiblie, Vice President and Founder, indicted December 11, 2009.
- Yochanan (Yochi) Cohen, CEO, indicted December 11, 2009.
- Haim Geri, President, indicted December 11, 2009.
- Amaro Goncalves, Vice President of Sales, indicted December 11, 2009.
- Saul Mishkin, Owner and CEO, indicted December 11, 2009.
- Ofer Paz, President and CEO, indicted December 11, 2009.

Criminal Charges:

- Conspiracy:
  - to bribe foreign officials (all defendants)
  - to falsify books and records (Bistrong)
  - to commit money laundering (all defendants)
  - to export a controlled commodity without a license (Bistrong)
- Bribery of foreign officials (all defendants)

Location and Time Period of Misconduct:

- Bistrong: The Netherlands, 2001-2003; United Nations (U.N.), 2001-2006; Iraq, 2003-2004; Nigeria, 2006.
- Goncalves, *et al.*: Unidentified African Country, 2009.

Summary:

On January 18, 2010, 22 executives and employees of companies in the military and law enforcement products industry were arrested on charges of conspiracy to violate the FCPA, conspiracy to engage in money laundering, and substantive FCPA violations. The arrest of the 22 individual defendants, who were charged in 16 separate indictments, represented the single largest investigation and prosecution of individuals in the history of DOJ's enforcement of the FCPA, as well as the first large-scale use of undercover law enforcement techniques to uncover FCPA violations. The defendants are alleged to have engaged in a scheme to pay bribes to the minister of defense for a country in Africa. In fact, the scheme was part of an undercover operation, with no actual involvement from any minister of defense. As part of the undercover operation, the defendants allegedly agreed to pay a 20 percent "commission" to a sales agent, who the defendants believed represented the minister of defense for a county in Africa, in order to win a portion of a \$15 million deal to outfit the country's presidential guard. In reality, the "sales agent" was an undercover FBI agent. The defendants were told that half of that "commission" would be paid directly to the minister of defense. The defendants allegedly agreed to create two price quotations in connection with the deals, with one quote representing the true cost of the goods and the second quote representing the true cost, plus the 20 percent "commission." The defendants also allegedly agreed to engage in a small "test" deal to show the minister of defense that he would personally receive the 10 percent bribe.

On April 16, 2010, a superseding indictment was filed in the District of Columbia, consolidating the cases against these 22 defendants and charging them with participation in a single foreign-bribery related conspiracy. The superseding indictment also revealed that the 22 defendants allegedly agreed that the products that they would supply in connection with the "test" deal would be consolidated for shipment to the African country.

In another case, on January 21, 2010, Richard T. Bistrong was charged in a one-count criminal information with conspiracy to violate the anti-bribery and accounting provisions of the FCPA, as well

as to export a controlled commodity without having first obtained a license from the U.S. Department of Commerce, in violation of the International Emergency Economic Powers Act (IEEPA) and the Export Administration Regulations. Bistrong, who was the vice-president of international sales for a Florida-based manufacturer of military, security, and law enforcement products (“the manufacturer”), is alleged to have taken part in a scheme to win contracts for the manufacturer with the United Nations (U.N.), the National Police Service Services Agency of the Netherlands (KLPD), and the Nigerian Independent National Election Commission (INEC) by paying bribes, via intermediaries, to U.N. procurement officials, a City of Rotterdam police office working on procurement matters for the KLPD, and an official with INEC, respectively. From 2001 through 2006, Bistrong also allegedly caused the falsification of the manufacturer’s books and records by using false “net” invoices to conceal nearly \$4.4 million in payments to third-party intermediaries. In addition, Bistrong is alleged to have caused the export, from the U.S., of controlled ballistic armor vests and helmets to the Kurdistan Regional Government in Iraq without having obtained a required license from the Commerce Department.

*Criminal Disposition:*

Richard T. Bistrong pleaded guilty to one count of conspiracy to violate the FCPA on September 16, 2010. On July 31, 2012, he was sentenced to 18 months’ imprisonment, followed by 3 years’ supervised release. Daniel Alvarez pleaded guilty to two counts of conspiracy to violate the FCPA on March 1, 2011. On March 30, 2012, Alvarez’s guilty plea was vacated and the charges against him were dismissed. Haim Geri pleaded guilty to one count of conspiracy to violate the FCPA on April, 28, 2011. The guilty plea was subsequently vacated on March 30, 2012, and the charge was dismissed. Jonathan M. Spiller pleaded guilty to one count of conspiracy to violate the FCPA on March 29, 2011. The guilty plea was subsequently vacated on March 30, 2012 and the charge was dismissed. The sole charge against Giordanella was dropped on December 22, 2011. The trials for defendants Andrew Bigelow, Lee Allen Tolleson, John Benson Wier III, Pankesh Patel, John M. Mushriqui, Jeana Mushriqui, R. Patrick Caldwell, John Gregory (Greg) Godsey, and Mark Frederick Morales ended in mistrial due to hung juries. Charges against those defendants, as well as Amaro Goncalves, Ofer Paz, Michael Sacks, Israel Weisler, Saul Mishkin, Yochanan (Yochi) Cohen, and Helmie Ashiblie, were withdrawn on February 21, 2012.

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**45. NATCO Group Inc.**

*Resulting Civil/Administrative Enforcement Action(s):*

- A. SEC v. NATCO Group Inc. (S.D. Tex., January 11, 2010)**
- B. In the Matter of NATCO Group Inc. (January 11, 2010)**

*Entities and Individuals:*

- NATCO Group Inc., civil complaint filed January 11, 2010; cease-and-desist order issued January 11, 2010.
- TEST Automation & Controls, Inc., civil complaint filed against parent company.

*Civil Charges:*

- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: Kazakhstan, 2007.

Summary:

NATCO, a Delaware corporation headquartered in Houston and listed on the New York Stock Exchange, designs, manufactures, and markets oil and gas production equipment and systems that are used worldwide. On January 11, 2010, the SEC filed a civil complaint and commenced administrative proceedings against NATCO, alleging that the company violated the books and records and internal controls provisions of the FCPA in connection with a subsidiary's mischaracterization of certain illicit payments to Kazakh officials in the company's books and records. The wholly-owned subsidiary in question, TEST Automation & Controls, Inc. ("TEST"), is a Louisiana corporation that fabricates and sells control panels and packaged automation systems and provides field services associated with repair, maintenance, inspection and testing of onshore and offshore control systems.

According to the SEC's complaint, in June 2005, TEST's branch office in Kazakhstan ("TEST Kazakhstan") won a contract to provide instrumentation and electrical services in Kazakhstan. To perform the services, TEST Kazakhstan hired both expatriates and local Kazakh workers. Kazakhstan law required TEST to obtain immigration documentation before an expatriate worker entered the country. Accordingly, Kazakhstan immigration authorities periodically audited immigration documentation of TEST Kazakhstan and other companies operating in Kazakhstan for compliance with local law.

In February 2007 and September 2007, Kazakh immigration prosecutors conducted audits and claimed that TEST Kazakhstan's expatriate workers were working without proper immigration documentation. The prosecutors subsequently threatened to fine, jail or deport the workers if TEST Kazakhstan did not pay cash fines.

Believing the prosecutor's threats to be genuine, employees with TEST Kazakhstan sought guidance from TEST's senior management in Harvey, Louisiana, who authorized making the payments. TEST Kazakhstan employees used personal funds to pay the prosecutors \$25,000 in February and \$20,000 in September, and then obtained reimbursement from TEST.

For the February 2007 payment, TEST made a \$25,000 wire transfer to the affected employee. TEST inaccurately described the transfer as "an advance against his [the paying employee's] bonus payable in March." Moreover, the email noted the bonus would be "substantial," to further disguise the true reason for the transfer. In addition, TEST's letter to the bank providing the wire instructions inaccurately described the payment as a "Payroll Advance." After the wire transfer was transmitted, TEST inaccurately recorded the payment in its books and records as a salary advance.

For the September 2007 payment, TEST made a \$20,000 wire transfer to reimburse the affected employee. The wire transfer and journal entry in TEST's books inaccurately described the purpose of the transfer as "visa fines."

In addition to the misrepresentation of the February and September 2007 wire transfers, the SEC's complaint alleged that TEST knowingly reimbursed false invoices worth more than \$80,000. Specifically, TEST Kazakhstan used consultants to assist it in obtaining immigration documentation for its expatriate employees. One of these consultants did not have a license to perform visa services, but maintained close ties to an employee working at the Kazakh Ministry of Labor, the entity issuing the visas. On two instances, the consultant requested cash from TEST Kazakhstan to help him obtain the visas. Because Kazakh law requires companies seeking to withdraw cash from commercial bank accounts to submit supporting invoices, the consultant provided TEST Kazakhstan bogus invoices for "cable" from third-party entities he controlled. TEST Kazakhstan knew these invoices were false, but nonetheless presented them to Kazakh banks to withdraw the requested cash. TEST Kazakhstan later

submitted the false invoices – which totaled in excess of \$80,000 – to TEST for reimbursement. TEST reimbursed these requests despite knowing the invoices mischaracterized the true purpose of the services rendered.

Civil Disposition:

In order to settle the civil charges filed by the SEC, NATCO agreed, without admitting or denying the SEC's allegations, to pay a \$65,000 civil penalty. In the related administrative proceedings, NATCO consented to the issuance of an order that requires the company to cease-and-desist from committing or causing any violations and future violations of the books and records and internal controls provisions of the FCPA.

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**46. UTStarcom Inc.**

Resulting Criminal Enforcement Action(s):

**A. In Re UTStarcom Inc. (December 31, 2009)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. UTStarcom, Inc. (N.D. Cal., December 31, 2009)**

Entities and Individuals:

- UTStarcom, Inc. (UTSI), non-prosecution agreement announced December, 31, 2009; civil complaint filed December 31, 2009.

Criminal Charges:

- Bribery of foreign officials
- Falsification of books and records

Civil Charges:

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: China, 2001-2007; Thailand, 2001-2005; Mongolia, 2005.

Summary:

On December 31, 2009, UTStarcom, Inc. (UTSI), a global telecommunications company that designs, manufactures, and sells network equipment and handsets, entered into a non-prosecution agreement with the Department of Justice regarding the improper provision of travel and other things of value to employees at state-owned telecommunications firms in the People's Republic of China, in violation of the FCPA. On the same date, the SEC filed a settled civil complaint against UTSI in relation to this conduct.

As part of these agreements, UTSI acknowledged responsibility for the actions of its wholly-owned subsidiary, UTStarcom China Co. Ltd. (UTS-China), and its employees and agents, who arranged and paid for employees of Chinese state-owned telecommunications companies to travel to popular tourist destinations in the United States, including Hawaii, Las Vegas, and New York City. The

trips were purportedly for individuals to participate in training at UTSI facilities. In fact, UTSI had no facilities in those locations and conducted no training. UTS-China then falsely recorded these trips as “training” expenses, while the true purpose for providing these trips was to obtain and retain lucrative telecommunications contracts.

The civil complaint filed by the SEC also stated that UTSI had arranged for expensive gifts and all-expense paid trips for officials from government customers in Thailand. In addition, the SEC stated that UTSI made sham payments to a Mongolian consulting company for the purpose of bribing a Mongolian government official to help UTSI obtain a favorable ruling in a license dispute.

*Criminal Disposition:*

As part of the non-prosecution agreement, UTSI agreed to pay a \$1.5 million fine, adopt rigorous internal controls, and continue cooperating fully with the Department.

*Civil Disposition:*

Pursuant to its settlement with the SEC, UTSI agreed to pay a \$1.5 million civil penalty and to provide FCPA compliance reports for four years.

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**47. Ports Engineering Consultants Corporation**

*Resulting Criminal Enforcement Action(s):*

- A. United States v. John W. Warwick (E.D. Va., December 15, 2009)**
- B. United States v. Charles Paul Edward Jumet (E.D. Va., November 10, 2009)**

*Entities and Individuals:*

- Ports Engineering Consultants Corporation (PECC) (company ceased to operate prior to prosecution)
- Overman Associates (company ceased to operate prior to prosecution)
- Overman de Panama (company ceased to operate prior to prosecution)
- John W. Warwick, President of PECC, Overman Associates and Overman de Panama, indicted December 15, 2009.
- Charles Paul Edward Jumet, Vice President and President of PECC and Vice President of Overman de Panama and Overman Associates, charged November 10, 2009.

*Criminal Charges:*

- Conspiracy to bribe foreign officials (all defendants)
- Making a false statement (Jumet)

*Location and Time Period of Misconduct:* Panama, 1997-2003.

*Summary:*

On November 10, 2009 and December 15, 2009, respectively, Charles Paul Edward Jumet and John W. Warwick were charged in connection with a conspiracy to make corrupt payments to Panamanian government officials in exchange for certain maritime contracts. Jumet was charged in a two-count criminal information with conspiracy to bribe foreign officials in violation of the FCPA and with making a false statement to the FBI. Warwick, the former president of Ports Engineering

Consultants Corporation (PECC), was indicted on one-count of conspiracy to authorize and cause corrupt payments to be made to foreign government officials for the purpose of securing business for PECC, in violation of the FCPA.

According to court documents, from 1997 through approximately July 2003, Warwick, Jumet, and others conspired to authorize and cause corrupt payments totaling more than \$200,000 to be made to the former administrator and deputy administrator of the Panama Maritime Ports Authority, as well as to a former, high-ranking elected executive official of the Republic of Panama. These corrupt payments were made so that the Panamanian officials would award contracts to maintain lighthouses and buoys along Panama's waterways to PECC, a company incorporated under the laws of Panama and affiliated with Overman Associates, an engineering firm based in Virginia. In 1997, the Panamanian government awarded PECC a no-bid 20-year concession to perform these duties. As a result of these contracts, PECC earned approximately \$18 million in revenue from 1997 to 2000. In 2000, Panama's Comptroller General Office suspended the contract while it investigated the government's decision to award PECC a contract without soliciting a bid from any other entities. In 2003, the Panamanian government resumed making payments to PECC.

*Criminal Disposition:*

On November 13, 2009, Charles Jumet pleaded guilty in the Eastern District of Virginia. As part of his plea agreement, Jumet agreed to cooperate with the Department of Justice in its ongoing investigation. On April 19, 2010, Jumet was sentenced to 87 months' imprisonment, 3 years' supervised release, and a \$15,000 criminal fine. On February 10, 2010, Warwick pleaded guilty to the one-count indictment and agreed to forfeit \$331,000. Warwick was sentenced on June 25, 2010, to 37 months' imprisonment followed by 2 years' supervised release. He was also ordered to forfeit the agreed-upon amount of \$331,000.

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**48. AGCO Corporation**

*Resulting Criminal Enforcement Action(s):*

**A. United States v. AGCO Limited (D.D.C., September 30, 2009)**

*Resulting Civil/Administrative Enforcement Action(s):*

**B. SEC v. AGCO Corporation (D.D.C., September 30, 2009)**

*Entities and Individuals:*

- AGCO Corporation (AGCO Corp.), deferred prosecution agreement filed September 30, 2009; civil complaint filed September 30, 2009.
- AGCO Limited (AGCO Ltd.), charged September 30, 2009.

*Criminal Charges:*

- Conspiracy:
  - to falsify books and records
  - to commit wire fraud

*Civil Charges:*

- Falsification of books and records

- Internal controls violations

Location and Time Period of Misconduct: Iraq, 2000-2003.

Summary:

AGCO Ltd., the wholly owned U.K. subsidiary of AGCO Corp., a U.S. corporation based in Duluth, Georgia, was charged on September 30, 2009 with one count of conspiracy to commit wire fraud and to violate the books and records provisions of the FCPA. These charges stemmed from the Department's investigation into the United Nations (U.N.) Oil-for-Food Program (OFFP). According to court documents, AGCO Corp. admitted that between 2000 and 2003, AGCO Ltd., with the assistance of a Jordanian agent, paid approximately \$553,000 to the former government of Iraq to secure three contracts to sell agricultural equipment and parts by inflating the price of the contracts by 13 to 21 percent before submitting the contracts to the U.N. for approval. The company concealed from the U.N. that the price of the contracts had been inflated and then used the additional funds to pay a kickback to the former Iraqi Ministry of Agriculture.

On September 30, 2009, the SEC filed a civil complaint against AGCO Corporation in the District of Columbia, alleging violations of the internal controls and books and records provisions of the FCPA in relation to the same underlying conduct. According to the complaint, AGCO Corp. and its subsidiaries made approximately \$5.9 million in kickback payments (or "after sale service fees" (ASSFs)) in connection with their contracts to sell humanitarian goods to Iraq. AGCO Corp.'s total gains from contracts in which ASSFs were paid was \$13,907,393.

Criminal Disposition:

On September 30, 2009, AGCO Corp. entered into a deferred prosecution agreement with the Department of Justice. As part of this agreement, AGCO Corp. acknowledged responsibility for the conduct of its subsidiary, AGCO Ltd., and agreed to pay a \$1.6 million criminal fine. The deferred prosecution agreement also required that AGCO Corp. and its subsidiaries, including AGCO Ltd., cooperate fully with the Justice Department's ongoing investigation.

AGCO Corp. also agreed to a disposition resolving an ongoing investigation by the Danish State Prosecutor for Serious Economic Crime, whereby AGCO Corp. agreed to pay approximately \$630,000 in disgorgement of profits. These charges were based on two OFFP contracts executed by AGCO Corp.'s Danish subsidiary, AGCO Denmark A/S.

Civil Disposition:

Contemporaneous with the criminal settlement, the SEC filed a settled action against AGCO Corp. enjoining it from future violations and requiring it to pay \$13.9 million in disgorgement and \$2 million in prejudgment interest, as well as a \$2.4 million civil penalty, in relation to the sixteen OFFP contracts.

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#### **49. Faro Technologies Inc.**

Resulting Criminal Enforcement Action(s):

**A. In Re Faro Technologies Inc. (June 5, 2008)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. Oscar H. Meza (D.D.C., August 28, 2009)**

**C. In the Matter of Faro Technologies, Inc. (June 5, 2008)**

Entities and Individuals:

- Faro Technologies Inc., non-prosecution agreement announced June 5, 2008; cease-and-desist order issued June 5, 2008.
- Oscar H. Meza, Director of Asia-Pacific Sales, civil complaint filed August 28, 2009.

Criminal Charges:

- Bribery of foreign officials (all defendants)
- Falsification of books and records (all defendants)

Civil Charges:

- Bribery of foreign officials (Faro and Meza)
- False accounting (Meza)
- False statements to accountants (Meza)
- Internal controls violations (Faro)
- Falsification of books and records (Faro)
- Aiding and abetting Faro's bribery of foreign officials (Meza)
- Aiding and abetting Faro's internal controls violations (Meza)
- Aiding and abetting Faro's falsification of books and records (Meza)

Location and Time Period of Misconduct: China, 2003-2006.

Summary:

On June 5, 2008, Faro Technologies Inc. (Faro), a public company headquartered in Lake Mary, Fla., which develops and markets portable computerized measurement devices and software, entered into a non-prosecution agreement with the Department of Justice in relation to a scheme to make corrupt payments to Chinese government officials in violation of the FCPA. Simultaneously, the SEC commenced administrative proceedings against Faro, seeking to enjoin it from further violations of the FCPA. In a related action, the SEC filed a civil complaint against Oscar H. Meza on August 28, 2009. Meza, a U.S. citizen, had served as the Vice-President for Asia-Pacific Sales and the Director of Asia-Pacific Sales for Faro during the period in question. The Commission charged Meza with violations of the anti-bribery, books and records and internal controls provisions of the FCPA, and with aiding and abetting Faro's violations of the anti-bribery, books and records and internal controls provisions of the FCPA.

According to the statement of facts, Faro began direct sales of its products in China in 2003 through its subsidiary, Faro China, which is based in Shanghai. On several occasions in 2004 and 2005, Meza authorized other Faro employees to make corrupt payments, termed "referral fees" within Faro, directly to employees of state-owned or controlled entities in China to secure business for Faro.

Ultimately, Meza authorized a total of \$444,492 in corrupt payments disguised as referral fees, which allowed Faro to secure contracts worth approximately \$4.5 - \$4.9 million in sales and \$1.4 million in net profit. Faro also falsely recorded these improper payments in its books and records, inaccurately describing the bribe payments as referral fees. Also, between May 2003 and February 2006,

Faro failed to devise and maintain a system of internal controls with respect to foreign sales activities sufficient to ensure compliance with the FCPA.

The statement of facts also reveals that certain Faro employees decided in 2005 to route the corrupt payments to Chinese government officials through a shell company to “avoid exposure,” according to internal emails. As a result, in January 2005, Faro China entered into a bogus services contract with an intermediary, using it to pay the bribes on behalf of Faro. The intermediary aggregated the bribe payments it paid on behalf of Faro and sent regular invoices to Faro for payment based on its services contract.

*Criminal Disposition:*

In recognition of Faro’s voluntary disclosure and thorough review of the improper payments, its cooperation with the Department’s investigation, the company’s implementation of, and commitment to implement in the future, enhanced compliance policies and procedures, and the company’s agreement to engage an independent corporate monitor, the Department agreed to enter into a two-year non-prosecution agreement with Faro. As part of this agreement, Faro agreed to pay a criminal fine of \$1.1 million.

*Civil Disposition:*

As part of the SEC’s settled administrative enforcement action against Faro, the company agreed to the entry of a cease and desist order and agreed to pay approximately \$1.85 million in disgorgement and prejudgment interest.

In the civil suit filed against Meza by the SEC, the court entered a final judgment order whereby Meza was required to pay a \$30,000 civil penalty, as well as \$26,707 in disgorgement and prejudgment interest.

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**50. Nature’s Sunshine Products Inc.**

*Resulting Civil/Administrative Enforcement Action(s):*

**A. SEC v. Nature’s Sunshine Products, Inc., et al. (D. Utah, July 31, 2009)**

*Entities and Individuals:*

- Nature’s Sunshine Products Inc. (NSP), civil complaint filed July 31, 2009.
- Douglas Faggioli, CEO, civil complaint filed July 31, 2009.
- Craig D. Huff, CFO, civil complaint filed July 31, 2009.

*Civil Charges:*

- Bribery of foreign officials (NSP)
- Fraud in connection with the purchase or sale of securities (NSP)
- Disclosure violations (NSP)
- Internal controls violations (all defendants)
- Falsification of books and records (all defendants)

*Location and Time Period of Misconduct:* Brazil, 2000-2002.

Summary:

On July 31, 2009, the SEC filed a settled enforcement action against Nature's Sunshine Products Inc. (NSP), a manufacturer of nutritional and personal care products, as well as its Chief Executive Officer Douglas Faggioli and its former Chief Financial Officer Craig D. Huff. This complaint alleged that the defendants violated the antifraud, issuer reporting, books and records, and internal controls provisions of federal securities laws in connection with a series of cash payments to Brazilian government officials in 2000 and 2001. The complaint alleged that, faced with changes to Brazilian regulations which resulted in classifying many of NSP's products as medicines, which would have required NSP to register many of its products for importation and sale, NSP's Brazilian subsidiary made a series of cash payments to customs officials in order to induce them to allow NSP to import unregistered products into that country. NSP's Brazilian subsidiary then purchased false documentation to conceal the nature of the payments, which were later falsely recorded in the books and records of NSP.

The complaint also alleged that Faggioli and Huff, in their capacities as control persons, violated the books and records and internal controls provisions of the FCPA in connection with the Brazilian cash payments. In addition, it is alleged that NSP failed to disclose the payments to Brazilian customs agents in its filings with the SEC.

Civil Disposition:

NSP, Faggioli and Huff, without admitting or denying the allegations in the complaint, consented to the entry of a final judgment that would enjoin each of the defendants from future violations of the above-stated provisions and would order NSP to pay a civil penalty of \$600,000, and Faggioli and Huff to each pay a civil penalty of \$25,000.

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**51. Helmerich & Payne, Inc.**

Resulting Criminal Enforcement Action(s):

**A. In Re Helmerich & Payne, Inc. (July 30, 2009)**

Resulting Civil/Administrative Enforcement Action(s):

**B. In the Matter of Helmerich & Payne, Inc. (July 30, 2009)**

Entities and Individuals:

- Helmerich & Payne, Inc. (H&P), non-prosecution agreement announced July 30, 2009; cease-and-desist order issued July 30, 2009.

Criminal Charges:

- Bribery of foreign officials
- Falsification of books and records

Civil Charges:

- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: Venezuela, 2003-2008; Argentina, 2004-2008.

Summary:

On July 30, 2009 Helmerich & Payne (H&P) entered into a non-prosecution agreement with the Department of Justice and the SEC initiated a settled administrative proceeding against H&P. These enforcement actions stemmed from a series of improper payments by H&P to government officials in Argentina and Venezuela in violation of the FCPA. H&P, a Delaware corporation, is headquartered in Tulsa, Oklahoma, and is listed on the New York Stock Exchange. The company provides oil drilling rigs, equipment and personnel on a contract basis, primarily in the United States and South America, with subsidiaries in both Argentina and Venezuela.

The improper payments were made to officials of the Argentine and Venezuelan customs services, both government agencies, made in order to import and export goods that were not within regulations, to import goods that could not lawfully be imported, and to evade higher duties and taxes on the goods. From 2004 through 2008, H&P Argentina paid Argentine customs officials approximately \$166,000, which allowed it to avoid more than an estimated \$186,000 in expenses it would have otherwise incurred if it had properly imported and exported the equipment and materials. In addition, from 2003 through 2008, H&P Venezuela made corrupt payments to Venezuelan customs officials totaling approximately \$19,673, which allowed it to avoid more than an estimated \$134,000 in expenses it would have otherwise incurred if it had properly imported and exported the equipment and materials.

H&P and its subsidiaries then falsely, or at least misleadingly, described these improper payments in H&P's books and records. For instance, the Argentine payments were described as attributable to "additional assessments," "extra costs," or "extraordinary expenses." Similarly, the Venezuelan payments were described as, for instance, "urgent processing," "urgent dispatch," or "customs processing."

Criminal Disposition:

As part of the non-prosecution agreement, H&P acknowledged responsibility for the actions of its subsidiaries, employees and agents who made the improper payments. The agreement required that H&P pay a \$1 million penalty, implement rigorous internal controls, and cooperate fully with the Department.

Civil Disposition:

In a related matter, H&P reached a settlement with the SEC, under which it agreed to pay \$320,604 in disgorgement of profits and \$55,077.22 in pre-judgment interest, and agreed to an entry of a cease-and-desist order.

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**52. Avery Dennison Corporation**

Resulting Civil/Administrative Enforcement Action(s):

- A. SEC v. Avery Dennison Corporation (C.D. Cal., July 28, 2009)**
- B. In the Matter of Avery Dennison Corporation (July 28, 2009)**

Entities and Individuals:

- Avery Dennison Corporation, civil complaint filed July 28, 2009; cease-and-desist order issued July 28, 2009.

Civil Charges:

- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: China, 2002-2005.

Summary:

On July 28, 2009, the SEC filed a settled civil action and a settled administrative order against Avery Dennison Corporation (Avery), a Pasadena, California-based multinational corporation, alleging violations of the FCPA in connection with improper payments and promises of improper payments to foreign officials by Avery's Chinese subsidiary and several entities Avery acquired. The SEC's civil complaint and administrative order charged that, from 2002 through 2005, the Reflectives Division of Avery (China) Co. Ltd. (Avery China) paid or authorized the payments of kickbacks, sightseeing trips, and gifts to Chinese government officials. The amount of illegal payments actually paid amounted to approximately \$30,000.

In one transaction, Avery China secured a sale to a state-owned end user by agreeing to pay a Chinese official a kickback of nearly \$25,000 through a distributor. Avery China realized \$273,313 in profit from this transaction, which it inaccurately booked as a sale to the distributor rather than to the end user. In addition, after Avery acquired a company in June 2007, employees of the acquired company continued their pre-acquisition practice of making illegal petty cash payments to customs or other officials in several foreign countries, resulting in illegal payments of approximately \$51,000. Avery failed to accurately record these payments and gifts in the company's books and records, and failed to implement or maintain a system of internal accounting controls sufficient to detect and prevent such illegal payments or promises of illegal payments.

Civil Disposition:

In the administrative proceeding, the SEC ordered Avery to cease and desist from such violations, and to disgorge \$273,213, together with \$45,257 in prejudgment interest. In the federal civil action, Avery agreed to the entry of a final judgment requiring it to pay a civil penalty in the amount of \$200,000.

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**53. Control Components, Inc.**

Related Criminal Enforcement Action(s):

- A. United States v. Control Components, Inc. (C.D. Cal., July 22, 2009)**
- B. United States v. Stuart Carson, et al. (C.D. Cal., April 8, 2009)**
- C. United States v. Richard Morlok (C.D. Cal., January 7, 2009)**
- D. United States v. Mario Covino (C.D. Cal., December 17, 2008)**

Entities and Individuals:

- Control Components, Inc. (CCI), charged July 22, 2009.
- Stuart Carson, CEO, indicted April 8, 2009.
- Hong (Rose) Carson, Director of Sales for China and Taiwan, indicted April 8, 2009.
- Paul Cosgrove, Director of Worldwide Sales, indicted April 8, 2009.
- David Edmonds, Vice President of Worldwide Customer Service, indicted April 8, 2009.

- Flavio Ricotti, Vice-President and Head of Sales for Europe, Africa, and the Middle East, indicted April 8, 2009.
- Han Yong Kim, President of CCI's Korean office, indicted April 8, 2009.
- Richard Morlok, Finance Director, charged January 7, 2009.
- Mario Covino, Director of Worldwide Factory Sales, charged December 17, 2008.

Criminal Charges:

- Conspiracy:
  - to bribe foreign officials (all defendants)
  - to commit commercial bribery (all defendants except Covino and Morlok)
- Bribery of foreign officials (all defendants except Morlok and Covino)
- Commercial bribery (Ricotti, Edmonds, and Cosgrove)
- Destruction of Records (Hong Carson)

Location and Time Period of Misconduct: Over 36 countries, including China, Malaysia, South Korea, India, United Arab Emirates, Romania, Brazil, 1998-2007.

Summary:

On July 22, 2009, Control Components, Inc. (CCI), a Rancho Santa Margarita, California-based company, was charged in a three count criminal information with violations of the FCPA and the Travel Act, stemming from a decade-long scheme to secure contracts in approximately 36 countries by paying bribes to officials and employees of various foreign state-owned companies as well as foreign and domestic private companies. Previously, two former executives of CCI, Mario Covino and Richard Morlok, were each charged with one count of conspiracy to bribe foreign officials in violation of the FCPA (on December 17, 2008 and January 7, 2009, respectively). On April 9, 2009, a grand jury in the Central District of California returned an indictment against six additional former CCI executives for their alleged roles in this bribery scheme.

According to court documents, from 2003 through 2007, CCI, a manufacturer of service control valves for use in the nuclear, oil and gas, and power generation industries, made approximately 236 corrupt payments to officers and employees of foreign state-owned and private companies in more than 30 countries. Sales from these corrupt payments resulted in net profits to the company of approximately \$46.5 million.

Covino, CCI's former Director of Worldwide Factory Sales, was charged in connection with his role in causing and approving approximately \$1 million in corrupt payments to foreign government officials from March 2003 through August 2007, for the purpose of obtaining business from state-owned enterprises in several countries, including, but not limited to, Brazil, China, India, Korea, Malaysia, and the United Arab Emirates (UAE). CCI ultimately earned approximately \$5 million in profits from the contracts it obtained as a result of these corrupt payments.

Morlok, CCI's former Finance Director, was charged in connection with his role in a scheme to pay approximately \$628,000 in bribes from 2003 through 2006 to foreign government officials in several countries, including China, Korea, Romania, and Saudi Arabia. CCI ultimately earned approximately \$3.5 million in profits from the contracts it obtained as a result of these corrupt payments.

According to the indictment of Stuart Carson, Hong (Rose) Carson, Paul Cosgrove, David Edmonds, Flavio Ricotti, and Han Yong Kim, these six defendants caused CCI to pay approximately \$4.9 million in bribes, in violation of the FCPA, to officials of foreign state-owned companies and approximately \$1.95 million in bribes, in violation of the Travel Act, to officers and employees of

foreign and domestic privately owned companies. The alleged corrupt payments were made to foreign officials at state-owned entities including Jiangsu Nuclear Power Corp. (China), Guohua Electric Power (China), China Petroleum Materials and Equipment Corp., PetroChina, Dongfang Electric Corporation (China), China National Offshore Oil Corporation, Korea Hydro and Nuclear Power, Petronas (Malaysia), and National Petroleum Construction Company (UAE).

*Criminal Disposition:*

On July 31, 2009, CCI pleaded guilty in the Central District of California. As part of the plea agreement, CCI agreed to pay a criminal fine of \$18.2 million; create, implement and maintain a comprehensive anti-bribery compliance program; retain an independent compliance monitor for a three-year period to review the design and implementation of CCI's anti-bribery compliance program and to make periodic reports to CCI and the Department; serve a three-year term of organizational probation; and continue to cooperate with the Department in its ongoing investigation.

Covino pleaded guilty to the one count criminal information on January 8, 2009, and agreed to cooperate with the Department in its ongoing investigation. As part of his plea agreement, Covino also admitted to providing false and misleading responses to internal auditors during a 2004 internal audit of the company's commission payments, and to deleting emails and instructing others to delete emails that referred to corrupt payments, for the purpose of obstructing the internal audit. Covino is currently scheduled to be sentenced on March 11, 2013.

Morlok pleaded guilty to the same charge on February 3, 2009. As part of his plea agreement, Morlok also admitted that he provided false and misleading information regarding the commission payments to internal and external auditors in 2004. Morlok is currently scheduled to be sentenced on March 11, 2013.

On April 17, 2012, Stuart Carson and his wife Hong "Rose" Carson pleaded guilty to one count each of violating the FCPA. On November 5, 2012, Stuart Carson was sentenced, in a 5K1.1 downward departure, to 4 months' imprisonment, followed by 3 years' supervised release, including 8 months' home confinement, and was ordered to pay a \$20,000 fine. On the same day, Hong "Rose" Carson was sentenced, in a court variance, to 3 years' probation, including 6 months' home confinement, and was ordered to pay a \$20,000 fine.

Cosgrove pleaded guilty on May 29, 2012, to one count of commercial bribery in violation of the FCPA. On September 13, 2012, taking into consideration Cosgrove's cardiac issues, he was sentenced to 13 months' home detention.

Flavio Ricotti was arrested in Frankfurt, Germany on February 14, 2010, and he was subsequently extradited to the United States on July 2, 2010. Ricotti pleaded guilty on April 28, 2011, and is currently scheduled to be sentenced on March 18, 2013.

On June, 14, 2012, David Edmonds pleaded guilty to one count of violating the FCPA. On December 17<sup>th</sup>, 2012, David Edmonds was sentenced to 4 months' imprisonment, followed by 3 years' supervised release, including 4 months' home confinement, and was ordered to pay a \$20,000 fine. The remaining counts were dismissed at sentencing.

Han Yong Kim remains a fugitive.

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**54. United Industrial Corporation**

*Resulting Civil/Administrative Enforcement Action(s):*

**A. In the Matter of United Industrial Corporation (May 29, 2009)**

## **B. SEC v. Thomas Wurzel (D.D.C., May 29, 2009)**

### Entities and Individuals:

- United Industrial Corporation, cease-and-desist order issued May 29, 2009.
- ACL Technologies, Inc. (parent was subject to enforcement action).
- Thomas Wurzel, President of ACL Technologies, Inc., civil complaint filed May 29, 2009.

### Civil Charges:

- Bribery of foreign officials (all defendants)
- Internal controls violations (all defendants)
- Falsification of books and records (UIC)
- False accounting (Wurzel)
- Aiding and abetting UIC's bribery of foreign officials (Wurzel)
- Aiding and abetting UIC's falsification of books and records (Wurzel)

Location and Time Period of Misconduct: Egypt, 2001-2002.

### Summary:

On May 29, 2009, the SEC filed a settled enforcement action in the U.S. District Court for the District of Columbia against Thomas Wurzel, the former President of ACL Technologies, Inc. (ACL), formerly a subsidiary of United Industrial Corporation (UIC), which provided aerospace and defense systems. In a related action, the SEC also instituted, on May 29, 2009, a settled administrative proceeding against UIC.

The Commission's complaint against Wurzel alleged that he authorized illicit payments to an Egyptian-based agent while he knew or consciously disregarded the high probability that the agent would offer, provide, or promise at least a portion of such payments to Egyptian Air Force officials for the purpose of influencing these officials to award business related to a military aircraft depot in Cairo, Egypt to UIC. From late 2001 through 2002, Wurzel authorized three forms of illicit payments to the agent: (1) payments to the agent ostensibly for labor subcontracting work; (2) a \$100,000 advance payment to the agent in June 2002 for "equipment and materials;" and (3) a \$50,000 payment to the agent in November 2002 for "marketing services." Furthermore, Wurzel later directed his subordinates to create false invoices to conceal the fact that the \$100,000 "advance payment" in June 2002 was never repaid. As a result, UIC, through ACL, was awarded a contract with gross revenues and net profits of approximately \$5.3 million and \$267,000, respectively.

### Civil Disposition:

Without admitting or denying the allegations contained in the complaint, Wurzel consented to the entry of a final judgment permanently enjoining him from future violations of the FCPA and ordering him to pay a \$35,000 civil penalty.

On May 29, 2009, without admitting or denying the SEC's findings, UIC agreed to an SEC order requiring it to cease-and-desist from committing or causing violations or future violations of the anti-bribery, books and records, and internal controls provisions of the FCPA. In addition, UIC was ordered to pay \$267,571 in disgorgement and \$70,108.42 in prejudgment interest.

**55. Novo Nordisk A/S**

Resulting Criminal Enforcement Action(s):

**A. United States v. Novo Nordisk A/S (D.D.C., May 11, 2009)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. Novo Nordisk A/S (D.D.C., May 11, 2009)**

Entities and Individuals:

- Novo Nordisk A/S, charged May 11, 2009; civil complaint filed May 11, 2009.

Criminal Charges:

- Conspiracy:
  - to commit wire fraud
  - to falsify books and records

Civil Charges:

- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: Iraq, 2001-2003.

Summary:

On May 11, 2009, Novo Nordisk A/S (Novo), a Danish corporation based in Bagsvaerd, Denmark, was charged in a one-count criminal information with conspiracy to commit wire fraud and to violate the books and records provisions of the FCPA. On the same date, the SEC filed a settled civil complaint against Novo in the U.S. District Court for the District of Columbia.

According to court documents, between 2001 and 2003, a Jordan-based agent acting on behalf of Novo, an international manufacturer of insulin, medicines and other pharmaceutical supplies, made improper payments worth approximately \$1.4 million to the former Iraqi government in order to obtain contracts with the Iraqi Ministry of Health to provide insulin and other medicines as part of the Oil-for-Food Program (OFFP).

Novo engaged its long-time Jordan-based agent to submit bids on Novo's behalf to Kimadia, the Iraqi State Company for the Importation and Distribution of Drugs and Medical Appliances, a state-owned company which was part of the Iraqi Ministry of Health. Two branches of Novo Nordisk – RONE, based in Athens, Greece, and NEO, based in Amman, Jordan – handled the sales to the Iraq and supplied the agent with bid prices for each contract. In late 2000 or early 2001, a Kimadia import manager advised the agent that Kimadia required Novo Nordisk to pay a ten percent kickback in order to obtain a contract under the Program. The Kimadia import manager told the agent that Novo Nordisk should increase its prices by ten percent and pay that amount to Kimadia. By doing so, Novo would recover the secret kickback from the U.N. escrow account when the contract, with the inflated price, was subsequently approved for disbursement and paid by the U.N.

Beginning in 2001 and continuing through 2003, Novo paid these kickbacks, characterized as "after-sales service fees" ("ASSFs"), by inflating the price of contracts by 10 percent before submitting the contracts to the U.N. for approval. Novo also concealed from the U.N. the fact that the price contained a kickback to the former Iraqi government. In addition, on at least two occasions in 2001,

Novo paid increased commissions to its agent to pay the kickbacks to Kimadia. The agent's commission was increased under the guise that the payment was used to cover the agent's increased distribution and marketing costs. All together, Novo paid over \$1.4 million in kickbacks payments on eleven contracts through the agent, and agreed to pay approximately \$1.3 million in ASSFs on two additional contracts. Novo then inaccurately recorded the kickback payments as "commissions" in its books and records.

Criminal Disposition:

On the same date that it was charged, Novo entered into a three-year deferred prosecution agreement with the Department of Justice, whereby it agreed to pay a \$9 million penalty.

Civil Disposition:

On May 11, 2009, Novo entered into a settlement with the SEC, which enjoined it from future violations of the FCPA, and required Novo to pay \$3,025,066 in civil penalties, \$4,321,523 in disgorgement of profits, and \$1,683,556 in pre-judgment interest.

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**56. ITT Corporation**

Resulting Civil/Administrative Enforcement Action(s):

**A. SEC v. ITT Corporation (D.D.C., February 11, 2009)**

Entities and Individuals:

- ITT Corporation, civil complaint filed February 11, 2009.
- Nanjing Gould Pumps Ltd. (complaint filed against parent company).

Civil Charges:

- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: China, 2001-2005.

Summary:

On February 11, 2009, the SEC filed a settled civil injunctive action in the U.S. District Court for the District of Columbia against ITT Corporation (ITT), a New York-based, global multi-industry company, alleging violations of the books and records and internal controls provisions of the FCPA. According to the SEC's complaint, ITT's violations of these provisions resulted from payments to Chinese government officials by ITT's wholly owned Chinese subsidiary, Nanjing Goulds Pumps Ltd. ("NGP"). NGP distributes a variety of water pump products that are sold to power plants, building developers, and general contractors throughout China.

From 2001 through 2005, NGP directly through certain employees, or indirectly through third-party agents, made illicit payments to numerous Chinese state-owned entities ("SOEs") to influence the purchase of NGP water pumps for large infrastructure projects in China, which were developed, constructed, and owned by the SOEs. NGP's illicit payments totaled approximately \$200,000, and the customers associated with those illicit payments generated over \$4 million in sales to NGP, from which ITT realized improper profits of more than \$1 million.

In addition, NGP disguised these payments as increased commissions in NGP's books and records. These improper NGP entries were then consolidated and included in ITT's financial statements contained in its filings with the Commission for the company's fiscal years 2001 through 2005.

Civil Disposition:

ITT, without admitting or denying the allegations in the Commission's complaint, consented to the entry of a final judgment permanently enjoining it from future violations. The judgment also ordered the company to pay \$1,041,112 in disgorgement and \$387,538.11 in prejudgment interest and a civil penalty in the amount of \$250,000.

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**57. Bribery of Thai Tourism Officials**

Resulting Criminal Enforcement Action(s):

- A. United States v. Juthamas Siriwan, et al. (C.D. Cal., January 28, 2009)**
- B. United States v. Gerald Green, et al. (C.D. Cal., January 16, 2008)**

Entities and Individuals:

- Gerald Green, Owner/Film Executive, indicted January 16, 2008; first superseding indictment filed October 1, 2008; second superseding indictment filed March 11, 2009.
- Patricia Green, Owner/Film Executive, indicted January 16, 2008; first superseding indictment filed October 1, 2008; second superseding indictment filed March 11, 2009.
- Juthamas Siriwan, Governor of the Tourism Authority of Thailand, indicted January 28, 2009.
- Jittisopa Siriwan, daughter of the Governor of the Tourism Authority of Thailand, indicted January 28, 2009.

Criminal Charges:

- Conspiracy:
  - to bribe foreign officials (Green, et al.)
  - to commit international money laundering (Green, et al.)
- Bribery of foreign officials (Green, et al.)
- Money laundering (Green, et al.)
- International money laundering (all defendants)
- False subscription of a federal tax return (Patricia Green)
- Obstruction of justice (Gerald Green)
- Aiding and abetting (Siriwan, et al.)

Location and Time Period of Misconduct: Thailand, 2002-2007.

Summary:

On December 18, 2007, Gerald Green and Patricia Green, the owner-operators of Film Festival Management, a Los-Angeles based company, were arrested on a criminal complaint filed on December 7, 2007, which charged them in connection with a scheme to pay bribes to tourism authorities in Thailand. The Greens were subsequently indicted by a federal grand jury in Los Angeles on January 16, 2008, on one count of conspiracy to bribe a foreign public official in violation of the FCPA and six substantive violations of the anti-bribery provisions of the FCPA. The charges against the Greens were

expanded pursuant to two superseding indictments, filed on October 1, 2008 and March 11, 2009, respectively, to include charges of conspiracy to commit money laundering, money laundering, obstruction of justice, and false subscription of a U.S. income tax return.

According to court documents, the Greens paid bribes to Juthamas Siriwan, then the governor of the Tourism Authority of Thailand (TAT) in exchange for receiving contracts to manage and operate Thailand's yearly "Bangkok International Film Festival," as well as contracts related to a promotional book on Thailand and the provision of an elite tourism "privilege card" marketed to wealthy foreigners. Ultimately, between 2002 and 2007, the Greens paid approximately \$1.8 million in bribes to Juthamas Siriwan through numerous bank accounts in Singapore, the United Kingdom, and the Isle of Jersey in the name of a friend of the former governor and the former governor's daughter, Jittisopa Siriwan. The contracts received by the Greens resulted in more than \$13.5 million in revenue to businesses they owned.

For their alleged roles in this bribery scheme, Juthamas Siriwan and Jittisopa Siriwan were indicted by a federal grand jury in Los Angeles on January 28, 2009. This indictment charges the former governor and her daughter with one count of conspiracy to commit international money laundering seven counts of transporting funds to promote unlawful activity, namely felony bribery in violation of the FCPA, and one count of aiding and abetting.

*Criminal Disposition:*

On September 11, 2009, following a 2 ½ week trial, Gerald Green and Patricia Green were each found guilty of conspiracy to violate the FCPA and money laundering laws of the United States, as well as ten counts of violating the FCPA, six counts of international money laundering, one count of money laundering, and one count of forfeiture. Patricia Green was also found guilty of two counts of falsely subscribing U.S. income tax returns in connection with the scheme.

On August 12, 2010, Gerald and Patricia Green were each sentenced to 6 months' imprisonment and 3 years' supervised release – to include 6 months' home confinement – and were ordered to pay restitution of \$250,000.

Gerald and Patricia Green appealed their convictions to the U.S. Court of Appeals for the 9<sup>th</sup> Circuit in October, 2010. That appeal is currently pending. The government filed a cross-appeal to the 6 months sentence both defendants received, but subsequently withdrew that appeal on August 23, 2011. Both Greens completed their sentences of imprisonment in June 2011.

Juthamas and Jittisopa Siriwan are currently fugitives.

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**58. Fiat S.p.A.**

*Resulting Criminal Enforcement Action(s):*

- A. United States v. Iveco S.p.A. (D.D.C., December 22, 2008)**
- B. United States v. CNH Italia S.p.A. (D.D.C., December 22, 2008)**
- C. United States v. CNH France S.A. (D.D.C., December 22, 2008)**

*Resulting Civil/Administrative Enforcement Action(s):*

- D. SEC v. Fiat S.p.A., et al. (D.D.C., December 22, 2008)**

*Entities and Individuals:*

- Fiat S.p.A., deferred prosecution agreement filed December 22, 2008; civil complaint filed December 22, 2008.
- Iveco S.p.A., charged December 22, 2008.
- CNH Italia S.p.A., charged December 22, 2008.
- CNH France S.A., charged December 22, 2008.
- CNH Global N.V., civil complaint filed December 22, 2008.

Criminal Charges:

- Conspiracy:
  - to falsify books and records (all defendants except CNH France S.A.)
  - to commit wire fraud (all defendants)

Civil Charges:

- Internal controls violations (all defendants)
- Falsification of books and records (all defendants)

Location and Time Period of Misconduct: Iraq, 2000-2003.

Summary:

On December 22, 2008, three subsidiaries of Fiat S.p.A. (Fiat), an Italian corporation based in Turin, Italy, were charged in the U.S. District Court for the District of Columbia in connection with a scheme to pay bribes to Iraqi government officials in order to win contracts under the U.N. Oil-for-Food Program (OFFP). Two Fiat subsidiaries, Iveco S.p.A. (Iveco) and CNH Italia S.p.A. (CNH Italia), were each charged with one count of conspiracy to commit wire fraud and to violate the books and records provisions of the FCPA. A third subsidiary, CNH France S.A. (CNH France), was charged with one count of conspiracy to commit wire fraud. The SEC simultaneously filed a civil complaint against Fiat and CNH Global N.V., alleging that Fiat and its subsidiaries violated the books and records and internal controls provisions of the FCPA in relation to the same conduct.

These charges stemmed from a series of improper payments made by Fiat to Iraqi government officials in order to obtain contracts with Iraqi ministries to provide industrial pumps, gears, and other equipment. According to court documents, between 2000 and 2002, Iveco, CNH Italia, and CNH France paid a total of approximately \$4.4 million in kickbacks (referred to as “after sales service fees” (ASSFs)) to the Iraqi government by inflating the price of contracts by 10 percent before submitting the contracts to the U.N. for approval, and concealed from the U.N. the fact that the price contained a kickback to the Iraqi government. Iveco and CNH Italia also inaccurately recorded the kickback payments as “commissions” and “service fees” for its agents in its books and records.

Criminal Disposition:

In recognition of Fiat’s thorough review of the illicit payments and its implementation of enhanced compliance policies and procedures, and in order to resolve the criminal charges against the three Fiat subsidiaries, Fiat and the Department entered into a three-year deferred prosecution agreement that required Fiat to pay a \$7 million criminal penalty.

Civil Disposition:

Without admitting or denying the allegations in the SEC’s complaint, Fiat consented to the entry of a final judgment permanently enjoining Fiat and CNH Global from future violations of the books and

records and internal controls provisions of the FCPA. In addition, as part of this judgment, Fiat was ordered to pay \$3.6 million in civil penalties and \$5,309,632 in disgorgement of profits and \$1,899,510 in prejudgment interest.

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## **59. Bid-Rigging in the International Market for Marine Hose**

### Resulting Criminal Enforcement Action(s):

#### **A. United States v. Misao Hioki (S.D. Tex., December 8, 2008)**

### Entities and Individuals:

- Misao Hioki, General Manager, charged December 8, 2008.

### Criminal Charges:

- Conspiracy:
  - to violate the Sherman Antitrust Act
  - to bribe foreign officials

Location and Time Period of Misconduct: Argentina, Brazil, Ecuador, Mexico, Venezuela, 2004-2007.

### Summary:

On December 8, 2008, Misao Hioki, the former general manager of his company's Industrial Engineered Products Department (IEP) in Tokyo, Japan, was charged in a two-count criminal information with one count of conspiracy to violate the Sherman Antitrust Act and one count of conspiracy to violate the anti-bribery provisions of the FCPA. Hioki was charged for his role in a conspiracy to rig bids, fix prices, and allocate market shares of marine hose in the United States and elsewhere and also for his role in a conspiracy to violate the FCPA by making corrupt payments to government officials in Latin America and elsewhere in order to obtain and retain business.

General Manager of the IEP department, Hioki was responsible for supervising IEP employees in both Japan and in regional subsidiaries, including a U.S. subsidiary, who were responsible for selling the company's products in Latin America. These IEP employees and subsidiaries contracted with local sales agents in many of the Latin American countries, and these sales agents sought to develop relationships with employees of the government-owned enterprises with which the company sought to do business. These sales agents would forward information regarding potential projects to the company's regional subsidiaries, including the U.S. subsidiary, who in turn forwarded the information to IEP employees in Japan. These local sales agents often negotiated with employees of the government-owned customers in Argentina, Brazil, Ecuador, Mexico, and Venezuela to establish a percentage of the total value of the proposed deal that would be corruptly paid to these foreign officials in order to secure their business. If the company secured the deal, the company, by and through its regional subsidiaries, would pay a commission to the local sales agent, which included the illicit payment to the foreign official(s).

In furtherance of this scheme, Hioki and others knowingly approved both these deals and the making of corrupt payments and took steps to conceal the improper payments. All together, from January 2004 through 2007, Hioki and others made more than \$1 million in corrupt payments to foreign government officials in Latin America to secure or retain business for IEP.

Criminal Disposition:

On December 10, 2008, Hioki became the ninth individual to plead guilty in the marine hose bid-rigging investigation and the first individual to plead guilty in the investigation of the FCPA conspiracy. On the same day, Hioki was sentenced to 24 months' imprisonment and a criminal fine of \$80,000, following the Antitrust Division's established practice of negotiating agreed-to-dispositions.

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**60. AMAC International**

Resulting Criminal Enforcement Action(s):

**A. United States v. Shu Quan-Sheng (E.D. Va., November 12, 2008)**

Entities and Individuals:

- Shu Quan-Sheng, President of AMAC International, charged November 12, 2008.

Criminal Charges:

- Bribery of foreign officials
- Unlawful export of a defense article

Location and Time Period of Misconduct: China, 2003-2007.

Summary:

On September 24, 2008, Shu Quan-Sheng, a native of China, naturalized U.S. citizen and PhD physicist, was arrested on charges of illegally exporting space launch technical data and services to the People's Republic of China (PRC) and offering bribes to Chinese government officials. Shu, the President, Secretary and Treasurer of AMAC International, a high-tech company located in Newport News, Virginia and with an office in Beijing, China, was subsequently charged on November 12, 2008, in a three-count information with the unlawful export of a defense article to a foreign person without prior approval in violation of the Arms Export Control Act, as well as bribery of a foreign official in violation of the FCPA.

According to court documents, from 2003 to 2007, Shu provided technical assistance and foreign technology acquisition expertise to several PRC government entities involved in the design, development, engineering, and manufacture of a space launch facility in the southern island province of Hainan, PRC. This facility was designed to house liquid-propelled heavy payload launch vehicles designed to send space stations and satellites into orbit, as well as provide support for manned space flight and future lunar missions.

Prior to the ultimate decision to award a \$4 million project to develop a 600 liter per hour liquid hydrogen tank system in January 2007, Shu allegedly offered illicit payments worth \$189,300 to officials within the PRC's 101<sup>st</sup> Research Institute, a component of the China Academy of Launch Vehicle Technology, in order to induce those officials to award the contract to a French company he represented, rather than a competitor. This liquefier was to be part of the 101 Institute's comprehensive research, development, and test base for liquid-propelled engines and space vehicle components, and at the time, the liquefier represented the first in as many as five additional projects to be undertaken by AMAC and the French company, all to be used as ground-based support for the launch vehicles at the Hainan launch facility. This successful brokering of this deal earned Shu and AMAC a commission.

As part of this project, Shu also allegedly exported controlled military technical data related to the design and manufacture of a “Standard 100 M3 Liquid Hydrogen (LH) 2 Tank” and illegally provided assistance to the foreign persons in the design, development, assembly, testing or modification of the tank and related components for the foreign launch facility. At no time during this period did Shu have the required licenses or written approvals with respect to brokering, export of defense articles, or proposals to provide defense services to the PRC.

Criminal Disposition:

On November 17, 2008, Shu pleaded guilty to the three count information before District Judge Henry C. Morgan, Jr. in the Eastern District of Virginia, Norfolk Division. On April 7, 2009, Shu was sentenced to 51 months’ imprisonment and ordered to forfeit \$386,740.

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**61. Nexus Technologies, Inc.**

Resulting Criminal Enforcement Action(s):

**A. United States v. Nam Quoc Nguyen, et al. (E.D. Pa., September 4, 2008)**

Entities and Individuals:

- Nexus Technologies Inc. (Nexus), indicted September 4, 2008; superseding indictment filed October 29, 2009.
- Nam Nguyen, President of Nexus Technologies Inc., indicted September 4, 2008; superseding indictment filed October 29, 2009.
- Joseph Lukas, joint venture partner of Nexus Technologies Inc., indicted September 4, 2008.
- Kim Nguyen, Vice President of Nexus Technologies Inc., indicted September 4, 2008; superseding indictment filed October 29, 2009.
- An Nguyen, employee of Nexus Technologies Inc., indicted September 4, 2008; superseding indictment filed October 29, 2009.

Criminal Charges:

- Conspiracy (all defendants)
- Bribery of foreign officials (all defendants)
- Commercial bribery (all defendants except Lukas)
- Money laundering (all defendants except Lukas)

Location and Time Period of Misconduct: Vietnam, 1999-2008.

Summary:

On September 4, 2008, Nexus and its employees, Nam Quoc Nguyen, Kim Nguyen, and An Nguyen, and joint venture partner Joseph Lukas, were indicted by a grand jury in Philadelphia, Pennsylvania on charges related to a scheme to pay bribes totaling at least \$250,000 to employees of state-owned enterprises in Vietnam in exchange for favorable treatment for Nexus in the award of procurement contracts.

Nexus, a privately owned export company, identified U.S. vendors for contracts opened for bid by the Vietnamese government and other companies operating in Vietnam. The contracts allowed for the purchase of a wide variety of equipment and technology, including underwater mapping equipment,

bomb containment equipment, helicopter parts, chemical detectors, satellite communication parts, and air tracking systems. Nam Nguyen negotiated the contracts and bribes with the Vietnamese government agencies and employees. Kim Nguyen, vice president of Nexus, oversaw the U.S. operations and handled company finances. Joseph Lukas and An Nguyen identified and negotiated with U.S. vendors to supply the goods needed to fulfill the contracts.

A superseding indictment of Nexus, Nam Nguyen, Kim Nguyen, and An Nguyen, which added charges, was returned by the same grand jury on October 29, 2009, charging one count of conspiracy and nine counts each of violating the FCPA, violating the Travel Act, and money laundering.

*Criminal Disposition:*

On June 29, 2009, Joseph Lukas pleaded guilty in relation to this conduct. On March 16, 2010, Nexus Technologies Inc., Nam Nguyen, Kim Nguyen, and An Nguyen each pleaded guilty. Nam Nguyen and An Nguyen each pled guilty to one count of conspiracy and one count of violating the FCPA, violating the Travel Act, and money laundering. Kim Nguyen pled guilty to one count of conspiracy, one count of violating the FCPA and money laundering. In pleading guilty, Nexus Technologies Inc. admitted to operating primarily through criminal means and agreed to cease all operations.

On September 15, 2010, Nam Nguyen was sentenced to 16 months' imprisonment followed by two years' supervised release. An Nguyen was simultaneously sentenced to 9 months' imprisonment followed by three years' supervised release. In recognition of their cooperation with the Government's investigation, Kim Nguyen and Joseph Lukas were sentenced to two years' probation, ordered to perform 200 hours of community service, and ordered to pay fines of \$20,000 and \$1,000, respectively. In accordance with its plea agreement, Nexus was given 1 year of organizational probation in which to completely cease operations, formally dissolve, and turn over all assets to the Court.

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**62. Con-Way Inc.**

*Resulting Civil/Administrative Enforcement Action(s):*

- A. SEC v. Con-Way Inc. (D.D.C., August 27, 2008)**
- B. In the Matter of Con-Way Inc. (August 27, 2008)**

*Entities and Individuals:*

- Con-Way, Inc., civil complaint filed August 27, 2008; cease-and-desist order issued August 27, 2008.
- Emery Transnational (civil complaint filed against parent).

*Civil Charges:*

- Internal controls violations
- Falsification of books and records

*Location and Time Period of Misconduct:* Philippines, 2000-2003.

*Summary:*

On August 27, 2008, the SEC settled a civil action in the U.S. District Court for the District of Columbia charging Con-Way Inc. (Con-way), a San Mateo, California international freight

transportation company, with violations of the books and records and internal controls provisions of the FCPA. The complaint alleges that between 2000 and 2003, Emery Transnational, Con-Way's Philippine subsidiary, made approximately \$244,000 in improper payments to foreign officials of the Philippines Bureau of Customs and the Philippine Economic Zone Area. The complaint alleges that these payments were made to induce these foreign officials to violate customs regulations, settle customs disputes, and reduce or not enforce otherwise legitimate fines. The complaint also alleges that the company made approximately \$173,000 in improper payments to foreign officials at fourteen state-owned airlines that conducted business in the Philippines. These payments were made to induce airline officials to improperly reserve space for Emery Transnational on airplanes, to falsely under-weigh shipments, and to improperly consolidate multiple shipments into a single shipment, resulting in lower shipping charges. According to the complaint, none of the improper payments were accurately reflected in Con-way's books and records, and Con-way knowingly failed to implement a system of internal accounting controls concerning Emery Transnational that would both ensure that Emery Transnational complied with the FCPA and require that the payments it made to foreign officials would be accurately reflected on its books and records.

Civil Disposition:

In a settlement agreement with the SEC, Con-Way agreed to cease-and-desist from future violations of the FCPA and to pay \$300,000 in civil penalties.

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**63. AGA Medical Corporation**

Resulting Criminal Enforcement Action(s):

**A. United States v. AGA Medical Corporation (D. Minn., June 3, 2008)**

Entities and Individuals:

- AGA Medical Corporation, charged June 3, 2008.

Criminal Charges:

- Conspiracy to bribe foreign officials
- Bribery of foreign officials

Location and Time Period of Misconduct: China, 1997-2005.

Summary:

On June 3, 2008, AGA Medical Corporation (AGA), a privately-held medical device manufacturer, incorporated and headquartered in Minnesota, was charged in a two-count criminal information with one count of conspiring to make bribe payments to Chinese officials and one count of violating the FCPA in connection with the authorization of specific corrupt payments to officials in the People's Republic of China (PRC).

According to the criminal information, between 1997 and 2005, AGA, a high-ranking officer of AGA and other AGA employees agreed to make corrupt payments to doctors in China who were employed by government-owned hospitals and caused those payments to be made through AGA's local Chinese distributor. In exchange for these payments, the Chinese doctors directed the government-owned hospitals to purchase AGA's products rather than those of the company's competitors.

The criminal information also alleges that from 2000 through 2002, AGA sought patents on several AGA products from the PRC State Intellectual Property Office. As a part of this effort, AGA and a high-ranking officer of AGA agreed to make payments through their local Chinese distributor to Chinese government officials employed by the State Intellectual Property Office in order to have the patents approved.

Criminal Disposition:

On June 3, 2008, AGA entered into a three-year deferred prosecution agreement with the Department. As part of this agreement, AGA agreed to pay a \$2 million criminal fine and to engage an independent compliance monitor.

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**64. Willbros Group Inc.**

Resulting Criminal Enforcement Action(s):

- A. United States v. Willbros Group Inc., et al. (S.D. Tex., May 14, 2008)**
- B. United States v. James K. Tillery, et al. (S.D. Tex., January 17, 2008)**
- C. United States v. Jason Edward Steph (S.D. Tex., July 19, 2007)**
- D. United States v. Jim Bob Brown (S.D. Tex., September 11, 2006)**

Resulting Civil/Administrative Enforcement Action(s):

- E. SEC v. Willbros Group Inc., et al. (S.D. Tex., May 14, 2008)**
- F. SEC v. Jim Bob Brown (S.D. Tex., September 14, 2006)**

Entities and Individuals:

- Willbros Group, Inc. (WGI), charged May 14, 2008; civil complaint filed May 14, 2008.
- Willbros International, Inc. (WII), charged May 14, 2008.
- Jim Bob Brown, WII's Managing Director (Nigeria), charged September 11, 2006; civil complaint filed September 14, 2006.
- Jason Edward Steph, WII's General Manager-Onshore in Nigeria, indicted July 19, 2007; civil complaint filed May 14, 2008.
- James K. Tillery, Executive Vice President and President of WII, indicted January 17, 2008.
- Paul G. Novak, Consultant and Intermediary, indicted January 17, 2008.
- Gerald Jansen, WII's Administrator and General Manager-Finance, civil complaint filed May 14, 2008.
- Lloyd Biggers, WII Employee, civil complaint filed May 14, 2008.
- Carlos Galvez, WII Accounting and Administrative Employee, civil complaint filed May 14, 2008.

Criminal Charges:

- Conspiracy:
  - to bribe foreign officials (all defendants)
  - to falsify books and records (WGI and WII)
  - to commit money laundering (Tillery, Novak, and Steph)
- Bribery of foreign officials (Tillery and Novak)
- International Money Laundering (Steph)

Civil Charges:

- Bribery of foreign officials (Willbros and Steph)
- Fraud in connection with the purchase and sale of securities (Willbros)
- Aiding and abetting Willbros' fraud violations (Galvez)
- Disclosure violations (Willbros)
- Aiding and Abetting Willbros' disclosure violations (Galvez)
- Internal controls violations (Willbros)
- Falsification of books and records (Willbros)
- False accounting violations (Steph, Jansen, Galvez, Biggers)
- Aiding and abetting Willbros' bribery of foreign officials (Steph, Jansen, Biggers)
- Aiding and abetting Willbros' internal controls violations (Steph, Jansen, Galvez, Biggers)
- Aiding and abetting Willbros' falsification of books and records (Steph, Jansen, Galvez, Biggers)

Location and Time Period of Misconduct: Nigeria, 2003-2005; Ecuador, 2004.

Summary:

On May 14, 2008, Willbros Group Inc. (WGI), a publicly-traded company that provides construction, engineering and other services in the oil and gas industry, and Willbros International Inc. (WII), the wholly owned subsidiary through which it conducts international operations, were charged in a six-count criminal information with one count of conspiring to make bribe payments to Nigerian and Ecuadorian officials, two counts of violating the anti-bribery provisions of the FCPA, and three counts of violating the books and records provisions of the FCPA. These charges stemmed from a bribery scheme involving senior officials of WII, which involved the corrupt payment of more than \$6.3 million to Nigerian officials in connection with a gas pipeline construction project and \$300,000 to Ecuadorian officials in connection with a gas pipeline rehabilitation project.

From late 2003 through March 2005, WII employees agreed to make corrupt payments totaling more than \$6.3 million to officials of the Nigerian National Petroleum Corporation (NNPC), the state-owned oil company in Nigeria; NNPC's subsidiary, the National Petroleum Investment Management Services (NAPIMS); a senior official in the executive branch of the Nigerian federal government; officials of a multinational oil company; and a Nigerian political party. These bribes were paid to Nigerian government officials to assist in obtaining and retaining a \$387 million contract for work on a major engineering, procurement and construction gas pipeline project known as the Eastern Gas Gathering System (EGGS). In addition, in 2004, various WII employees paid at least \$300,000 to officials of the Ecuadorian state-owned oil company in order to obtain a gas pipeline rehabilitation contract.

Three former WII employees and one WII agent have been charged criminally for their participation in this bribery scheme. Jim Bob Brown, WII's Managing Director (Nigeria and Ecuador), was charged in connection with conspiring with other WII executives to pay approximately \$1.5 million in cash to Nigerian officials and \$300,000 to Ecuadorian officials. According to court documents, from 1996 through 2005, Brown also conspired with other WII executives to approve a scheme in which WII's Nigerian operations submitted fictitious invoices for payment by WGI. These funds were used, in part, to make corrupt payments to officials of the Nigerian revenue agencies and courts in order to lower taxes that would have otherwise been assessed, and to influence favorably litigation in Nigeria affecting the business of WGI.

Jason Edward Steph, WII's General Manager-Onshore in Nigeria, was charged in relation to his role in causing a series of corrupt payments totaling more than \$6 million to be made to various Nigerian officials in order to assist WII in obtaining and retaining the EGGS deal. According to court documents, in early 2005, as a senior WII executive, Steph authorized and arranged for the payment of \$1.8 million in cash to the Nigerian officials to further the conspiracy.

James K. Tillery, Executive Vice President and President of WII, was charged in connection with the payment of more than \$6 million in bribes to Nigerian and Ecuadorian government officials. Tillery was charged with one count of conspiracy to violate the anti-bribery provisions of the FCPA, two counts of violating the anti-bribery provisions of the FCPA, and one count of conspiracy to launder money.

Paul G. Novak was charged for his role as an intermediary in the payment of more than \$6 million in bribes to Nigerian and Ecuadorian government officials. Novak was charged with one count of conspiracy to violate the anti-bribery provisions of the FCPA, two counts of violating the anti-bribery provisions of the FCPA, and one count of conspiracy to launder money.

*Criminal Disposition:*

On May 14, 2008, WGI (and WII) entered into a deferred prosecution agreement with the Department of Justice. As part of the agreement, WGI agreed to pay a fine of \$22 million.

Jason Edward Steph pleaded guilty on November 5, 2007 and was sentenced on January 28, 2010 to 15 months' incarceration, 2 years' supervised release, and a fine of \$2,000. Steph's sentence reflected a reduction in its severity because of his cooperation with the government.

On January 28, 2010, Jim Bob Brown was sentenced to 12 months and 1 day's incarceration, 2 years' supervised release, and a fine of \$17,500 in connection with his September 2006 guilty plea. Brown's sentence also reflected a reduction in its severity due to his cooperation with the government.

On November 12, 2009, Paul G. Novak pleaded guilty to participating in a conspiracy to violate the FCPA. Novak had been a fugitive, but he returned to the United States from Constantia, South Africa, after his U.S. passport was revoked. He is currently awaiting sentencing.

James K. Tillery is a fugitive and remains at large.

*Civil Disposition:*

To settle the civil charges filed by the SEC, WGI agreed to disgorge \$8.9 million in profits and \$1.4 million in prejudgment interest.

In order to settle the related civil complaints by the SEC, Jansen, Biggers, Galvez each consented to judgments that permanently enjoin them from future violations of the FCPA. In addition, Jansen and Galvez were subject to civil penalties in the amount of \$30,000 and \$35,000, respectively.

In order to settle the civil charges brought by the SEC, Steph and Brown also consented to the entry of judgments, which permanently enjoin them from future violations of the FCPA. Pursuant to these judgments, the Court will determine later whether Steph and/or Brown will pay a civil penalty and what the amount of such penalty will be.

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**65. Pacific Consolidated Industries LP**

*Resulting Criminal Enforcement Action(s):*

- A. **United States v. Martin Eric Self (C.D. Cal., May 2, 2008)**
- B. **United States v. Leo Winston Smith (C.D. Cal., April 25, 2007)**

Entities and Individuals:

- Pacific Consolidated Industries LP (PCI) (company had ceased to exist).
- Martin Eric Self, President and Owner, charged May 2, 2008.
- Leo Winston Smith, Executive VP & Director of Sales and Marketing, indicted April 25, 2007.

Criminal Charges:

- Conspiracy:
  - to bribe foreign officials (Smith)
  - to commit money laundering (Smith)
- Bribery of foreign officials (both defendants)
- International money laundering (Smith)
- False statement in a tax return (Smith)

Location and Time Period of Misconduct: United Kingdom, 1993-2003.

Summary:

On May 2, 2008, Martin Eric Self, a former Pacific Consolidated Industries (PCI) executive was charged in a two-count information with violating the FCPA in connection with the illicit payment of more than \$70,000 in bribes for the benefit of a U.K. Ministry of Defense (UK-MOD) official in exchange for obtaining and retaining lucrative contracts with the U.K. Royal Air Force for PCI. Previously, on April 25, 2007, another former PCI executive, Leo Winston Smith, was indicted by a federal grand jury in Santa Ana, California, on several counts of FCPA violations and money laundering in connection with his participation in a scheme to make over \$300,000 in illicit payments to the same foreign official from 1993-2003. Smith was also charged with failing to report nearly \$500,000 in commissions from PCI on his 2003 U.S. tax return.

PCI was a private company headquartered in Santa Ana that manufactured Air Separation Units (ASUs) and other equipment for defense departments throughout the world. ASUs generate oxygen in remote, extreme, and confined locations for aircraft support and military hospitals. Self, a U.S. citizen, was a partial owner and the president of PCI at the time the crimes were committed. As president, Self was a signatory on PCI marketing agreements and bank accounts.

In or about October 1999, Self and Smith, PCI's then-executive vice president and director of sales and marketing, caused PCI to enter into a marketing agreement with a person they understood to be a relative of the UK-MOD official. The UK-MOD official was a project manager who was directly involved in the procurement of ASUs on behalf of the UK-MOD and, as a result of his position, was able to influence the awarding of the ASU contracts to PCI. The ASU and related contracts that were awarded to PCI were valued at over \$11 million.

According to court documents, the defendants were not aware of any genuine services provided by the official's relative, and they believed that there was a high probability that the payments were being made to the official's relative in order to benefit the official in exchange for PCI obtaining and retaining the ASU contracts. Despite these beliefs, Self initiated several of the improper wire transfers to the relative and deliberately avoided learning the true facts relating to the nature and purpose of the payments.

Criminal Disposition:

On November 17, 2008, Self was sentenced to two years' probation and a fine of \$20,000 in connection with his May 2008 guilty plea. Smith pleaded guilty on September 3, 2009. On December 2,

2010, Smith was sentenced to 6 months' imprisonment followed by 6 months' home confinement and 3 years' supervised release. Smith was also order to pay a fine of \$7,500. The UK-MOD official pleaded guilty in the U.K. to accepting more than \$300,000 in bribes from PCI and was sentenced to two years in prison.

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## **66. AB Volvo**

### Resulting Criminal Enforcement Action(s):

- A. United States v. Volvo Construction Equipment, AB (D.D.C., March 20, 2008)**
- B. United States v. Renault Trucks SAS (D.D.C., March 20, 2008)**

### Resulting Civil/Administrative Enforcement Action(s):

- C. SEC v. AB Volvo (D.D.C., March 20, 2008)**

### Entities and Individuals:

- AB Volvo, deferred prosecution agreement announced March 20, 2008.
- Volvo Construction Equipment AB, charged March 20, 2008.
- Renault Trucks SAS, charged March 20, 2008.

### Criminal Charges:

- Conspiracy:
  - to falsify books and records (all defendants)
  - to commit wire fraud (all defendants)

### Civil Charges:

- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: Iraq, 2000-2003.

### Summary:

On March 20, 2008, AB Volvo, a Swedish company, entered into a deferred prosecution agreement with the Department of Justice and a settlement agreement with the SEC in connection with payments made by two of its subsidiaries to obtain contracts administered by the United Nations Oil for Food Program (OFFP). The subsidiaries, Renault Trucks SAS (Renault Trucks) and Volvo Construction Equipment AB (VCE), were charged in separate conspiracies to commit wire fraud and violate the books and records provision of the FCPA.

According to the court documents, between November 2000 and April 2003, employees and agents of Renault Trucks paid a total of approximately \$5 million in kickbacks to the Iraqi government for a total of approximately €61 million worth of contracts with various Iraqi ministries. To pay the kickbacks, Renault Trucks inflated the price of contracts by approximately 10 percent before submitting them to the U.N. for approval and concealed from the U.N. the fact that the contract prices contained a kickback to the Iraqi government. In some cases, Renault Trucks paid inflated prices to companies that outfitted the chassis and cabs produced by Renault Trucks. Those companies then used the excess funds to pay the kickbacks to the Iraqi government on behalf of Renault Trucks.

Between December 2000 and January 2003, Volvo Construction Equipment International AB (VCEI), the predecessor to VCE, and its distributors were awarded a total of approximately \$13.8 million worth of contracts. During the same time period, employees, agents and distributors of VCEI paid a total of approximately \$1.3 million in kickbacks to the Iraqi government by inflating the price of contracts by approximately 10 percent before submitting them to the U.N. for approval. Similar to Renault Trucks, VCE concealed from the U.N. the fact that the contract prices contained a kickback to the Iraqi government.

Criminal Disposition:

To resolve its criminal liability in connection with this bribery scheme, AB Volvo, on behalf of itself and its subsidiaries, entered into a three-year deferred prosecution agreement with the Department, whereby AB Volvo agreed to pay a criminal fine of \$7 million.

Civil Disposition:

In a settlement with the SEC, AB Volvo agreed to a permanent injunction from future violations and to pay \$7,299,208 in disgorgement of profits and \$1,303,441 in prejudgment interest, as well as civil penalties in the amount of \$4 million.

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**67. Flowserve Corporation**

Resulting Criminal Enforcement Action(s):

**A. United States v. Flowserve Pompes SAS (D.D.C., February 21, 2008)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. Flowserve Corporation (D.D.C., February 21, 2008)**

Entities and Individuals:

- Flowserve Corporation, civil complaint filed February 21, 2008.
- Flowserve Pompes SAS, charged February 21, 2008.

Criminal Charges:

- Conspiracy:
  - to falsify books and records
  - to commit wire fraud

Civil Charges:

- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: Iraq, 2001-2003.

Summary:

On February 21, 2008, the Department of Justice and the SEC simultaneously filed a criminal information and a civil complaint against Flowserve Pompes SAS (Flowserve Pompes), and its parent

company, Flowserve Corporation (Flowserve), in the U.S. District Court for the District of Columbia. The information charges that Flowserve Pompes engaged in a conspiracy to commit wire fraud and to violate the books and records provisions of the FCPA in connection with a scheme to pay kickbacks to the Iraqi government under the United Nations Oil for Food Program (OFFP). The SEC's civil complaint charges Flowserve with violating the books and records and internal controls provisions of the FCPA in connection with the same underlying conduct.

According to documents filed in the criminal and civil cases, the French and Dutch subsidiaries of Flowserve, a Texas-based manufacturer of pumps, valves, seals, and related automation services for the oil and gas, chemical, and power industries, paid or promised to pay approximately \$820,246 from 2001 to 2003 in connection with the sale of industrial equipment to the Iraqi government. Flowserve Pompes, Flowserve's French subsidiary, concealed illegal payments to the Iraqi government totaling \$604,651 through a Jordanian entity that was its exclusive agent for Iraqi contracts. These payments were made to assist Flowserve Pompes in obtaining fifteen contracts for the sale of large-scale water pumps and spare parts for use in Iraqi oil refineries. Flowserve Pompes also agreed to, but did not ultimately make, an additional \$173,758 in improper payments pursuant to four additional contracts, as delivery under these four contracts had not been completed by the time of the U.S. invasion of Iraq in March 2003. Senior officials at Flowserve Pompes, including its President, allegedly developed different false cover stories to conceal these kickback payments in the company's internal accounting records.

According to the SEC's complaint, Flowserve's Dutch Subsidiary, Flowserve B.V., also entered into one contract involving an improper kickback under the OFFP. Specifically, Flowserve B.V. paid \$41,836 in kickbacks to Iraqi officials in order to obtain a contract to supply water pump spare parts to the Iraqi government-owned South Gas Company.

*Criminal Disposition:*

Flowserve entered into a three-year deferred prosecution agreement with the Department and paid a \$4 million fine. Flowserve also entered into a non-prosecution agreement with the Dutch prosecutor, which included a \$376,000 fine.

*Civil Disposition:*

To settle the pending civil charges brought by the SEC, Flowserve agreed to pay a \$3 million civil penalty and approximately \$2,270,861 in disgorgement and \$853,364 in prejudgment interest. Flowserve also agreed to an order enjoining it from future violations of the FCPA.

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**68. Westinghouse Air Brake Technologies Corporation (“Wabtec”)**

*Resulting Criminal Enforcement Action(s):*

**A. In Re Westinghouse Air Brake Technologies Corporation (February 14, 2008)**

*Resulting Civil/Administrative Enforcement Action(s):*

**B. SEC v. Westinghouse Air Brake Technologies Corporation (E.D. Pa., February 14, 2008)**

**C. In the Matter of Westinghouse Air Brake Technologies Corporation (February 14, 2008)**

*Entities and Individuals:*

- Westinghouse Air Brake Technologies Corporation, non-prosecution agreement announced, civil complaint filed, and cease-and-desist order issued February 14, 2008.

Criminal Charges:

- Bribery of foreign officials
- Falsification of books and records

Civil Charges:

- Bribery of foreign officials
- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: India, 2001-2005.

Summary:

On February 14, 2008, Westinghouse Air Brake Technologies Corporation (Wabtec), a Pennsylvania-based and New York Stock Exchange-listed manufacturer of brake subsystems and related products for locomotives, freight cars, and passenger vehicles, entered into a non-prosecution agreement with the Department of Justice regarding improper payments made by its Indian subsidiary, Pioneer Friction Limited (Pioneer), to officials of the Indian Railway Board (IRB). On the same date, the SEC filed a settled civil enforcement proceedings charging Wabtec with violations of the anti-bribery, internal controls, and books and records provisions of the FCPA.

According to court documents, from at least 2001 through 2005, Pioneer made over \$137,400 in improper cash payments to officials of the Indian Railway Board, a government agency which is part of India's Ministry of Railroads. These payments were made in order to: (a) assist Pioneer in obtaining and retaining business with the IRB; (b) schedule pre-shipping product inspections; (c) obtain issuance of product delivery certificates; and, (d) curb what Pioneer considered to be excessive tax audits.

Criminal Disposition:

In recognition of its voluntary disclosure, thorough internal investigation, full cooperation, and institution of remedial compliance measures, the Department agreed not to prosecute Wabtec or Pioneer for the making or false recording of these improper payments, provided that Wabtec satisfied its obligations under the agreement for a period of three years. Those obligations included continued cooperation, the adoption of rigorous internal controls, and the payment of a \$300,000 criminal penalty.

Civil Disposition:

The SEC filed two settled actions against Wabtec, which required the company to cease-and-desist from future violations, to retain an independent FCPA compliance monitor, to pay a civil penalty of \$87,000, and to disgorge \$259,000, together with \$29,351 in prejudgment interest.

**69. Lucent Technologies Inc.**

Resulting Criminal Enforcement Action(s):

**A. In Re Lucent Technologies Inc. (December 21, 2007)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. Lucent Technologies Inc. (D.D.C., December 21, 2007)**

Entities and Individuals:

- Lucent Technologies Inc., non-prosecution agreement announced and civil complaint filed December 21, 2007.

Criminal Charges:

- Bribery of foreign officials
- Falsification of books and records

Civil Charges:

- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: China, 2000-2003.

Summary:

On December 21, 2007, the Department of Justice and the SEC settled a multi-year investigation into whether global communications provider Lucent Technologies Inc. (Lucent) provided travel and other things of value to Chinese government officials. As part of the settlement, Lucent acknowledged that, from at least 2000 to 2003, it spent millions of dollars on approximately 315 “pre-sale” and “post-sale” trips for Chinese government officials that included primarily sightseeing, entertainment and leisure. These trips were requested and approved with the consent and knowledge of the most senior Lucent Chinese officials and with the logistical and administrative assistance of Lucent employees in the United States, including at corporate headquarters in Murray Hill, N.J. Lucent also admitted that it improperly recorded expenses for these trips in its books and records and failed to provide adequate internal controls to monitor the provision of travel and other things of value to Chinese government officials.

Lucent acknowledged that it provided Chinese government officials with pre-sale trips to the United States to attend seminars and visit Lucent facilities, as well as to engage in sightseeing, entertainment and leisure activities. In 2002 and 2003 alone, there were 24 Lucent-sponsored pre-sale trips for Chinese government customers. Of these, at least 12 trips were mostly for the purpose of sightseeing. Lucent spent over \$1.3 million on at least 65 pre-sale visits between 2000 and 2003. The individuals participating in these trips were senior level government officials, including the heads of state-owned telecommunications companies in Beijing and the leaders of provincial telecommunications subsidiaries.

Between 2000 and 2003, Lucent also provided Chinese government officials with post-sale trips that were typically characterized as “factory inspections” or “training” in contracts with its Chinese government customers. By 2001, however, Lucent had outsourced most of its manufacturing and no longer had any Lucent factories for its customers to tour. Nevertheless, Lucent provided individuals with trips for “factory inspections” to the United States, Europe, Australia, Canada, Japan and other countries that involved little or no business content. These trips consisted primarily or entirely of sightseeing to locations such as Disneyland, Universal Studios, the Grand Canyon, and in cities such as Los Angeles, San Francisco, Las Vegas, Washington, D.C., and New York City, and typically lasted 14 days each and cost between \$25,000 and \$55,000 per trip.

Criminal Disposition:

To resolve its potential criminal liability in connection with this improper conduct, Lucent entered into a two-year non-prosecution agreement with the Department and agreed to pay a \$1 million criminal fine. Under the terms of this agreement, Lucent was required to adopt new or modify existing internal controls, policies and procedures. Those enhanced compliance controls must ensure that Lucent makes and keeps fair and accurate books, records and accounts, as well as a rigorous anti-corruption compliance code, standards and procedures designed to detect and deter violations of the FCPA and other applicable anti-corruption laws.

Civil Disposition:

In a settlement with the SEC, Lucent agreed to be enjoined from future violations and to pay \$1.5 in civil penalties.

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**70. Akzo Nobel, N.V.**

Resulting Criminal Enforcement Action(s):

**A. In Re Akzo Nobel N.V. (December 20, 2007)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. Akzo Nobel N.V. (D.D.C., December 20, 2007)**

Entities and Individuals:

- Akzo Nobel N.V., non-prosecution agreement announced and civil complaint filed December 20, 2007.

Criminal Charges:

- Bribery of foreign officials
- Falsification of books and records

Civil Charges:

- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: Iraq, 2000-2003.

Summary:

On December 20, 2007, the Department of Justice and the SEC settled allegations against Akzo Nobel N.V. (Akzo), for its participation in a kickback scheme surrounding the United Nations Oil for Food Program (OFFP). Akzo Nobel, a Dutch pharmaceutical company with its headquarters in Arnhem, Netherlands, acknowledged responsibility for the actions of two of its subsidiaries whose employees and agents made nearly \$280,000 in kickback payments to the Iraqi government from 2000-2003, which were characterized as “after-sales service fees” (ASSFs).

In 2000, Akzo subsidiary Intervet International B.V. (Intervet) entered into one OFFP contract involving a kickback payment of \$38,741. During the OFFP, Intervet conducted business in Iraq through

two separate agents, who were paid jointly on all Iraqi contracts. In August 2000, the agents' fees were 2.5 percent each. In September 2000, one of the agents informed Intervet that the Iraqi ministry required that Intervet make a five percent kickback under an OFFP contract under negotiation. Although Intervet initially refused to make the payment, at the contract signing, an Intervet employee who was aware of the kickback demand saw the agent deliver an envelope to one of the Iraqi representatives. Shortly thereafter, the agent sought reimbursement of the five percent kickback made on the contract. In order to reimburse the agent for the kickback while not accurately reflecting the true purpose of the payment in the company's books and records, the Intervet employees agreed to revert to Intervet's pre-August 2000 commission arrangement with its two agents, giving each agent a five percent commission. By doing so, the agents could keep the 2.5 percent they were each entitled to receive and the agent who paid the kickback could be reimbursed for the five percent passed on to the Iraqi ministry.

During this period, another Akzo subsidiary, N.V. Organon (Organon), entered into three contracts that involved the payment of \$240,750 in ASSF payments to Iraqi officials. The same agent that worked on the Intervet transaction was involved in each of these transactions. On the first contract, Organon and the Iraqi ministry agreed on an initial contract price. However, when Organon prepared the contract documents that were approved by the U.N., Organon inflated the contract price by ten percent to cover the ASSF payment. On the two subsequent contracts, Organon simply agreed with the Iraqi ministry on an initial contract price that was inflated by ten percent, and then submitted that inflated contract price in the U.N. documents. An Organon employee created backdated price quotes that matched the pricing reflected in the three contracts. The agent's commission was increased from five percent to fifteen percent to account for the ten percent kickback. On the first contract, the agent requested that Organon pay the extra ten percent commission to an entity called "Sabbagh Drugstore." On the remaining two contracts, the agent requested that Organon pay the extra ten percent commissions directly to an account in his name. The Organon employees were aware that the contract price submitted to the U.N. was inflated by ten percent and that the increase in the agent's commission resulted in money going directly to Kimadia, a unit of the Iraqi Ministry of Health.

Criminal Disposition:

With regard to its criminal conduct, Akzo entered into a non-prosecution agreement with the Department, which required the company to cooperate fully with the ongoing investigation. In addition, the agreement stipulated that if Organon reached a resolution with the Dutch National Public Prosecutor's Office for Financial, Economic and Environmental Offences regarding its conduct, including payment of a criminal fine of approximately €381,000 in the Netherlands, then it would pay no fine in the U.S. If no agreement was reached with Dutch authorities in that time, Akzo would have to pay a criminal fine of \$800,000 in the United States.

Civil Disposition:

The SEC settlement enjoined Akzo from future violations and required the corporation to disgorge \$1,647,363 in profits and \$584,150 in prejudgment interest and pay a \$750,000 civil penalty.

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**71. Schnitzer Steel Industries, Inc.**

Resulting Criminal Enforcement Action(s):

- A. United States v. Si Chan Wooh (D. Or., June 26, 2007)**
- B. United States v. SSI International Far East Ltd. (D. Or., October 10, 2006)**

Resulting Civil/Administrative Enforcement Action(s):

- C. SEC v. Robert W. Philip (D. Or., December 13, 2007)**
- D. SEC v. Si Chan Wooh (D. Or., June 29, 2007)**
- E. In the Matter of Schnitzer Steel Industries, Inc. (October 16, 2006)**

Entities and Individuals:

- Schnitzer Steel Industries, Inc. (SSI), deferred prosecution agreement announced and cease-and-desist order issued October 16, 2006.
- SSI International Far East Ltd. (SSI Korea), charged October 10, 2006.
- Si Chan Wooh, Senior Officer of SSI Korea, charged June 26, 2007; civil complaint filed June 29, 2007.
- Robert W. Philip, President, CEO and Chairman of the Board of SSI, civil complaint filed December 13, 2007.

Criminal Charges:

- Conspiracy
  - to bribe foreign officials (SSI Korea and Wooh)
  - to falsify books and records (SSI Korea)
  - to commit wire fraud (SSI Korea)
- Bribery of foreign officials(SSI Korea)
- Falsification of books and records (SSI Korea)
- Wire fraud (SSI Korea)
- Aiding and abetting SSI's falsification of books and records (SSI Korea)

Civil Charges:

- Bribery of foreign officials (SSI, Philip, Wooh)
- Internal controls violations (SSI)
- Falsification of books and records (SSI)
- Aiding and abetting SSI's bribery of foreign officials (Philip, Wooh)
- Aiding and abetting SSI's internal controls violations (Philip, Wooh)
- Aiding and abetting SSI's falsification of books and records (Philip, Wooh)

Summary:

On October 10, 2006, SSI International Far East Ltd. (SSI Korea), a wholly-owned subsidiary of Schnitzer Steel Industries Inc. (SSI), was charged with conspiracy, bribery in violation of the FCPA, wire fraud, and aiding and abetting the making of false entries in SSI's books and records. These charges stemmed from a decade-long scheme to bribe foreign officials in China and South Korea in order to obtain and retain business for SSI Korea and its Oregon-based parent company. In June 2007, Si Chan Wooh, a former senior executive officer of SSI, was charged by both the DOJ and SEC in connection with his role in the bribery scheme.

According to court documents, from at least 1995 to at least August 2004, SSI, through its officers and employees, including Wooh, authorized and made corrupt payments worth more than \$1.8 million to officers and employees of government owned customers in China and South Korea to induce them to purchase scrap metal from SSI. Between September 1999 and August 2004, corrupt payments of approximately \$204,537 were paid to managers of government-owned customers in China. As a result

of these corrupt payments, during that same time period, SSI realized gross revenue of approximately \$96,396,740 and profits of approximately \$6,259,104 on scrap metal sold to instrumentalities in China.

In a related action, on December 13, 2007, the SEC filed a settled civil complaint charging former Chairman and CEO of SSI, Robert W. Philip, with violating the anti-bribery provisions of the FCPA and with aiding and abetting SSI's anti-bribery, books and records, and internal controls violations. According to the SEC's complaint, from 1999 to 2004, Philip authorized the payment of more than \$200,000 to managers of government-owned steel mills in China in order to induce them to purchase scrap metal from SSI. In addition, the complaint charged Philip with authorizing more than \$1.7 million in payments to managers of privately-owned steel mills in both China and South Korea. SSI later described these payments as "sales commissions," "commissions to the customer," "refunds," or "rebates" in its books and records, in violation of the FCPA.

*Criminal Disposition:*

SSI Korea pleaded guilty on October 16, 2006, and was sentenced to pay a criminal fine of \$7.5 million. In addition, SSI entered into a three-year deferred prosecution agreement with the Department and agreed to appoint an independent compliance monitor.

On June 29, 2007, Wooh pleaded guilty to one count of conspiring to violate the FCPA's anti-bribery provisions before U.S. District Judge Garr M. King in the District of Oregon. On October 17, 2011, the United States filed an Unopposed Motion to Dismiss the Information pending against Wooh.

*Civil Disposition:*

On October 16, 2006, the SEC filed a settled action against SSI, requiring it to cease-and-desist from future violations, disgorge \$7,725,201 in ill-gotten profits and \$1,446,106 in pre-judgment interest, and retain and independent FCPA compliance monitor for a period of three years.

Philip agreed to pay a total of \$250,000 to settle the SEC's charges, including \$169,863.79 in disgorgement of bonuses and pay, \$16,536.63 in prejudgment interest, and a \$75,000 civil penalty.

On June 29, 2007, the SEC filed a settled action against Wooh enjoining him from future violations and ordering that he disgorge \$14,819.38 in bonuses and \$1,312.52 in prejudgment interest and pay a \$25,000 civil penalty.

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**72. Vitol SA**

*Resulting Criminal Enforcement Action(s):*

**A. New York v. Vitol SA (New York County, November 20, 2007)**

*Entities and Individuals:*

- Vitol SA, charged November 20, 2007, in New York State Court.

*Criminal Charges:*

- Grand Larceny

*Location and Time Period of Misconduct:* Iraq, 2001-2002.

Summary:

In 2007, the Manhattan (NY) District Attorney's Office charged Vitol, S.A. (Vitol), a Swiss oil trading firm, with Grand Larceny in the First Degree for its involvement in a scheme to pay kickbacks to Iraq in connection with oil purchases made under the United Nations Oil-for-Food Program (OFFP). According to court documents, while the OFFP was in effect, Vitol purchased Iraqi crude oil first as direct purchaser and later from third-parties. In June 2001, after an OPEC meeting, an agent of VITOL was told by Iraqi officials that surcharges had to be paid in order for Iraqi crude oil to be lifted. Over the next year, VITOL paid or caused surcharges to be paid on certain oil purchases in two ways. In direct purchases, VITOL had an associated entity called Vitol Bahrain send the surcharge monies to accounts controlled by the Iraqi regime. In indirect purchases, VITOL financed the purchase of oil through third-parties who then paid the surcharge to the Iraqi regime. VITOL did not inform the UN about the surcharge payments. During the period from June 2001 through September 2002, approximately \$13,000,000 in surcharge monies were paid directly to the Iraqi regime in connection with crude oil purchased directly or indirectly by VITOL.

Criminal Disposition:

On November 20, 2007, Vitol pleaded guilty and was sentenced to pay restitution of \$13 million to the Iraqi people through the Development Fund for Iraq, in addition to a payment of \$4.5 million in lieu of fines, forfeiture and to cover the costs of prosecution.

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**73. Chevron Corporation**

Resulting Criminal Enforcement Action(s):

- A. United States v. Chevron Corporation (S.D.N.Y., November 14, 2007)**
- B. New York v. Chevron Corporation (New York County, November 14, 2007)**

Resulting Civil/Administrative Enforcement Action(s):

- C. SEC v. Chevron Corporation (S.D.N.Y., November 14, 2007)**

Entities and Individuals:

- Chevron Corporation, charged and civil complaint filed November 14, 2007.

Criminal Charges:

- Wire fraud

Civil Charges:

- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: Iraq, 2001-2003.

Summary:

On November 2007, Chevron Corporation (Chevron) was charged by the U.S. Attorney's Office for the Southern District of New York (SDNY), the New York County District Attorney's Office (DANY), and the SEC in connection with a scheme to pay secret, illegal surcharges to the Iraqi

government in order to obtain Iraqi oil under the former United Nations Oil-for-Food Program (OFFP). From in or about 2000, up to and including in or about March 2003, the former Iraqi government demanded the payment of secret illegal surcharges on allocations of Iraqi oil. In 2001, oil market participants, including participants who purported to have close ties to officials of the Government of Iraq, informed representatives of Chevron that surcharges were being demanded on Iraqi oil allocations in the OFFP. Subsequently, from 2001 through 2003, in order to purchase Iraqi oil, Chevron paid approximately \$20 million in illegal surcharges to the former Government of Iraq, in violation of United States wire fraud statutes and administrative regulations that prohibited transactions with the former Government of Iraq.

*Criminal Disposition:*

In a joint settlement with the SEC, SDNY, DANY and the Office of Foreign Asset Control of the Department of Treasury (OFAC), Chevron agreed to pay combined monetary penalties in the amount of \$27 million. Pursuant to the agreement, Chevron's payments were to be split along the following lines: (1) forfeiture of \$20,000,000 to SDNY, which would seek to transfer that money to the Development Fund of Iraq; and, (2) \$5,000,000 to the DANY to be distributed as DANY shall deem appropriate.

In addition to the monetary payments, the joint Agreement obligated Chevron to continue cooperating fully with SDNY, DANY, the FBI, the SEC, OFAC, and any other law enforcement agency designated by SDNY or DANY. In exchange, DOJ agreed not to prosecute Chevron for any crimes related to its purchase of Iraqi oil during the OFFP.

*Civil Disposition:*

On November 14, 2007, the SEC filed a settled action against Chevron enjoining it from future violations and ordering it to pay \$25 million in disgorgement and \$3 million in civil penalties. Pursuant to the joint settlement agreement, the disgorgement required was to be satisfied by the payments to SDNY and DANY detailed above. The remaining \$2 million from the \$27 million joint penalty were paid by Chevron to OFAC.

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**74. Ingersoll-Rand Company Limited**

*Resulting Criminal Enforcement Action(s):*

- A. United States v. Ingersoll-Rand Italiana SpA (D.D.C., October 31, 2007)**
- B. United States v. Thermo-King Ireland Limited (D.D.C., October 31, 2007)**

*Resulting Civil/Administrative Enforcement Action(s):*

- C. SEC v. Ingersoll-Rand Company Limited (D.D.C., October 31, 2007)**

*Entities and Individuals:*

- Ingersoll-Rand Company Limited (Ingersoll-Rand), deferred prosecution agreement announced and civil complaint filed October 31, 2007.
- Ingersoll-Rand Italiana (I-R Italiana) charged October 31, 2007.
- Thermo King Ireland Limited (Thermo King), charged October 31, 2007.

*Criminal Charges:*

- Conspiracy:

- to falsify books and records (I-R Italiana)
- to commit wire fraud (I-R Italiana and Thermo King)

Civil Charges:

- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: Iraq, 2000-2003.

Summary:

On October 31, 2007, the Department of Justice filed criminal charges against two subsidiaries of Ingersoll-Rand Company Limited (Ingersoll-Rand), in connection with payments made by these and other subsidiaries to obtain contracts administered by the United Nations Oil for Food Program (OFFP). On the same day, the SEC filed a settled civil complaint against Ingersoll-Rand, charging it with violations of the internal controls and books and records provisions of the FCPA arising out of the same underlying conduct.

According to court documents, between October 2000 and August 2003, employees of three subsidiaries, one unnamed, Ingersoll-Rand Italiana, and Thermo King Ireland Limited, made \$963,148 in kickback payments to the Iraqi government, and promised an additional \$544,697, in exchange for contracts to provide road construction equipment, air compressors and parts, and refrigerated trucks under the OFFP. In order to both pay for and conceal these kickbacks, the subsidiaries inflated the price of contracts by approximately 10 percent before submitting them to the U.N. for approval. The subsidiaries never revealed to the U.N. the fact that the contract prices contained a kickback to the Iraqi government.

Criminal Disposition:

To resolve its criminal liability arising out of this kickback scheme, Ingersoll-Rand, on behalf of itself and its subsidiaries, entered into a three-year deferred prosecution agreement with the Department and agreed to pay a criminal fine of \$2.5 million.

Civil Disposition:

In a simultaneous agreement with the SEC, Ingersoll-Rand was enjoined from future violations of the FCPA, ordered to disgorge \$1,710,034 in profits and \$560,953 in prejudgment interest, and required to pay a civil penalty of \$1.95 million.

**75. York International Corporation**

Resulting Criminal Enforcement Action(s):

**A. United States v. York International Corporation (D.D.C., October 1, 2007)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. York International Corporation (D.D.C., October 1, 2007)**

Entities and Individuals:

- York International Corporation, charged October 1, 2007; civil complaint filed October 1, 2007.

Criminal Charges:

- Conspiracy:
  - to falsify books and records
  - to commit wire fraud
- Falsification of books and records
- Wire Fraud

Civil Charges:

- Bribery of foreign officials
- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: Iraq, Bahrain, Egypt, India, Turkey, UAE, Nigeria, China and various other European and Middle Eastern countries 1999-2006.

Summary:

On October 1, 2007, York International Corporation (York) was charged in a three-count criminal information with conspiracy, falsification of its books and records, in violation of the FCPA, and wire fraud. These charges stemmed in part from the actions of York Air Conditioning and Refrigeration FZE (FZE), a subsidiary, whose employees and agents paid approximately \$647,110 in kickbacks to Iraqi government officials from 2000 to 2003 in order to obtain contracts to provide air-conditioning, ventilation and refrigeration equipment and services to Iraq under the United Nations Oil-for-Food Program (OFFP).

In a related action, the SEC filed a settled civil complaint against York, alleging that York violated the anti-bribery provisions of the FCPA by paying bribes to UAE officials to secure business. Specifically, the SEC charged that in 2003 and 2004, York's Delaware-based subsidiary, York Air Conditioning and Refrigeration, Inc. (YACR), paid approximately \$522,500 to an intermediary while knowing that most of the money was intended to bribe UAE officials to secure contracts in connection with the construction of a government-owned luxury hotel. Altogether, thirteen illicit payments were made on this project, totaling \$550,000. In connection with these corrupt payments, the SEC charged that York had failed to devise and maintain effective system of internal controls to prevent and detect numerous violations and that York failed to accurately record in its books and records the bribes in the UAE, as well as the kickbacks in Iraq and illicit consultancy payments made in various other countries.

In addition to the corrupt payments in the UAE and Iraq, from 2001 through 2006, York, through certain subsidiaries, including YACR, made over \$7.5 million in illicit payments to secure orders on certain commercial and government projects in the Bahrain, Egypt, India, Turkey, China, Nigeria, and various other European and Middle Eastern countries. York's subsidiaries devised elaborate schemes to conceal these kickback payments to certain individuals who had enough influence to secure contracts for York's subsidiaries. These payments were referred to internally as "consultancy payments"; however, no bona fide services were performed in exchange for these payments. A total of 854 improper consultancy payments were made on approximately 774 contracts – with 302 of these projects involving government end-users, such as government owned companies, public hospitals, or schools.

Criminal Disposition:

York entered into a deferred prosecution agreement with the Department of Justice, whereby it agreed to pay a criminal fine of \$10 million and engage an independent FCPA compliance monitor for a period of three-years.

Civil Disposition:

In a settlement with the SEC, York was enjoined from future violations and ordered to disgorge \$8,949,132 in profits and \$1,083,748 in prejudgment interest, and to pay a civil penalty of \$2 million. The SEC's settlement also required that the company retain a compliance monitor for three years.

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**76. Immucor, Inc.**

Resulting Civil/Administrative Enforcement Action(s):

- A. SEC v. Gioacchino De Chirico (N.D. Ga., September 28, 2007)**
- B. In the Matter of Immucor, Inc., et al. (September 27, 2007)**

Entities and Individuals:

- Immucor, Inc., cease-and-desist order issued September 27, 2007.
- Gioacchino De Chirico, President and CEO, cease-and-desist order issued September 27, 2007; civil complaint filed September 28, 2007.

Civil Charges:

- Bribery of foreign officials (Immucor)
- Internal controls violations (Immucor)
- Falsification of books and records (Immucor)
- False accounting violations (De Chirico)
- Aiding and abetting internal controls violations (De Chirico)
- Aiding and abetting falsification of books and records (De Chirico)

Location and Time Period of Misconduct: Italy, 2004.

Summary:

On September 28, 2007, the SEC commenced administrative proceedings against Immucor, Inc. and its President and CEO, Gioacchino De Chirico, alleging that they engaged in violations of the anti-bribery, books and records, and internal controls provisions of the FCPA, as well as false accounting violations and aiding and abetting related violations. The SEC simultaneously filed a settled civil complaint against De Chirico in the U.S. District Court for the Northern District of Georgia, which charged him with much of the same conduct.

These charges stemmed from an incident in April 2004 when Immucor paid €13,500 to the director of a public hospital in Milan, Italy, as a quid pro quo for the hospital director favoring Immucor in selecting contracts for medical supplies and equipment. The complaint further alleged that De Chirico knowingly approved a false invoice that described the €13,500 payment as a consulting fee for services in connection with opportunities in Switzerland, which De Chirico knew the director had not performed.

Civil Disposition:

To settle the SEC's charges, both Immucor and De Chirico consented to the issuance of a cease-and-desist order enjoining them from any future violations of the FCPA. On October 2, 2007, U.S. District Judge Horace T. Ward also ordered De Chirico to pay a \$30,000 civil penalty.

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**77. Syncor International Corporation**

Resulting Criminal Enforcement Action(s):

- A. United States v. Syncor Taiwan, Inc. (C.D. Cal., December 4, 2002)**

Resulting Civil/Administrative Enforcement Action(s):

- B. SEC v. Monty Fu (D.D.C., September 27, 2007)**  
**C. SEC v. Syncor International Corporation (D.D.C., December 10, 2002)**  
**D. In the Matter of Syncor International Corporation (December 10, 2002)**

Entities and Individuals:

- Syncor International Corporation (Syncor), civil complaint filed December 10, 2002.
- Syncor Taiwan, Inc., charged December 4, 2002.
- Monty Fu, Founder and Chairman, civil complaint filed September 27, 2007.

Criminal Charges:

- Bribery of foreign officials (Syncor Taiwan)

Civil Charges:

- Bribery of foreign officials (Syncor)
- Internal controls violations (Syncor)
- Falsification of books and records (Syncor)
- False accounting violations (Fu)
- Aiding and abetting internal controls violations (Fu)
- Aiding and abetting falsification of books and records (Fu)

Location and Time Period of Misconduct: Taiwan, 1997-2002.

Summary:

In December 2002, the Department of Justice and the SEC filed criminal and civil charges against Syncor Taiwan, Inc., and its parent company, Syncor International Corporation (Syncor), a radiopharmaceutical company based in Woodland Hills, California. The Department charged Syncor Taiwan in a one-count criminal information in the Central District of California with violating the anti-bribery provisions of the FCPA, while the civil suit filed by the SEC in the District of Columbia charged Syncor with violations of the anti-bribery, internal controls, and books and records provisions of the FCPA.

These charges stemmed from a series of improper payments made by Syncor and its employees to physicians employed by hospitals owned by the legal authorities in Taiwan. At least \$344,110 in "commissions" were paid to state-employed Taiwanese physicians between January 1, 1997 and

November 6, 2002, for the purpose of obtaining and retaining business from those hospitals and in connection with the purchase and sale of unit dosages of certain radiopharmaceuticals. These payments were authorized by Monty Fu, Syncor Taiwan's founder and board chairman, while in the Central District of California, and were paid in cash in Taiwan via hand-delivered, sealed envelopes. For his role in authorizing these illicit payments, the SEC filed a civil complaint against Fu on September 27, 2007 in the District of Columbia.

In addition, Syncor Taiwan made payments to physicians employed by hospitals owned by the legal authorities in Taiwan in exchange for their referrals of patients to medical imaging centers owned and operated by the defendant. These improper payments, also made pursuant to the authorization of Fu, totaled at least \$113,007 during the period from January 1, 1998 through November 6, 2002.

*Criminal Disposition:*

Syncor Taiwan pleaded guilty on December 10, 2002, to a one-count information charging the company with violating the anti-bribery provisions of the FCPA. Pursuant to its plea agreement, Syncor was sentenced to a criminal fine of \$2 million.

*Civil Disposition:*

Pursuant to the SEC's settled civil action, filed on December 10, 2002, Syncor agreed to pay a \$500,000 civil penalty and to accept a cease-and-desist order enjoining it from future violations of the FCPA. As part of the administrative cease-and-desist order issued by the SEC, Syncor was required to retain an independent compliance consultant for a period 130 days. During this period, the consultant was to review and make recommendations regarding Syncor's compliance programs. Except in certain circumstances, Syncor was then required to implement the consultant's recommendations within 90 days of having received the consultant's report.

On September 27, 2007, without admitting or denying the more recent SEC allegations, Monty Fu agreed to a civil penalty of \$75,000 and a permanent injunction against future violations of the FCPA.

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**78. Bristow Group Inc.**

*Resulting Civil/Administrative Enforcement Action(s):*

**A. In the Matter of Bristow Group Inc. (September 26, 2007)**

*Entities and Individuals:*

- Bristow Group Inc., cease-and-desist order issued September 26, 2007.
- AirLog International, Ltd., (cease-and-desist order issued against parent).
- Pan African Airlines Nigeria Ltd., (cease-and-desist order issued against parent).

*Civil Charges:*

- Bribery of foreign officials
- Internal controls violations
- Falsification of books and records

*Location and Time Period of Misconduct:* Nigeria, 2003 – 2004.

Summary:

On September 26, 2007, the SEC instituted administrative proceedings against Bristow Group Inc., a Houston-based and New York Stock Exchange-listed helicopter transportation services and oil and gas production facilities operation company, for violations of the FCPA. The SEC's administrative order alleged that Bristow violated the anti-bribery, internal controls, and books and records provisions of the FCPA as a consequence of the actions of two of its subsidiaries in Nigeria.

Since at least 2003 and through approximately the end of 2004, Bristow Group's Nigerian affiliate, Pan African Airlines Nigeria Ltd. (PAAN), made improper payments totaling \$423,000 to employees of the governments of two Nigerian states to influence them to improperly reduce the amount of expatriate employment taxes payable by PAAN to the respective Nigerian state governments. At the end of each year, PAAN was subject to an expatriate "Pay As You Earn" (PAYE) tax, which was assessed on the salaries of PAAN employees by the government of each Nigerian state where PAAN operated. PAAN then negotiated with government tax officials to lower the amount assessed. In each instance, the PAYE tax demand amount was lowered and a separate cash payment for the tax officials was negotiated. Once PAAN paid the state government and the tax officials, each state government provided PAAN with a receipt reflecting only the amount payable to the state government. All together, PAAN secured an \$854,000 reduction in its PAYE tax liability in exchange for improper payments.

During that same time period, Bristow Group underreported PAAN and another Bristow Group Nigerian affiliate's payroll expenses to certain Nigerian state governments. As a result, Bristow Group's periodic reports filed with the SEC did not accurately reflect certain of the company's payroll-related expenses. Accordingly, the SEC's administrative order found that during this time period, Bristow Group had both lacked sufficient internal accounting controls and mischaracterized the payments as legitimate payroll expenses on its books and records.

Civil Disposition:

Without admitting or denying the SEC's allegations, Bristow Group consented to entry of an Administrative Order that required the company to cease-and-desist from committing violations of the anti-bribery, internal controls, and/or books and records provisions of the FCPA.

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**79. Electronic Data Systems Corporation**

Resulting Civil/Administrative Enforcement Action(s):

- A. In the Matter of Electronic Data Systems Corporation (September 25, 2007)**
- B. SEC v. Chandramowli Srinivasan (D.D.C., September 25, 2007)**

Entities and Individuals:

- Electronic Data Systems Corporation (EDS), cease-and-desist order issued September 25, 2007.
- A.T. Kearney Ltd. – India (ATKI), (cease-and-desist order issued against parent).
- Chandramowli Srinivasan, President of ATKI, civil complaint filed September 25, 2007.

Civil Charges:

- Bribery of foreign officials (Srinivasan)
- Falsification of books and records (EDS)
- Disclosure violations (EDS)
- Regulation violations (EDS)

- False accounting violations (Srinivasan)

Location and Time Period of Misconduct: India, 2001-2003.

Summary:

On September 25, 2007, the SEC filed settled civil and administrative actions against Chandramowli Srinivasan and the Electronic Data Systems Corporation (EDS), alleging that the defendants had violated the anti-bribery and books and records provisions of the FCPA, as well as numerous other federal securities laws. According to the SEC's filings, from early 2001 through September 2003, EDS's former Indian subsidiary, A.T. Kearney Ltd. – India (ATKI), made at least \$720,000 in illicit payments to high-level employees of two Indian state-owned enterprises in order to retain its business with those enterprises. ATKI made these payments at the direction of Srinivasan, ATKI's president, after the officials of the state-owned enterprises threatened to cancel the contracts with ATKI. These bribes allowed EDS to recognize over \$7.5 million in revenues from the Indian companies' contracts after ATKI began paying the bribes.

Civil Disposition:

Pursuant to the administrative proceedings, the SEC issued a cease-and-desist order against EDS, enjoining it from future violations of the FCPA and requiring it to pay \$358,800 in disgorgement and \$132,102 in prejudgment interest.

To resolve the civil suit filed by the SEC, Srinivasan agreed to a permanent injunction enjoining him from future violations of the FCPA and agreed to pay a \$70,000 civil penalty.

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## **80. Paradigm, B.V.**

Resulting Criminal Enforcement Action(s):

**A. In Re Paradigm, B.V. (September 24, 2007)**

Entities and Individuals:

- Paradigm B.V., non-prosecution agreement announced September 24, 2007.

Criminal Charges:

- Bribery of foreign officials

Location and Time Period of Misconduct: Indonesia, 2003; Nigeria, 2003 – 2005; Mexico, 2004 – 2005; Kazakhstan, 2005 – 2006; China, 2006.

Summary:

On September 24, 2007, the Department of Justice resolved allegations against Paradigm, B.V., a Dutch LLC with its principal place of business in Houston, Texas. Paradigm B.V. uncovered improper payments to foreign officials as it undertook the due diligence required for its anticipated initial public offering, including corrupt payments to employees of state-owned oil and gas companies in China, Indonesia, Kazakhstan, Latvia, Mexico, and Nigeria.

In one instance, Paradigm paid \$22,250 into the Latvian bank account of a British West Indies company recommended as a consultant by an official of KazMunaiGas, Kazakhstan's national oil company, to secure a tender for geological software. In this case, Paradigm performed no due diligence on the British West Indies company, did not enter into any written agreement with the company, and did not appear to have received any services from the company.

According to the statement of facts, Paradigm also used an agent in China to make commission payments to representatives of a subsidiary of the China National Offshore Oil Company (CNOOC) in connection with the sale of software to the CNOOC subsidiary. In addition, Paradigm directly retained and paid employees of Chinese national oil companies or state-owned entities as so-called "internal consultants" to evaluate Paradigm's software and to influence their employers' procurement divisions to purchase Paradigm's products.

As part of its due diligence, Paradigm also admitted to similar conduct in dealings in Mexico, Indonesia, and Nigeria. In Nigeria, Paradigm representatives agreed to make corrupt payments of between \$100,000 and \$200,000 through an agent to Nigerian politicians to obtain a contract to perform services and processing work for a subsidiary of the Nigerian National Petroleum Corporation.

*Criminal Disposition:*

In recognition of the fact that Paradigm self-reported and undertook full cooperation with enforcement authorities, the Department agreed not to prosecute Paradigm on the condition that the company upheld certain obligations for a period of 18 months. The non-prosecution agreement obliged Paradigm to continue its full cooperation with the investigation, institute rigorous internal controls and other remedial steps, pay a \$1 million criminal fine, and retain an outside compliance counsel.

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**81. Textron Inc.**

*Resulting Criminal Enforcement Action(s):*

**A. In Re Textron Inc. (August 23, 2007)**

*Resulting Civil/Administrative Enforcement Action(s):*

**B. SEC v. Textron Inc. (D.D.C., August 23, 2007)**

*Entities and Individuals:*

- Textron, Inc., charged August 23, 2007; civil complaint filed August 23, 2007.

*Criminal Charges:*

- Bribery of foreign officials
- Falsification of books and records

*Civil Charges:*

- Internal controls violations
- Falsification of books and records

*Location and Time Period of Misconduct:* Iraq, Bangladesh, Egypt, India, Indonesia, UAE, 2000-2003.

Summary:

On August 23, 2007, Textron, Inc., a Rhode Island-based industrial equipment company, settled allegations with the Department of Justice and the SEC relating to kickbacks paid to the former Government of Iraq under the United Nations Oil for Food Program (OFFP). As part of a consent agreement with the SEC and a non-prosecution agreement with the Department, Textron acknowledged responsibility for kickbacks paid to the Iraqi government by its David Brown French subsidiaries in exchange for contracts worth \$1,936,936 to provide industrial pumps, gears, and other equipment to Iraqi ministries under the OFFP.

According to settlement documents, the subsidiaries in Textron's Fluid and Power Business Unit paid a total of more than \$650,000 in kickbacks by inflating the price of contracts by 10 percent before submitting the contracts to the U.N. for approval. These kickback payments, which bypassed the U.N. escrow account, were paid by third parties to Iraqi government-controlled accounts. During the course of its own internal investigation, Textron also uncovered an additional 36 illicit payments totaling almost \$115,000 that were made to officials of state-owned companies in countries other than Iraq, including the United Arab Emirates, Bangladesh, Indonesia, Egypt, and India, in order to obtain similar contracts.

Criminal Disposition:

In recognition of Textron's early discovery and reporting of the improper payments, its thorough review of those payments as well as its discovery and review of improper payments made in other countries, and the company's implementation of enhanced compliance policies and procedures, the Department agreed to enter into a non-prosecution agreement with the company. Under this agreement, Textron agreed to pay a criminal fine of \$1,150,000 and continue cooperating with the Department's investigation.

Civil Disposition:

In a settlement agreement with the SEC, Textron agreed to disgorge \$2,284,579 in profits and \$450,461.68 in prejudgment interest, to pay an \$800,000 civil penalty, and to be permanently enjoined from future violations of the FCPA.

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**82. Delta Pine & Land Company**

Resulting Civil/Administrative Enforcement Action(s):

- A. In the Matter of Delta & Pine Land Company, et al. (July 26, 2007)**
- B. SEC v. Delta & Pine Land Company, et al. (D.D.C., July 25, 2007)**

Entities and Individuals:

- Delta & Pine Land Company, civil complaint filed July 25, 2007; cease-and-desist order issued July 26, 2007.
- Turk Deltapine, Inc., civil complaint filed July 25, 2007; cease-and-desist order issued July 26, 2007.

Civil Charges:

- Bribery of foreign officials (Turk Deltapine)
- Internal controls violations (Delta & Pine)

- Falsification of books and records (Delta & Pine)

Location and Time Period of Misconduct: Turkey, 2001-2006.

Summary:

In July 2007, the SEC filed settled civil and administrative actions against Delta & Pine Land Company (Delta & Pine), a Scott, Mississippi-based company engaged in the production and marketing of cottonseed, and its subsidiary, Turk Deltapine, Inc. (Turk Deltapine), charging them with violations of the anti-bribery, internal controls, and books and records provisions of the FCPA. According to the SEC's complaint, from 2001 through 2006, Turk Deltapine paid bribes of \$43,000 to officials of the Turkish Ministry of Agricultural and Rural Affairs in order to obtain governmental reports and certifications necessary to operate in Turkey. Delta & Pine failed to accurately record these payments in its books and records and failed to establish effective internal controls that could have prevented such payments.

Civil Disposition:

In the administrative proceeding, a cease-and-desist order was issued enjoining both defendants from future violations of the FCPA. In addition, Delta & Pine was ordered to retain an independent compliance consultant to review and make recommendations concerning the company's FCPA compliance policies and procedures. In the federal lawsuit, Delta & Pine and Turk Deltapine agreed to the entry of a final judgment requiring them to pay, jointly and severally, a \$300,000 civil penalty.

### **83. ITXC Corporation**

Resulting Criminal Enforcement Action(s):

- A. United States v. Steven J. Ott (D.N.J., July 25, 2007)**
- B. United States v. Roger M. Young (D.N.J., July 25, 2007)**
- C. United States v. Yaw Osei Amoako (D.N.J., September 6, 2006)**

Resulting Civil/Administrative Enforcement Action(s):

- D. SEC v. Steven J. Ott, et al. (D.N.J., September 6, 2006)**
- E. SEC v. Yaw Osei Amoako (D.N.J., September 1, 2005)**

Entities and Individuals:

- ITXC Corporation (ITXC) (never charged – company ceased to exist during investigation).
- Steven Ott, ITXC's Executive Vice President of Global Sales, charged July 25, 2007.
- Roger Young, ITXC's Managing Director for Africa, charged July 25, 2007.
- Yaw Osei Amoako, regional manager for Africa at ITXC, charged September 6, 2006.

Criminal Charges:

- Conspiracy (all defendants)
- Bribery of foreign officials (all defendants)
- Commercial bribery (all defendants)

Civil Charges:

- Bribery of foreign officials (all defendants)

- False accounting violations (all defendants)
- Aiding and abetting falsification of books and records (all defendants)
- Aiding and abetting internal controls violations (Ott and Young)

Location and Time Period of Misconduct: Nigeria, 2002-2004; Rwanda, 2002; Senegal, 2001-2003; Ghana, 2001-2002; Mali, 2002.

Summary:

Three former executives of ITXC Corporation, a global telecommunications company based in Princeton, NJ, have pleaded guilty to conspiring to violate the FCPA and the Travel Act in connection with a scheme to bribe government telecommunications officials in four African countries. ITXC was a publicly traded company that provided telecommunication services, primarily Voice Over Internet Protocol (VOIP) services, to carriers across the globe. In pleading, the defendants admitted that between September 1999 and October 2004, they conspired with each other and other former ITXC employees and officers to make corrupt payments totaling approximately \$450,000 to employees of foreign state-owned and foreign-owned telecommunications carriers in Nigeria, Rwanda, Senegal, and Mali to obtain and retain contracts for ITXC. For example, in Nigeria, ITXC entered into a service agreement with and agreed to pay a consulting company headed by an official of NITEL, the state-owned Nigerian telecommunications authority, in exchange for assistance in obtaining agreements with other service providers in the country. Between November 2002 and May 2004, ITXC wire transferred approximately \$166,541.31 to the Nigerian bank account of the foreign official's company.

Criminal Disposition:

Steven J. Ott, ITXC's Executive Vice-President of Global Sales, was sentenced on July 21, 2008 to five years' probation, including 6 months' home confinement and 6 months' community confinement, and a \$10,000 fine. Roger Michael Young, ITXC's Managing Director for Africa and the Middle East, was sentenced on September 2, 2008 to five years' probation, including 3 months' home confinement and 3 months' community confinement, and a \$7,000 fine. The third executive, Yaw Osei Amoako, was sentenced in August 2007 to 18 months' imprisonment and a \$7,500 fine.

Civil Disposition:

On May 6, 2008, the SEC announced that it had obtained final judgments in civil suits filed against Ott, Young, and Amoako. Pursuant to these judgments, the defendants were permanently enjoined from future violations of the FCPA. In addition, Amoako agreed to disgorge \$150,411 in wrongfully-received profits and \$38,042 in pre-judgment interest.

**84. Oily Rock**

Resulting Criminal Enforcement Action(s):

- A. **In Re Omega Advisors, Inc. (July 6, 2007)**
- B. **United States v. Viktor Kozeny, et al. (S.D.N.Y., May 12, 2005)**
- C. **United States v. Hans Bodmer (S.D.N.Y., August 5, 2003)**
- D. **United States v. Clayton Lewis (S.D.N.Y., July 31, 2003)**
- E. **United States v. Thomas Farrell (S.D.N.Y., March 10, 2003)**

Entities and Individuals:

- Omega Advisors, Inc., non-prosecution agreement announced July 6, 2007.
- Viktor Kozeny, Head of Investment Consortium, indicted May 12, 2005.
- Frederic Bourke, Investor, indicted May 12, 2005.
- David Pinkerton, Investment Manager, indicted May 12, 2005.
- Hans Bodmer, Lawyer, indicted August 5, 2003.
- Clayton Lewis, Investment Manager, indicted July 31, 2003.
- Thomas Farrell, Employee of Kozeny's investment companies, charged March 10, 2003.

Criminal Charges:

- Conspiracy:
  - to bribe foreign officials (all defendants)
  - to violate the Travel Act (Kozeny, Bourke, Pinkerton)
  - to commit money laundering (all defendants except Farrell)
- Bribery of foreign officials (all defendants except Bodmer)
- Money laundering (Kozeny, Bourke, Pinkerton)
- Making false statements (Bourke, Pinkerton)

Location and Time Period of Misconduct: Azerbaijan, 1997-1998.

Summary:

On May 12, 2005, Viktor Kozeny, Frederic A. Bourke Jr., and David Pinkerton were indicted in the Southern District of New York on charges of conspiracy to violate the FCPA and Travel Act, substantive FCPA violations, substantive Travel Act Violations, conspiracy to commit money laundering, substantive money laundering charges, and, in the case of Bourke and Pinkerton, making false statements. These charges stemmed from their role in a scheme to pay millions of dollars worth of bribes to Azeri government officials to ensure that the defendants' investment consortium would gain, in secret partnership with the Azeri officials, a controlling interest in the State Oil Company of the Azerbaijan Republic (SOCAR) and its substantial oil reserves.

According to evidence presented in the trial of Bourke, in August 1997, Kozeny allegedly agreed to transfer to corrupt Azeri officials two-thirds of the vouchers and options purchased by his investment consortium, Oily Rock, and to give them two-thirds of all of the profits arising from his investment consortium's participation in SOCAR's privatization. In addition, evidence presented at trial showed that in June 1998, Bourke knew that Kozeny arranged for Oily Rock to increase its authorized share capital from \$150 million to \$450 million so that the additional \$300 million worth of Oily Rock shares could be transferred to one or more of the Azeri officials as a further bribe payment. Bourke also arranged for two of the corrupt officials to travel to New York City on different occasions in 1998 to receive medical treatment, for which Oily Rock paid. Thereafter, in interviews with the FBI in April and May of 2002, Bourke falsely stated that he was not aware that Kozeny had made the alleged payments to the Azeri Officials.

Three others have been charged in connection with their roles in this bribery scheme. Thomas Farrell, a former employee of Oily Rock, was charged in an information with one count of conspiracy to violate the FCPA and one count of violating the FCPA's anti-bribery provisions. On July 31, 2003, Clayton Lewis, a former principal of Omega Advisors and a co-investor in the scheme, was indicted on one count of conspiracy to violate the FCPA and one count of conspiracy to commit money laundering. On August 5, 2003, a grand jury in New York returned an indictment charging the third individual, Hans

Bodmer, a Swiss lawyer who represented Kozeny and his investment consortium, with conspiring to violate the FCPA's anti-bribery provisions and conspiracy to commit money laundering. At the United States' request, Korea extradited Mr. Bodmer to the United States in 2004.

In June 2007, the Department entered into a non-prosecution agreement with Omega Advisors, regarding its role as a major investor in the consortium.

Criminal Disposition:

Following a six-week jury trial, Bourke was found guilty by a federal jury in Manhattan on July 10, 2009, of conspiracy to violate the FCPA and the Travel Act, and making false statements to the FBI. Evidence presented at trial established that Bourke was a knowing participant in a scheme to bribe senior government officials in Azerbaijan with several hundred million dollars in shares of stock, cash, and other gifts. In November 2009, he was sentenced to one year and a day imprisonment, followed by 3 years' supervised release, and ordered to pay a \$1 million criminal penalty. Bourke subsequently appealed his conviction to the U.S. Court of Appeals for the 2<sup>nd</sup> Circuit, whereupon the Government filed a cross-appeal. On December 14, 2011, the U.S. Court of Appeals affirmed the July 2009 jury conviction of Bourke.

On January 26, 2010, the Court of Appeals for the Commonwealth of the Bahamas issued a decision overturning a September 28, 2006 ruling by a Bahamian magistrate, and thereby blocking Viktor Kozeny's extradition to the U.S. This decision is being appealed to the U.K. Privy Council.

Hans Bodmer pleaded guilty in October 2004 to money laundering. The FCPA count against Bodmer had been previously dismissed by the Court because the court deemed that prior to the 1998 amendments to the FCPA, foreign nationals could not be criminally prosecuted under the FCPA because they were outside U.S. jurisdiction. Bodmer is currently awaiting sentencing.

On February 10, 2004, Clayton Lewis pleaded guilty before District Judge Naomi Buchwald to superseding information charging him with one count of conspiracy to violate the FCPA and one count of violating the FCPA's anti-bribery provisions. Lewis's sentencing is scheduled for February 27, 2013.

Thomas Farrell pleaded guilty on October 3, 2003 before Judge Richard M. Berman in the U.S. District Court for the Southern District of New York. Farrell's sentencing is pending.

In order to resolve potential criminal charges related to the FCPA, Omega Advisors entered into a non-prosecution agreement with the Department in June 2007 and agreed to forfeit \$500,000.

In July 2008, the Government dismissed the case against Mr. Pinkerton.

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**85. Former United States Congressman, William J. Jefferson**

Resulting Criminal Enforcement Action(s):

**A. United States v. William J. Jefferson (E.D. Va., June 4, 2007)**

Entities and Individuals:

- William J. Jefferson, former U.S. Congressman, indicted June 4, 2007.

Criminal Charges:

- Conspiracy:
  - to solicit bribes by a public official
  - to deprive citizens of honest services by wire fraud
  - to bribe foreign officials

- Solicitation of bribes by a public official
- Deprivation of honest services by wire fraud
- Bribery of foreign officials
- Money laundering
- Obstruction of justice
- Racketeering

Location and Time Period of Misconduct: Nigeria, 2000-2005.

Summary:

On June 4, 2007, William J. Jefferson of New Orleans, Louisiana became the first U.S. public official ever charged with violating the FCPA, when he was charged with, among other things, one count of bribery in violation of the FCPA and one count of conspiring to solicit bribes, deprive honest services, and violate the anti-bribery provisions of the FCPA.

According to evidence presented at his trial, from August 2000 through August 2005, Congressman Jefferson, while serving as an elected member of the U.S. House of Representatives, used his position and his office to corruptly seek, solicit, and direct that things of value be paid to him and his family members in exchange for his performance of official acts to advance the interests of the people and businesses who paid him the bribes.

In addition, according to court documents and evidence presented at trial, Jefferson conspired to violate the FCPA by offering, promising, and making payments to foreign officials to advance various business endeavors in which he and his family had a financial interest. More specifically, Jefferson was responsible for negotiating, offering and delivering payments of bribes to a high-ranking official in the executive branch of the Government of Nigeria in order to induce the official to use his position to assist a telecommunications joint venture in securing the governmental approvals necessary for its success. In return for taking these official acts in furtherance of this bribery conspiracy, this joint venture agreed to pay Jefferson and his family things of value.

Criminal Disposition:

On August 5, 2009, following a nine-week trial, a federal jury convicted former Congressman Jefferson of conspiracy, bribery, deprivation of honest services, money laundering, and racketeering. While he was acquitted on the substantive FCPA charge, Jefferson was convicted of one count of conspiracy, one object of which was the bribery of foreign officials in violation of the FCPA. On November 13, 2009, Jefferson was sentenced to 13 years' imprisonment, followed by three years' supervised release, and ordered to forfeit more than \$470,000. Jefferson appealed his conviction to the U.S. Court of Appeals for the 4<sup>th</sup> Circuit. On March 26, 2012, the U.S. Court of Appeals for the 4<sup>th</sup> Circuit affirmed in part and vacated in part the decision of the district court. The case was remanded to the district court for further proceedings consistent with the court's decision. On April 20, 2012, the district court amended the judgment and Count 10, one count of Scheme to Deprive Citizens of Honest Services by Wire Fraud, was vacated. On the same day, Jefferson was sentenced under the amended judgment to 12 years imprisonment, followed by three years' supervised released and ordered to pay a criminal penalty of \$1,000.

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## 86. The Mercator Corporation

### Resulting Criminal Enforcement Action(s):

- A. **United States v. James H. Giffen, et al. (S.D.N.Y., April 2, 2003)**
- B. **United States v. J. Bryan Williams (S.D.N.Y., April 2, 2003)**

### Resulting Civil/Administrative Enforcement Action(s):

- C. **United States v. Approx. \$84 Million (S.D.N.Y., May 3, 2007)**

### Entities and Individuals:

- James H. Giffen, Chairman of The Mercator Corporation, indicted April 2, 2003.
- J. Bryan Williams, Senior Executive of Mobil Oil, indicted April 2, 2003.
- The Mercator Corporation, charged August 6, 2010.

### Criminal Charges:

- Conspiracy:
  - to commit wire fraud (Giffen)
  - to commit mail fraud (Giffen)
  - to bribe foreign officials (Giffen)
  - to commit money laundering (Giffen)
  - to defraud the United States by impairing and impeding its lawful functions (Giffen, Williams)
- Bribery of foreign officials (Giffen, Mercator)
- Wire fraud (Giffen)
- Mail fraud (Giffen)
- International money laundering (Giffen)
- Money laundering (Giffen)
- Obstructing the enforcement of the Internal Revenue laws (Giffen)
- Subscribing to false tax returns (Giffen, Williams)
- Tax Evasion (Williams)
- Failure to supply information regarding foreign bank accounts on an income tax return (Giffen)

### Civil Charges:

- Forfeiture

Location and Time Period of Misconduct: Kazakhstan, 1995-1999.

### Summary:

On April 2, 2003, James H. Giffen, the Chairman of The Mercator Corporation (Mercator), a merchant bank with offices in New York and the Republic of Kazakhstan, was indicted in the Southern District of New York on charges that he made a series of illegal payments to senior Kazakh officials in connection with numerous oil deals in that country. According to court documents, Giffen allegedly made corrupt payments to senior Kazakh officials in connection with the following transactions in which Giffen represented the Republic of Kazakhstan: 1) Mobil Oil's 1996 purchase of a 25% share in the Tengiz oil field; (2) Mobil Oil's 1995 agreement to finance the processing and sale of gas condensate from the Karachaganak oil and gas field; (3) Amoco's 1997 purchase of a share in the Caspian Pipeline

Consortium; (4) Texaco and other oil companies' purchase of a share in the Karachaganak oil and gas field in 1998; (5) Mobil and other oil companies' 1998 purchase of exploration rights in the Kazakh portion of the Caspian Sea, and; (6) Phillips Petroleum's 1998 purchase of Caspian Sea exploration rights.

Subsequently, on August 6, 2010, Mercator was charged with one count of violating the anti-bribery provisions of the FCPA in connection with the purchase of two snowmobiles in November 1999. These snowmobiles were later shipped to Kazakhstan for delivery to a senior Kazakh official. Giffen and Mercator were advisors to the Kazakh government on strategic planning, development of foreign investment and the negotiation of priority investment projects relating to the exploration, development, production, transportation, and processing of oil and gas. During this period, Giffen had held the title of counselor to the President of Kazakhstan. According to the charges, Mobil oil agreed to pay the success fees owed by Kazakhstan to Giffen and Mercator, and out of those fees, Giffen made unlawful payments of \$22 million dollars to secret Swiss accounts beneficially owned by two high level Kazakh officials.

In addition, between 1995 and 2000, Giffen caused approximately \$70 million paid by various oil companies into escrow accounts in Switzerland in connection with the purchase of oil and gas rights in Kazakhstan to be diverted into secret Swiss bank accounts under his control. Giffen then used this money to make additional unlawful payments of approximately \$55 million to the two senior officials of the Kazakh Government.

On April 2, 2003, J. Bryan Williams a senior executive at Mobil Oil, was charged in connection with a kickback and tax evasion scheme involving a related oil deal in Kazakhstan. According to court documents, Williams was sent by Mobil's Chairman to finalize the negotiations with Kazakhstan regarding Mobil's purchase for approximately \$1 billion of a 25% interest in the Tengiz oil field in 1996. After the Tengiz deal closed, Mobil paid \$41 million to a New York merchant bank that represented the Republic of Kazakhstan in the transaction. The merchant bank's Chairman kicked back \$2 million of that payment to Williams, by transferring money through a secret Swiss bank account.

In 2007, the Department filed a civil forfeiture action against approximately \$84 million, plus interest, which was being held in a bank account in Switzerland. According to the Department's filings, this money included at least \$51.7 million in proceeds from Giffen's alleged scheme to bribe senior Kazakh officials.

#### Criminal Disposition:

On August 6, 2010, Giffen pleaded guilty to a one-count superseding information charging him with failure to disclose control of a Swiss bank account on his 1996 income tax return. Giffen was sentenced on November 19, 2010, to time served. Mercator also pleaded guilty on August 6, 2010, to one count of violating the FCPA's anti-bribery provisions. Mercator was sentenced on November 19, 2010, and ordered to pay a fine in the amount of \$32,000. Previously, on September 18, 2003, Williams pleaded guilty to conspiracy and tax evasion charges and was sentenced to 46 months in prison. Williams was also ordered to pay a \$25,000 fine and was required to pay taxes on the \$2 million kickback that he received in connection with the Tengiz oil field deal.

#### Civil Disposition:

Pursuant to a 2007 agreement between the United States, Switzerland and Kazakhstan, the \$84 million on deposit in Switzerland is being used by a non-governmental organization in Kazakhstan, independent of the Kazakh government, to benefit underprivileged Kazakh children.

## **87. Baker Hughes Incorporated**

### Resulting Criminal Enforcement Action(s):

- A. United States v. Baker Hughes Services International, Inc. (S.D. Tex., April 11, 2007)**
- B. United States v. Baker Hughes Incorporated (S.D. Tex., April 11, 2007)**

### Resulting Civil/Administrative Enforcement Action(s):

- C. SEC v. Baker Hughes Incorporated, et al. (S.D. Tex., April 26, 2007)**
- D. In the Matter of Baker Hughes Inc. (September 12, 2001)**
- E. SEC v. Eric L. Mattson, et al. (S.D. Tex., September 11, 2001)**
- F. United States, et al. v. KPMG Siddharta Siddharta & Harsono, et al. (S.D. Tex., September 11, 2001)**

### Entities and Individuals:

- Baker Hughes Incorporated (Baker Hughes), cease-and-desist order issued September 12, 2001; charged April 11, 2007; civil complaint filed April 26, 2007.
- Baker Hughes Services International, Inc. (BHSI), charged April 11, 2007.
- Roy Fearnley, BSHI's Business Development Manager, civil complaint filed April 26, 2007.
- Eric L. Mattson, CFO of Baker Hughes, civil complaint filed September 12, 2001.
- James W. Harris, Controller of Baker Hughes, civil complaint filed September 11, 2001.
- KPMG Siddharta Siddharta & Harsono, civil complaint filed September 11, 2001.
- Sonny Harsono, Partner at KPMG Siddharta Siddharta & Harsono, civil complaint filed September 11, 2001.

### Criminal Charges:

- Conspiracy:
  - to bribe foreign officials (Baker Hughes, BHSI)
  - to falsify books and records (Baker Hughes, BHSI)
- Bribery of foreign officials (BHSI)
- Falsification of books and records (BHSI)

### Civil Charges:

- Bribery of foreign officials (all civil defendants)
- False accounting (Baker Hughes)
- Internal controls violations (Baker Hughes, Mattson, Harris)
- Falsification of books and records (Baker Hughes, Mattson, Harris)
- Aiding and abetting Baker Hughes' internal controls violations (Fearnley, KPMG, Harsono)
- Aiding and abetting Baker Hughes' falsification of books and records (Fearnley, KPMG, Harsono)

Location and Time Period of Misconduct: Indonesia, 1999; Kazakhstan, 2001-2003.

### Summary:

In April 2007, Baker Hughes Services International (BHSI), and its parent company Baker Hughes Incorporated (Baker Hughes), were charged in separate criminal informations filed in the

Southern District of Texas, in connection with a scheme to pay bribes to Kazakh government officials from 2001 through 2003. According to subsequent plea agreements, Baker Hughes and BHSI violated the FCPA by paying approximately \$4.1 million in bribes to an intermediary, knowing that the intermediary would transfer all or part of the corrupt payments to an official of Kazakhoil, the state-owned oil company. These corrupt payments were paid through a consulting firm retained as an agent for Baker Hughes in connection with a major oil field services contract. On April 26, 2007, the SEC filed civil complaints against Baker Hughes and BHSI's Business Development Manager, Roy Fearnley, charging them with FCPA violations in connection with this same bribery scheme.

According to court documents, the government of Kazakhstan and Kazakhoil, entered into an agreement with a consortium of four international oil companies for the purpose of developing and operating a giant oil field known as Karachaganak in northwestern Kazakhstan. In February 2000, BHSI submitted a bid, on behalf of Baker Hughes, to perform comprehensive services such as project management, oil drilling, and support services in connection with the Karachaganak project.

Kazakhoil wielded considerable influence as Kazakhstan's national oil company, and the ultimate award of any contract by the consortium of international oil companies depended upon the favorable recommendation of Kazakhoil officials. After BHSI submitted its bid for the Karachaganak project and before the award was announced, Kazakhoil officials demanded that Baker Hughes pay a commission to a "consulting firm" located on the Isle of Man, to act as its agent. Although the consulting firm had performed no services to assist Baker Hughes, in September 2000, BHSI agreed to pay a commission equal to 2 percent of the revenue earned on the Karachaganak project, and 3 percent on future projects in Kazakhstan. Baker Hughes was awarded the contract for Karachaganak in October 2000. From May 2001 through November 2003, Baker Hughes paid a total of \$4.1 million in "commissions" from a BHSI bank account in Houston to an account of the consulting firm in London.

In a previous matter, two former employees of Baker Hughes, a partner in an Indonesian accounting firm, and a partner of the accounting firm were charged by the SEC in connection with a scheme to pay bribes to Indonesian government officials. According to the SEC's filings, on March 9, 1999, James Harris, a former Baker Hughes Controller, allegedly learned that Sonny Harsono, a partner in KPMG Siddharta Siddharta & Harsono (KPMG), had authorized payment of \$75,000 to an Indonesian tax official to reduce a tax assessment for PT Eastman Christensen (PTEC), an Indonesian company owned by Baker Hughes, from \$3.2 million to \$270,000. In March 1999, Harris and Eric L. Mattson, the former CFO of Baker Hughes, allegedly authorized payment of the bribe despite the General Counsel's warning that such conduct would violate the FCPA. After receiving the invoice, PTEC allegedly paid KPMG's invoice and improperly recorded the transaction as payment for professional services. On March 23, 1999, PTEC received a tax assessment of approximately \$270,000. After Baker Hughes's General Counsel and FCPA Advisor discovered the subject payment, Baker Hughes attempted to stop the payment and voluntarily disclosed the payment to enforcement authorities.

*Criminal Disposition:*

As part of the plea agreement, BHSI agreed to pay a criminal fine of \$11 million, serve a three-year term of organizational probation, and adopt a comprehensive anti-bribery compliance program. Baker Hughes, pursuant to a deferred prosecution agreement, agreed to hire an independent monitor for three years to oversee the creation and maintenance of a robust compliance program and to continue to cooperate completely with the Department in ongoing investigations into corrupt payments by company employees and managers.

Civil Disposition:

In April 2007, Baker Hughes reached a settlement with the SEC whereby it acknowledged that it had violated a 2001 cease-and-desist order issued by the SEC in connection with the Indonesian bribery conduct. As part of the settlement, Baker Huges was enjoined from future violations and required to obtain an independent FCPA compliance monitor and pay \$10 million in civil penalties and \$19,944,778 in disgorgement of all profits it earned in connection with the bribes, as well as \$3,133,237.41 in prejudgment interest. In the same civil matter, a judgment was entered against Fearnley enjoining him from future violations and ordering \$5,000 in disgorgement and \$7,635.51 in prejudgment interest.

The civil complaint against Mattson and Harris was dismissed by the court in 2003.

In 2001, Harsono and KPMG consented to the entry of an injunction from violating and aiding and abetting the violation of the anti-bribery provisions of the FCPA and the internal controls and books and records provisions of the Exchange Act.

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**88. Monsanto Company**

Resulting Criminal Enforcement Action(s):

**A. United States v. Monsanto Company (D.D.C., January 6, 2005)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. Charles Michael Martin (D.D.C., March 6, 2007)**

**C. SEC v. Monsanto Company (D.D.C., January 6, 2005)**

**D. In the Matter of Monsanto Company (January 6, 2005)**

Entities and Individuals:

- Monsanto Company (Monsanto), charged, civil complaint filed, and cease-and-desist order issued January 6, 2005.
- Charles Michael Martin, Monsanto's Government Affairs Director for Asia, civil complaint filed March 6, 2007.

Criminal Charges:

- Bribery of foreign officials (Monsanto)
- Falsification of books and records (Monsanto)

Civil Charges:

- Bribery of foreign officials (Monsanto, Martin)
- Internal controls violations (Monsanto)
- Falsification of books and records (Monsanto)
- False accounting (Monsanto, Martin)
- Aiding and abetting Monsanto's internal controls violations (Martin)
- Aiding and abetting Monsanto's falsification of books and records (Martin)

Location and Time Period of Misconduct: Indonesia, 1997-2002.

Summary:

Monsanto, a producer of various agricultural products, hired an Indonesian consulting company to assist it in obtaining various Indonesian governmental approvals and licenses necessary to sell its genetically modified products in Indonesia. At the time, the Indonesian government required an environmental impact study before authorizing the cultivation of genetically modified crops. After a change in governments in Indonesia, Monsanto sought, unsuccessfully, to have the new government, in which the senior environment official had a post, amend or repeal the requirement for the environmental impact statement.

Having failed to obtain the senior environment official's agreement to amend or repeal this requirement, in 2002, Charles Martin, the Government Affairs Director for Asia for Monsanto, authorized and directed an Indonesian consulting firm to make an illegal payment totaling \$50,000 to the senior environment official to "incentivize" him to agree to do so. Martin also directed representatives of the Indonesian consulting company to submit false invoices to Monsanto for "consultant fees" to obtain reimbursement for the bribe, and agreed to pay the consulting company for taxes that company would owe by reporting income from the "consultant fees."

In February 2002, an employee of the Indonesian consulting company delivered \$50,000 in cash to the senior environment official, explaining that Monsanto wanted to do something for him in exchange for repealing the environmental impact study requirement. The senior environment official promised that he would do so at an appropriate time. In March 2002, Monsanto, through its Indonesian subsidiary, paid the false invoices thus reimbursing the consulting company for the \$50,000 bribe, as well as the tax it owed on that income. A false entry for these "consulting services" was included in Monsanto's books and records. The senior environment official never authorized the repeal of the environmental impact study requirement.

Criminal Disposition:

On January 6, 2005, Monsanto Company entered into a deferred prosecution agreement with the Department of Justice in which it agreed to pay a \$1 million penalty and admit to violations of the FCPA.

Civil Disposition:

Monsanto consented to pay a \$500,000 civil penalty to the Commission. On March 6, 2007, the SEC filed a settled enforcement action charging Charles Michael Martin. Without admitting or denying the charges, Martin consented to the entry of a final judgment permanently enjoining him from violating and/or aiding and abetting violations of the anti-bribery, books and records, and internal controls provisions of the FCPA. Martin also agreed to pay a \$30,000 civil penalty.

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**89. Dow Chemical Company**

Resulting Civil/Administrative Enforcement Action(s):

- A. SEC v. Dow Chemical Company (D.D.C., February 13, 2007)**
- B. In the Matter of Dow Chemical Company (February 13, 2007)**

Entities and Individuals:

- Dow Chemical Company (Dow), civil complaint filed and cease-and-desist order issued February 13, 2007.

Civil Charges:

- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: India, 1996-2001.

Summary:

DE-Nocil, a subsidiary of Dow, made approximately \$200,000 in improper payments to Indian government officials, including \$39,700 to an official in India's Central Insecticides Board to expedite the registration of three DE-Nocil products. Most of the payments were made through contractors who added fictitious charges to their bills or issued false invoices to DE-Nocil and then directed the money to "consultants" or officials. DE-Nocil made \$435,000 in profits because of the accelerated registration, \$329,295 of which went to Dow, based on Dow's ownership interest at the time. DE-Nocil also paid approximately \$87,400 in small (\$100 or less) payments to state-level agricultural inspectors to keep them from interfering in the sale of DE-Nocil products. DE-Nocil also made payments to sales tax officials and customs officials, as well as gave improper gifts, travel, and entertainment to other government officials (\$19,000), totaling more than \$70,000.

Civil Disposition:

In an agreement resolving the administrative and civil enforcement actions taken by the SEC, the SEC ordered Dow Chemical to cease-and-desist from future violations and pay a \$325,000 civil penalty.

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**90. Vetco International, Ltd.<sup>2</sup>**

Resulting Criminal Enforcement Action(s):

- A. United States v. Vetco Gray Controls, Inc., et al. (S.D. Tex., January 5, 2007)**
- B. United States v. Aibel Group Limited (S.D. Tex., January 5, 2007)**

Entities and Individuals:

- Vetco Gray Controls, Inc., charged January 5, 2007.
- Vetco Gray Controls, Ltd., charged January 5, 2007.
- Vetco Gray UK Ltd., charged January 5, 2007.
- Aibel Group Ltd., charged January 5, 2007; superseding information filed November 12, 2008.

Criminal Charges:

- Conspiracy to bribe foreign officials (all defendants except Aibel Group)
- Bribery of foreign officials (Aibel Group)

Location and Time Period of Misconduct: Nigeria, 2002-2005.

Summary:

On January 5, 2007, three wholly-owned subsidiaries of Vetco International, Ltd., a global supplier of products and services for oil drilling production, were charged in the Southern District of

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<sup>2</sup> Also see Cases 34 and 94.

Texas with conspiring to violate the FCPA and violating the anti-bribery provisions of the FCPA in connection with the corrupt payment of approximately \$2.1 million to Nigerian government officials. According to court documents, beginning in February 2001, Vetco International, and its predecessor and several related companies, began providing engineering and procurement services, as well as subsea construction equipment, for Nigeria's first deepwater oil drilling operation, known as the Bonga Project. From at least September 2002 to at least April 2005, in connection with their business in Nigeria, these subsidiaries made at least 378 corrupt payments through a major international freight forwarding and customs clearance company to employees of the Nigerian Customs Service, and these payments were intended to assist Vetco in avoiding paying customs duties.

On the same date, Aibel Group, Ltd. (Aibel Group), another wholly owned subsidiary of Vetco International, entered into a deferred prosecution agreement regarding the same bribery scheme. Subsequently, on November 12, 2008, Aibel Group, a United Kingdom corporation, was charged in a two-count superseding information charging the company with a conspiracy to violate the FCPA and a substantive violation of the FCPA.

*Criminal Disposition:*

On February 6, 2007, Vetco Gray Controls Inc., Vetco Gray Controls Ltd., and Vetco Gray UK Ltd. each pleaded guilty and agreed to pay criminal fines of \$6 million, \$8 million, and \$12 million, respectively, for a total of \$26 million. In addition to the criminal fines, the plea agreements required the defendants to hire an independent monitor to oversee the creation and maintenance of a robust compliance program. Aibel Group, another wholly owned subsidiary of Vetco International, simultaneously entered into a deferred prosecution agreement regarding the same underlying conduct.

Subsequently, on November 21, 2008, Aibel Group pleaded guilty to the two-count superseding information, thereby admitting that it was not in compliance with the deferred prosecution agreement it had signed with the Department of Justice in February 2007. As part of the plea agreement, Aibel Group was ordered to pay a \$4.2 million criminal fine and to serve a two-year term of organizational probation that requires, among other things, that it submit periodic reports regarding its progress in implementing anti-bribery compliance measures.

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**91. Alcatel CIT**

*Resulting Criminal Enforcement Action(s):*

**A. United States v. Christian Sapsizian, et al. (S.D. Fla., December 19, 2006)**

*Entities and Individuals:*

- Alcatel CIT
- Christian Sapsizian, Alcatel's Vice President for Latin America, indicted December 19, 2006.
- Edgar Valverde Acosta, CEO of Alcatel de Costa Rica S.A., superseding indictment filed March 20, 2007.

*Criminal Charges:*

- Conspiracy to launder money (Valverde Acosta)
- Bribery of foreign officials (Sapsizian and Valverde Acosta)

*Location and Time Period of Misconduct:* Costa Rica, 2000-2004.

Summary:

From February 2000 through September 2004, French national Christian Sapsizian, Vice President for Latin America for Alcatel Inc., conspired with co-defendant Edgar Valverde Acosta, a Costa Rican citizen who was Alcatel's senior country Officer in Costa Rica, and others to pay more than \$2.5 million in bribes to senior Costa Rican officials in order to obtain a mobile telephone contract on behalf of Alcatel. The payments, funneled through one of Alcatel's Costa Rican consulting firms, were made to a director of Instituto Costarricense de Electricidad (ICE), the state-owned telecommunications authority in Costa Rica, which was responsible for awarding all telecommunications contract. According to court documents, the ICE director was an advisor to a senior government official and the payments were shared with the senior government official. The payments were intended to cause the ICE director and the senior government official to exercise their influence to initiate a bid process which favored Alcatel's technology and to vote to award Alcatel a mobile telephone contract. Alcatel was in fact awarded a \$149 million mobile telephone contract in August 2001.

Criminal Disposition:

Sapsizian pleaded guilty on June 7, 2007, and on September 23, 2008, was sentenced to 30 months in prison and ordered to forfeit \$261,500. Valverde Acosta is currently a fugitive.

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**92. Statoil, ASA**

Resulting Criminal Enforcement Actions:

**A. United States v. Statoil, ASA (S.D.N.Y., October 13, 2006)**

Resulting Civil/Administrative Enforcement Action(s):

**B. In the Matter of Statoil, ASA (October 13, 2006)**

Entities and Individuals:

- Statoil, ASA, charged October 13, 2006; cease-and-desist order issued October 13, 2006.

Criminal Charges:

- Bribery of foreign officials

Civil Charges:

- Bribery of foreign officials
- False Accounting violations
- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: Iran, 2001-2002.

Summary:

In 2001 and 2002, Statoil sought to expand its business internationally, and focused specifically on Iran as a country in which to secure oil and gas development rights. At the time, Iran was awarding contracts for the development of the South Pars field, one of the largest natural gas fields in the world.

In 2001, Statoil developed contacts with an Iranian government official who was believed to have influence over the award of oil and gas contracts in Iran. Following a series of negotiations with the Iranian official in 2001 and 2002, Statoil entered into a “consulting contract” with an offshore intermediary company.

The purpose of that consulting contract—which called for the payment of more than \$15 million over 11 years—was to induce the Iranian official to use his influence to assist Statoil in obtaining a contract to develop portions of the South Pars field and to open doors to additional Iranian oil and gas projects in the future. Two bribe payments totaling more than \$5 million were actually made by wire transfer through a New York bank account, and Statoil was awarded a South Pars development contract that was expected to yield millions of dollars in profit.

On October 13, 2006, Statoil was charged in a two-count information filed in the Southern District of New York with violating the FCPA by making corrupt payments to Iranian officials and by falsifying its books and records in characterizing the bribe payments as consulting fees.

*Criminal Disposition:*

Pursuant to a deferred prosecution agreement, Statoil paid a \$10.5 million fine, which had been reduced by \$3 million to take into account a fine paid in Norway. Statoil also agreed to the appointment of a three-year corporate compliance monitor.

*Civil Disposition:*

Statoil agreed to disgorge \$10.5 million in ill-gotten profits and prejudgment interest to the SEC. Statoil further agreed to an order to cease-and-desist from future violations and to obtain an independent FCPA compliance monitor for three years.

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**93. InVision Technologies, Inc.**

*Resulting Criminal Enforcement Action(s):*

**A. In Re InVision Technologies, Inc. (December 6, 2004)**

*Resulting Civil/Administrative Enforcement Action(s):*

**B. SEC v. David M. Pillor (N.D. Cal., August 15, 2006)**

**C. SEC v. GE InVision, Inc. (N.D. Cal., February 14, 2005)**

**D. In the Matter of GE InVision, Inc. (February 14, 2005)**

*Entities and Individuals:*

- InVision Technologies, Inc. (InVision) (later became GE InVision, Inc.), non-prosecution agreement announced December 6, 2004.
- GE InVision, Inc. (successor to InVision), civil complaint filed and cease-and-desist order issued February 14, 2005.
- General Electric Company, agreement announced December 6, 2004.
- David M. Pillor, InVision’s Senior Vice President for Sales and Marketing, civil complaint filed August 15, 2006.

*Criminal Charges:*

- Bribery of foreign officials (InVision)

- Failure to implement internal controls (InVision)

Civil Charges:

- Bribery of foreign officials (InVision)
- Internal controls violations (InVision)
- Falsification of books and records (InVision, Pillor)
- Aiding and abetting InVision's internal controls violations (Pillor)

Location and Time Period of Misconduct: Thailand, 2002-2004; China, 2002-2004; Philippines, 2001-2002.

Summary:

In December 2004, InVision Technologies, Inc. (InVision) entered into a non-prosecution agreement with the Department of Justice in connection with a series of improper payments to foreign officials in the Kingdom of Thailand, the People's Republic of China (PRC), and the Republic of the Philippines. These improper payments had been discovered in the course of due diligence conducted by General Electric Company (GE) in connection with its proposed acquisition of InVision. GE and InVision then conducted their own internal investigation and voluntarily disclosed their findings to the Department of Justice and the SEC. The investigations by the Department and the SEC revealed that InVision, through the conduct of certain employees, was aware of a high probability that its agents or distributors in Thailand, the PRC, and the Philippines had paid or offered to pay money to foreign officials or political parties in connection with transactions or proposed transactions for the sale by InVision of its airport security screening machines. In February 2005, the SEC filed a settled civil complaint against GE InVision, InVision's corporate successor, charging the company with violations of the anti-bribery, books and records, and internal controls provisions of the FCPA.

On August 15, 2006, the SEC filed a civil complaint against David M. Pillor in the Northern District of California, alleging that, as InVision's Senior Vice President for Sales and Marketing, Pillor had indirectly falsified InVision's books and records and had aided and abetted InVision's internal controls violations in relation to these improper payments.

Criminal Disposition:

On December 6, 2004, InVision Technologies entered into a two-year non-prosecution agreement with the Department of Justice in which it admitted to violations of the FCPA, agreed to pay \$800,000 in penalties, agreed to implement a rigorous compliance program with an independent monitor, and agreed to cooperate fully in the ongoing parallel investigations by the Department of Justice and the SEC.

In a related agreement, GE, which had recently completed its acquisition of InVision, agreed to ensure compliance by InVision with its obligations under the non-prosecution agreement and to effect FCPA compliance programs within its new InVision business.

Civil Disposition:

On February 14, 2005, the SEC entered a cease-and-desist order from future violations against GE InVision and ordered the company to pay \$589,000 in disgorgement and \$28,703.57 in prejudgment interest. The company was also ordered to pay a civil penalty of \$500,000 and to obtain an independent compliance monitor.

On August 15, 2006, the SEC filed a settled action against Pillor enjoining him from future violations and ordering him to pay \$65,000 in civil penalties.

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**94. ABB Ltd.<sup>3</sup>**

Resulting Criminal Enforcement Action(s):

**A. United States v. ABB Vetco Gray, Inc., et al. (S.D. Tex., June 22, 2004)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. John Samson, et al. (D.D.C., July 14, 2006)**

**C. SEC v. ABB Ltd. (D.D.C., November 30, 2004)**

Entities and Individuals:

- ABB Ltd., civil complaint filed November 30, 2004.
- ABB Vetco Gray, Inc., charged June 22, 2004.
- ABB Vetco Gray UK Ltd., charged June 22, 2004.
- ABB Vetco Gray Nigeria Ltd., not charged.
- John Samson, Regional Sales Manager for West Africa for Vetco Gray Nigeria Ltd., civil complaint filed July 14, 2006.
- John G. A. Munro, Senior Vice President of Operations for ABB Vetco Gray UK Ltd., civil complaint filed July 14, 2006.
- Ian N. Campbell, Vice President of Finance for ABB Vetco Gray UK Ltd., civil complaint filed July 14, 2006.
- John H. Whelan, Vice President of Sales for ABB Vetco Gray, Inc., civil complaint filed July 14, 2006.

Criminal Charges:

- Bribery of foreign officials

Civil Charges:

- Bribery of foreign officials (all defendants)
- Internal controls violations (ABB Ltd.)
- Books and records violations (ABB Ltd.)
- False accounting violations (Samson, Munro, Campbell, Whelan)
- Aiding and abetting ABB's internal controls violations (Samson, Munro, Campbell, Whelan)
- Aiding and abetting ABB's falsification of books and records (Samson, Munro, Campbell, Whelan)

Location and Time Period of Misconduct: Nigeria, 1998-2002.

Summary:

On June 22, 2004, one U.S. and one U.K. subsidiary of ABB Ltd., a Swiss company, were charged with two counts of bribery in violation of the FCPA in connection with oil construction projects

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<sup>3</sup> Also see Cases 34 and 90.

in Nigeria. According to court documents, the two subsidiaries, ABB Vetco Gray, Inc. and ABB Vetco Gray UK Ltd., paid bribes to officials of NAPIMS, a Nigerian government agency that evaluates and approves potential bidders for contract work on oil exploration projects in Nigeria, including bidders seeking subcontracts with foreign oil and gas companies. According to the stipulated statement of facts, the companies paid more than \$1 million in exchange for obtaining confidential bid information and favorable recommendations from Nigerian government agencies in connection with seven oil and gas construction contracts related to the offshore Bonga Oil Field in Nigeria, from which the companies expected to realize profits of almost \$12 million.

In a related matter, the SEC charged ABB Ltd. with violations of the books and records and internal controls provisions of the FCPA, arising from the Nigerian conduct involved in the criminal proceedings, as well as suspected illicit payments in Kazakhstan and Angola. In addition to the bribes paid to officials of NAPIMS, the SEC's complaint alleged that from 2000 to 2002, ABB's subsidiaries made corrupt payments to engineers employed by Sonangol, the Angolan state-owned oil company, who had responsibility for the technical evaluation of bids submitted to Sonangol. These improper payments were issued in the context of three separate training trips sponsored by ABB, twice to the United States and Brazil, and once to Norway and the United Kingdom. In each instance, ABB's Vetco Gray U.S. and UK subsidiaries paid all the travel, meals, lodging and entertainment of the Sonangol engineers, and also provided them with cash spending money of \$120 to \$200 per day, at a time when Angola's gross annual per capital income was just \$710. These cash payments—made for the purpose of obtaining or retaining business with Sonangol—were passed out to the Sonangol engineers prior to their departures for each trip, and were improperly recorded in ABB's books and records. In addition, the SEC alleged that from December 2001 through at least February 2003, ABB's Kazakh subsidiaries made more than \$125,000 in improper payments to Kazakh companies owned by a government official employed in Kazakhstan's state oil and gas companies.

*Criminal Disposition:*

In July 2004, ABB Vetco Gray, Inc. and ABB Vetco Gray UK Ltd. each pleaded guilty to violations of the FCPA and agreed to pay a combined fine of \$10.5 million.

*Civil Disposition:*

To settle the civil charges brought by the SEC, ABB Ltd. agreed to disgorge \$5.9 million in illicit profits and prejudgment interest.

On July 5, 2006, Without admitting or denying the allegations in the complaint, Samson, Munro, Campbell, and Whelan consented to the entry of final judgments that: (1) permanently enjoined each of them from future violations of the FCPA; (2) ordered each to pay a civil monetary penalty (\$50,000 as to Samson, and \$40,000 each as to Munro, Campbell and Whelan); and (3) ordered Samson to pay \$64,675 in disgorgement and prejudgment interest.

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**95. Titan Corporation**

*Resulting Criminal Enforcement Action(s):*

- A. United States v. Titan Corporation (S.D. Cal., March 1, 2005)**
- B. United States v. Steven Lynwood Head (S.D. Cal., June 23, 2006)**

*Resulting Civil/Administrative Action(s):*

### **C. SEC v. Titan Corporation (D.D.C., March 1, 2005)**

#### Entities and Individuals:

- Titan Corporation, charged March 1, 2005; civil complaint filed March 1, 2005.
- Titan Africa, Inc. (criminal and civil charges filed against parent).
- Steven Lynwood Head, CEO, Titan Africa, Inc., charged June 23, 2006.

#### Criminal Charges:

- Bribery of foreign officials (Titan)
- Falsification of books and records (Titan and Head)
- Filing a false tax return (Titan)

#### Civil Charges:

- Bribery of foreign officials
- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: Benin, 1999-2000.

#### Summary:

Titan Corporation (Titan), a Delaware Corporation headquartered in San Diego, CA, is a global provider of military intelligence and communications solutions. In October 1998, Titan established a joint venture with Afronetwork, a Benin telecommunications company, to build a satellite-based telephone system in Benin. In a November meeting between Titan and Afronetwork, Titan was introduced to a “business advisor” to the president of Benin. Titan subsequently hired the “advisor” to assist with the contract in exchange for 5% of the value of all equipment installed in Benin. Revenues from the contract were close to \$100 million, and Titan subsequently made over \$2.3 million in payments to the agent, including via offshore accounts in Monaco. Titan recorded the payments as “consulting services” in its corporate books and records and broke the payments into smaller increments to make them appear more reasonable.

#### Criminal Disposition:

On March 1, 2005, Titan pleaded guilty to a three-count information charging it with violating the anti-bribery and books and records provisions of the FCPA and with assisting in the filing of a false tax return. As part of its plea agreement, Titan agreed to pay a \$13 million criminal fine.

Head also pleaded guilty on June 23, 2006, and was sentenced in September 2007 to six months’ imprisonment, 3 years’ supervised release, and a fine of \$5,000.

#### Civil Disposition:

To settle the SEC’s civil charges, Titan agreed to pay \$12.62 million in disgorgement along with \$2.86 million in prejudgment interest. In addition, Titan was ordered to pay a civil penalty of \$13 million, which was deemed satisfied by payment of the same amount in criminal fines.

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**96. Bribery of a Senior Iraqi Police Official**

Resulting Criminal Enforcement Action(s):

**A. United States v. Faheem Mousa Salam (D.D.C., June 7, 2006)**

Entities and Individuals:

- Faheem Mousa Salam, Defense Contractor, charged June 7, 2006.

Criminal Charges:

- Bribery of foreign officials

Location and Time Period of Misconduct: Iraq, 2006.

Summary:

Faheem Mousa Salam admitted that in January 2006, while working in Baghdad as a civilian translator for a U.S. army subcontractor, he offered a senior Iraqi police official \$60,000 in exchange for the official's assistance in facilitating the purchase of 1,000 armored vests and a sophisticated map printer for a sales price of approximately \$1 million. Salam requested the official use his position with the Iraqi police force to coordinate the sale of the material to the multinational Civilian Police Assistance Training Team (CPATT), an organization designed to train the Iraqi police and border guard in Iraq. Salam admitted that he later made final arrangements with an undercover agent of the Office of the Special Inspector General for Iraq Reconstruction who was posing as a procurement officer for CPATT. Salam admitted that during the subsequent discussions with the undercover agent he offered a separate \$28,000 to \$35,000 "gift" to the agent to process the contracts.

Criminal Disposition:

Salam pleaded guilty on August 4, 2006, and was sentenced on February 2, 2007, to 36 months' imprisonment, 24 months' supervised release, and 250 hours' community service.

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**97. Oil States International, Inc.**

Resulting Civil/Administrative Enforcement Action(s):

**A. In the Matter of Oil States International, Inc. (April 27, 2006)**

Entities and Individuals:

- Oil States International, Inc., civil complaint filed April 27, 2006.
- Hydraulic Well Control, LLC (civil complaint filed against parent).

Civil Charges:

- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: Venezuela, 2003-2004.

Summary:

From 2003 through 2004, Oil States International, Inc. (Oil States), through certain employees of one of its subsidiaries, Hydraulic Well Control LLC (HWC), provided approximately \$348,350 in improper payments to employees of Petróleos de Venezuela, S.A. (PdVSA), an energy company owned by the government of Venezuela. Previously, HWC had hired a consultant to help it secure business from PdVSA. In December 2003, three PdVSA employees approached HWC's consultant and asked the consultant to submit inflated bills to HWC for his services and pay these excess funds to the PdVSA employees in the form of kickbacks. These employees also threatened to undermine or undo HWC's contracts with PdVSA if the company refused to pay the requested kickbacks. In turn, the consultant told three HWC employees about the scheme, and the employees agreed to accept inflated invoices. Ultimately, from December 2003 through November 2004, HWC approximately \$348,350 in illicit payments to the consultant, knowing that some or all of this money would be transferred to foreign government officials for the purpose of obtaining or retaining business for HWC and Oil States. HWC then improperly recorded the payments in its accounting books and records as ordinary business expenses, which were subsequently incorporated into the books and records of its parent company.

Civil Disposition:

On April 27, 2006, the SEC instituted settled administrative proceedings against Oil States, whereby the company was ordered to cease-and-desist from future violations of the FCPA. No disgorgement or civil penalties were ordered.

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**98. Bribery of Liberian Officials for False Accreditation of Academic Institutions**

Resulting Criminal Enforcement Action(s):

**A. United States v. Richard John Novak (E.D. Wash., October 5, 2005)**

Entities and Individuals:

- Richard John Novak, indicted October 5, 2005; superseding information filed March 20, 2006.

Criminal Charges:

- Conspiracy:
  - to bribe foreign officials
  - to commit wire and mail fraud
- Bribery of foreign officials

Location and Time Period of Misconduct: Liberia, 2002-2004.

Summary:

In a superseding information filed on March 20, 2006, Richard John Novak was charged with one count of bribery in violation of the FCPA and an additional count of conspiracy to bribe foreign officials, to commit mail fraud, and to commit wire fraud. These charges stemmed from a series of bribe payments, in excess of \$43,000, which were made to several Liberian officials in order to obtain accreditation from Liberia for Saint Regis University, Robertstown University, and James Monroe University, and to induce Liberian officials to issue letters and other documents to third parties falsely representing that Saint Regis University was properly accredited by Liberia. These "online universities" were in fact part of an online "diploma mill" scheme, and they provided no legitimate educational

services and had no legitimate academic accreditation. According to court documents, between October 2002 and September 2004, approximately \$19,200 was wired from an account in the State of Washington controlled by Novak's co-defendants, Dixie Ellen Randock and Steven Karl Randock, Sr., to a bank account in Maryland in the name of the Liberian Consul. These corrupt payments benefited officials of the Liberian Embassy in Washington, D.C., the Director of National Commission of Higher Education of Liberia, and the Director General of Higher Education of Liberia.

Criminal Disposition:

Novak pleaded guilty to the superseding information on March 20, 2006 and was subsequently sentenced on October 2, 2008, to 3 years' probation and 300 hours of community service.

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**99. Diagnostic Products Corporation**

Resulting Criminal Enforcement Action(s):

**A. United States v. DPC (Tianjin) Co. Ltd. (C.D. Cal., May 20, 2005)**

Resulting Civil/Administrative Enforcement Action(s):

**B. In the Matter of Diagnostic Products Corporation (May 20, 2005)**

Entities and Individuals:

- Diagnostic Products Corporation, cease-and-desist order issued May 20, 2005.
- DPC (Tianjin) Co. Ltd., charged May 20, 2005.

Criminal Charges:

- Bribery of foreign officials

Civil Charges:

- Bribery of foreign officials
- Falsification of books and records
- Internal controls violations

Location and Time Period of Misconduct: China, 1991-2002.

Summary:

From late 1991 through December 2002, DPC (Tianjin) Co. Ltd., a subsidiary of Diagnostic Products Corporation (DPC), paid approximately \$1.6 million in bribes in the form of illegal "commissions" to physicians and laboratory personnel employed by government-owned hospitals in the People's Republic of China (PRC) in exchange for agreements that the hospitals would obtain DPC Tianjin's products and services. These bribes constituted violations of the anti-bribery provisions of the FCPA because the physicians and laboratory personnel were employed by hospitals owned by the legal authorities in the PRC, and thus, were "foreign officials" as defined by the FCPA. In most cases, the bribes were paid in cash and hand-delivered by DPC Tianjin salespeople to the person who controlled purchasing decisions for the particular hospital department. DPC Tianjin recorded the payments on its books and records as "selling expenses." DPC Tianjin's general manager regularly prepared and submitted to DPC its financial statements, which contained its sales expenses. The general manager also

caused approval of the budgets for sales expenses of DPC Tianjin, including the amounts DPC Tianjin intended to pay to the officials of the hospitals in the following quarter or year. The “commissions,” typically between 3 percent and 10 percent of sales, allowed DPC Tianjin to earn approximately \$2 million in profits from the sales.

Criminal Disposition:

On May 20, 2005, DPC (Tianjin) Co. pleaded guilty to violating the FCPA, agreed to adopt internal compliance measures, cooperate with ongoing criminal and SEC civil investigations, and appoint an independent compliance expert to audit the company’s compliance program and monitor its implementation of new internal policies and procedures. DPC Tianjin also paid a criminal penalty of \$2 million.

Civil Disposition:

To resolve civil charges brought by the SEC, DPC agreed to the issuance of an order to cease-and-desist from future violations and to disgorge \$2,038,727 in profits and \$749,895 in prejudgment interest to the SEC.

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**100. Micrus Corporation**

Resulting Criminal Enforcement Action(s):

**A. In Re Micrus Corporation (March 2, 2005)**

Entities and Individuals:

- Micrus Corporation, non-prosecution agreement announced March 2, 2005.

Criminal Charges:

- Bribery of foreign officials
- Internal controls violations

Location and Time Period of Misconduct: France, 2002-2004; Turkey, 2004; Spain, 2002; Germany, 2003.

Summary:

From January 2002, Micrus Corporation, a privately held company based in Sunnyvale, California, and its Swiss subsidiary Micrus S.A. (collectively Micrus), engaged in, among other businesses, the sale and distribution of embolic coils in foreign jurisdictions. Between January 2002 and August 2004, in connection with sales to public and private medical facilities in some of those countries, Micrus entered into several types of arrangements with doctors, pursuant to which the doctors used or promoted Micrus products in exchange for payments, commissions or honoraria (the “foreign payments”). During that time, Micrus also granted to some of those foreign doctors options to purchase shares of Micrus securities (after those securities were issued to the public in an Initial Public Offering). These payments ultimately totaled approximately \$1,400,000. Of that amount, approximately \$105,000 was paid as part of an arrangement that clearly violated the FCPA and the law in the foreign jurisdiction where the payment was made, and an additional approximately \$250,000 was comprised of payments

for which Micrus did not obtain the necessary prior administrative or legal approval as required under the laws of the relevant foreign jurisdiction.

Criminal Disposition:

On February 28, 2005, Micrus agreed to a two-year non-prosecution agreement and paid \$450,000 in penalties; agreed to implement a rigorous compliance program with a monitor for a period of three years; and agreed to cooperate fully in the investigation by the Department of Justice.

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**101. HealthSouth Corporation**

Resulting Criminal Enforcement Action(s):

- A. United States v. Robert E. Thomson, et al. (N.D. Ala., July 1, 2004)**
- B. United States v. Thomas Carman (N.D. Ala., March 2, 2004)**
- C. United States v. Vincent Nico (N.D. Ala., March 2, 2004)**

Entities and Individuals:

- Robert E. Thomson, President and COO, HealthSouth in-patient division, indicted July 1, 2004.
- James C. Reilly, Group Vice President of Legal Services, HealthSouth, indicted July 1, 2004.
- Thomas Carman, Executive Vice President, HealthSouth, charged March 2, 2004.
- Vincent Nico, Vice President, HealthSouth, charged March 2, 2004.

Criminal Charges:

- Conspiracy:
  - to violate the Travel Act (Thomson and Reilly)
  - to falsify books and records (Thomson and Reilly)
- Falsification of books and records (Thomson and Reilly)
- Commercial bribery (Thomson and Reilly)
- Wire fraud (Nico)
- False statements to the FBI (Carman)

Location and Time Period of Misconduct: Saudi Arabia, 2000-2003.

Summary:

HealthSouth was a corporation organized under the laws of the state of Delaware with headquarters in Birmingham, Alabama. In March and July 2004, the Department of Justice filed charges against four HealthSouth executives in connection with an alleged scheme to bribe the director general of a Saudi Arabian foundation in furtherance of HealthSouth's effort to secure an agreement to provide staffing and management services for a 450-bed hospital in Saudi Arabia. Under the contract that HealthSouth eventually executed with the Saudi Arabian foundation, HealthSouth was to receive \$10 million annually over a five-year term.

On July 1, 2004, the Department indicted Robert E. Thomson, President and COO of HealthSouth's in-patient division, and James C. Reilly, the Group Vice President of Legal Services for Health South, in the Northern District of Alabama. According to the indictment, the Saudi Arabian foundation's director general solicited a \$1 million payment from HealthSouth, ostensibly as a "finder's fee." Against the advice of counsel, HealthSouth allegedly agreed to pay the Saudi Arabian

foundation's director general the sum of \$500,000 per year for a five-year period in return for his agreement to execute the contract on behalf of the Saudi Arabian foundation. In order to conceal the true nature of the scheme, HealthSouth officers, including Thomson and Reilly, allegedly arranged for the Saudi Arabian foundation's director general to execute a bogus consulting contract with a HealthSouth-affiliated entity in Australia. Until the scheme was detected in 2003, HealthSouth paid the amounts due under this phony consulting contract by wiring them to Australia, where they were subsequently wired to the foundation's director general in Saudi Arabia, according to the indictment. The HealthSouth officers allegedly undertook this conduct despite the fact that they had been specifically advised beforehand by an attorney retained by HealthSouth that such conduct would amount to a violation of federal criminal law.

The indictment charged that Thomson and Reilly violated the Travel Act by using the facilities of interstate commerce to promote unlawful activity, namely bribery in violation of Alabama law. In addition, the indictment charges that Thomson and Reilly violated the Foreign Corrupt Practices Act by causing HealthSouth's books, records and accounts to falsely and fraudulently reflect that the payments made to fund the bogus consulting contract were made for legitimate purposes.

Previously, on March 2, 2004, the Department had filed charges against HealthSouth's former Vice President, Vincent Nico, and former Executive Vice President, Thomas Carman. Nico was charged with wire fraud while Carman was charged with having made false statements to the FBI.

*Criminal Disposition:*

Nico pleaded guilty on April 22, 2004, and was sentenced to 36 months' probation, including 6 months' home detention, and a \$250,000 fine. Nico also forfeited more than \$1 million. Carman pleaded guilty on April 27, 2004, and was later sentenced to 36 months' probation and a \$500 fine. Thomson and Reilly were acquitted at trial.

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## **102. Schering-Plough Corporation**

*Resulting Civil/Administrative Enforcement Action(s):*

- A. SEC v. Schering-Plough Corporation (D.D.C., June 9, 2004)**
- B. In the Matter of Schering-Plough Corporation (June 9, 2004)**

*Entities and Individuals:*

- Schering-Plough Corporation, civil complaint filed and cease-and-desist order issued June 9, 2004.

*Civil Charges:*

- Falsification of books and records
- Internal controls violations

*Location and Time Period of Misconduct:* Poland, 1999-2002.

*Summary:*

On June 9, 2004, the SEC commenced civil and administrative enforcement actions against Schering-Plough Corporation (Schering-Plough), a pharmaceutical company, for violations of the books and records and internal controls provisions of the FCPA. The Commission's complaint against

Schering-Plough alleged that, between February 1999 and March 2002, one of Schering-Plough's foreign subsidiaries, Schering-Plough Poland, made improper payments to a charitable organization called the Chudow Castle Foundation. At the time of these payments, the foundation was headed by an individual who was the Director of the Silesian Health Fund, a Polish governmental body that, among other things, provided money for the purchase of pharmaceutical products and influenced the purchase of those products by other entities, such as hospitals, through the allocation of health fund resources. According to the complaint, Schering-Plough Poland paid approximately \$76,000 to the Chudow Castle Foundation to induce the Director to influence the health fund's purchase of Schering-Plough's pharmaceutical products.

Civil Disposition:

On June 16, 2004, without admitting or denying the Commission's allegations, Schering-Plough entered into a settlement with the SEC, whereby the company was ordered to cease-and-desist from future violations and pay a civil penalty in the amount of \$500,000.

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**103. BJ Services Company**

Resulting Civil/Administrative Enforcement Action(s):

**A. In the Matter of BJ Services Company (March 10, 2004)**

Entities and Individuals:

- BJ Services Company, cease-and-desist order issued March 10, 2004.

Civil Charges:

- Bribery of foreign officials
- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: Argentina, 1998-2002.

Summary:

On March 10, 2004, the SEC instituted settled administrative proceedings against BJ Services Company (BJ Services), for violations of the anti-bribery, internal controls, and books and records provisions of the FCPA. According to the SEC's filing, during 2001, BJ Services, through its wholly owned Argentinean subsidiary B.J. Services, S.A. ("BJSA"), made illegal or questionable payments, totaling approximately 72,000 pesos to Argentinean customs officials. Further, from 1998 through April 2002 certain undocumented or improperly characterized payments were made totaling approximately 151,000 pesos. In certain instances, entries were made in BJSA's books and records to conceal the payments. During the same period, BJ Services experienced certain breaches in the existing accounting policies, controls and procedures in certain areas of its Latin American Region.

Civil Disposition:

BJ Services was ordered to cease-and-desist from future violations. No disgorgement or civil penalty was ordered by the SEC.

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**104. American Bank Note Holographics, Inc.**

Resulting Criminal Enforcement Action(s):

- A. United States v. Joshua C. Cantor (S.D.N.Y., July 17, 2001)**

Resulting Civil/Administrative Enforcement Action(s):

- B. SEC v. Joshua C. Cantor (S.D.N.Y., April 10, 2003)**  
**C. SEC v. American Bank Note Holographics, Inc. (S.D.N.Y., July 18, 2001)**  
**D. In the Matter of American Bank Note Holographics, Inc. (S.D.N.Y., July 18, 2001)**

Entities and Individuals:

- American Bank Note Holographics, Inc. (ABNH), civil complaint filed and cease-and-desist order issued July 18, 2001.
- Joshua C. Cantor, President of ABNH, charged July 17, 2001; civil complaint filed April 10, 2003.

Criminal Charges:

- Conspiracy:
  - to commit securities fraud
  - to falsify books and records
  - to lie to auditors

Civil Charges:

- Falsification of books and records

Location and Time Period of Misconduct: Saudi Arabia, 1998-1999.

Summary:

In July 2001, the Department of Justice and the SEC simultaneously filed criminal and civil charges against Joshua C. Cantor, the President of American Bank Note Holographics, Inc. (ABNH), in connection with certain violations of the FCPA and other federal securities laws. In addition, the SEC filed two settled actions against ABNH, a manufacturer of holographic products that are used in a variety of commercial applications, such as credit cards. According to court documents, the Saudi Arabian Monetary Agency (SAMA) approached ABNH with the opportunity to be the supplier of a hologram for a commemorative Saudi Arabian banknote. In May 1998, one of ABNH's overseas sales agents informed ABNH that its bid would need to include "an additional sum to cover consultancy fees." Cantor, as President of ABNH, knew that at least a portion of these consultancy fees was to go to Saudi Arabian officials in exchange for the contract. ABNH eventually won the bid and consultancy fees in the amount of \$239,000 were transferred to a Swiss bank account in Geneva held in the name of "Satapco." ABNH, along with numerous other former executives, were also charged by the SEC in connection with a broad range of violations of federal securities.

Criminal Disposition:

Cantor pleaded guilty on July 17, 2001.

Civil Disposition:

To settle the civil and administrative enforcement actions undertaken by the SEC, without admitting or denying the Commission's allegations, ABNH and Cantor each agreed to the entry of a cease-and-desist order. ABNH also agreed to pay a civil penalty of \$75,000.

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**105. Bribery of and by World Bank Officials**

Resulting Criminal Enforcement Action(s):

- A. United States v. Ramendra Basu (November 26, 2002)**
- B. United States v. Gautam Sengupta (D.D.C., January 30, 2002)**

Entities and Individuals:

- Ramendra Basu, World Bank Trust Funds manager, charged November 26, 2002.
- Gautam Sengupta, World Bank Task Manager for Africa, charged January 30, 2002.

Criminal Charges:

- Conspiracy to bribe foreign officials (all defendants)
- Bribery of foreign officials (all defendants)

Location and Time Period of Misconduct: World Bank, Ethiopia, Kenya, 1997-2000.

Summary:

In 2002, the Department of Justice charged two World Bank officials, Ramendra Basu, a national of India, and Gautam Sengupta, with conspiring to steer World Bank contracts to certain consultants in exchange for kickbacks. According to court documents, the two defendants conspired with a Swedish consultant and others to use their official positions with the World Bank to steer World Bank contracts in Ethiopia and Kenya to certain Swedish companies in exchange for approximately \$127,000 in kickbacks. In addition, the defendants admitted that in January 1999, they received a request for a \$50,000 bribe from a Kenyan government official working on a Project Implementation Unit involved in a World Bank-financed project, which was to be paid by the Swedish consultant. Collectively, Basu and Sengupta forwarded this request to the Swedish consultant and passed along related bank account information, despite knowing that the payment was meant to corruptly influence an act or decision of the foreign official in his official capacity, in violation of the anti-bribery provisions of the FCPA.

Criminal Disposition:

Sengupta pleaded guilty on February 13, 2002, and was sentenced in 2006, Sengupta to two months' imprisonment and one year of supervised release, which was to include four months of home confinement. Sengupta was also sentenced to pay a criminal fine of \$3,000. Basu pleaded guilty on December 17, 2002, and was sentenced on April 22, 2008, to 15 months in prison, 2 years of supervised release, and 50 hours of community service. On December 2, 2009, the U.S. Court of Appeals for the District of Columbia affirmed the District Court's decision to deny Basu's May 7, 2006 motion to withdraw his guilty plea on the grounds that Basu failed to show that the plea was tainted by any constitutional or procedural error. On March 29, 2010, the Supreme Court denied Basu's petition for a writ of certiorari.

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**106. American Rice, Inc.**

Resulting Criminal Enforcement Action(s):

**A. United States v. David Kay, et al. (S.D. Tex., December 12, 2001)**

Resulting Civil/Administrative Enforcement Action(s):

**B. SEC v. David Kay, et al. (S.D. Tex., July 30, 2002)**

Entities and Individuals:

- American Rice, Inc. (ARI) (not charged).
- Douglas Murphy, President of ARI, indicted December 12, 2001; civil complaint filed July 30, 2002.
- David Kay, Vice President of ARI, indicted March 25, 2002; civil complaint filed July 30, 2002.
- Lawrence Theriot, Caribbean Operations consultant for ARI, civil complaint filed July 30, 2002.

Criminal Charges:

- Conspiracy to bribe foreign officials (all defendants)
- Bribery of foreign officials (all defendants)
- Obstruction of justice (Murphy)

Civil Charges:

- Bribery of foreign officials (Kay and Murphy)
- Internal controls violations (Kay)
- Falsification of books and records (Kay)
- Aiding and abetting ARI's falsification of books and records (Kay)
- Aiding and abetting ARI's internal controls violations (Kay)
- Aiding and abetting Kay and Murphy's bribery of foreign officials (Theriot)

Location and Time Period of Misconduct: Haiti, 1998-1999.

Summary:

On December 12, 2001, David Kay, the Vice President of Marketing for American Rice, Inc. (ARI), a Texas corporation, was indicted in the Southern District of Texas on twelve counts of violating the FCPA in connection with a scheme to pay bribes to Haitian customs officials. A superseding indictment against Kay and Douglas Murphy, the President of American Rice, was returned by a grand jury in the Southern District of Texas on March 25, 2002. In addition to adding Murphy to the twelve counts of bribery in violation of the FCPA, the indictment charged Murphy with obstruction of justice and both defendants with conspiring to violate the anti-bribery provisions of the FCPA.

According to evidence presented at trial, between January 1998 and October 1999, Kay, who as Vice President of Marketing was responsible for overseeing ARI's sales in Haiti, authorized corrupt cash payments to Haitian customs officials. These bribery payments, which numbered at least 12 and totaled over \$500,000, were made to customs officials in exchange for reductions in taxes imposed upon ARI's rice imports. Ultimately, these payments allowed ARI to avoid approximately \$1.5 million in Haitian import taxes. Evidence presented at trial also established that Murphy, as President of ARI was aware of the bribery scheme, but took no action to stop the payments.

The reduced import tax liability assisted ARI in obtaining or retaining business because it allowed ARI to retain its competitive price advantage over competitors, including illegal importers of rice, who paid no import dues.

Criminal Disposition:

In April 2002, the district court dismissed the indictment, finding that the conduct alleged did not fall within the FCPA's requirement that the bribes be paid to "assist in obtaining or retaining business." The United States appealed this decision, and, in February 2004, the Court of Appeals for the Fifth Circuit reinstated the indictment.

On October 6, 2004, Kay and Murphy were convicted on all counts contained in the superseding indictment following a two-week jury trial. On June 29, 2005, Murphy was sentenced to 63 months in prison followed by three years of supervised release. Kay was sentenced to 37 months in prison followed by two years of supervised release. Both defendants filed appeals to the U.S. Court of Appeals for the 5<sup>th</sup> Circuit, but the convictions and sentences were upheld.

Civil Disposition:

The civil matter against Kay and Murphy was suspended until sentencing, and the SEC has not yet moved to reopen the case. Theriot agreed to the issuance of a cease-and-desist order and paid an \$11,000 civil penalty.

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**107. BellSouth Corporation**

Resulting Civil/Administrative Enforcement Action(s):

- A. SEC v. BellSouth Corporation (N.D. Ga., January 15, 2002)**
- B. In the Matter of BellSouth Corporation (January 15, 2002)**

Entities and Individuals:

- BellSouth Corporation, civil complaint filed and cease-and-desist order issued January 15, 2002.

Civil Charges:

- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: Venezuela, 1997-2000; Nicaragua, 1998-1999.

Summary:

On January 15, 2002, the SEC filed two settled enforcement actions against BellSouth Corporation, charging that two of the company's subsidiaries had engaged in violations of the internal controls and books and records provisions of the FCPA. According to the SEC's Complaint, between September 1997 and August 2000, former senior management of BellSouth's Venezuelan subsidiary, Telcel, C.A. (Telcel), authorized payments totaling approximately \$10.8 million to six offshore companies and improperly recorded the disbursements in Telcel's books and records, based on fictitious invoices, as bona fide services. Telcel's internal controls failed to detect the unsubstantiated payments for a period of at least two years. As an additional consequence of this control deficiency, the Complaint alleged that BellSouth was unable to reconstruct the circumstances or purpose of the Telcel payments, or

determine the identity of their ultimate recipients. Telcel was Venezuela's leading wireless provider, contributing more revenue to BellSouth's Latin American Group segment than any other Latin American BellSouth operation.

In addition, the SEC charged that between October 1998 and June 1999, BellSouth's Nicaraguan subsidiary, Telefonía Celular de Nicaragua, S.A.'s (Telefonía), improperly recorded payments to the wife of the Nicaraguan legislator who was the chairman of the Nicaraguan legislative committee with oversight of Nicaraguan telecommunications.

Civil Disposition:

BellSouth was enjoined from future violations and was ordered to pay a \$150,000 civil penalty.

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**108. Chiquita Brands International, Inc.**

Resulting Civil/Administrative Enforcement Action(s):

- A. SEC v. Chiquita Brands International, Inc. (D.D.C., October 3, 2001)**
- B. In the Matter of Chiquita Brands International, Inc. (October 3, 2001)**

Entities and Individuals:

- Chiquita Brands International, Inc., civil complaint filed and cease-and-desist order issued October 3, 2001.
- C.I. Bananos de Exportación, S.A. (civil complaint filed against parent company).
- Comercio Exterior Asesores Limitada (civil complaint filed against parent company).

Civil Charges:

- Internal controls violations
- Falsification of books and records

Location and Time Period of Misconduct: Columbia, 1996-1997.

Summary:

On October 3, 2001, the SEC commenced two settled enforcement actions against Chiquita Brands International, Inc. (Chiquita), alleging that the company had violated the books and records and internal controls provisions of the FCPA as a result of the conduct of its Colombian subsidiary, C.I. Bananos de Exportación, S.A. (Banadex). According to the SEC's filings, in September 1995, a Banadex employee in charge of material and supplies advised Banadex management that renewal of the company's Turbo, Colombia port facility's customs license was in jeopardy because of two previous citations for failure to comply with Colombian customs regulations. The employee further advised Banadex management that replacing the Turbo facility would cost approximately \$1 million.

Without the knowledge or consent of any Chiquita employees outside Colombia and in contravention of Chiquita's policies, Banadex's chief administrative officer authorized the company's customs broker, as well as Banadex's security officer and controller, to make a corrupt payment of the equivalent of \$30,000 to local customs officials to secure the renewal of the port facility's license. The subsidiary's books and records incorrectly identified the two installment payments, which were made in 1996 and 1997. In 1997, Chiquita's internal audit staff discovered the payment during an audit review

and, after an internal investigation, Chiquita took corrective action which included terminating the responsible Banadex employees and reinforcing internal controls at Banadex.

Civil Disposition:

Pursuant to a settlement agreement with the SEC, Chiquita was ordered to cease-and-desist from future violations of these provisions of the FCPA and to pay a \$100,000 civil penalty.

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**109. Owl Securities and Investment Ltd.**

Resulting Criminal Enforcement Action(s):

- A. United States v. Richard K. Halford (W.D. Mo., August 3, 2001)**
- B. United States v. Albert Reitz (W.D. Mo., August 3, 2001)**
- C. United States v. Robert Richard King, et al. (W.D. Mo., June 27, 2001)**

Entities and Individuals:

- Owl Securities and Investment Ltd. (OSI Ltd.) (not charged).
- OSI Proyectos (not charged).
- Richard K. Halford, Part-Owner and CFO of OSI Ltd., charged August 3, 2001.
- Albert Reitz, Vice President and Secretary of OSI Ltd., charged August 3, 2001.
- Robert Richard King, Part-Owner of OSI Ltd., indicted June 27, 2001.
- Pablo Barquero Hernandez, Costa Rican representative of OSI Ltd., indicted June 27, 2001.

Criminal Charges:

- Conspiracy to bribe foreign officials (all defendants)
- Bribery of foreign officials (King and Hernandez)
- Commercial bribery (King and Hernandez)

Location and Time Period of Misconduct: Costa Rica, 1997-2000.

Summary:

In 2001, the Department of Justice filed charges against two executives and a part-owner of Owl Securities and Investment Ltd., a Missouri company, as well as an agent that represented the company and its wholly-owned Costa Rican subsidiary, OSI Proyectos. According to court documents, OSI Proyectos was engaged in the development of port facilities in Costa Rica, including an international airport and various luxury properties. In 1998, the ruling Costa Rican political party signed a letter agreeing to allow OSI and its subsidiary to move forward with developing the port facilities. However, before it granted formal permission, Pablo Barquero Hernandez, OSI's Costa Rican Representative indicated that OSI would be required to pay a final "closing cost" or "toll" of \$1 million. This amount was later increased to \$1.5 million. Together, Robert Richard King, a large shareholder in OSI, and Hernandez allegedly agreed to pay the Costa Rican ruling party a \$1 million "closing cost" to secure the contract. For their roles in this bribery scheme, King and Hernandez were indicted by a federal grand jury in the Western District of Missouri on June 27, 2001.

Two additional OSI executives were charged on August 3, 2001, for their roles in the illicit payments to Costa Rican officials. According to court documents, Richard K. Halford, then the CFO of OSI, had communicated with Hernandez and was aware of the payments to Costa Rican officials. He

proposed opening a new account in Panama or the U.S. to route the payments. Albert Reitz, OSI's Vice President and Secretary, assisted in raising funds from investors to pay for the bribe.

Criminal Disposition:

Halford and Reitz each pleaded guilty on August 3, 2001. On July 9, 2002, District Judge Scott O. Wright sentenced Halford to five years' probation and Reitz to five years' probation, including 6 months of home confinement, and 100 hours of community service. King was convicted at trial in June 2002 and sentenced in November of that year to 30 months' imprisonment, 2 years' supervised release, and a \$60,000 fine. On December 15, 2003, the U.S. Court of Appeals for the 8<sup>th</sup> Circuit upheld King's conviction. Hernandez is currently a fugitive.

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**110. Allied Products Corporation**

Resulting Criminal Enforcement Action(s):

**A. United States v. Daniel Ray Rothrock (W.D. Tex., June 13, 2001)**

Entities and Individuals:

- Daniel Ray Rothrock, Vice President of Allied Products Corporation's Cooper Division, charged June 13, 2001.

Criminal Charges:

- Falsification of books and records

Location and Time Period of Misconduct: Russia, 1991-1993.

Summary:

On June 13, 2001, the Department of Justice charged Daniel Ray Rothrock, the Vice President of the Cooper Division of Allied Products Corporation (Allied), with one count of falsifying his employer's corporate books and records, in violation of the FCPA. The Cooper Division of Allied, a Chicago, Illinois based company and U.S. issuer, was engaged in the business of manufacturing and selling workover rigs and other oilfield well servicing equipment to purchasers throughout the world. According to the one-count information filed against him, in August 1991, the Cooper Division of Allied agreed to pay a sales commission of \$282,076 to a third-party company for the ultimate benefit of the Director General of RVO Zarubezhneftstroy ("Nestro"), a Soviet government purchasing agency, in order to obtain a contract for the sale of 20 workover rigs to Nestro.

In September 1992, this third-party company, of which the Russian official was a director, requested \$300,000 from Allied's Cooper Division, purportedly for services provided by the company in connection with the award of the workover rig contract. Subsequently, in late 1992, Rothrock created a falsified invoice for the consulting company, in the amount of \$300,000, which purported to be for a "consultation fee and market study". Rothrock later admitted that he knew that no consultation fee or market study had been or would be provided by the third-party company and that, in fact, the invoice he provided was for the purpose of disbursing these illicit funds to the company. In October 1992, Rothrock received an invoice for \$300,000, similar to the one he had drafted for the third-party company, which purported to come from a company called "Educa" in Vienna, Austria. Following the signing of a second contract with Nestro for the provision of additional workover rigs in 1993, Rothrock caused the

Cooper Division to issue a check to Educa in the amount of \$300,000, despite knowing that Allied had no business relationship with a company called “Educa” and that the invoice was in fact from the third-party company. Rothrock thereby caused false entries regarding this illicit payment to be incorporated into the books and records of Allied.

Criminal Disposition:

Rothrock pleaded guilty before a U.S. Magistrate Judge on June 22, 2001. Rothrock’s guilty plea was accepted by U.S. District Judge Orlando L. Garcia on August 24, 2001, and he was sentenced to one year’s probation on September 20, 2001.

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**111. International Business Machines Corporation**

Resulting Civil/Administrative Enforcement Action(s):

- A. SEC v. International Business Machines Corporation (D.D.C., December 21, 2000)**
- B. In the Matter of International Business Machines Corporation (December 21, 2000)**

Entities and Individuals:

- International Business Machines Corporation, civil complaint filed December 21, 2000.

Civil Charges:

- Falsification of books and records

Location and Time Period of Misconduct: Argentina, 1994-1995.

Summary:

On December 21, 2000, the SEC filed two settled enforcement actions against International Business Machines Corporation (IBM), alleging that the company had violated the books and records provision of the FCPA in connection with a \$250 million contract to integrate and modernize the computer system of a commercial bank owned by the Argentine government. According to the SEC’s filings, certain former senior management of IBM-Argentina, S.A. (“IBM-Argentina”), a wholly-owned subsidiary of IBM, caused IBM-Argentina to enter into a subcontract with Capacitacion Y Computacion Rural, S.A. (“CCR”). Between 1994 and 1995, IBM-Argentina paid CCR approximately \$22 million under the subcontract. Of this amount, at least \$4.5 million was transferred to several directors of the state-owned Argentine bank by CCR.

In connection with the subcontract, IBM-Argentina’s former senior management overrode IBM procurement and contracting procedures, and hid the details of the subcontract from the technical and financial review personnel assigned to the contract with the Argentine state-owned bank. In order to override IBM’s procurement review procedures, the IBM-Argentina’s former senior management provided the company’s Procurement department with fabricated documentation, including a backdated authorization letter and a document that stated incomplete and inaccurate reasons for hiring CCR. IBM-Argentina subsequently recorded the payments to CCR in its books and records as third-party subcontractor expenses. While IBM did not falsify or destroy any records, in consolidating its subsidiaries’ financial results, this false information was incorporated into IBM’s 1994 Form 10-K, which was filed with the SEC on March 23, 1995.

After IBM officials learned about the misconduct by IBM-Argentina, the company took immediate corrective action, including terminating the employees involved and stopping all future payments to CCR.

Civil Disposition:

IBM was ordered to cease and desist from future violations and paid a \$300,000 civil penalty.

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**112. UNC/Lear Services Inc.**

Resulting Criminal Enforcement Action(s):

**A. United States v. UNC/Lear Services Inc. (W.D. Ky., February 17, 2000)**

Entities and Individuals:

- UNC/Lear Services Inc., charged February 17, 2000.

Criminal Charges:

- Falsification of books and records
- Mail fraud
- Making a false statement

Location and Time Period of Misconduct: Saudi Arabia, 1993-1995.

Summary:

On February 17, 2000, the Department of Justice charged UNC/Lear Services Inc. (UNC/Lear), a provider of military parts and services to foreign governments, with mail fraud, making false statements, and falsifying its books and records. The charges against UNC/Lear arose from the company's efforts to conceal \$140,000 in illicit payments, which were made to a Kentucky corporation for the benefit of a Saudi Arabian consultant. The payments were described in the company's books and records as "fees for engineering services," and the consultant provided UNC/Lear with false invoices to support the payments. UNC/Lear was also charged with making false statements to the U.S. Department of Defense by claiming that it had paid no foreign agents and no contingent fees on a sole source Financial Management Information System contract.

Criminal Disposition:

UNC/Lear pleaded guilty to all charges on March 6, 2000, and was sentenced to pay a \$75,000 criminal fine, a \$132,000 civil penalty, and \$768,000 in restitution.

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**113. Metcalf & Eddy International, Inc.**

Resulting Civil/Administrative Enforcement Action(s):

**A. United States v. Metcalf & Eddy International, Inc. (D. Mass., December 14, 1999)**

Entities and Individuals:

- Metcalf & Eddy International, Inc., charged December 14, 1999.

Civil Charges:

- Bribery of foreign officials

Location and Time Period of Misconduct: Egypt, 1994-1997.

Summary:

On December 14, 1999, the Department of Justice initiated a settled civil enforcement action against Metcalf & Eddy International, Inc. (M&E), in connection with the company's improper provision of things of value to Egyptian government officials, in violation of the FCPA. According to the Department's filings, during 1994, Metcalf & Eddy International, Inc. (M&E) was awarded a contract to provide services in support of the maintenance of wastewater treatment facilities managed by the Alexandria General Organization for Sanitary Drainage (AGOSD), an Egyptian government agency that was responsible for wastewater and sewage treatment in Alexandria, Egypt. In 1995, M&E was awarded a second contract to provide architectural and engineering support to AGOSD's operations.

In 1994, M&E paid for the Chairman of the AGOSD to travel to Boston, Paris, and San Diego with his family, including cash "per diem" payments given to him in advance in Alexandria, Egypt. In exchange, the Chairman exerted influence over the board in charge of awarding these contracts and recommended that M&E be given \$36 million contracts, which were funded by the U.S. Agency for International Development.

Civil Disposition:

On December 14, 1999, without admitting or denying the Department's allegations, M&E consented to an injunction to pay a fine of \$400,000 and costs of investigation of \$50,000, and to be permanently enjoined from FCPA violations.

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**114. International Materials Solutions Corporation**

Resulting Criminal Enforcement Action(s):

- A. United States v. International Materials Solutions Corporation, et al. (S.D. Ohio, February 8, 1999)**

Entities and Individuals:

- International Materials Solutions Corporation (IMSC), charged February 8, 1999.
- Thomas K. Qualey, President of IMSC, charged February 8, 1999.

Criminal Charges:

- Conspiracy to bribe foreign officials (all defendants)
- Bribery of foreign officials (all defendants)

Location and Time Period of Misconduct: Brazil, 1995-1996.

Summary:

On February 8, 1999, the Department of Justice filed a two-count information in the Southern District of Ohio, charging International Materials Solutions Corporation (IMSC) and Thomas K. Qualey,

IMSC's President, with one count of conspiring to violate the anti-bribery provisions of the FCPA and one count of bribing a foreign official. According to court documents, in 1995 and 1996, Qualey prepared and submitted bids on behalf of International Materials Solutions Corporation (IMSC) to sell forklifts to the Brazilian Air Force (BAF) and to service them. In order to secure these contracts, which were worth approximately \$400,000, IMSC agreed to pay \$67,000 in bribes to a Lieutenant Colonel in the BAF, who was stationed as a Foreign Liaison Officer in the United States.

Criminal Disposition:

On February 10, 1999, Qualey pleaded guilty and was sentenced to four months home confinement and a \$5,000 fine. IMSC also pleaded guilty on this date and was later sentenced to pay a \$1,000 criminal fine.

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**115. Control Systems Specialist, Inc.**

Resulting Criminal Enforcement Action(s):

**A. United States v. Control Systems Specialist, Inc., et al. (S.D. Ohio, August 19, 1998)**

Entities and Individuals:

- Control Systems Specialist, Inc.
- Darrold Richard Crites, President of Control Systems Specialist, Inc.

Criminal Charges:

- Conspiracy to bribe foreign officials (all defendants)
- Bribery of foreign officials (all defendants)
- Bribery of U.S. officials (all defendants)

Location and Time Period of Misconduct: Brazil, 1994-1996.

Summary:

On August 19, 1998, the Department of Justice filed a three-count information against Control Systems Specialist, Inc. (CSS) and its President, Darrold Richard Crites, charging both with conspiring to bribe foreign officials, as well as bribing both foreign and U.S. public officials. CSS, an Ohio corporation, was engaged in the business of buying and repairing surplus military equipment for resale. According to court documents, in 1994, CSS and Crites bid on a contract to supply refurbished military equipment to the Brazilian Aeronautical Commission. In order to win this contract, between November 1994 and December 1995, CSS and Crites made more than 21 bribe payments to a Brazilian Air Force Lt. Colonel, who was authorized to purchase military equipment on behalf of the Brazilian government. These bribe payments ultimately totaled more than \$250,000. In addition, CSS and Crites paid approximately \$66,000 to a U.S. Air Force officer to provide CSS with confidential information that helped the contracts with the Brazilian government. As a result of these bribe payments, CSS was awarded the contract with the Brazilian Air Force, which was ultimately worth more than \$670,000.

Criminal Disposition:

CSS and Crites each pleaded guilty before Judge Walter H. Rice on October 15, 1998, and were subsequently sentenced on March 8, 1999. Defendant Crites was sentenced to 3 years' probation, including 6 months' home confinement. CSS was fined \$1,500.

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**116. Saybolt Inc.**

Resulting Criminal Enforcement Action(s):

- A. United States v. Saybolt North America Inc., et al. (D. Mass., August 18, 1998)**
- B. United States v. David H. Mead, et al. (D.N.J., April 17, 1998)**

Entities and Individuals:

- Saybolt Inc., charged August 18, 1998.
- Saybolt North America Inc., charged August 18, 1998.
- Frerik Pluimers, Chairman of the Board of Directors of Saybolt Inc., indicted April 17, 1998.
- David H. Mead, President of Saybolt Inc., indicted April 17, 1998.

Criminal Charges:

- Conspiracy:
  - to bribe foreign officials (all defendants)
  - to commit commercial bribery (Pluimers and Mead)
- Bribery of foreign officials (all defendants)
- Commercial bribery (Pluimers and Mead)

Location and Time Period of Misconduct: Panama, 1994-1995.

Summary:

In April 1998, a grand jury sitting in Trenton, New Jersey, returned an indictment charging Frerik Pluimers, a Dutch national, and David Mead, a British national, both of whom were officers of an American company, Saybolt Inc., with conspiracy and violations of the FCPA and the Travel Act in connection with a \$50,000 bribe paid to Panamanian officials. The bribe was paid to secure a lease for Saybolt Panama to move into the Panama canal free zone, which would reduce the company's tax liability. The bribe was discussed and approved at a board meeting of Saybolt Inc. in New Jersey, but the bribe itself was paid from the company's Dutch parent, Saybolt N.A., with the authorization of Pluimers.

Criminal Disposition:

On December 3, 1998, Saybolt Inc. and its subsidiary, Saybolt North America, pled guilty to violating the FCPA and paid a \$1.5 million fine. In a related case, Saybolt Inc. was sentenced to pay a \$3.4 million fine and required to retain a compliance monitor in relation to charges that it had falsified environmental tests of certain of its products.

Subsequent to the resolution, Saybolt sued its attorney, who had advised the company that the bribes could be paid through the Netherlands, for malpractice. The case was settled, but the settlement was never made public.

Mr. Mead was convicted at trial in October 1998 and sentenced to four months in prison and a \$20,000 fine. The United States requested that the Netherlands extradite Mr. Plumiers in March 2000. Despite extended litigation, including a decision of the Dutch Supreme Court authorizing the extradition, the Dutch authorities have refused and rejected the U.S. request for Mr. Plumiers' extradition. The United States is still seeking Mr. Plumiers return to the United States to stand trial.

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**117. Tanner Management Corporation**

Resulting Criminal Enforcement Action(s):

**A. United States v. Herbert K. Tannenbaum (S.D.N.Y., July 23, 1998)**

Entities and Individuals:

- Herbert K. Tannenbaum, President of Tanner Management Corporation, charged July 23, 1998.

Criminal Charges:

- Conspiracy to bribe foreign officials

Location and Time Period of Misconduct: Argentina, 1996-1998.

Summary:

On March 24, 1998, Herbert Tannenbaum was arrested pursuant to a criminal complaint filed in the Southern District of New York, which charged him with conspiracy to violate the anti-bribery provisions of the FCPA. A one-count information, charging Tannenbaum with conspiracy to violate the FCPA, was subsequently filed on July 23, 1998. According to court documents, Tannenbaum, as President of Tanner Management Corporation, offered to make secret payments totaling 15% of the contract value to an undercover agent posing as a procurement officer of the Government of Argentina in order to induce the agent to purchase garbage incinerators. According to the plea agreement, the offered bribe totaled between \$120,000 and \$200,000. As part of the conspiracy and in an attempt to disguise the secret payment, Tannenbaum incorporated a fictitious entity named Cybernet USA and opened a bank account in the same name.

Criminal Disposition:

Tannenbaum pleaded guilty on August 5, 1998, and, pursuant to a plea agreement with the United States, was sentenced to a prison term of 1 year and 1 day, to be followed by 3 years of supervised release.

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