



# Red Notice

A Monthly Update on Global Investigations and Prosecutions

MAY 2013

## INTRODUCTION

**Welcome** to the May 2013 edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP. In this month's edition, two brand name companies agree to Foreign Corrupt Practices Act (FCPA) settlements, and a Texas oil and gas services company pays over USD 15 million to end a probe into its dealings in Africa. In sanctions enforcement news, a defense contractor settles allegations of International Traffic in Arms Regulations (ITAR) and other violations for USD 8 million; a Middle East computer parts distributor remits USD 2.8 million to resolve charges it illegally exported parts to Syria; the financing arm of a major car manufacturer settles with the government for its alleged loans to a Specially Designated Narcotics Trafficker; and an insurance company remits payment to resolve allegations that it processed insurance claims in contravention of U.S. Cuba, Sudan and Iran sanctions regulations. In U.S. export control and sanctions law developments, the U.S. government releases milestone revised export rules regarding aerospace products; the United States publishes the Magnitsky list, and Russia retaliates; and the U.S. Department of State lifts sanctions against three maritime firms that had previously done business with Iran.

Thank you as always for reading *Red Notice*.

## ANTI-CORRUPTION DEVELOPMENTS

### **Electronics Giant Agrees to USD 4.5M FCPA Settlement over European Medical Business**

Netherlands-based electronics giant Koninklijke Philips Electronics N.V. ("Philips") agreed to pay USD 4.5 million last month to settle bribery allegations stemming from the activities of the company's health care division in Poland. The U.S. Securities and Exchange Commission (SEC) alleges that employees of Philips in Poland paid officials at state-run health care facilities to "increase the likelihood that public tenders for the sale of medical equipment would be awarded to Philips." While officials were reportedly paid between 3 and 8 percent of the contract's value, Philips employees would sometimes keep a cut of the bribes as commission. Philips conducted an internal investigation of its Polish health care unit, but failed to uncover the improper payments. Two years later, authorities in Poland indicted three former Philips employees and 16 officials for their roles in the bribery schemes, and Philips conducted an additional internal investigation and reported its findings to U.S. authorities. The improper payments were disguised on Philips' books, according to the SEC, as fake expenses with forged supporting documentation. The USD 4.5 million settlement is comprised of approximately USD 3.1 million in disgorged profits and USD 1.4 million of prejudgment interest. Read the SEC [order](#) and [coverage](#) at *Law360*.

### **Texas Energy Co. Ends Probe of Bribes in Nigeria with USD 15.9M Settlement**

Until it reached settlements with the U.S. authorities last month, Houston-based oil and gas services company Parker Drilling Company ("Parker") faced charges of paying USD 1.25 million to a go-between, knowing the funds would be used to bribe a Nigerian official. Reportedly, the payment was intended to encourage the officials to lower a fine imposed on the company in Nigeria. The Parker allegations were uncovered in a related U.S. Department of Justice (DOJ) investigation of freight forwarders, which has now yielded over USD 230 million in settlements. According to investigators, Parker used a Swiss freight forwarder to pay the Nigerian official to lower Parker's USD 3.8 million fine for customs violations. After the payment, the fine was lowered to USD 750,000. As a part of its settlements with the DOJ and SEC, Parker will pay USD 11.8 million in penalties and USD 4.1 in disgorgement and interest. Read the DOJ [release](#), SEC [litigation release](#) and [coverage](#) from *Bloomberg*.

### **Fashion House Pays Over USD 1.5M to Settle South American Import Bribery Issue**

In late April, New York-based fashion retailer Ralph Lauren Corp. ("Ralph Lauren") reached an agreement with U.S. authorities to end an investigation into the company's dealings with customs officials in Argentina, paying USD 1.6 million

authorities to end an investigation into the company's dealings with customs officials in Argentina, paying USD 10 million in penalties and disgorgement. The DOJ and SEC investigations centered on allegations that Ralph Lauren's Argentine division paid over USD 500,000 in bribes, and gave clothing, perfume, and handbags to government officials in Argentina to expedite or eliminate customs inspections. As a part of the settlements, the company signed a non-prosecution agreement with DOJ and SEC allowing the company to avoid prosecution for the misconduct uncovered in the investigation if the company strengthens its compliance program and complies with other requirements. Read the [SEC release](#), the [DOJ release](#) and [coverage](#) at *The Wall Street Journal*.

## EXPORT CONTROL AND SANCTIONS ENFORCEMENT

### Major American Defense Contractor Agrees to Settlement of USD 8M for Export Violations

Raytheon Company ("Raytheon"), a defense contractor and weapons manufacturer headquartered in Waltham, Massachusetts, agreed to a civil penalty payment of USD 8 million on April 30, 2013 for alleged violations of the Arms Export Control Act (AECA) and the ITAR. The consent agreement with the U.S. Department of State's Directorate of Defense Trade Controls (DDTC) constitutes a settlement of 125 charges, including charges of false valuation and documentation of temporary exports and imports of restricted hardware, as well as inaccurate tracking of those exports and imports. The DDTC found these violations to be indicative of an endemic weakness within the company's export controls compliance program. As such, USD 4 million of the total USD 8 million penalty will be suspended on the condition that those funds will be used instead to establish government-approved remedial compliance measures within the company. Raytheon will hire an independent contractor specializing in compliance to oversee the government's injunctions over the four-year consent agreement. Read the [DDTC's 2013 consent agreement](#) with the company and [press coverage](#).

### Dubai Computer Parts Distributor to Pay Almost USD 3M to Settle Alleged EAR Violations

Computerlinks FZCO ("Computerlinks"), a computer parts distributor located in the United Arab Emirates, agreed to a settlement agreement in April 2013 of USD 2.8 million—the maximum fine allowable—in regards to alleged violations of the Export Administration Regulations (EAR). The company had been charged by the U.S. Department of Commerce's Bureau of Industry and Security (BIS) with actively seeking to evade the EAR in the reexport of materials and software to Syria, which is subject to a long-standing U.S. trade embargo. Computerlinks obtained the products from Blue Coat Systems, Inc. ("Blue Coat"), a leading provider of web security and network solutions. Computerlinks is the authorized distributor in the Middle East for Blue Coat products. In three shipments in 2010 and 2011, Computerlinks provided software and equipment to end-users in Syria. The exported materials, valued at USD 1.4 million, are controlled under the EAR for anti-terrorism and national security reasons. In its reporting to Blue Coat, Computerlinks falsified the end-user and destination information, willfully obscuring the fact that it had unlawfully shipped the items to Syria. Read the [BIS press release](#) and [CNBC press coverage](#).

### Financing Department for Automobile Company Settles Alleged Sanctions Violation

Toyota Motor Credit Corporation (TMCC), the U.S. financing arm of Toyota Financial Services, a subsidiary of Toyota Motor Corporation, agreed on April 25, 2013 to pay USD 23,400 for the alleged violation of the Foreign Narcotics Kingpin Sanctions Regulations. The allegation arises from TMCC's maintenance of a loan account for Claudia Aguirre Sanchez, who is designated as a Specially Designated Narcotics Trafficker by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury. Between April 2008 and June 2010, TMCC processed 26 loan payments—totaling USD 14,449—on behalf of Sanchez. OFAC determined that the apparent violation constituted a non-egregious case, and fined TMCC less than the base penalty amount of USD 26,000. OFAC, however, noted that TMCC requires a more robust compliance program, given the sophisticated nature of its financial business. Read the [OFAC enforcement action](#) and [press coverage](#).

### American Insurance Club Agrees to Liability for Violations of Cuba, Sudan and Iran Sanctions

The American Steamship Owners Mutual Protection and Indemnity Association, Inc. ("the American Club"), a New York-based mutual insurance association of merchant ship owners, reached a settlement on May 9, 2013 with OFAC for apparent violations of a number of sanctions regulations. As part of the settlement agreement, the American Club will remit USD 348,000 to OFAC. The cases stem from numerous violations of the Cuban Assets Control Regulations (CACR), the Sudanese Sanctions Regulations (SSR) and the Iranian Transactions Regulations (ITR). Between November 2003 and March 2007, the American Club processed a total of 55 insurance claims, letters of undertaking/guarantees (LOU) and letters of indemnity as security or countersecurity for a LOU, all in contravention of the above-cited regulations. OFAC found that the American Club had knowledge or reason to believe that the transactions involved sanctioned countries, but considered the alleged violations to be non-egregious. The American Club cooperated with OFAC during the investigation. Read the [OFAC enforcement action](#) and [press coverage](#).

### Departments of State and Commerce Issue Milestone Export Rules on Aerospace Items

In April 2013, the U.S. Departments of State and Commerce issued final rules transitioning the control over the export of numerous items manufactured for the aerospace industry from the ITAR to the EAR. These new rules are the first of a series of anticipated regulatory amendments that represent a comprehensive overhaul of Cold War-era export controls, part of the President's Export Control Initiative announced in 2009. The items referenced in the set of final rules released in April comprise certain aircraft and aircraft parts and components, including parts of gas turbine engines. The new rules move these items from the U.S. Department of State's Munitions List to the Commerce Control List, a separate list maintained by the U.S. Department of Commerce. Future rules will cover changes to export controls of other sensitive technologies, munitions and commercial goods with military applications. Read the U.S. Department of State [media note](#) and [press coverage](#).

### U.S. Releases Magnitsky Act Sanctions List; Russia Responds in Kind

On April 12, 2013, OFAC released a Specially Designated Nationals List update, adding individuals to the list under the Sergei Magnitsky Rule of Law Accountability Act of 2012 ("Magnitsky Act"). Of the individuals added to the list in April, 15 are Russian citizens, and the other three hail from Azerbaijan, Ukraine and Uzbekistan. These individuals are now banned from travel to the United States, and any assets they have within the United States have been frozen. All of the individuals are implicated in the imprisonment and death of Russian lawyer Sergei Magnitsky, who died in 2009 after his discovery of a USD 230 million tax fraud involving the Russian Ministry of the Interior. The Magnitsky Act was adopted in 2012 specifically to establish travel and financial sanctions against those responsible for Magnitsky's mistreatment, imprisonment and death. In an act of retribution, on April 13, 2013, the Russian government released its own list of 18 individuals banned from entering Russia. The Russian list includes staffers from the Bush administration and two former commanders of Guantanamo Bay. Read the U.S. Department of the Treasury [sanctions listing](#). Press coverage can be found [here](#) and [here](#).

### Iran Sanctions Lifted From Three Maritime Companies

Three maritime firms—Tanker Pacific Management, Société Anonyme Monégasque D'Administration Maritime Et Aérienne and Allvale Maritime Inc.—were sanctioned by the U.S. government in May 2011 for their involvement in a September 2010 deal providing a multi-million dollar tanker to the Islamic Republic of Iran Shipping Lines, the Iranian state shipping line. Under the sanctions, U.S. financial institutions were barred from issuing credit or loans of more than USD 10 million to the companies in any 12-month period. Almost two years later, the U.S. Department of State is lifting those sanctions by removing the listing of the three companies under the Iran Sanctions Act. The companies were delisted after they undertook concrete and significant measures to comply with U.S. sanctions law and policy and gave assurances that they would not knowingly violate U.S. sanctions in the future. Read the U.S. Department of State [press statement](#) and the [coverage](#) by *The Wall Street Journal*.

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