

Akin Gump
STRAUSS HAUER & FELD LLP

Red Notice

A Monthly Update on Global Investigations and Prosecutions



OCTOBER 2014

Introduction

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

This month on the anticorruption front, a Texas company agrees to pay more than \$5 million to settle allegations of Foreign Corrupt Practices Act (FCPA) violations, a high ranking executive of a multinational engineering firm pleads guilty to Swiss corruption charges, allegations of bribery continue to afflict pharmaceutical companies, two Austrian financial executives are sentenced for involvement in international bribery schemes and a Chinese real estate mogul is held under house arrest pending an ongoing bribery investigation.

In export control and sanctions enforcement news, the U.S. Department of Commerce's Bureau of Export Administration (BIS) takes its first penalty action for unlicensed encryption exports, an oil field services company admits to export infringements, a healthcare company settles various sanctions violations with the Office of Foreign Assets Control (OFAC), BIS revokes export privileges from two persons convicted of export violations and issues an export suspension for two Utah companies, and three separate individuals face penalties for various breaches of export and sanction laws.

Finally, in developments in export control and sanctions law, OFAC publishes Ukraine-related General License Number 3.

Thank you as always for reading *Red Notice*.

ANTICORRUPTION DEVELOPMENTS

SEC Settles FCPA Probe of Texas-Based Construction Company for \$5.1 Million

Earlier this week, Texas-based water management, construction and drilling company Layne Christensen Company agreed to pay nearly \$5.13 million to the U.S. Securities and Exchange Commission (SEC) to settle allegations of FCPA violations. Without admitting or denying the SEC's findings, Layne consented to an administrative order requiring the company to pay nearly \$3.9 million in disgorgement, \$858,720 in prejudgment interest and a penalty of \$375,000.

In 2010, Layne self-disclosed that it was conducting an internal investigation into improper payments. In August, *Red Notice* [reported](#) that the U.S. Department of Justice (DOJ) had closed its related FCPA probe of Layne, declining to bring criminal charges against the company. However, the SEC persisted in its investigation, determining that employees of Layne's African and Australian subsidiaries violated the antibribery provision of the FCPA by making improper payments to government officials in exchange for \$3.89 million in financial benefits.

The SEC found that "Layne's lack of internal controls allowed improper payments to government officials in multiple countries to continue unabated for five years." The payments were made between 2005 and 2010 to officials in Mali, Guinea, the Democratic Republic of the Congo, Burkina Faso and Tanzania. In exchange for the bribes, the company secured work permits, avoided paying customs duties and realized more than \$3.2 million in tax benefits. The SEC found that Layne also violated the books and records provision of the Securities Exchange Act by recording some of these bribes as legal fees.

Initially, Layne accumulated a \$10.4 million reserve for financial

TRANSLATIONS

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WRITING AND SPEAKING ENGAGEMENTS

On November 5, Akin Gump will host a CLE in our New York office, "The Cybersecurity Pandemic: A comprehensive look at navigating enterprise risk management, data breach response and multi-regulatory compliance," featuring lawyers across our offices and practices. For more information, please e-mail NewYorkEvents@akingump.com.

On November 19, partner [Lars-Erik A. Hjelm](#) will participate on the panel "Surviving the Increase of Customs Audits: How to Prepare in Advance to Avoid Problems in the Future" at C5's 6th Advanced Forum on Customs Compliance conference in London. For more information, click [here](#).

On December 3-4, 2014, partners [Jonathan Poling](#) and [Edward Rubinoff](#) will speak at the ACI's 5th Annual Economic Sanctions Boot Camp, "Comprehensive Update on the Ever Changing Global Sanctions Restrictions," in New York, NY. Click [here](#) for more information.

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

penalties. However, the SEC credited the company's self-disclosure, consistent cooperation throughout the investigation and updated FCPA security controls when assessing the final penalty of less than half the reserve amount.

To learn more read the SEC's [press release](#) and [Reuters](#) coverage.

Global Engineering Firm in Trouble in Multiple Jurisdictions After Top Executives Paid Millions in Bribes

On October 1, 2014, a former top executive at Canada's largest engineering firm, SNC-Lavalin Group Inc., pled [guilty](#) to Swiss corruption charges. The executive admitted that he funneled millions of dollars in improper payments to late Libyan dictator Muammar Gaddafi's son—payments he made using up to \$160 million in stolen corporate funds.

Riadh Ben Aissa, former head of SNC-Lavalin's global construction group, was found guilty of bribery, dishonest management and money-laundering in Switzerland's Federal Crime Court earlier this month. SNC-Lavalin allegedly enjoyed a number of lucrative contracts in Libya due in large part to Ben Aissa's ties to the Gaddafi family. Now, SNC-Lavalin is under scrutiny for its business there, as well as in Algeria, Bangladesh and Canada.

The Swiss court sentenced Ben Aissa to three years in prison, but reduced the sentence by 29 months in acknowledgment of the time he served while detained in connection with the case. The court also ordered Ben Aissa to surrender nearly \$50 million of improperly obtained assets.

Ben Aissa was [extradited](#) to Canada on October 15, where he now faces additional corruption charges related to a \$1.3 billion McGill University Hospital project awarded to SNC-Lavalin under his leadership. SNC-Lavalin officials allegedly paid \$22.5 million in bribes to close the deal.

Ben Aissa is one of seven top SNC-Lavalin executives to face corruption and bribery charges in the past two years. Among them, former Executive Vice President Sami Abdellah Bebawi remains at large, wanted by Canadian officials for money-laundering, bribery and obstruction of justice. In February 2013, SNC-Lavalin's former Chief Executive Pierre Duhamie was also charged with corruption for his role in the McGill University Hospital project.

In response to these scandals, SNC-Lavalin has sought to overhaul its ethics and compliance programs and has replaced most of its executive leadership. Though SNC-Lavalin stands to regain some \$16 million stolen by Ben Aissa, the company continues to face ongoing investigations by Canadian federal and provincial authorities and has acknowledged the possibility of additional fines.

See the [Huffington Post](#) and [The Globe and Mail](#) for additional information.

Onslaught of Bribery Allegations Continues for Pharmaceutical Companies

European pharmaceutical companies are again making headlines with corruption and bribery allegations concerning their foreign-based operations.

On October 6, 2014, French pharmaceutical company Sanofi S.A. announced that it is investigating claims that its employees offered improper perks to healthcare professionals in East Africa and the Middle East in order to boost sales of Sanofi's products. The investigation began after an anonymous tipster alleged that employees of the company's Kenyan subsidiary paid for prominent medical professionals to attend international conferences and provided them with gifts and cash. Sanofi self-disclosed the accusations to the DOJ and the SEC. The French drugmaker hired outside counsel to conduct an internal investigation. Last year, Sanofi faced regulatory scrutiny after a whistleblower came forward with allegations of bribes to medical professionals in China, covered by the [September 2013](#) issue.

As reported in our [September 2014 issue](#), British pharmaceutical giant GlaxoSmithKline PLC (GSK) is also grappling with serious corruption charges. In September, GSK was fined a record three billion yuan (\$488.5 million) for bribing doctors in China. On October 7, 2014, GSK confirmed that, as part of an ongoing internal probe, it is investigating employees for possible corruption in the United Arab Emirates (UAE) as well. The investigation was sparked by a whistleblower email thought to have come from a UAE regional sales manager. GSK is also investigating allegations of bribes to medical

officials in Jordan and Lebanon.

Read more at the [New York Times](#) and the [International Business Times](#).

Former Executives of Austrian Banknote Printer Sentenced in Kickback Scheme

On October 3, 2014, two former executive directors of Austria's central bank were sentenced for their role in a conspiracy to bribe officials in Syria and Azerbaijan. Johannes Miller and Michael Wolf, former executive directors of the banknote-printing unit of Austria's central bank, were each sentenced by Vienna's criminal court to a two-year suspended jail sentence.

Miller and Wolf were charged along with seven other co-conspirators after an 18-month investigation revealed bribes of at least 14 million euros (US \$17.5 million) paid between 2005 to 2011 to officials in Syria and Azerbaijan. Wolf, the former managing director of the central bank, admitted knowledge of the bribes at the start of the trial. Miller ultimately pled guilty during the trial as well. A third defendant, Wolfgang Duchatczek, former chairman of the Oesterreichische Banknoten und Sicherheitsdruck GmbH (OeBS), a subsidiary of Austria's central bank, was acquitted.

The investigation began after internal auditors identified payments made without any corresponding services rendered. According to the 83-page indictment, the defendants overcharged the Azeri and Syrian governments for money-printing services and then used the additional fees to pay kickbacks to foreign officials, including governors of those countries' central banks.

To learn more, see coverage at [Bloomberg](#) and the [FCPA Blog](#).

Chinese Authorities Investigate Real Estate Company's Dealings and Executive Is Held Under House Arrest

Chinese real estate developer Agile Property Holdings Ltd. confirmed on October 11, 2014, that its chairman and president, Chen Zhuo Lin, has been held under house arrest since September 30, 2014. China's antigraft investigators have reportedly uncovered evidence that Agile paid bribes to a former Chinese official in the Yunnan province. The company has been pursuing large tourist facilities in the region for several years, secured in part by investment agreements with local governments. The bribery allegations emerged shortly after the detention of Zhang Tianxin, a former Communist-party secretary in the Yunnan capital of Kunming.

During Chairman Zhuo Lin's detention, the company appointed Zhuo Lin's wife and younger brother, Fion Luk and Chan Cheuk Yin, respectively, to serve as acting co-chairpersons and co-presidents. The company also has lost contact with Vice President and Executive Director Huang Fengchao, who appears to have been taken into custody by Chinese authorities. Fengchao managed Agile's real estate developments in China's Hainan and Yunnan provinces. On October 11, 2014, Fengchao asked a colleague for assistance in handing questions from China's anticorruption agency. Since then, the company has not been able to reach Fengchao.

Prior to the chairman's detention, Agile faced allegations of corruption from the Chinese and Hong Kong press, alleging that the company assisted its former chief of security, Zhou Yongkang, in a money-laundering scheme.

The corruption allegations have taken a toll on the company's financial health. Moody's recently downgraded the company's corporate credit rating, and Standard & Poor's put the company on a negative credit watch.

Read more at the [South China Morning Post](#) and the [Wall Street Journal](#).

EXPORT CONTROL AND SANCTIONS ENFORCEMENT

Intel Subsidiary Agrees to \$750,000 Penalty for Unauthorized Encryption Exports

Wind River Systems in California, a wholly owned subsidiary of Intel Corporation, has agreed to a \$750,000 settlement with the BIS for alleged violations of the encryption controls of the Export Administration Regulations (EAR). The violations involved 55 unauthorized exports of encryption software products between 2008 and 2011, valued at \$2.9 million, to organizations in China on BIS's restricted party list, as well as to foreign government customers.

The civil penalty marks the first time BIS penalized a company for unlicensed encryption exports instead of issuing warning letters in response to such violations. The assistant secretary of commerce for enforcement explained that the BIS decision was based on the ongoing nature of the violations over a period of three years. BIS considered the company's voluntary disclosure a mitigating factor.

Read the [BIS press release](#) and [Reuters coverage](#), and see the proposed charging letter, settlement agreement and order [here](#).

Foreign Subsidiary of Texas Oil Firm Pleads Guilty to Illegally Exporting Drilling Equipment to Syria and Agrees to Pay \$1.6 Million

Robbins & Meyers Belgium S.A., a subsidiary of Texas-based Robbins & Meyers Inc., pled guilty earlier this month to violations of the International Emergency Economic Powers Act (IEEPA) and the EAR. The Belgian subsidiary admitted to four illegal reexports and transshipments of stators, components of oil extraction equipment made from U.S.-manufactured steel, to a customer in Syria. An internal auditor from the parent company flagged the exports in May 2006, and Robbins & Meyers Inc. directed its Belgian subsidiary to stop shipments. Despite this directive, the subsidiary continued shipments between August 2006 and October 2006, and then attempted to conceal shipping documents from government investigators.

The subsidiary will pay \$1 million in criminal fines and serve a term of corporate probation. The company must also forfeit the proceeds of the four illegal exports, amounting to \$31,716. A parallel settlement agreement with BIS amounted to an additional \$600,000 in civil penalties. Commenting on the steep fines and penalties, government officials cited their resolve to prosecute those who "flout" export control laws and to "hit companies that do business with Syria where it hurts most: the bottom line."

See press releases from [BIS](#) and [DOJ](#) as well as reporting by [Nasdaq.com](#). The order, settlement agreement and proposed charging letter are available [here](#).

Florida Healthcare Company Settles with OFAC for Violations of Multiple Sanctions Programs

Bupa Insurance Company (BIC), Bupa Worldwide Corporation (BWW) and USA Medical Services Corporation (USAMED)—Florida corporations and affiliates of a UK-based international healthcare group—agreed to a \$128,704 settlement with OFAC for 39 apparent violations of the Narcotics Trafficking Sanctions Regulations (NTSR), the Foreign Narcotics Kingpin Sanctions Regulations (FNKSR), and the Cuban Assets Control Regulations (CACR) that occurred from March 26, 2008 to March 1, 2011.

The three companies, collectively "Bupa Florida," allegedly failed to monitor or screen health insurance policyholders, dependents or providers against OFAC's Specially Designated Nationals and Blocked Persons List ("SDN List"). According to OFAC allegations, BWW and USAMED provided insurance support services, such as claims processing, for healthcare policies to individuals on OFAC's SDN List under the NTSR, and they also processed and paid a policyholder's reimbursement claims for medical treatment in Cuba in violation of the CACR. BIC allegedly provided health insurance coverage to a dependent on an insurance policy who was named on the SDN List under the NTSR and FNKSR.

OFAC determined that Bupa Florida voluntarily self-disclosed the apparent violations and that the violations constituted a non-egregious case. The base penalty for the apparent violations was \$95,337. The higher settlement amount apparently reflects OFAC's consideration of a number of aggravating factors in this case, among them that Bupa Florida: 1) acted with reckless disregard for U.S. sanctions; 2) knew or had reason to know that its policyholders and beneficiaries were on the SDN List; and 3) did not appear to have an OFAC sanctions compliance program at the time of the violations.

To learn more about the Bupa Florida settlement, read the OFAC statement [here](#) and *Wall Street Journal* [coverage](#).

BIS Denies Export Privileges to Individuals Convicted of Export Violations

At the end of September 2014, BIS issued two orders imposing 10-year denials of export privileges to Demetrio Cortez-Salgado and Ming Xie, respectively. Cortez-Salgado was convicted last year in the U.S. District Court for the Eastern District of California for violations of

the Arms Export Control Act (AECA) involving unlicensed exports from the United States to Mexico of rifles controlled under the U.S. Munitions List (USML). He completed his prison term in November 2013 and is now prohibited from engaging in any transactions involving exports of items subject to the EAR until September 11, 2023.

Xie was convicted last year in the U.S. District Court for the District of New Jersey for violations of the AECA and IEEPA for unlicensed exports to China of U.S.-origin power amplifiers, some of which were considered defense articles subject to the International Traffic in Arms Regulations (ITAR) and others that were subject to the EAR. BIS extended the denial order to Xie's company, Horizon LR Systems, in order to prevent evasion of the order, valid through May 22, 2023.

To learn more, read the BIS [Cortez-Salgado denial order](#) and [Xie denial order](#).

Temporary Denial Order Issued for Illegal Export of Crime Control Items to Russia and China

BIS issued a Temporary Denial Order (TDO) to suspend the export privileges of Utah companies X-TREME Motors LLC and XTREME Outdoor Store, and three of their corporate officers for making more than 200 exports of items controlled under the EAR for crime control reasons to Russia and China without obtaining required BIS authorization. The companies misrepresented information on customs declarations, falsely stating that packages contained ATV parts when, in fact, the shipments contained rifle scopes. The TDO is in effect for 180 days and may be renewed.

For more information, read the [TDO](#) and [BIS press release](#).

Illinois Man Pleads Guilty to Illegally Exporting Carbon Fiber and Other Controlled Items to Pakistan

Bilal Ahmed of Illinois, president and owner of Trexim Corp., pled guilty earlier this month to federal charges in connection with the unlicensed export of dual-use technology in violation of the IEEPA. Ahmed admitted to the unlicensed shipment in 2009 of carbon fiber and in 2013 of microwave laminate to Pakistan's Space and Upper Atmosphere Research Commission, knowing that the dual-use goods required a BIS export license. He was arrested in March of this year while attempting to ship a dual-use thermal imaging camera to Pakistan.

Ahmed's sentencing is scheduled for January 2015. To learn more about the guilty plea, see the [FBI press release](#).

Russian National Receives 18-Month Prison Sentence for Smuggling High-Tech Night-Vision Technology to Russia

Earlier this month, the U.S. District Court for the District of Delaware sentenced Dmitry Ustinov to an 18-month prison term and three years of supervised release. Ustinov pled guilty in July 2014 to conspiring to export high-tech military technology, including night-vision devices and thermal imaging scopes, to Russia. He faced a maximum penalty of five years in prison with three years of supervised release and a \$250,000 fine. Ustinov will be deported at the conclusion of his 18-month sentence.

Read the DOJ [press release](#) and *Washington Times* [coverage](#).

Former Taiwan Resident Pleads Guilty to Violation of Anti-Proliferation Laws

Earlier this month, Hsien Tai Tsai pled guilty in the U.S. District Court for the Northern District of Illinois for conspiracy to defraud the United States in its enforcement of the sanctions against proliferators of weapons of mass destruction (WMD) and their supporters that are administered by the OFAC pursuant to Executive Order No. 13382. In January 2009, OFAC designated Tsai and two Taiwan-based companies with which he was associated as WMD proliferators. Following the designation, Tsai and the designated companies continued conducting business transactions, but tried to conceal their involvement by using different company names, such as Trans Multi Mechanics (TMM). Tsai admitted involvement in the September 2009 purchase of equipment from a Chicago-based company and export to Taiwan using TMM. Tsai was arrested in Estonia in May 2013 and extradited to the United States.

Upon sentencing on December 5, 2014, Tsai faces a maximum penalty of five years imprisonment and a \$250,000 fine.

For additional information, see the [DOJ](#) press release, as well as [Chicago Tribune](#) coverage.

EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

OFAC Publishes Ukraine-Related General License Number 3

Earlier this month, OFAC issued Ukraine-Related General License No. 3, a narrow license that authorizes all transactions prohibited by Directive 1 for DenizBank A.Ş. and companies in which it owns, directly or indirectly, a 50 percent or greater interest. Directive 1 prohibits certain transactions with named persons operating in Russia's financial services sector.

For further information, find the text of the General License [here](#).

CONTACT INFORMATION

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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 Schlapprizzi](#).

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