

Jul 25, 2016

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16-60195-CR-HURLEY/HOPKINS
UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____

15 U.S.C. § 78m(b)(2)(A)
15 U.S.C. § 78m(b)(2)(B)
15 U.S.C. § 78m(b)(5)
15 U.S.C. § 78ff(a)
18 U.S.C. § 2

UNITED STATES OF AMERICA

v.

**LATAM AIRLINES GROUP S.A.,
f/k/a LAN Airlines S.A.**

Defendant.

_____/

INFORMATION

The United States charges that, at all times relevant to this Information, unless otherwise specified:

GENERAL ALLEGATIONS

Relevant Statutory Background

1. The Foreign Corrupt Practices Act of 1977, as amended, Title 15, United States Code, Sections 78dd-1, *et seq.* ("FCPA"), was enacted by Congress for the purpose of, among other things, making it unlawful to act corruptly in furtherance of an offer, promise, authorization, or payment of money or anything of value, directly or indirectly, to a foreign official for the purpose of obtaining or retaining business for, or directing business to, any person.

2. The FCPA's accounting provisions, among other things, require that any issuer of publicly traded securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78l, or required to file periodic reports with the United States Securities and Exchange Commission ("SEC") under Section 15(d) of the Securities Exchange Act, 15 U.S.C. § 78o(d) (hereinafter "issuer") make and keep books, records, and accounts that accurately and fairly reflect the transactions and disposition of the company's assets, and prohibit the knowing and willful falsification of an issuer's books, records, or accounts. 15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(5), and 78ff(a).

3. Additionally, the FCPA's accounting provisions require that issuers maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to (A) permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (B) maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals, and appropriate action is taken with respect to any differences. The FCPA also prohibits the knowing and willful failure to implement such a system of internal accounting controls. 15 U.S.C. §§ 78m(b)(5) and 78ff(a).

LAN and Other Relevant Entities and Individuals

4. Latam Airlines Groups S.A. ("LATAM") is the successor-in-interest to LAN Airlines S.A. ("LAN"). LAN was, until 2012, an airline company incorporated and

headquartered in Chile that provided passenger and cargo transportation throughout South and Central America, as well as to the United States, Europe, and Australia. Until 2012, shares of LAN's stock traded on the New York Stock Exchange ("NYSE") as American depository receipts ("ADRs"), and LAN was required to file periodic reports with the Securities and Exchange Commission under Section 15(d) of the Securities Exchange Act, 15 U.S.C. § 78o(d), and was therefore an issuer. In June 2012, LAN became LATAM after merging with TAM S.A. After the merger, LATAM's shares traded on the NYSE as ADRs, and LATAM was required to file periodic reports with the Securities and Exchange Commission under Section 15(d) of the Securities Exchange Act, 15 U.S.C. § 78o(d). Accordingly, LATAM was an issuer. LATAM was incorporated and headquartered in Chile.

5. Until the 2012 merger, LAN Cargo was a subsidiary of LAN; thereafter, it was a subsidiary of LATAM. LAN Cargo was incorporated in Chile, headquartered in Miami, Florida, and had several other offices in the United States. It provided cargo transportation within South and Central America, and between South and Central America and the rest of the world.

6. Until the 2012 merger, Atlantic Aviation Investments LLC ("AAI") was a subsidiary of LAN; thereafter it was a subsidiary of LATAM. AAI was incorporated in Delaware and headquartered in Chile. AAI's financial statements were consolidated into the financial statements of LAN and later LATAM.

7. "LAN Executive," an individual whose identity is known to the United States, was a high-level executive at LAN.

8. "LAN Cargo Executive," an individual whose identity is known to the United States, was a high-level Executive at LAN Cargo during the relevant period. LAN Cargo

Executive was responsible, along with LAN Executive and other LAN executives, for leading LAN's entry into the Argentine airline market during the relevant period. LAN Cargo Executive was based in Miami, Florida, and was a United States citizen.

9. "Consultant," an individual whose identity is known to the United States, was an advisor to the Secretary of Argentina's Ministry of Transportation during the relevant period. He was appointed to that position pursuant to an unpublished resolution.

Overview of the Unlawful Scheme

LAN's Entry into the Argentine Market

10. LAN sought entry into the Argentine commercial airline market in the early 2000s. At the time, Argentina prohibited foreign-owned airlines from operating in the country, so LAN looked for a local Argentine company in which it could acquire a minority interest.

11. In 2004 and 2005, LAN engaged in discussions with government officials from Argentina's Ministry of Transportation about a variety of issues surrounding its entry into the market, including: (a) which local airline it could acquire (the government had to approve its acquisition); (b) revising the law to permit LAN to own a majority of that company; (c) granting LAN additional routes within Argentina it could operate once it had established operations in the country; (d) raising the maximum allowable ticket prices, which were set by the government; and (e) labor issues that arose after it entered the market.

12. By early 2005, LAN had agreed with officials from the Argentine Ministry of Transportation that it would acquire the defunct Argentine airline, Aero 2000, which had no active operations. As part of that agreement, LAN also agreed to employ the labor forces from two other defunct airlines, LAFSA and Southern Winds. In return for that commitment,

Argentine government officials agreed that the officials would revise the law so that LAN could own a majority of the airline it had acquired, would raise the cap on maximum airfares, and would grant LAN additional domestic routes.

13. However, LAN's relationship with the labor unions representing its inherited workforce began deteriorating during this time frame. The tension focused on the so-called "one function rule," which mandated that each employee could engage in only one, narrowly-defined type of work. Although LAN's labor unions did not strictly enforce the rule in practice, the unions threatened to do so, which would have had the effect of significantly increasing LAN's labor expenses.

The Fictitious Consulting Agreement

14. In September and October 2006, LAN negotiated and executed a fictitious \$1.15 million consulting agreement with Consultant, through a company he owned and operated, in order to funnel bribes to labor union officials. As a result of these corrupt payments, LAN's unions had agreed not to enforce the one function rule for a period of years and had accepted substantially lower wage increases than they had been demanding.

15. LAN Cargo Executive negotiated the fictitious agreement with Consultant on behalf of LAN, while keeping LAN Executive informed of the negotiation's progress. On September 23, 2006, for example, LAN Cargo Executive sent LAN Executive an email with the subject line "Topic closed for the moment." In it, LAN Cargo Executive advised LAN Executive that "[t]he cost would be 1,000 plus 15%," with "1/3 to be paid immediately, another 1/3 in 30 and 60 days. I expect Oct 11/Nov 11 and Dec 11."

16. On October 2, 2006, Consultant emailed LAN Cargo Executive a draft of the agreement, copying a high-level official in the Ministry of Transportation. Among other responsibilities, the high-level official was involved in LAN's negotiations with its labor unions.

17. The draft agreement between LAN and Consultant's company stated that Consultant's company "is specialized and has broad experience in providing advisory services on the subject of transportation in the Argentine Republic and the region" Under the terms of the draft agreement, the consulting company purportedly was to:

undertake a study of existing air routes in the Argentine Republic and the regional market, including those being serviced by different airlines, as well as those with no service available at present. The study must include, among other data: each of the points to be connected by each of the routes, possible combinations, eventual connections, estimated passenger volumes throughout the year, especially differentiating weekdays from weekends, and particularly those dominated [sic] as long weekends. This study must include an estimate of the potential air cargo demands for each of the routes.

18. Further, the draft agreement contemplated that Consultant's company would perform legal analysis on LAN's behalf: "[w]ithin the framework of the law governing Public-Private Partnerships (PPP) in the Argentine Republic, [LAN] assigns [Consultant's company] the task of studying and analyzing said law and its potential application to the different services provided by [LAN]." The draft agreement gave Consultant's company up to ninety days "to deliver the study with the requested services."

19. In exchange for these purported services, the draft agreement provided that LAN would pay Consultant's company "a fixed sum of US\$ 1,150,000" payable in four installments: \$300,000 on signing; \$300,000 at both thirty and sixty days after signing; and the remaining \$250,000 paid ninety days after signing.

20. LAN Cargo Executive forwarded the draft agreement to LAN Executive on October 3, 2006, the day after LAN Cargo Executive had received it. LAN Cargo Executive reached agreement with Consultant and LAN Executive approved it even though they both knew that the draft agreement's description of the services that Consultant's company would provide were false. Rather, both understood that the true purpose of the draft agreement was to use Consultant to intercede on LAN's behalf with the officials of its Argentine labor unions. Further, LAN Cargo Executive knew and intended that Consultant would use some of the money he received under the draft agreement to bribe union officials to accept terms more favorable to LAN. LAN Executive also understood that Consultant might pass some of the money he would be paid under the draft agreement to union officials.

21. LAN and Consultant's company never fully signed and executed the fictitious consulting agreement, and neither the Consultant nor anyone else affiliated with his company ever performed any of the services specified in the draft agreement. Despite the absence of a fully executed agreement and despite the failure of Consultant's company to perform the services specified in the draft agreement, Consultant's company invoiced LAN for payment under the draft agreement and a LAN affiliate paid those invoices.

22. On October 18, 2006, Consultant emailed LAN Cargo Executive an invoice from his company to LAN for \$300,000 "[f]or consulting services provided by and payable to you under contract signed by both parties." It directed that payment be made to a Wachovia account in Roanoke, Virginia, held in the name of Consultant and his wife, not in the name of his company. LAN paid this invoice from its Citibank account in New York, on behalf of AAI, even though (i) the contract had never been signed, (ii) the first invoice had been directed to LAN (not

AAI), (iii) the unsigned agreement had been between Consultant's company and LAN, not AAI, and (iv) it was not a company bank account receiving the funds. LAN Cargo Executive directed Consultant to address remaining invoices to AAI, not LAN.

23. On November 21, 2006, and January 16, 2007, Consultant emailed two additional invoices to LAN Cargo Executive, the first for \$300,000 and the second for \$550,000. Both invoices were addressed to AAI, both directed payment be made to the same Virginia Wachovia account held by Consultant and his wife, and both invoices indicated they were "[f]or consulting services provided by and payable to you under contract signed by both parties." As before, LAN paid both invoices on behalf of AAI from its New York Citibank account.

24. All of the payments to Consultant's company were intentionally mis-recorded as "other debtors" on the books, records, and accounts of LAN's Delaware subsidiary. LAN Executive approved the payments to Consultant's company, knowing that the payments were pursuant to an unsigned fictitious consulting agreement with Consultant's company.

25. On November 7, 2007, LAN also paid an additional \$58,000 to a New York Bank of America account in the name of another company, which was jointly owned by Consultant's wife and son. The invoice for that payment, like the three from Consultant's company, falsely indicated that the payment was for "consulting services and studies performed on the different aerial routes in the Argentine Republic and in the regional market." LAN did not have an agreement or arrangement of any kind with this second company.

26. LAN obtained an estimated benefit of \$6,743,932 as a result of the improper payments to Consultant's company to resolve LAN's union issues.

LAN's Internal Accounting Controls

27. During the relevant period, LAN knowingly and willfully failed to implement a sufficient system of internal accounting controls. In particular and as relevant here, LAN had deficient internal accounting controls that did not require, among other things, (a) due diligence for the retention of third party consultants; (b) a fully executed contract with a third party before payment could be made to it; (c) invoices issued to the LAN entity that in fact engaged the third party; (d) documentation or other proof that services had been rendered by a third party before payment could be made to it; (e) that payment to third parties retained by LAN or LAN entities be made to bank accounts held in the names of those third parties; or (f) oversight of the payment process to ensure that payments were made pursuant to appropriate controls, including those described above.

28. LAN Executive, LAN Cargo Executive, and one other high-level LAN executive knew that the services described in the unsigned fictitious agreement with Consultant's company were false, and that the true purpose of the payments made under it were to resolve LAN's disputes with its Argentine labor unions. At least LAN Cargo Executive, moreover, knew that Consultant would pay bribes to officials of the labor unions. LAN Executive and the other high-level LAN executive who knew about the false nature of the agreement had the authority and responsibility to ensure that LAN devised and maintained an adequate system of internal accounting controls, knew that LAN's then-existing internal accounting controls failed to prevent LAN from entering into an unsigned fictitious consulting agreement, and knowingly and willfully failed to implement internal accounting controls to address the known weaknesses in part to permit LAN to enter into the contract.

COUNT ONE
(Violation of the False Books and Records Provisions of the FCPA)

29. Paragraphs 1 through 28 are realleged and incorporated by reference as though fully set forth herein.

30. From in or around 2006, and continuing through in or around 2007, in the Southern District of Florida and elsewhere, the defendant,

LATAM AIRLINES GROUP S.A.,
f/k/a LAN Airlines S.A.,

knowingly and willfully falsified and caused to be falsified its books, records, and accounts and did not, in reasonable detail, accurately and fairly reflect its transactions and dispositions, to wit: the defendant knowingly falsified records relating to the retention and nature of services of, and payments to, Consultant in order to conceal the true purpose of retaining Consultant; all in violation of Title 15, United States Code, Section 78m(b)(2)(A), 78m(b)(5), and 78ff(a), and Title 18, United States Code, Section 2.

COUNT TWO
(Violation of the Internal Controls Provisions of the FCPA)

31. Paragraphs 1 through 28 are realleged and incorporated by reference as though fully set forth herein.

32. From in or around 2006, and continuing through in or around 2007, in the Southern District of Florida and elsewhere, the defendant,

LATAM AIRLINES GROUP S.A.,
f/k/a LAN Airlines S.A.,


knowingly and willfully failed to implement a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions were executed in accordance with

management's general or specific authorization; (ii) transactions were recorded as necessary to (A) permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (B) maintain accountability for assets; (iii) access to assets was permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets was compared with the existing assets at reasonable intervals, and appropriate action is taken with respect to any differences, to wit: the defendant knowingly and willfully failed to implement, among other internal accounting controls, controls that required: (a) due diligence for the retention of third party consultants; (b) an executed contract with a third party before payment could be made to it; (c) invoices issued to the entity that in fact engaged the third party; (d) documentation or other proof that services had been rendered by a third party before payment could be made to it; (e) payment to third parties retained by the defendant or its affiliates be made to bank accounts held in the names of those third parties; or (f) oversight of the payment process to ensure that payments were made pursuant to appropriate controls, including those described above

All in violation of Title 15, United States Code, Section 78m(b)(2)(B), 78m(b)(5), and 78ff(a), and Title 18, United States Code, Section 2.

ANDREW WEISSMANN
Chief, Fraud Section

BY:



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Senior Trial Attorney, Fraud Section
United States Department of Justice
Criminal Division
1400 New York Ave., N.W.
Washington, D.C. 20005
(202) 514-3740

UNITED STATES OF AMERICA

CASE NO. _____

vs.

LATAM AIRLINES GROUP S.A.,

CERTIFICATE OF TRIAL ATTORNEY*

Defendant.

Superseding Case Information:

Court Division: (Select One)

☒ Miami FTL ☐ Key West WPB ☐ FTP

New Defendant(s) Yes ☐ No ☐
Number of New Defendants _____
Total number of counts _____

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.
3. Interpreter: (Yes or No) No
List language and/or dialect _____
4. This case will take 0 days for the parties to try.
5. Please check appropriate category and type of offense listed below:

(Check only one)

(Check only one)

I	0 to 5 days	<u>X</u>	Petty	_____
II	6 to 10 days	_____	Minor	_____
III	11 to 20 days	_____	Misdem.	_____
IV	21 to 60 days	_____	Felony	<u>X</u>
V	61 days and over	_____		

6. Has this case been previously filed in this District Court? (Yes or No) No

If yes:

Judge:

(Attach copy of dispositive order)

Case No. _____

Has a complaint been filed in this matter? (Yes or No) No

If yes:

Magistrate Case No. _____

Related Miscellaneous numbers: _____

Defendant(s) in federal custody as of _____

Defendant(s) in state custody as of _____

Rule 20 from the District of _____

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? Yes ☐ No X

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? Yes ☐ No X



JASON LINDER
SENIOR TRIAL ATTORNEY, DEPT OF JUSTICE
DISTRICT COURT NO. A5501149

*Penalty Sheet(s) attached

REV 4/8/08

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: LATAM Airlines Group S.A.

Case No: _____

Count #: 1 FCPA – False Books and Records

15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(5), and 78ff(a)

*** Max. Penalty:** Fine of up to \$25,000,000 or Twice the Gross Gain

Count #: 2

FCPA – Failure to Implement Internal Controls

15 U.S.C. §§ 78m(b)(2)(B), 78m(b)(5), and 78ff(a)

***Max. Penalty:** Fine of up to \$25,000,000 or Twice the Gross Gain

Count #:

***Max. Penalty:**

Count #:

***Max. Penalty:**

Count #:

***Max. Penalty:**

***Refers only to possible term of incarceration}-does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

for the
Southern District of Florida

Case No.

Defendants

I understand that I have been accused of one or more offenses punishable by imprisonment for more than one year. I was advised ~~in open court~~ of my rights and the nature of the proposed charges against me.

Date: 7/21/2016

Defendant's signature

Roger M. W. H. /cs

Signature of defendant's attorney

Roger M. Witten

Printed name of defendant's attorney

Judge's signature

Judge's printed name and title