

# Red Notice

A Monthly Update on Global Investigations and Prosecutions



AUGUST 2012

## INTRODUCTION

**Welcome** to August's edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP. In this month's edition, the Justice Department's enforcement efforts continue in the health sector, resulting in fines and new investigations; a European aerospace company faces a new criminal probe in the U.K. related to its business in Iran nearly a decade ago; one of the world's largest oil companies plans for a large FCPA settlement; and a former financial services executive will serve a prison term for evading his company's internal FCPA controls. On the anti-cartel front, new allegations surface related to international travel firms and hotel rate-fixing; the LIBOR probe continues on two continents; eight more airlines agree to pay over USD \$180 million to settle civil allegations that they fixed air cargo rates with their competitors; and a seventh executive will serve jail time in connection with DOJ's auto parts industry probe. In export violation news, a Texas company is penalized for violating U.S. sanctions against Iran and WMD proliferators, and a large multinational bank settles with New York regulators for allegedly moving billions of dollars in transactions with Iran.

Thank you as always for reading *Red Notice*.

## ANTI-CORRUPTION DEVELOPMENTS

### Health Sector Investigations: Healthcare Firms Reveal FCPA Probes

German dialysis maker Fresenius Medical Care AG, the world's largest provider of dialysis products, revealed possible FCPA violations currently under investigation this month. In a regulatory filing, the company noted it is investigating "communications alleging certain conduct that may violate the U.S. Foreign Corrupt Practices Act and other anti-bribery laws." Meanwhile, Israeli generic giant Teva Pharmaceutical Industries Ltd. received a subpoena from the SEC related to its activities in Latin America. Teva is also conducting an internal investigation with outside counsel. This month's news is just the latest in a recent string of health industry FCPA investigations. Merck & Co., AstraZeneca PLC, Bristol-Myers Squibb Co, and GlaxoSmithKline PLC have received letters of inquiry from DOJ and the SEC. And according to reports earlier this month, U.S. drug company Pfizer Inc. has settled FCPA allegations. The company, which is reported to have been cooperating with DOJ on this matter since 2004, reportedly agreed to pay \$60.2 million in connection with a DOJ investigation into the company's contact with government doctors, hospital administrators, and regulators in Europe and Asia. Some of the settled allegations related to Wyeth, a company Pfizer acquired in 2009. Read coverage of the [Pfizer](#) settlement at the *Wall Street Journal*, as well as coverage of the [Teva](#) and [Fresenius](#) investigations.

### Former Morgan Stanley Exec Sentenced to Jail Time for Evading Internal Controls

A former managing director in the Morgan Stanley's Shanghai office was sentenced to nine months in prison earlier this month for conspiring to evade his company's internal controls required by the FCPA (*US v. Peterson*, No. 12-00224 (E.D.N.Y.)). Garth Peterson admitted to providing real estate investments to the former chairman of a Chinese government-owned entity in exchange for business provided to Morgan Stanley. He also admitted to lying to others within the company about who was purchasing the investments. Morgan Stanley fired Peterson in 2008 and was able to show that it trained Peterson on the FCPA seven times and reminded Peterson about FCPA compliance on at least 35 occasions. Because of the company's controls and cooperation, DOJ declined to prosecute Morgan Stanley for the violations. Peterson's civil settlement with the SEC included an agreement to relinquish approximately \$3.4 million in real estate holdings that he acquired in the scheme. Read the [coverage](#) at the *Wall Street Journal*.

### French Oil Giants Sets Aside EUR €316 Million for FCPA Settlement

French oil company Total SA, one of the world's six 'supermajor' oil companies, stated in a regulatory filing earlier this month that it has reserved EUR €316 million (nearly USD \$400 million) to settle the SEC and DOJ's long-running

month that it has received EUR 500 million (approximately USD 600 million) to settle the SEC and DOJ long running investigation of the company's efforts to win contracts in Iran in the early 2000s. The investigation began in 2003 and centers on whether a consultant hired by Total paid bribes on behalf of the company as a part of Total's endeavor to develop Iran's South Pars gas field. Total acknowledged the reservation of this large sum as a "best estimate of potential costs" in context of recently accelerating settlement discussions with the U.S. government. Total also faces investigation on this matter in France. Read the [coverage](#) at the *Wall Street Journal*.

### **European Aerospace Firm Faces UK Bribery Probe in USD \$3.3 Billion Contract**

The UK's Serious Fraud Office (SFO) announced earlier this month that it has launched a criminal probe into European Aeronautic Defence & Space Co. (EADS) concerning the activities of the company's Saudi-Arabian subsidiary and its efforts to win a USD \$3.3 billion communication contract. GPT Special Project Management Ltd., the EADS division in question, is alleged to have provided cash, jewelry, and cars to Saudi Arabian officials. According to reports, the SFO was content with EADS earlier internal investigation and cooperation, thus the launch of a criminal probe marks a distinct shift in the SFO's position regarding the EADS case. Read the SFO's [statement](#) and [coverage](#) from the *Financial Times*.

## **INTERNATIONAL CARTEL ENFORCEMENT DEVELOPMENTS**

### **Reports: Swiss Bank Employees Offered Immunity for Information in LIBOR Probe**

According to reports, the DOJ is offering immunity from prosecution in exchange for cooperation to low-level former employees of Switzerland's UBS. The DOJ's Antitrust Division has been investigating whether banks colluded to manipulate certain interest rates including the London Inter-Bank Offered Rate (LIBOR). UBS reports that the Antitrust Division has already provided the company leniency in that investigation. The offer of immunity to low-level former employees suggests that DOJ is still searching for the executives who orchestrated the scheme. Despite having obtained leniency from the Antitrust Division, UBS may still be facing enforcement action from other U.S. and foreign enforcement authorities. Read the coverage at the [Telegraph](#) and the [Wall Street Journal](#).

### **Auto Executive Pleads Guilty, Will Serve 14 Months for Price-Fixing Conspiracy**

Last week, an executive from Japan's Yazaki Corporation reached a deal with prosecutors to plead guilty, serve 14 months in a U.S. prison, and pay a USD \$20,000 fine in connection with charges that he conspired with Yazaki's competitors to fix prices of instrument panel clusters installed on cars sold in the U.S. (*U.S. v. Sudo*, No. 12-20548 (E.D. Mich.)). Toshio Sudo is the 11th executive charged in the investigation – seven others have already been sentenced to pay fines and serve jail sentences between one and two years. Seven companies in the auto part industry have also pled guilty in the scheme, agreeing to more than \$785 million in fines. Read the DOJ's [release](#) on Sudo's plea at the Department's website.

### **Court Approves USD \$183 Million Settlement in Air Cargo Case**

At the beginning of this month, a federal judge in the Eastern District of New York approved an agreement that settles claims against nine airlines named in a 2006 civil suit alleging that dozens of airlines conspired to fix shipping rates for air cargo (*In re Air Cargo Shipping Services Antitrust Litigation*, No. 06-01775 (E.D.N.Y.)). 42 airlines were named in more than 90 civil suits filed in relation to the issue. Under the terms of this settlement agreement, which is the third such agreement in the case, the plaintiffs will receive USD \$183 million, in part from British Airways, PLC (USD \$89 million), LAN Airlines S.A. of Chile (USD \$66 million), and Emirates Airlines (USD \$7.8 million). Read the [coverage](#) at *Reuters*.

### **Travel Firms Face Hotel Rate-Fixing Allegations in UK**

Late last month, the U.K.'s Office of Fair Trading (OFT) announced that it planned to initiate enforcement actions against several of the world's largest online travel websites and hotel chains for conspiring to set minimum prices for the cost of hotel rooms. Travel website Expedia has already admitted to "cartel conduct" and is now cooperating with the investigation which also involves website Booking.com, and the Intercontinental, Starwood, Radisson, and Thistle hotel chains among others. The investigation began when a small online retailer complained to the OFT that large chains were pressuring suppliers to offer rooms at the same price. Reports suggest that Expedia is also providing information to the OFT as a part of a leniency deal designed to reduce the Expedia's exposure to fines. Read the [coverage](#) at the *Telegraph*.

## **EXPORT CONTROL AND SANCTIONS ENFORCEMENT**

### **Texas Company Assessed a Penalty for Violating the Iranian Transactions Regulations and the WMD Proliferators Sanctions Regulations**

The Department of the Treasury announced a penalty of \$402,000 USD assessed on Grand Resources, Inc., based in Houston, Texas, for two incidents violating U.S. sanctions. Grand Resources USA, doing business as GR-Duratech

Texas, Inc., violated the Iranian Transactions Regulations (ITR) in 2005 and 2009 and the Weapons of Mass Destruction Proliferators Sanctions Regulations (WMDPSR) in 2009. In 2005, GR-Duratech negotiated a sale of graphitized petroleum coke to a company in the United Arab Emirates, with knowledge that the goods would be delivered to Iran. In 2009, GR-Duratech engaged in transactions with the Islamic Republic of Iran Shipping Lines (IRISL), including a shipment of cargo above the blocked vessel "Sabalan." GR-Duratech further transferred trade documents related to the shipment to its customer in Turkey without OFAC's authorization. It was determined that GR-Duratech demonstrated reckless disregard for sanctions regulations; had full knowledge that dealings with Iran were prohibited; attempted to evade U.S. sanctions laws by concealing the transactions' relationship to Iran; and that senior-level management had knowledge of the violating conduct. Read the Treasury's [release](#).

### **Standard Chartered Bank Reaches a Settlement with the New York State Department of Financial Services for Violations of U.S. Money-laundering Laws**

Standard Chartered reportedly agreed to pay \$340 million USD to the New York State Department of Financial Services (DFS), cooperate with DFS examiners and monitors for at least two years, and permanently install personnel within its New York branch to oversee due diligence and monitoring to settle allegations of violations of State banking regulations in connection with processing of financial transactions involving Iran and other U.S. embargoed countries which are separately under still ongoing investigation by U.S. federal authorities under U.S. sanctions and other federal laws. The settlement with the DFS is the largest fine ever collected by a single state regulator in an antimoney-laundering case. New York Department of Finance Chief Benjamin Lawsky alleged that Standard Chartered engaged in at least \$250 billion USD of illegal transactions with Iranian entities from 2001-2010 by moving money through its New York branch for Iranian financial institutions under U.S. sanctions, violating New York financial regulations and U.S. sanctions on Iran. Press reports and public statements by U.S. federal authorities indicate that the Federal Reserve, the U.S. Department of Justice, the U.S. Treasury Department's Office of Foreign Assets Control and the Manhattan district attorney's office had been investigating Standard Chartered's activities associated with countries subject to OFAC sanctions since at least 2010. Standard Chartered action's associated with Iran and other U.S. sanctioned countries remain under ongoing criminal investigation by the Federal Bureau of Investigation and the Justice Department at this time. Read the DFS [order](#) and [coverage](#) from *Bloomberg*.

## **CONTACT INFORMATION**

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