

# Red Notice

A Monthly Update on Global Investigations and Prosecutions



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## ANTICORRUPTION DEVELOPMENTS

### Former Magyar Telekom Executives Settle Bribery Charges

On April 24, 2017, the Securities and Exchange Commission (SEC) announced that two former executives of Magyar Telekom, a Hungarian telecommunications company, agreed to settle FCPA charges against them. The settlement comes just before the executives were scheduled to stand trial for FCPA charges first lodged against them in December 2011. The executives were accused of creating fake contracts to facilitate improper payments to foreign officials in Macedonia in order to shut out competitors in the market. Former Magyar CEO Elek Straub will pay a \$250,000 penalty, while former Magyar Chief Strategy Officer Andras Balogh will pay a \$150,000 penalty. Both men also agreed not to serve as officers or directors of any SEC-registered public company for five years.

In February 2017, Tamas Morvai, a third former Magyar executive, who served as director of business development and acquisitions, also settled ahead of his anticipated trial. Morvai agreed to pay \$60,000 to settle allegations that he falsified the company's books and records to conceal bribes.

For its part, Magyar paid a \$95 million penalty in December 2011 to settle claims alleging that the company

bribed foreign officials in Macedonia and Montenegro in order to retain business and secure a competitive advantage.

The SEC's April 2017 press release is available [here](#), and its December 2011 press release is available [here](#). The SEC's original complaint against all three executives is available [here](#). For more information, see *The Wall Street Journal's* coverage [here](#) and the FCPA Blog's coverage [here](#).

### **Supreme Court Hears Oral Argument on Whether SEC Disgorgement Penalties Subject to Five-Year Statute of Limitations**

On April 18, 2017, the Supreme Court, including newly confirmed Justice Neil Gorsuch, heard oral argument in *Kokesh v. Securities and Exchange Commission*. As previously noted in this publication (available [here](#)), on January 13, 2017, the U.S. Supreme Court granted Charles R. Kokesh's petition for certiorari seeking review of a decision of the U.S. Court of Appeals for the 10th Circuit affirming the district court's finding that the SEC's issuance of a permanent injunction and disgorgement of profits are remedial in nature and thus not subject to the five-year statute of limitations imposed by 28 U.S.C. § 2462.

It is likely that the Supreme Court will issue its decision sometime in June, the last month before its summer recess.

The transcript of the April 18th oral argument can be found [here](#). The opinion of the United States Court of Appeals for the 10th Circuit, petition for certiorari, response, reply and amicus curiae briefs are available [here](#). For more information, see *The New York Times's* coverage [here](#), *The Wall Street Journal's* coverage [here](#), the FCPA Blog's coverage [here](#) and *Law360's* coverage [here](#).

### **DOJ Reduces Odebrecht Penalties in FCPA Case**

On April 10, 2017, in a court filing, the Department of Justice (DOJ) advised that the U.S. share of Odebrecht SA's "global" criminal penalty for its December 2016 Foreign Corrupt Practices Act (FCPA) resolution should be \$93 million and not \$260 million. In approving the DOJ's request, U.S. District Judge Raymond Dearie announced at a hearing in Brooklyn that \$93 million will go to the United States, \$2.39 billion to Brazil and \$116 million to Switzerland. Judge Dearie further explained (as reflected in the DOJ's Sentencing Memorandum) that the reduced share reflects intervening losses of contracts with the governments of Peru, Colombia and Panama that have impaired Odebrecht's ability to pay the \$2.6 billion global penalty. The Sentencing Memorandum cites its analysis of the company's impairment in the "ability to pay" as the basis for the reduction.

The DOJ's Sentencing Memorandum is available [here](#). For more information, please see the FCPA Blog's coverage [here](#).

### **Kara Novaco Brockmeyer, Chief of FCPA Unit, to Leave SEC After 17 Years of Service**

On April 4, 2017, the SEC announced that Kara Novaco Brockmeyer, Chief of the Enforcement Division's FCPA Unit, would leave the agency by the end of April 2017. Brockmeyer has led the FCPA Unit since she was appointed in September 2011. During her tenure, the SEC brought 72 FCPA enforcement actions, resulting in more than \$2 billion in monetary penalties, disgorgement and prejudgment interest. Charles Cain, the current Deputy Chief of the FCPA Unit, will assume the role of Acting Chief.

The SEC's press release is available [here](#). For more information, see *The Wall Street Journal's* coverage [here](#) and the FCPA Blog's coverage [here](#).

### **Texas Aviation Company President Jailed for His Role in Mexican Airplane Maintenance Contract Scheme**

On March 30, 2017, Douglas Ray, owner and president of Brownsville, Texas, company Hunt Pan Am Aviation, was sentenced to 18 months in prison and to a payment of \$590,000 in restitution for his role in a scheme involving more than \$2 million in bribes paid to Mexican officials in exchange for aviation maintenance, repair and overhaul contracts. Previously, on October 28, 2016, Ray pleaded guilty to conspiracy to violate the FCPA and conspiracy to commit wire fraud. Five other co-defendants, including some former Mexican officials, have also pleaded guilty to conspiracy counts in connection with the scheme.

The *Red Notice* previously reported on the sentencing of co-defendant Victor Hugo Valdez Pinon, who worked as a sales representative for Hunt Pan Am Aviation and is a Mexican citizen. That coverage is available [here](#).

The DOJ's Information, Plea Agreement and Press Release relating to the charges against Mr. Ray and his sentencing are available [here](#). For more information, see the FCPA Blog's coverage [here](#).

### **World Bank Debars Denmark Engineering Firm Consia for Vietnam, Indonesia Bribes**

On March 30, 2017, the World Bank added Danish engineering firm Consia Consultants ApS ("Consia") to its debarment list for 14 years related to fraud and corruption in the East Asian countries of Indonesia and Vietnam.

With respect to improprieties in Indonesia, Consia allegedly made payments to win certain contracts, as well as failed to disclose an agreement and commissions paid to one of its employees in connection with the Indonesian World Bank-financed Strategic Road Infrastructure Project. Consia also, according to the World Bank, undertook similar behavior in Vietnam, allegedly making payments in connection with the Hanoi Urban Transport Development Project, as well as other fraudulent misconduct relating to the Second Northern Mountain Poverty Reduction Project.

Consia's actions qualified for debarment because they ran afoul of the 2004, 2006 and 2010 Consultant Guidelines, Para. 1.22(a)(i)-(ii). A full list of debarred firms and individuals is available [here](#). The World Bank press release is available [here](#). For more information, please see the FCPA Blog's coverage [here](#).

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## EXPORT CONTROLS, SANCTIONS AND CUSTOMS ENFORCEMENT

### **Florida Firm Settles Export Violations with Department of Commerce for \$27 Million**

On March 14, 2017, the U.S. Department of Commerce's (DOC) Bureau of Industry and Security (BIS) announced that Access USA Shipping, LLC ("Access USA"), a mail and package forwarder in Florida, agreed to pay the U.S. government \$10 million as part of a civil settlement for apparent violations of the Export Administration Regulations (EAR). BIS agreed to suspend a further \$17 million, provided that Access USA refrains from further violations and complies with the terms of the settlement order.

From April 2011 to January 2013, Access USA allegedly provided foreign customers with a U.S. address and warehouse space used to clandestinely export items such as rifle scopes, night vision lenses and weapons parts. Foreign customers had the items delivered to Access USA's facilities in Florida, using the address to avoid further scrutiny by concealing from U.S. merchants that the items were intended for export. Item descriptions were then altered, and merchant invoices were removed to avoid detection by the U.S. government. Access USA then exported the items without obtaining a license, maintaining records or providing accurate export documentation. Access USA allegedly undervalued, misrepresented and evaded regulatory export requirements using multiple different schemes.

In addition to the civil settlement order, Access USA also entered a nonprosecution agreement (NPA) with the U.S. Attorney's Office for the Middle District of Florida. BIS has made compliance with the NPA a condition for suspension of the further \$17 million of the settlement.

For additional information, please see the BIS [press release](#) and [settlement order](#).

### **Chinese National Pleads Guilty to Attempting to Illegally Export High-Grade Carbon Fiber to China**

On April 21, 2017, the Department of Justice (DOJ) announced that Fuyi Sun ("Sun"), a Chinese national, had pleaded guilty to violating the International Emergency Economic Powers Act (IEEPA) in connection with a scheme to illegally export high-grade carbon fiber to China without a license.

According to the allegations in the press release, since 2011, Sun had attempted to acquire high-grade M60 carbon fiber, used in aerospace technologies, unmanned aerial vehicles and other defense applications. In furtherance of this scheme, Sun had communicated for years with a distributor of carbon fiber, which was actually an undercover entity created by the U.S. government. Sun repeatedly suggested ways to avoid detection by authorities, such as the use of code words and submission of fraudulent customs documents. Sun also repeatedly suggested that the Chinese military was the ultimate end user for the carbon fiber, and he claimed to have personally worked in the Chinese missile program. He was ultimately arrested after agreeing to purchase two cases of the carbon fiber for export to China without a license.

Sun is scheduled to be sentenced on July 26, 2017, and faces up to 20 years' imprisonment. For additional information, please see the DOJ [press release](#).

### **Natural Gas and Oil Company Settles Record Jones Act Penalty for \$10 Million**

On April 4, 2017, DOJ announced that Furie Operating Alaska LLC ("Furie"), a Texas-based natural gas and oil exploration company, agreed to pay \$10 million to U.S. Customs and Border Protection (CBP) to satisfy a penalty assessed by CBP for Furie's violation of the Jones Act. The Jones Act prohibits foreign vessels from transporting merchandise between points in the United States, unless they have received a waiver from the Department of Homeland Security (DHS). The DHS has the authority to waive the Jones Act in the interest of national defense when there is a need for ships and no suitable U.S. vessels are available. The lack of available U.S. vessels has led to temporary waivers of Jones Act requirements when emergencies have disrupted normal oil supply routes.

In 2011, Furie transported a drill rig from the Gulf of Mexico to Alaska on a Chinese-flagged vessel without

obtaining a waiver. Furie had obtained a national defense waiver in 2006 to move a different rig, but was not able to obtain a subsequent waiver. DHS disagreed with Furie's argument that a waiver was necessary, because fuel supplies in southern Alaska were low and there were no Jones Act vessels capable of transporting the rig around South America's Cape Horn. CBP issued a civil penalty of \$15 million, which is the largest penalty ever assessed under the Jones Act. Furie brought suit in 2012, contending that DHS's denial of the waiver was arbitrary and that the \$15 million penalty was excessive. The parties filed a joint stipulation of dismissal on March 24, 2017.

For additional information, please see the DOJ [press release](#).

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## EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

### **OFAC Publishes FAQs Related to the SDN List Removal Process**

On April 20, 2017, the Office of Foreign Assets Control (OFAC) published Frequently Asked Questions (FAQs) regarding petitions for removal from the Specially Designated National and Blocked Persons List ("SDN List"). The FAQs shed light on the listing and delisting process. FAQ 4 states that, while each case is unique, OFAC applies the same standard of review across all sanctions programs, taking into consideration factors such as the need for additional information, timely and forthcoming responses, and incomplete documentation. FAQ 6 discusses the listing process, stating that OFAC draws on information from other agencies, foreign governments, the United Nations, and public sources to conduct its investigation. FAQ 6 further states that listings are reviewed by the departments of Treasury, Justice and State, and by other U.S. government agencies as necessary.

For additional information, please see OFAC's [FAQs on Filing a Petition for Removal from an OFAC List](#).

### **President Trump Issues Two Executive Orders on Trade and Customs Enforcement, and Trade Deficits**

On March 31, 2017, President Trump signed two Executive Orders (EOs) addressing trade and customs enforcement. The first orders, in part, that the government prioritize the prosecution of trade and customs laws, while the second requests an omnibus report on significant trade deficits. The EOs signify an increase in enforcement of U.S. trade laws and further scrutiny of U.S. trading partners.

For a detailed analysis of the EOs and their likely impact, please see the Akin Gump International Trade Alert [here](#).

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## WRITING AND SPEAKING ENGAGEMENTS

On May 9, [Jasper Helder](#) will be a panelist, speaking on "Going Global" at an American Association of Exporters and Importers event in Washington, D.C.

On May 18, [Anne Borkovic](#) will speak on "ITAR Enforcement" at the Export Compliance Training Institute's US Export Controls for EU, UK, and Other non-US Companies seminar in London.

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

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