

Akin Gump
STRAUSS HAUER & FELD LLP

Red Notice

A Monthly Update on Global Investigations and Prosecutions



AUGUST 2014

Introduction

Welcome to the August 2014 edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP.

This month on the anticorruption front, the former CEO of an aviation company pleads guilty to participating in an alleged bribery scheme in Latin America; a French citizen receives a two-year prison sentence for attempts to obstruct a federal Foreign Corrupt Practices Act (FCPA) investigation; the U.S. Department of Justice (DOJ) ends their probe of drilling company with a declination to bring any charges; and the United Kingdom's anticorruption body concludes a bribery prosecution with the sentencing of four former company executives.

In export control and sanctions enforcement news, a Chinese citizen pleads guilty to illegally exporting defense articles and a Puerto Rican beverage manufacturing company settles with Office of Foreign Assets Control (OFAC) for six alleged violations of the Narcotics Trafficking Sanctions Regulations.

Finally, in developments in export control and sanctions law, additional sanctions are issued against Russia; the United States joins other P5+1 countries in extending temporary sanctions relief to Iran; OFAC publishes Iran General License G and amends Sudan General License No. 1A.

Thank you as always for reading *Red Notice*.

CORRECTION: In the July 2014 issue, we reported in error that the judge presiding over the case against two former Noble Corporation executives ruled that the payments in question in that case were not "facilitating payments" under the FCPA. Rather, Judge Ellison denied the government's motion for partial summary judgment requesting a ruling that the payments in question did not fit into the FCPA's narrow exception for "facilitating payments" under the FCPA without ruling on the issue, effectively leaving the issue open. We regret any confusion this may have caused.

ANTICORRUPTION DEVELOPMENTS

Senior Ex-BizJet Official Pleads Guilty in Foreign Bribery Scheme

On July 24, 2014, the DOJ announced that the former president and chief executive officer of BizJet International Sales and Support Inc., a U.S.-based unit of German aircraft maintenance company Lufthansa Technik AG, pled guilty in Oklahoma federal court for his participation in an alleged plot to bribe government officials in Latin America.

Bernd Kowalewski, 57, pled guilty to conspiracy to violate the FCPA and a substantive violation of the FCPA in connection with payments made to Mexican and Panamanian officials for assistance in acquiring contracts for aircraft services. Kowalewski was the third and most senior BizJet executive to plead guilty to bribing officials to secure contracts for the company in Mexico and Panama. Kowalewski was indicted under seal in 2012, and was arrested on a provisional arrest warrant in Amsterdam in March 2014. In June 2014, Kowalewski waived extradition and returned to the United States.

According to court filings, Kowalewski and his accomplices paid foreign officials directly and, in some cases, used a shell company to conceal bribery payments under the guise of providing aircraft

TRANSLATIONS

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RELATED NEWS

[Jonathan C. Poling](#) has joined as partner in Akin Gump's international trade practice. Mr. Poling brings significant experience handling complex export control and trade-related civil and criminal matters involving a wide array of industries. He is a former federal prosecutor with the DOJ's National Security Division's Counterespionage Section. To learn more, please read the [press release](#) announcing his arrival.

Partners [Edward Rubinoff](#) and [Stephen Davis](#), counsel [Tatman Savio](#) and associate [Kelly Stephenson](#) will present a one-hour CLE on "Exporting Energy Resources: Regulatory Concerns and Recent Developments" at the Akin Gump Houston office on September 9, 2014.

On September 10, 2014 from 12 p.m. to 2 p.m. ET counsel [Kimberly Ball](#) will present in a two-hour live webcast, "FCPA in 2014 & Beyond," hosted by The Knowledge Group. For more information and registration details, please click [here](#).

Partners [James Benjamin, Jr.](#) and [Robert Hotz, Jr.](#) are participating in the Practising Law Institute's "White Collar Crime: Prosecutors and Regulators Speak" on September 23, 2014 in New York City. For more information, please visit PLI's [website](#).

On October 16, 2014 from 10:00 a.m. - 12:00 p.m. ET, senior counsel [Nicole Sprinzen](#) will present in a two-hour live webcast "Best Practices in Banking Fraud Prevention: 2014 and Beyond," also hosted by The Knowledge Group. For more information and registration details, please see [here](#).

If you would like to invite Akin Gump Strauss Hauer & Feld LLP lawyers to speak at your company or to your group about anticorruption law, compliance, enforcement and policy or other international investigation

maintenance brokerage services. Participants in the bribery scheme referred to the bribe payments as "commissions" or "incentives," but, as Assistant Attorney General Leslie R. Caldwell of the U.S. DOJ's Criminal Division made clear, "they were bribes, plain and simple." Assistant Attorney General Caldwell credited the FCPA's international scope and the government's "continued determination to hold corporate executives responsible for criminal wrongdoing whenever the evidence allows" with facilitating Kowalewski's guilty plea.

On March 14, 2012, the DOJ announced that it had entered into a deferred prosecution agreement (DPA) with BizJet. The DPA required BizJet to pay an \$11.8 million criminal penalty in exchange for a three-year prosecution deferral. Former BizJet executives Peter DuBois and Neal Uhl pled guilty in January 2012 for their roles in the bribery scheme and avoided prison sentences by cooperating with the government's investigation. DuBois and Uhl were each sentenced to probation and eight months of home confinement. A fourth former BizJet executive, Jald Jensen, has been indicted for conspiracy, as well as substantive FCPA violations and money-laundering, but remains at large.

Read the DOJ's [press release](#) and more news coverage at [Bloomberg](#).

French Citizen Sentenced to Two Years for Obstructing FCPA Probe

On July 25, 2014, the U.S. Attorney for the Southern District of New York, Preet Bharara, announced that Frederic Cilins, a 51 year-old French citizen and former agent for mining company BSG Resources Ltd. (BSGR), was sentenced to 24 months in prison for obstructing a federal criminal investigation into potential FCPA violations. According to U.S. Attorney Bharara, Cilins "went to great lengths to thwart a Manhattan federal grand jury investigation into an alleged bribery scheme in the Republic of Guinea." As part of the sentence, U.S. District Judge William H. Pauley ordered Cilins to forfeit \$20,000 and to pay a \$75,000 penalty, the maximum fine allowed under federal sentencing guidelines.

Cilins obstructed an investigation by the Federal Bureau of Investigation (FBI) concerning alleged bribery payments paid by a mining company to a former governmental regime in the Republic of Guinea to secure valuable mining concessions in the Simandou region. Cilins, who was formerly associated with the mining company under investigation, offered to pay a cooperating FBI witness to leave the United States to avoid questioning from the FBI and attempted to induce the witness to destroy documents and submit false statements to the FBI concerning the investigation. The witness Cilins attempted to influence was the former wife of a now-deceased Guinean government official who held influence over awards of mining concessions.

Cilins pled guilty in March 2014 to a one-count superseding information charging him with obstruction of a federal investigation.

Read the DOJ's [press release](#) and additional news coverage at [Bloomberg](#) and the [FCPA Blog](#).

DOJ Concludes Investigation of Drilling Company; SEC Settlement Also May Be Imminent

Texas-based Layne Christensen Company announced on August 15, 2014 that the DOJ has completed its probe into the water management, construction and drilling company regarding potential violations of the FCPA and has declined to bring criminal charges. Layne disclosed in 2010 that it was investigating the possible impropriety of payments made to customs-clearing agents in the Democratic Republic of the Congo and other African countries.

While cooperating fully with the DOJ and the U.S. Securities and Exchange Commission (SEC), Layne disclosed the results of its internal investigation to both agencies. Initially accumulating a reserve of \$10.4 million for a potential settlement, the company has reduced this accrual by about half and will reflect this decrease in its second-quarter fiscal results.

The SEC's parallel investigation remains open, and Layne remains "actively engaged in settlement discussions with the SEC to resolve this matter," said the company.

Read more at the [Wall Street Journal](#) and [Street Insider](#).

United Kingdom's Serious Fraud Office Jails Three Former Execs as Innospec Prosecution Wraps Up

and compliance topics, please contact Mandy Warfield at mwarfield@akingump.com or +1 202.887.4464.

Following up on our July 2014 [report](#) regarding the conviction of two former Innospec Limited executives for their participation in bribery schemes in Indonesia, we report this month that the Southwark Crown Court in London sentenced the two Innospec executives, along with several other Innospec officers, for their roles in the bribery schemes.

The sentences were dispensed as follows:

Dennis Kerrison, 69, the former CEO of Innospec Limited, was sentenced to four years in prison. Miltiades Papachristos, a former Innospec regional sales director, was sentenced to 18 months in prison. Kerrison and Papachristos were convicted of conspiracy to commit corruption on June 18, 2014, following a jury trial related to corrupt activities in Indonesia.

Paul Jennings, 57, former CEO of Innospec's UK operations, was sentenced to two years in prison. Jennings pled guilty in June 2012 to two charges of conspiracy to commit corruption, and in July 2012 to an additional charge of conspiracy to commit corruption related to corrupt activities in Indonesia and Iraq.

David Turner, 59, a former Innospec business director, was the only defendant to avoid a sentence of jail time. Turner received a 16-month suspended sentence and 300 hours of unpaid work. In January 2012, Turner pled guilty to three charges of conspiracy to commit corruption in relation to corrupt activities in Indonesia and Iraq.

These sentences mark the conclusion of the Innospec prosecution saga, rooted in the company's 2010 guilty pleas for violating antibribery laws in both the United States and the United Kingdom. Regulatory agencies from several countries contributed to the prosecution, including the DOJ, the SEC, Indonesia's Corruption Eradication Commission, and Swiss and Singaporean authorities. Both the DOJ and the Serious Fraud Office (SFO) praised the collaborative effort.

Read the SFO's [press release](#) and additional coverage at the [FCPA Blog](#).

EXPORT CONTROL AND SANCTIONS ENFORCEMENT

Chinese National Pleads Guilty to Trying to Smuggle Sensors Made for U.S. Military

In late July, following an investigation by the U.S. Immigration and Customs Enforcement's Homeland Security Investigations (HSI) directorate, a 28-year old Chinese national, Bo Cai, pled guilty in the U.S. District Court for the District of New Mexico to violations of the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR) through a scheme to illegally export defense articles to the People's Republic of China.

Cai conspired with his cousin to export sensors manufactured primarily for sale to the U.S. Department of Defense for use in line-of-sight stabilization and precision motion control systems. Because of an arms embargo against China, the United States does not issue licenses for the export of such sensors to China. Cai awaits sentencing and faces a maximum penalty of twenty years in prison for the AECA charge. After serving his sentence, Cai will be deported.

Read the FBI's [summary](#) and additional coverage by [Reuters](#).

Procesadora Campofresco, Inc. Settles with the Office of Foreign Assets Control on Claims of Violating the Narcotics Trafficking Sanctions Regulations

Procesadora Campofresco, Inc. of Puerto Rico, agreed in late July to a \$27,000 settlement with OFAC for six alleged violations of the Narcotics Trafficking Sanctions Regulations. Over a nine-month period in 2009 and 2010, Campofresco engaged in six transactions to purchase \$344,016 worth of frozen passion fruit juice from Frutas Exoticas Colombiana S.A., an OFAC Specially Designated Narcotics Trafficker.

Although Campofresco did not voluntarily disclose the apparent violations, OFAC deemed the case non-egregious and acknowledged Campofresco's implementation of remedial measures, including institution of an OFAC compliance program. OFAC agreed to settle for significantly less than the base penalty amount of \$600,000.

Read the OFAC enforcement [summary](#).

Bureau of Industry and Security Imposes Additional Sanctions on Russian Oil Industry and Adds Individual to its Entity List

In early August, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) issued a new rule imposing further sanctions against Russia to implement U.S. policy addressing Russia's destabilization of Ukraine and continued occupation of Crimea and Sevastopol. The new rule imposes export controls on specified items used in the Russian energy sector intended for oil and gas deepwater, Arctic offshore and shale exploration projects. The rule also designates an additional person deemed to be acting contrary to U.S. national security and foreign policy interests for the BIS Entity List, a list which notifies the public of parties representing a diversion or other risk.

Read the BIS [summary and rule](#).

Extension of the Implementation of the Joint Plan of Action Reached on November 24, 2013 between the P5+1 and Iran

In late July, the United States joined the United Kingdom, Germany, France, Russia and China (collectively, the "P5+1") in extending temporary sanctions relief to Iran until November 24, 2014, as provided for in the Joint Plan of Action (JPOA) between the P5+1 and Iran. The JPOA, first agreed to in November 2013, embodied commitments from Iran to halt progress on its nuclear program and from the P5+1 to provide limited, targeted sanctions relief to Iran for a six-month period, renewable by mutual consent. The first period of sanctions relief lasted from January 20, 2014 until July 20, 2014. This second period of relief went into effect on July 21, 2014.

JPOA relief applies to certain sanctions involving Iran's purchase and sale of gold and precious metals, the country's automotive industry and its export of petrochemical products. It also involved commitments to license transactions related to the safety of Iran's civil aviation industry, to establish financial channels to facilitate certain humanitarian and educational activities, to pause efforts to further reduce Iran's crude oil exports, and to provide Iran access to \$4.2 billion in blocked funds. The relief extended to Iran does not impact the continued applicability of other U.S. sanctions programs against Iran, which remain in full force, and the United States continues to enforce its prohibition on transactions with Iranian entities on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List).

The United States has the right to revoke its sanctions relief at any time if Iran fails in meeting its JPOA commitments.

Read OFAC's [summary](#) and [FAQs](#) and learn more by referencing the August 4th Federal Register notices [here](#) and [here](#).

OFAC Publishes Iran General License G, Impacting Academic Exchanges and Educational Services

In mid-August, OFAC posted Iran General License G in the Federal Register. OFAC first issued Iran General License G under the Iranian Transactions and Sanctions Regulations (ITSR) in late March 2014, permitting accredited academic institutions in the United States to form undergraduate and graduate academic exchange agreements with universities in Iran, including the provision of scholarships to participating Iranian students. In addition, the license allows U.S. academic institutions and U.S. persons to export to Iran educational services in certain academic disciplines and to administer examinations to Iranian students.

Read the Federal Register [summary](#) and [notice](#).

OFAC Amends Sudan General License No. 1A

In April 2013, OFAC issued Sudan General License No. 1A, which authorized certain academic and professional exchange activities with Sudan that were previously prohibited under the Sudanese Sanctions Regulations (SSR). In mid-August 2014, OFAC amended the General License to expand the authorization, permitting specified activities related to the authorized exchanges.

The amendment expands the scope of the definition of "U.S. academic institutions" to include branch campuses abroad. It also permits U.S. academic institutions "to engage in activities involving

Sudanese nationals that are necessary for such nationals to apply to U.S. academic institutions” and that would otherwise be prohibited under the SSR, such as accepting tuition payments and application fees. Under the amended license, U.S. financial institutions are permitted to process money transfers from Sudanese nationals for fees and expenses associated with authorized exchange programs or training seminars.

Read OFAC's [summary](#) and full [text](#) of the license.

CONTACT INFORMATION

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[Edward L. Rubinoff](#) at 202.887.4026 or erubinoff@akingump.com or [Nicole H. Sprinzen](#) at 202.887.4301 or nsprinzen@akingump.com.

Contact information for attorneys in related practices can be found [here](#).

The “Anticorruption Developments” section of *Red Notice* is edited by [Courtney Cardin](#) and [Jennifer Hildebrand](#). The “Export Control and Sanctions Developments and Enforcement” sections are edited by [Annie Schiappizzi](#).

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