

Red Notice

A Monthly Update on Global Investigations and Prosecutions



MAY 2012

INTRODUCTION

Welcome to May's edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP. In this month's edition, authorities in China and India have begun reviews of corruption in their health care industries, which may prompt parallel investigations by U.S., U.K., and World Bank authorities. In addition, Canada continues to investigate corruption at a large Canadian engineering firm – in the past month, the firm's offices were raided, a former sector head was arrested, and the company was temporarily debarred from participation in World Bank projects. Also, a former Morgan Stanley executive pleaded guilty to evading internal anti-bribery controls, Siemens is back under investigation for its activities in Russia, and South Korea is expanding its whistleblower incentives.

In International cartel enforcement news, a jury in the Southern District of New York has convicted three former financial services executives for their participation in conspiracies related to bidding for contracts for the investment of municipal bond proceeds and other municipal finance contracts. The first of three executives charged in the Hitachi-LG bid rigging case has been sentenced to jail time, and yet another exec is sentenced to jail in the DOJ's auto part investigation. And, although it is not a cartel matter, we note that an executive of a South Korean company will serve jail time for obstruction of justice charges in connection with altering documents submitted to the Federal Trade Commission in a pre-merger filing.

Thank you as always for reading *Red Notice*.

ANTI-CORRUPTION DEVELOPMENTS

Trouble Brewing in China, India for Multinational Health Care Companies

Reports surfaced earlier this month that the Chinese government will begin inspecting invoices from its state-owned hospitals, potentially spelling problems for medical device and pharmaceutical companies. According to the reports, agents of pharmaceutical companies bribe hospital staff and doctors to purchase and prescribe the companies' products. In 2008, medical device company AGA Medical Corp. paid US \$2 million and entered into a deferred prosecution agreement with the Justice Department in connection with allegations that the company's local Chinese distributor paid doctors responsible for state-owned hospitals to purchase AGA products. Similarly, the Indian government released a report last week finding a pattern of collusion between drug companies and India's pharmaceutical regulators. The report found that officials in India's Central Drugs Standard Control Organization (CDSCO), experts, and drug companies acted to speed up approvals of drugs and flout drug trials requirements. While the report does not contain specific allegations of bribery, these revelations are expected to trigger FCPA scrutiny from both the DOJ and the SEC. Read the [coverage](#) of the Chinese crackdown at *Xinhua*, see DOJ's [release](#) on AGA's deferred prosecution agreement and the [coverage](#) on the fallout from India's CDSCO report.

Canadian Engineering Giant Implicated in Corruption, Former Exec Arrested in Switzerland

Late last month, Riadh Ben Aissa, former head of construction for the Montreal-based SNC-Lavalin Group, was arrested in connection with a multi-national corruption probe. According to sources, law enforcement agencies are investigating Ben Aissa's efforts to assist SNC-Lavalin in winning billions in contracts from ousted regimes in Tunisia and Libya. SNC-Lavalin is also under investigation in Canada for corruption, which resulted in a mid-April raid at the company's headquarters. Additionally, the World Bank temporarily debarred an SNC unit while the Bank investigates the company's activities in a Bank-financed project in Bangladesh. An earlier internal investigation which led to the resignation of SNC's CFO found that the company paid US \$56 million in inappropriate payments. Read the [coverage](#) from the CBC.

SEC found that the company paid 60 \$50 million in inappropriate payments. Read the [coverage](#) from the SEC.

Former Morgan Stanley Exec May Face Prison for Evading FCPA Controls

A former Morgan Stanley managing director in the firm's real estate investment and advisory division in Singapore pled guilty late last month to one criminal count stemming from his relationship with a Chinese official (*US v. Peterson*, No. 12-CR-00224-JBW (E.D.N.Y.)). Between 2004 and 2007, Garth Peterson provided millions in real investments to the former chairman of a state-owned entity in China in exchange for business given to Morgan Stanley funds, all while evading controls Morgan Stanley put in place to comply with the FCPA. Peterson faces up to five years in prison in addition to the \$250,000 disgorgement, \$3.4 million in relinquished property, and a permanent ban from the securities industry which he agreed to in settling FCPA charges with the SEC. Morgan Stanley was not charged in this matter, having cooperated with DOJ and voluntarily disclosed the issue. In court records, Morgan Stanley showed that it trained Peterson on the FCPA seven times and reminded him of the law's requirements on 35 occasions. Read the DOJ's [statement](#) and the [coverage](#) at *The Wall Street Journal*.

New Investigation into Siemens Payments in Russia

Siemens announced early this month that it is cooperating with investigators looking into the company's payments to employees of a Russian facility between 1999 and 2006. The announcement marks the most recent trouble for the German engineering giant, which paid a staggering US \$1.6 billion to settle international bribery charges in 2008. Read the [coverage](#) at *Mass Device*, a site dedicated to the medical device business.

South Korea Expands Whistleblower Incentives

South Korea's Anti-Corruption & Civil Rights Commission announced earlier this month that it would expand a program that offers incentives to whistleblowers who report corruption. For example, in one case the Commission revealed that it paid a whistleblower the full amount of a bribe he reported to law enforcement as a reward for the report. However, some are criticizing the expansion for continuing to encourage a system of independent bounty hunters, who seek out the 970 different types of infractions that qualify for a whistleblower award. Critics say that the government should instead concentrate on its own enforcement and investigation efforts. Read the [coverage](#) at *The Wall Street Journal's* Korea Real Time blog.

INTERNATIONAL CARTEL ENFORCEMENT DEVELOPMENTS

Former Financial Services Execs Convicted in Conspiracies Involving Investment Contracts

Earlier this month, a jury in the Southern District of New York convicted three former financial services executives for their participation in conspiracies related to bidding for contracts for the investment of municipal bond proceeds and other municipal finance contracts. According to DOJ, the former employees of a General Electric Co. affiliate and their co-conspirators "corrupted the competitive bidding process and defrauded municipalities across the country." So far, 15 people have been convicted in the municipal bonds bid rigging investigation. See the story [coverage](#) in *Bloomberg* and the DOJ's [release](#).

Exec of South Korean Company Pleads Guilty to Obstruction of Justice in ATM Merger Investigation

The Justice Department announced early this month that Kyoungwon Pyo, an executive of South Korean-based Hyosung Corporation has agreed to plead guilty and to serve time in a U.S. prison for obstruction of justice charges in connection with an automated teller machine merger investigation conducted by the Antitrust Division. According to a two-count felony charge filed, Pyo, in his role as senior vice president for corporate strategy of Hyosung Corporation, an affiliate of Nautilus Hyosung Holdings Inc. (NHI), altered and directed subordinates to alter numerous existing corporate documents before they were submitted to the Department of Justice and the Federal Trade Commission (FTC) in conjunction with mandatory premerger filings in connection with NHI's proposed acquisition of Triton Systems of Delaware Inc. See the DOJ's [release](#).

Auto Parts Cartel Investigation Expands with Guilty Plea; Exec Will Serve Prison Time

The Justice Department announced late last month that Makoto Hattori, an executive with Japan's Denso Corp., pled guilty to price fixing charges in connection with the DOJ's investigation into the auto parts industry (*US v. Hattori*, No. 12-CR-20271-GCS (E.D. Mich.)). Hattori is the ninth executive charged in the investigation, which is still in progress but is already regarded as one of the largest price fixing enforcement actions in US history. Also, last month, Fujikura Ltd.

agreed to plead guilty for its role in a conspiracy to rig bids and fix prices of automotive wire harnesses (*US v. Fujikura*, No. 12-CR-20254-GCS (E.D. Mich.)). The company will pay U.S. \$20 million in fines. In related actions, five companies have pled guilty and agreed to pay more than U.S. \$748 million in fines. Hattori will serve 14 months in prison for his role in a conspiracy to fix prices and rig bids for heater control panels installed in cars sold in the U.S. On the Hattori plea, read the [coverage](#) at *Reuters* and DOJ's [release](#). Also, read the DOJ's [release](#) on the Fujikura case.

In the Optical Disk Drive Investigation, Another Exec to Serve Jail Time for Bid Rigging

A senior sales manager at Hitachi-LG Data Storage, a joint venture of Hitachi Ltd. and LG Electronics, has agreed to plead guilty, serve six months in prison, and pay a \$25,000 fine in connection with charges that he rigged bids for drives sold to Hewlett-Packard (*US v. Yang*, No. 12-CR-00309-RS (N.D. Cal.)). Between 2006 and 2009, Woo Jin Yang and other Hitachi LG executives allegedly conspired to fix prices of disk drives that read and write data onto CD-ROMs and DVDs. Yang faced four felony charges in case. Last November, Hitachi-LG pled guilty to antitrust charges and was ordered to pay a US \$21.1 million fine. Three other Hitachi-LG executives plead guilty earlier this year and are awaiting sentencing. Read the [coverage](#) at *Reuters* and DOJ's [release](#).

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