

Akin Gump

STRAUSS HAUER & FELD LLP

Red Notice

A Monthly Update on Global Investigations and Prosecutions



AUGUST 2015

Introduction

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

This month on the anticorruption front, the U.S. Department of Justice (DOJ) and the U.S. Securities and Exchange Commission (SEC) jointly announce a Foreign Corrupt Practices Act (FCPA) enforcement action against a former executive of a German software company, a British multinational pharmaceutical company adds possible improper business dealings in Central Europe to a string of anticorruption investigations, an executive is arrested in India following FCPA enforcement against his former employer, the SEC subpoenas a Texas company in connection with an FCPA investigation, the SEC concludes an investigation of a Georgia company without recommending enforcement action, and the United Kingdom creates a new unit to ramp up its international corruption efforts.

In export control and sanctions enforcement news, a specialty insurance company settles numerous sanctions violations, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) fines a software company for Iranian-related sanctions, a machinery manufacturer settles with OFAC in connection with alleged violations of Weapons of Mass Destruction Proliferators Sanctions Regulations (WMDPSR), OFAC issues a finding of violation, but no fine, to a major oilfield services company, and the United States drops a case against an individual facing arms-smuggling allegations.

Finally, in developments in export control and sanctions law, OFAC issues Crimea-related sanctions advisory, sanctions are announced for business dealings in Syria and Russia, and clarifying guidance on Iran sanctions relief is released.

Thank you as always for reading *Red Notice*.

ANTICORRUPTION DEVELOPMENTS

SAP Executive Pleads Guilty to Bribery Conspiracy

On August 12, 2015, the DOJ [announced](#) that Vicente Eduardo Garcia, the former Latin America regional director for SAP International Inc., pleaded guilty to a single count of conspiracy to violate the FCPA in federal court in the Northern District of California. SAP is a German software firm that provides technology services in almost 190 countries. In connection with his guilty plea, Garcia admitted to bribing Panamanian officials in order to secure a multimillion-dollar contract for the company. Garcia and his co-conspirators disguised the bribes through fake invoices and

TRANSLATIONS

中文 >

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WRITING AND SPEAKING ENGAGEMENTS

On October 1, partners [Chuck Connolly](#) and [Jonathan Poling](#) and senior counsel [Nicole Sprinzen](#) will present "As the World (Bank) Turns: Compliance and Enforcement Principles in Contracting" in our New York offices. For more information, contact NewYorkEvents@akingump.com.

On September 15 and 16 in Tampa and Miami, respectively, partner [Arnold Spencer](#) and senior counsel [Nicole Sprinzen](#) will speak at "FCPA, Financial Crimes and Other Alligators: Hidden Threats to Your Florida Business Success" co-sponsored by Navigant. For more information, contact cmcnulty@akingump.com.

On September 15, partner [Jonathan Poling](#) will present "It's Bound to Happen (and Probably Already Has): Handling Violations," at the Interactive Export Controls Workshop, Export Compliance Training Institute in Alexandria, VA. Click [here](#) for details.

On September 16, partner [Michelle Reed](#) will be participating on Bloomberg BNA's Privacy & Data Security expert panel in Dallas, Texas. See [here](#) for registration details.

If you would like to invite Akin Gump lawyers to speak at your company or

contracts. SAP was ultimately awarded a \$14.5 million technology upgrade contract with the Panamanian government.

The criminal investigation is being conducted jointly by the [Federal Bureau of Investigation](#) and the Internal Revenue Service. Garcia's criminal sentencing will take place on December 16, 2015.

On the same day, the SEC also [announced](#) a parallel civil settlement. Their investigation found that Garcia participated in the scheme from 2009 until 2013, during which time he offered deep discounts to a Panamanian partner—sometimes as much as 82 percent—in order to create a slush fund from which he and his co-conspirators made payments to Panamanian officials. Garcia personally received \$86,000 in kickbacks through the scheme. According to their [order](#), Garcia violated the antibribery and internal controls provisions of the Securities Exchange Act of 1934. Garcia has agreed to pay \$92,000 in penalties to disgorge the kickbacks he received, plus interest.

To learn more, read coverage at [Compliance Week](#) and [PCWorld](#).

GlaxoSmithKline Undertakes Bribery Investigation in Romania

Last week, international pharmaceutical giant GlaxoSmithKline (GSK) announced that it had begun an investigation into bribery allegations in Romania. The company launched an internal investigation after management received an email from an anonymous whistleblower claiming that GSK paid Romanian doctors to prescribe GSK-manufactured pharmaceuticals, including prostate treatment drugs Avodart and Duodart and the Parkinson's disease treatment Requip. According to the whistleblower, GSK attempted to disguise the payments as fees for speaking engagements that did not take place. The whistleblower further alleged that GSK provided doctors with international travel and additional compensation for participation on advisory boards.

In a statement released by GSK, the company acknowledged that it was investigating the allegations made by the whistleblower and promised to take a "very thorough" look at the allegations, noting that "[s]ometimes we do find things and we act on it; sometimes our findings do not substantiate the matters being raised."

The accusations in Romania are the latest in a series of corruption allegations involving GSK. In the last two years, the company has [investigated](#) allegations of corruption and bribery in the [United Arab Emirates](#), Lebanon, Jordan, Syria, Iraq and Poland. In [September 2014](#), China levied a record \$483 million fine against the British pharmaceutical company for paying doctors to prescribe its drugs. In 2013, GSK [pledged](#) that it would cease the practice of paying physicians to promote their pharmaceuticals by the beginning of 2016.

Learn more at [Reuters](#).

Former Louis Berger VP Arrested in India

On August 3, 2015, Indian police arrested Satyakam Mohanty, former vice president of Louis Berger International Inc., for his role in a scheme to bribe Indian officials to obtain a water development contract in the state of Goa.

In [July](#), Louis Berger, a New Jersey-based construction management company, admitted to violating the FCPA and entered into a deferred prosecution agreement (DPA) with the DOJ. As part of the DPA, the company agreed to pay a criminal penalty of \$17.1 million in exchange for deferral of any prosecution of the company, and agreement not to prosecute the company if it satisfies the terms of the DPA.

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 or +1 202.887.4464.



Mohanty's recent comes after two other former Louis Berger officers pleaded guilty to violating the FCPA, admitting to paying more than \$3.9 million in bribes to several foreign officials in India, Indonesia, Vietnam and Kuwait to win government construction contracts. The bribes were disguised as "commitment fees" and other payments to third parties. In late July, Indian officials also arrested the head of the Goa project, Anand Wachasundar.

For more information, see the [Times of India](#) and the [FCPA Blog](#).

SEC Investigating Flowserve for Possible FCPA Violation

Flowserve Corp., a Texas-based supplier of pumps and seals, has disclosed that it received a subpoena from the SEC regarding the potentially illegal acts of a former Flowserve employee at an overseas subsidiary. Flowserve terminated the employee in 2014 for violations of the company's Code of Business Conduct and conducted an internal investigation regarding the potential conduct in light of the FCPA. The company self-reported the matter to the DOJ and the SEC and stated that it continues to cooperate with the government investigation. Flowserve reported receipt of the SEC subpoena requesting additional information of the employee's conduct in its [quarterly 10-Q](#) filed with the SEC on July 30, 2015.

The current investigation is Flowserve's second FCPA-related investigation in recent years. In 2008, the company settled allegations with the SEC that it had paid or authorized \$820,000 in kickbacks to seal lucrative government contracts in Iraq.

To learn more, read coverage at the [FCPA Blog](#) and the [Wall Street Journal](#).

SEC Will Not Recommend Enforcement Against NCR

Earlier this month, NCR Corporation, a Georgia-based manufacturer of automated teller machines, announced in a [recent 10-Q](#) that the SEC will not recommend any action against the company stemming from 2012 corruption allegations. In August 2012, a whistleblower informed the company that certain of its business units located in the Middle East and China may have bribed government officials and violated U.S. trade embargoes against Syria. The company disclosed the allegations to the SEC and conducted an internal investigation. The SEC investigated the allegations for almost two years before informing the company on June 22, 2015 that it did not intend to take enforcement action.

NCR also previously settled a shareholder lawsuit related to the bribery allegations. As part of the settlement, NCR agreed to implement a number of compliance enhancements, including training employees and distributors, deploying a screening process for customer due diligence, and improving its system for tracking spending on gifts and entertainment.

For more information, see news coverage at [Bloomberg](#) and the [Atlanta Business Chronicle](#).

UK Creates New Multiagency Unit to Investigate International Corruption

On August 9, 2015, the United Kingdom announced the formation of a new multiagency team charged with investigating international corruption. The International Corruption Unit will be comprised of several investigation and intelligence units from various U.K. agencies, including the Metropolitan Police Service, City of London Police and the National Crime Agency (NCA). The NCA will operate the group, and the Department for International Development (DFID) will fund it for at least its first five years.

According to the DFID [announcement](#), the new unit is expected to increase the number of money laundering and overseas bribery cases

and “develop a more strategic approach to identifying and addressing corruption in developing countries, increase compliance with the U.K. Bribery Act, and support foreign law enforcement agencies with international anticorruption investigations.”

For more information, see the NCA's [post](#) and [Wall Street Journal](#) coverage.

EXPORT CONTROL AND SANCTIONS ENFORCEMENT

New York-Based Marine Insurance Company Agrees to \$271,000 Settlement for 48 Apparent Violations of OFAC Sanctions Relating to North Korea, Iran, Sudan and Cuba

Navigators Group, Inc., a marine insurance company headquartered in New York, entered into a \$271,815 settlement with OFAC in connection with 48 alleged violations of OFAC sanctions regulations, including the Foreign Assets Control Regulations, North Korea Sanctions Regulations, Iranian Transactions and Sanctions Regulations (ITSR), Sudanese Sanctions Regulations (SSR) and Cuban Assets Control Regulations. The alleged violations stem from Navigators' coverage of North Korean-flagged vessels that did business with, or operated in, Iran, Sudan and Cuba between May 2008 and April 2011. The alleged violations included collection of premiums on 24 policies with Korean-flagged vessels, payment on seven claims involving North Korea, payment on 11 claims involving Iran, payment on five claims involving Sudan and payment on one claim involving a Cuban national. The total base penalty for the alleged violations was \$755,042.

In determining the settlement amount, OFAC considered that Navigators knew the insurance policies and relevant claim payments involved OFAC-sanctioned countries and was a commercially sophisticated institution, yet lacked a formal OFAC compliance program at the time of the alleged violations. Nonetheless, the settlement was lower than the base penalty due to Navigators' compliance with OFAC regulations in the five years preceding the allegations and remedial action taken by the company, such as the formation and implementation of an OFAC compliance program. OFAC also considered that Navigators cooperated extensively with the investigation.

For additional information, see the [OFAC enforcement notice](#) and coverage in [The Insurance Journal](#), the [International Business Times](#) and the [Wall Street Journal](#) blog.

OFAC Imposes \$82,000 Penalty on Massachusetts Company for Apparent Violations of the ITSR

Late last month, OFAC penalized Blue Robin, Inc. of Massachusetts, in the amount of \$82,260 for violations of the ITSR. Over an 18-month period, Blue Robin imported web development services from an Iranian company, PersiaBME, in 33 transactions valued at \$205,650. Computer engineers at Blue Robin worked with PersiaBME through a private portal Blue Robin provided in order to develop web-based solutions for Blue Robin's customers.

According to OFAC, at least one Blue Robin manager and co-owner knew that the company was engaging in business with an Iranian company. After learning that it had violated the ITSR, Blue Robin continued receiving technical assistance from PersiaBME. Notwithstanding OFAC's consideration of these aggravating factors, the penalty represented a reduction from the base penalty of \$102,825, reflecting OFAC's consideration of the fact that Blue Robin provided significant cooperation in the OFAC investigation and that the company is small and claims to be struggling financially.

For additional information, see the OFAC [enforcement notice](#), [penalty](#)

[notice](#), and coverage in the [Wall Street Journal](#) blog.

Maryland Company Agrees to \$78,750 Settlement with OFAC for Apparent Violations of WMD-Related Regulations

Production Products, Inc. (PPI), a Maryland corporation, agreed this month to a \$78,750 settlement with OFAC for two alleged violations of the WMDPSR. The allegations stemmed from PPI's sale and shipment of three duct fabrication machines between December 2009 and August 2010 to China National Precision Machinery Import and Export Corp., a Specially Designated National (SDN), without receiving export authorization from OFAC.

OFAC determined that PPI did not voluntarily disclose the alleged violations, failed to exercise a minimal degree of care with respect to OFAC sanctions despite knowledge that the transaction involved an SDN, and did not have a sanctions compliance program in place at the time of the transaction. Nonetheless, the settlement amount represented a reduction from the base penalty of \$250,000, reflecting OFAC's consideration of PPI's compliance with OFAC regulations in the five years preceding the allegation, PPI's small size and willingness to take remedial action to implement a sanctions compliance program, and PPI's prompt and thorough cooperation with OFAC's requests for information and documents.

Find out more by reading OFAC's [enforcement notice](#).

OFAC Finds BVI Holding Company Violated Iran and Sudan Sanctions

In early August, OFAC issued a finding of violation to Schlumberger Oilfield Holdings, Ltd. (SOHL), a British Virgin Islands holding company whose parent, Schlumberger, Ltd. ("Schlumberger"), has a U.S. headquarters in Texas. OFAC found that SOHL, working through Schlumberger Ltd.'s Drilling and Measurements business segment, knowingly and willfully violated the ITSR and SSR over a six-year period from February 2004 to June 2010. According to OFAC, SOHL concealed and approved capital expenditure requests for Iran and Sudan operations, directed the transfer of oilfield equipment to Iran and Sudan, made and implemented business decisions on projects in Iran and Sudan, and provided technical services by troubleshooting issues to maintain oilfield services equipment in Iran and Sudan.

OFAC found that SOHL committed willful sanctions violations over a long period of time; that Schlumberger's senior management knew, or should have known, of the conduct that led to the alleged violations; and that Schlumberger failed to enforce its compliance program in an effective manner. Despite these aggravating factors, OFAC decided against imposing a fine on Schlumberger. In explaining its rationale, OFAC cited, in particular, SOHL's March 2015 plea agreement with the DOJ, through which SOHL agreed to pay a \$155 million criminal fine and \$77.5 million forfeiture based on the Iran and Sudan activities. OFAC also acknowledged Schlumberger's remedial actions, including cessation of oilfield services in Iran and cooperation in the OFAC investigation.

For additional information, see OFAC's [enforcement notice](#), coverage in The [FCPA Blog](#), and the [March 2015](#) issue of the *Red Notice*.

US Drops Case Against a South Korean Businessman Accused of Arms-Smuggling

Federal prosecutors filed a motion to dismiss the indictment against Jae Shik Kim, a South Korean businessman accused of attempting to send airplane and missile guidance systems to China and Iran in violation of the International Emergency Economic Powers Act and Arms Export Control Act. The decision to drop the case was made after the U.S. District Court Judge ruled in May 2015 that a

warrantless search of Kim's laptop by the U.S. Department of Homeland Security, which revealed incriminating emails, was unreasonable. The U.S. Attorney chose not to appeal that decision and was thus unable to continue to prosecute Kim without access to evidence obtained during the laptop search.

For additional information, see the [Motion to Dismiss Indictment](#), coverage in the [ABA Journal](#) and the [May 2015](#) issue of *Red Notice*.

EXPORT CONTROL AND SANCTIONS DEVELOPMENTS

OFAC Issues Important Crimea Sanctions Advisory

On July 30, 2015, OFAC issued a Crimea Sanctions Advisory highlighting some of the practices that have been used to circumvent or evade U.S. sanctions related to Crimea since the sanctions went into effect in December 2014. Such practices include omission or obfuscation of references to Crimea and locations within Crimea in documentation underlying transactions involving U.S. persons or the United States; omission of originator or beneficiary address information from SWIFT messages involving individuals ordinarily residing in, or entities located in, Crimea; and listing counterparties on financial and trade documents as being located in Russia rather than in Ukraine.

The Advisory also provides suggestions for mitigating the risk of an apparent violation of Crimea-related sanctions. Specifically, OFAC suggests (1) ensuring that transaction-monitoring systems include search terms addressing specific geographic locations within Crimea; (2) requesting additional information from parties (such as financial institutions, corporate entities and individuals) that have previously violated or attempted to violate U.S. sanctions on Crimea; and (3) clearly communicating sanctions obligations to international partners, including banking and trade partners.

For additional information, see the OFAC [press release](#), the [Crimea Sanctions Advisory](#) and coverage in the [AG Trade Law](#) blog.

US Puts Sanctions on Energy Networks Helping Syria

Earlier this month, OFAC imposed sanctions on international networks that provide energy products to the Assad regime in Syria. OFAC designated seven entities, four individuals and seven vessels used by the Government of Syria to evade U.S. and EU sanctions. OFAC also designated six entities affiliated with the Syrian government and three vessels in which Syria has an interest. The sanctions freeze all U.S. assets owned by designated entities and bar transactions between designated entities and U.S. persons. The new sanctions form part of OFAC's continuing efforts to use "financial tools to weaken Assad's support network" and are "designed to target culpable actors with minimum collateral effects on the Syrian people."

For more information, see the OFAC [press release](#), the new [designations](#) and coverage in the [Wall Street Journal](#) blog.

Russian Sanctions: Addition of Russian Oil and Gas Field to the Entity List to Prevent Violations of Russian Sector Sanctions

Earlier this month, the U.S. Department of Commerce, Bureau of Industry and Security (BIS) issued a final rule broadening U.S. sanctions on Russian energy products. The rule amends the Export Administration Regulations (EAR) to include the Yuzhno-Kirinskoye Field, a Russian oil and gas field located in the Sea of Okhotsk, on the BIS Entity List ("Entity List"). As a result of this designation, exports, reexports and transfers (in-country) of all items subject to the EAR to this field require a license from BIS. Furthermore, BIS will

consider such license requests with a presumption of denial. According to the final rule, BIS added the field to the Entity List due to its substantial oil reserves and the risk that items sent to the field and subject to the EAR would be used in, or diverted to, deepwater oil and gas exploration or production activities in Russia—activities targeted by sectoral sanctions imposed by BIS and OFAC.

The addition of the oil and gas field to the Entity List reflects a novel approach to U.S. sanctions strategy with regard to Russia by targeting property rather than a legal entity or person. In addition, unlike other sanctions targeting Russia's energy sector, the restrictions on the Yuzhno-Kirinskoye Field apply to all transactions involving items subject to the EAR, not just when the exporter knows or is unable to determine, that the items will be used for deepwater, Arctic offshore or shale projects. Given the broad scope, such sanctions presumptively apply to transactions involving items subject to the EAR in situations where the exporter does not know, or is unable to determine, how the items will be used. Accordingly, this action highlights the importance of screening transactions with Russia and Crimea to ensure that they do not involve restricted locations, end-users, end-uses or restricted persons.

For more information, see the BIS [overview](#), [Federal Register](#) Notice and discussion in the [AG Trade Law](#) blog.

OFAC and the State Department Issue Revised Guidance on Temporary Iran Sanctions Relief

Earlier this month, OFAC and the U.S. Department of State issued revised guidance on the continuation of sanctions relief relating to Iran. The guidance follows and clarifies two key developments from July 14, 2015: (1) the Joint Comprehensive Plan of Action (JCPOA), a nuclear deal reached between Iran and the P5+1 (China, France, Germany, Russia, the United Kingdom and the United States, coordinated by the European Union's High Representative for Foreign Affairs and Security Policy); and (2) the extension of the P5+1-Iran Joint Plan of Action (JPOA), in effect since November 2013, to continue temporary sanctions relief to Iran.

The guidance clarifies that the only Iran-related sanctions relief currently in effect is provided under the JPOA. Consequently, U.S. persons will continue to be generally prohibited from conducting transactions with Iran, unless licensed to do so by OFAC. However, consistent with the JPOA, the U.S. government will continue to provide Iran-related sanctions relief in the area of petrochemical exports, Iran's auto industry, civil aviation, gold and other precious metals, crude oil exports and civil aviation, and the U.S. government will open financial channels for limited "humanitarian trade" involving food and agricultural products, medicine and medical devices. According to the guidance, the more extensive sanctions relief envisioned by the JCPOA is contingent on Iran meeting its nuclear-related commitments and passing International Atomic Energy Agency inspections and verification.

With regard to civil aviation, OFAC also issued a Third Amended Statement of Licensing Policy. The Third Amended Statement on civil aviation continues the favorable licensing policy regime permitting U.S. persons to request authorization from OFAC to engage in transactions to ensure the safe operation of Iranian commercial passenger aircraft, including Iran Air. The Third Amended Statement differs from the Second Amended statement only in that it extends the effective date of the civil aviation policy until JCPOA relief is enacted and notes that OFAC will specify expiration dates in individual licenses rather than rely on a blanket expiration date.

For more information, see the OFAC [press release](#), the [Guidance](#), [FAQs](#) and the [Third Amended Statement of Licensing Policy](#).

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

[Edward L. Rubinoff](mailto:erubinoff@akingump.com) at +1 202.887.4026 or erubinoff@akingump.com or [Nicole H. Sprinzen](mailto:nsprinzen@akingump.com) at +1 202.887.4301 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 [Jonathan Vukicevich](#). The “Export Control and Sanctions Developments and Enforcement” sections are edited by [Annie Schlappizzi](#).

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