Akin Gump
STRAUSS HAUER & FELD LLP

Red Notice

A Monthly Update on Global Investigations and Prosecutions

FEBRUARY 2015

Introduction

Welcome to the February 2015 edition of *Red Notice*, a publication of Akin Gump Strauss Hauer & Feld LLP.

This month on the anticorruption front, several companies face the consequences of improper dealings in Africa—a major automobile parts manufacturer pays USD $16 million to settle Foreign Corrupt Practices Act (FCPA) charges related to sales in Kenya and Angola, a U.K. court sentences two men for their role in a bribery scheme in Kenya and Mauritania, and Canadian prosecutors join Swiss authorities in charging a Montreal-based engineering firm in connection with a bribery ploy in Libya. In addition, an energy company announces a declination from the U.S. Securities and Exchange Commission (SEC) for an FCPA investigation while a pharmaceutical company discloses the wrap-up of a bribery probe, and two U.S. Army sergeants fess up to bribery while stationed in the Middle East.

In export control and sanctions enforcement news, a judge makes a rare move in rejecting a sanctions settlement deal, a man pleads guilty to Arms Export Control Act (AECA) violations after attempting to send classified export-restricted technology to Iran, and three individuals are sentenced for separate export violations.

Finally, in developments in export control and sanctions law, additional licensing requirements and general licenses are issued for the Crimea region, a general license is issued amending the Sudanese Sanctions Regulations (SSR), export guidelines are instituted for military unmanned aerial systems, and export control restrictions on certain etch equipment and technology are eliminated.

Thank you, as always, for reading *Red Notice*.

ANTICORRUPTION DEVELOPMENTS

Goodyear Tire Resolves SEC FCPA Charges for $16 Million

On February 25, 2015, The Goodyear Tire & Rubber Company reached a settlement with the SEC to resolve foreign corruption charges related to tire sales in Kenya and Angola.

The SEC's settlement order details the charges against the Ohio-based tire conglomerate, alleging that, between 2007 and 2011, the company's subsidiaries in sub-Saharan Africa paid more than USD $3.2 million in bribes to public officials, state-owned entities and employees of private companies. According to the SEC, Kenya-based Treadsetters Tyres Ltd. and Angola-based Trentyre Angola Lda. made routine bribe payments to land tire sales and covered up

TRANSLATIONS

中文

НА РУССКОМ ЯЗЫКЕ

RELATED NEWS

Akin Gump has expanded its trade and disputes offerings in Asia with the relocation of international trade partner Tatman R. Savio from the firm's Washington, D.C. office to Hong Kong and the arrival in Hong Kong of litigation senior consultant Vena Cheng.

On February 23, 2015, the Department of Energy released a long-awaited final rule overhauling its Part 810 Regulations governing the export of certain nuclear technology and assistance. Read Akin Gump's client alert analyzing these revisions.

SPEAKING ENGAGEMENTS

On March 6, 2015, partner Michelle Reed will present in a live webcast panel "Cyber Security Plans: Adoption and Implementation Issues," hosted by The Knowledge Group. For more information and registration details, please see here.

From March 10-11, 2015, partner Tamer Soliman will participate on the panel "A Review of Permissible, Prohibited Activities and Transactions Involving Iran, Sudan, Syria, Russia and Ukraine: How Your Operations in the Middle East Are Impacted" at C5's 2nd Forum on Trade and Compliance in the Middle East at the Fairmont Dubai Hotel. Click here for more information.

the bribes as legitimate expenses in Goodyear's books and records. In particular, the SEC alleged that Treadsetters distributed in excess of USD $1.5 million in bribe payments to public officials at a variety of government agencies and employees of private entities, including the Kenya Ports Authority, Kenyan Air Force, Nzoia Sugar Co. and Telkom Kenya Ltd. Trentyre allegedly paid bribes totaling more than USD $1.6 million to employees of state-owned and private entities, including UNICARGAS, Engevia Construction and Public Works and the Catoca Diamond Mine.

The SEC charged Goodyear, as the parent company, with failing to prevent or detect the bribes levied by the subsidiaries due to a system of inadequate FCPA controls.

Under the terms of the settlement, without admitting or denying the charges, Goodyear agreed to disgorge USD $14,122,525 in profits earned from the corrupt payments, along with prejudgment interest of USD $2,105,540. In addition to the disgorgement payment, Goodyear agreed to report its FCPA remediation efforts to the SEC for a period of three years.

The SEC has acknowledged that the imposed penalties reflect the "significant cooperation" that Goodyear provided throughout the agency's investigation. Goodyear self-reported the bribery scheme to the SEC and the U.S. Department of Justice (DOJ) after uncovering the corrupt payments following a tip in 2011 on the company's ethics hotline.

After conducting a related inquiry, the DOJ informed Goodyear in January 2015 that it did not intend to pursue criminal charges.

To learn more, see news coverage at *Reuters* and *USA Today*.

UK Court Sentences Father and Son Directors of a Printing Company for Africa Bribes

On February 12, 2015, two directors of the Eastbourne, U.K.-based printing company Smith & Ouzman were sentenced following a corruption trial.

As we reported in our December *Red Notice*, Chairman Christopher Smith and his son, Sales and Marketing Director Nicholas Smith, were both convicted in December 2014 by a jury in London's Southwark Crown Court. The father and son were found guilty of two and three counts, respectively, of corruptly agreeing to make payments in violation of the U.K.'s Bribery Act for paying bribes totaling nearly £400,000 to public officials in Kenya and Mauritania to secure contracts for the printing firm.

This month, both men were sentenced for their roles in the bribery scheme. Christopher Smith received an 18-month suspended sentence, including a term of 250 hours of unpaid work and a three-month curfew. Nicholas Smith was sentenced to three years' imprisonment. In addition, both father and son were disqualified from serving as company directors for a period of six years. In accordance with this penalty, they have both resigned from their positions at Smith & Ouzman.

While conveying the sentences, Judge David Higgins offered sharp criticism of the defendants' conduct, referring to their actions as a "premeditated, pre-planned, sophisticated and very serious crime," and commenting that their "behaviour was cynical, deplorable and deeply anti-social and suggests, at least in this context, moral turpitude."

The investigation was led by the United Kingdom's Serious Fraud Office (SFO) and served as the SFO's first successful conviction after trial of corporate officers for bribing foreign public officials.

Read news reports from *BBC* and *Reuters* to learn more.

On March 11. 2015, from 12:00 pm – 1:30 pm, Akin Gump will host the CLE Series for in-house counsel in the New York office titled "An Update on the U.K.'s Conduct of Business Regulator – the Financial Conduct Authority" presented by partners Helen Marshall, Joe Boryshansky and Doug Rappaport and counsel Rosemarie Paul. For more information, please contact NewYorkEvents@akingump.com.

On March 26, 2015, counsel Rebekah Jones will present the seminar "ITAR Controls" at the Export Compliance Training Institute's U.S. Export Controls on Non-U.S. Transactions at the Novotel Singapore Clarke Quay Hotel. For more information, click here.

If you would like to invite Akin Gump lawyers to speak at your company or to your group about anticorruption law, cybersecurity, compliance, enforcement and policy or other international investigation and compliance topics, please contact Mandy Warfield at mwarfield@akingump.com or +1 202.887.4464.

Canada Charges SNC-Lavalin for Libya Bribes

On February 19, 2015, Canadian prosecutors levied foreign corruption charges against the Montreal-based engineering firm SNC-Lavalin Group Inc. and two of its subsidiaries. The charges follow on the heels of a string of corruption charges against the company's former top officials.

The charges against SNC-Lavalin—one count of bribery under Canada's Corruption of Foreign Public Officials Act and one count of fraud—relate to the company's business dealings with the former regime of dictator Muammar Gaddafi over the course of a 10-year period. The Royal Canadian Mounted Police (RCMP) claim that the company paid Libyan officials a total of CAD $47.7 million in bribes in connection with work performed by the company in Libya between 2001 and 2011. In addition, the RCMP alleges that the company defrauded the Libyan government of nearly CAD $130 million.

As we discussed in the October issue, several of the company's former top officials were previously charged for their roles in the Libyan bribery scheme.

SNC-Lavalin claims that the charges "are without merit" and has attempted to shift the prosecutorial focus onto the individual employees involved, contending that "if charges are appropriate, we believe that they would be correctly applied against the individuals in question and not the company." As long as the charges persist, the company has announced its intention to "vigorously defend itself and plead not guilty in the interest of its current employees, families, partners, clients, investors and other stakeholders."

See additional news coverage at *The New York Times* and Canadian outlet *CBC News*.

US Oil Company Avoids SEC Enforcement Action

On January 28, 2015, Cobalt International Energy, Inc. announced the conclusion of an investigation by the SEC into possible violations of the FCPA involving the company's operations in Angola.

The SEC's investigation began after allegations emerged of a connection between Cobalt's offshore Angolan oil blocks and senior Angolan government officials. In 2011, an investigative journalist publicized claims that Nazaki Oil & Gas, an Angolan company that shared an interest in Angolan oil blocks with Cobalt, was secretly owned by Angolan government officials. The journalist's allegations were confirmed in 2012, when three Angolan officials, including the current Vice President Manuel Vicente, publicly confirmed to Financial Times that they owned shares in Nazaki held in the name of a now-dissolved corporate entity.

Cobalt first learned of the SEC's investigation in November 2011 after receiving a formal order of investigation. The investigation culminated on August 4, 2014 with a Wells Notice to Cobalt from the SEC, reporting the agency's preliminary determination to recommend an enforcement action against the U.S. oil company for violation of federal securities laws. After receiving the Wells Notice, Cobalt announced its intention to dispute any resulting enforcement action, contending that the company had no knowledge of a connection between Angolan officials and Nazaki.

In an apparent reversal of the SEC's position that it would take enforcement action against Cobalt announced in the August 2014 Wells Notice, the SEC issued a termination letter to Cobalt in January, making clear that the SEC will not pursue any enforcement action against the company. Notwithstanding its SEC victory, Cobalt continues to face scrutiny in connection with its Angolan operations. In a recent press release celebrating the SEC's termination letter, the company disclosed its continued cooperation with a parallel investigation by the DOJ.

To learn more, see news coverage at *Forbes*.

Eli Lilly Emerges from Decade-Long International Bribery Investigation

Earlier this month, pharmaceutical giant Eli Lilly & Company disclosed the recent conclusion of an investigation by the DOJ related to allegations of bribes paid to government officials in Russia, Brazil, China and Poland.

The news marks the conclusion of more than a decade of investigations by U.S. regulatory authorities. The SEC began its investigation of Eli Lilly in mid-2003, focusing on sales practices by the company's Polish subsidiary, before ultimately expanding the investigation to the company's operations in other countries. In 2012, the SEC brought civil charges against the company, alleging that employees of the company's subsidiaries made improper payments to government officials, including Russian officials. They further alleged that the company used offshore "marketing agreements" to funnel millions of dollars to third parties designated by government officials. Without admitting or denying the SEC's allegations, Eli Lilly ultimately resolved the civil suit with a USD $29.4 million settlement. As part of the settlement, the company agreed to submit to a 60-day review of its internal controls and compliance program by an independent consultant.

Following the settlement with the SEC, Eli Lilly continued to grapple with a parallel investigation by the DOJ. In a Form 10-K annual report filed with the SEC on February 19, 2015, the company disclosed that the DOJ closed its bribery investigation of the company in January 2015 after declining to pursue charges.

Read more at the *Indianapolis Business Journal* and the *Wall Street Journal*.

Two US Army Sergeants Plead Guilty to Bribery Scheme During Afghanistan Deployment

On February 11, 2015, two U.S. Army sergeants pleaded guilty to bribery charges for accepting bribes while deployed in Afghanistan.

In connection with their guilty pleas, Sgts. James Edward Norris and Seneca Darnell Hampton admitted that, between January 2013 and April 2013, while deployed in Afghanistan, they accepted approximately USD $2,000 in bribes per day from Afghan truck drivers in exchange for providing thousands of gallons of fuel to the truck drivers for resale on the black market. To evade detection, Sgt. Hampton admitted that he falsely reported the fuel exchanged with the truck drivers as being dispersed for refueling generators and equipment, claiming that colder winter temperatures prompted increased fuel usage. Further, Norris and Hampton admitted that they conspired with other soldiers to solicit and accept the bribe payments. Norris and Hampton pocketed a total of approximately USD $150,000 over the course of the scheme, and they later shipped the ill-gotten gains back to the United States in boxes for use after their deployment. Both Norris and Hampton ultimately used the funds to purchase luxury SUVs.

This month, Norris and Hampton each pleaded guilty in the U.S. District Court in the Middle District of Georgia to one count of conspiracy to commit bribery of a public official and one count of money laundering. As part of their plea agreements, Norris and Hampton agreed to forfeit all proceeds from the bribery scheme, including the vehicles purchased with the unlawful payments. In addition, they agreed to pay full restitution. Both sergeants are scheduled to be sentenced on May 21, 2015.

Read more at the *Army Times* and the *Stars and Stripes*.

Judge Refuses to Approve Fokker's Multimillion-Dollar Sanctions Penalty

As we reported in June 2014, Fokker Services B.V. (FSBV), a Netherlands-based aerospace company, reached a global settlement of USD $21 million with the Office of Foreign Assets Control (OFAC), the U.S. Department of Commerce's Bureau of Industry and Security (BIS), and the U.S. Attorney's Office for the District of Columbia regarding allegations of 1,112 violations of the Iranian Transactions and Sanctions Regulations (ITSR) and of 41 violations of the SSR. However, on February 5, 2015, the Honorable Richard J. Leon of the U.S. District Court for the District of Columbia rejected the settlement, stating that it "does not constitute an appropriate exercise of prosecutorial discretion."

Although the U.S. Attorney for the District of Columbia who handled the case said that the "prosecution sends a clear message that there will be consequences for those who seek to profit from violating and circumventing U.S. trade laws," Judge Leon disagreed. In his February 5 opinion, the judge criticized the leniency of the 18-month deferred prosecution agreement (DPA) that accompanied the settlement and the dollar amount of the fine. He wrote that the deal "would undermine the public's confidence in the administration of justice and promote disrespect for the law for it to see a defendant prosecuted so anemically for engaging in such egregious conduct for such a sustained period of time and for the benefit of one of our country's worst enemies." Judge Leon also questioned why the DPA terms lacked the appointment of an independent monitor "trusted by the Court to verify for it and the Government both that this rogue company truly is on the path to complete compliance."

Judge Leon did not articulate specific modifications to the agreement but said he remains "open to a modified version" if the DOJ and FSBV agree to different terms for his review.

According to 2014 court filings, both the government and FSBV argued that the court's role in this process is confined to ensuring that the defendant entered the agreement willingly and knowingly, and that the DPA doesn't violate the defendant's right to a speedy trial. Refuting this limited interpretation of the role of "the Court to serve as a rubber stamp," Judge Leon referred to last year's ruling out of the U.S. District Court for the Eastern District of New York that the district court does have the power to approve or reject such an agreement.

Fokker announced it will appeal Judge Leon's ruling.

To learn more, read the published order and *The Washington Post* and *Bloomberg* coverage.

Former Defense Contractor Employee Pleads Guilty to AECA Violations

In late February 2015, a former employee of three U.S. defense contractors, Mozaffar Khazaee, pleaded guilty in the U.S. District Court for the District of Connecticut to AECA violations arising from efforts to send to recipients in Iran export-controlled technology related to the U.S. Air Force F35 Joint Strike Fighter and F-22 Raptor programs. Khazaee had stolen the sensitive, proprietary material from his defense contractor employers and attempted to use this information over a four-year period to obtain employment in Iran.

Khazaee succeeded in sending some export-controlled documents to Iran via email. He failed, however, in his attempt to send an unlicensed shipment to Iran containing digital media with thousands of documents, many of which were labeled as "ITAR-controlled" (i.e., subject to the International Traffic in Arms Regulations) or "export controlled." U.S. authorities arrested Khazaee before he boarded a flight to Iran and found additional export-controlled documents about military jet engines in his belongings. The court set sentencing for May 20, 2015. Khazaee faces up to 20 years in federal prison and a potential USD $1 million fine.

An FBI representative highlighted the importance for U.S. companies to remain vigilant to the risk of theft of sensitive technologies.

Japanese Man Sentenced to 30-Month Prison Term for Export Violation

Late last month, the U.S. District Court for the Western District of New York sentenced Japanese citizen Iteru Masui, age 30, to 30 months in prison for violation of AECA. Masui attempted to export from the United States AN/PRC-152 radios, controlled for export by the U.S. Munitions List (USML). Special agents of the Department of Homeland Security discovered and stopped Masui's attempted illegal export.

Maryland Man Sentenced For Planned Exports to Iran

In early February 2015, the U.S. District Court for the District of Maryland sentenced 34-year-old Ali Saboonchi of Maryland to two years in prison, for conspiracy and seven counts of exporting U.S.-manufactured industrial products and services to Iran in violation of the ITSR. According to trial testimony, the defendant created a business to procure goods to be sent to Iran and, in conspiracy with three fugitive co-defendants, exported U.S.-manufactured industrial goods and services to Iranian businesses. Saboonchi shipped items intended for Iranian customers to entities in the United Arab Emirates (UAE) and China without obtaining authorization to export the products. The co-conspirators then arranged the transport of goods from UAE and China to the customers in Iran.

See additional reporting at *Examiner.com*.

Texas Man Sentenced for Illegally Exporting Night Vision Devices

Earlier this month, the U.S. District Court for the District of Maryland sentenced Texas resident David Kelley to an 18-month prison term, for an estimated 60 illegal exports of night vision devices on the USML in violation of the ITAR. Kelley operated a business that sold night vision and other military-style equipment. Over a nine-month period, he sold the night vision devices to foreign customers in 24 countries without obtaining the necessary license and marked the shipments with various false labels.

Learn more at *My Fox Houston*.

EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

BIS Issues Licensing Policy for Crimea

Late last month, BIS issued a final rule imposing additional sanctions to implement U.S. policy toward Russia. The rule establishes a license requirement to export and re-export to Crimea, and to transfer within Crimea, items subject to the Export Administration Regulations (EAR), with exceptions for food and medicine designated as EAR99. Moreover, the rule imposes a presumption of denial for such licenses related to items other than the agricultural commodities, medicine, medical supplies and replacement parts outlined in OFAC's General License Number 4, which BIS will consider on a case-by-case basis. The final rule is an example of the Obama administration's effort to increase pressure on Russia for its actions in Crimea.

To learn more, see the BIS press release and new rule in the *Federal Register*.

OFAC Publishes Ukraine-Related General Licenses

OFAC published three Crimea-related general licenses in late January 2015. The general licenses provide authorization for certain activities otherwise prohibited by the U.S. comprehensive import, export and investment ban against Crimea.

General License Number 6 authorizes U.S. persons to send and receive noncommercial, personal remittances to or from Crimea, provided no blocked person is involved in the transaction.

General License Number 7 authorizes U.S. financial institutions to operate accounts for individuals “ordinarily resident” in Crimea who are authorized to receive noncommercial, personal remittances under General License Number 6.

General License Number 8 authorizes transactions with respect to the receipt and transmission of telecommunications. The general license explicitly does not authorize the provision, sale or lease of telecommunications equipment, technology or capacity on telecommunications transmission facilities (such as satellite or terrestrial network activity). General License Number 8 also authorizes transactions of common carriers incident to the receipt or transmission of mail and packages between the United States and Crimea, provided that the import or export of such mail and packages is exempt from the U.S. import, export and investment ban against Crimea.

OFAC, BIS Relax Controls on Certain Items Related to Personal Communications in Sudan

Earlier this month, in consultation with BIS and the U.S. Department of State, OFAC adopted a final rule to amend the SSR by issuing a general license for certain hardware, software and services pertaining to personal communications. A much more limited 2010 general license also permitted the export of certain software and services related to personal communications. OFAC expanded the 2010 general license in furtherance of U.S. government policy to advance free information flow and facilitate communications by the Sudanese.

BIS concurrently amended the EAR to modify its licensing policy from denial to case-by-case review for license requests to export and re-export to Sudan telecommunications equipment and associated software, computers and technology for civil end use. BIS also expanded its license exception, Consumer Communications Devices (CCD), previously applicable only to Cuba, to encompass exports and re-exports of certain consumer communications devices to Sudan.

See the *Federal Register* to learn more about the OFAC general license and the BIS EAR revisions.

United States Establishes Export Policy for Military Unmanned Aerial Systems

The U.S. Department of State announced on February 17, 2015, that the United States has established a new policy on the international sale, transfer and use of U.S.-origin commercial and military unmanned aerial systems (drones). Under the policy, the United States will “exercise restraint in sales and transfers” of drones. The policy is consistent with the requirements of the EAR, which governs U.S. commercial transfers, and the Foreign Assistance Act and AECA, which govern U.S. military transfers. The announcement focused on the export of military drones and stated that the new policy builds on the U.S. Conventional Arms Transfer Policy.

According to the announcement, the U.S. government will review potential exports of military drones, including armed drones, on a case-by-case basis. Such exports will require stringent conditions, which may require recipients to provide end-use assurances and permit end-use monitoring. Recipients will be required to agree to principles for proper use before the United State authorizes transfer or sale of military drones. These principles state that the recipient: 1) must use the drone in accordance with international law; 2) may not use the drone in operations involving force unless international law provides a basis for such use of force; 3) may not use the drone to conduct illegal surveillance or employ force against the recipient's domestic population; 4) will provide operators with training, as appropriate, to minimize the risk of accidental damage or injury.

The State Department emphasized that requests to export commercial or military drones subject to the Missile Technology Control Regime (MTCR) under Category I–commercial and military systems with a range of 300 kilometers or more that can carry a load of at least 500 kilograms–will face a presumption of denial but may be permitted on rare occasions.

To learn more, see the State Department announcement and coverage by *Bloomberg* and *Reuters*.

BIS Removes Export Restriction on Certain Etch Equipment through Foreign Availability Assessment

BIS removed export control restrictions on certain etch equipment and technology, previously controlled for national security reasons under Export Control Classification Number 3B001.c. The global trade organization for the micro- and nano-electronic manufacturing supply chains, SEMI, petitioned BIS for a foreign availability assessment (FAA) to examine the foreign availability of anisotropic plasma dry etching equipment. Under the FAA process, BIS conducts an analysis to determine the overseas availability of a particular item. Upon finding that an item is "foreign available," BIS may decontrol the item for national security reasons or approve a previously-denied license request.

To learn more, see the notice in the *Federal Register* and coverage in a technology publication.

CONTACT INFORMATION

For more information about the stories highlighted in *Red Notice*, please contact:

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 Schlapprizzi.

Translations of *Red Notice* into Chinese and Russian are available on a delayed basis. Please check via the links above or archived editions links blow to view past translated editions.

Red Notice is a monthly publication of Akin Gump Strauss Hauer & Feld LLP.

Archived Editions • Archived Editions – Chinese • Archived Editions – Russian • Subscribe to Red Notice