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EMERGING MARKETS OF SUB-SAHARAN AFRICA & THE U.S. FOREIGN CORRUPT PRACTICES ACT: *A CAUTIONARY TALE*

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I. INTRODUCTION

Of all the continents, Sub-Saharan Africa (SSA) is said to be the most fascinating and promising; but she also poses the greatest challenges. Governments, multinational corporations and other business entities in the U.S., EU, China and the Middle East now see Africa as the 21st Century's new land of opportunities. Three years ago, millions of Americans welcomed the son of an African father and an American mother, President Barack Obama, to the White House, giving hope to the entire world, especially Africans and the nation states of SSA. As the missing link in the global economy, Africa now stands at the cornerstone of growth and opportunity. SSA countries have long generated some of the highest returns on deployed capital. With twenty percent (20%) of the world's total landmass, a population of 900 million (14% of world total), and a galaxy of mineral resources, the continent has been appropriately dubbed a "sleeping beauty."

Regional integration in SSA is coming into play in building blocks of an African economic community. Emerging from old African institutions are new institutions, such as the African Union (AU) and the New Partnership for Africa's Development (NEPAD), transforming into "work shops" from the old "talk shops," and applying new and innovative solutions to old African problems. As former U.S. Ambassador to the United Nations, Andrew J. Young, observed, *"Africa's role in the 21st Century is increasingly more strategic as the U.S. seeks assurance of growing markets through the Africa Growth and Opportunity Act and an assured secure supply of petroleum in the midst of Middle Eastern chaos."* Former U.S. Secretary of State Colin Powell also opined shortly before leaving office that: *"Africa matters to America, by history and by choice. America has almost 35 million citizens of African descent, and more than 30,000 Africans are studying in the United States today. Last year, trade with Africa approached*

$30 billion and the United States is the Continent's leading foreign investor." And his successor Condoleeza Rice optimistically commented, *"We see a continent of enormous promise, increasingly willing to tackle its own challenges to create a better life for Africans everywhere."*

A strong wind of socio-economic and political change is blowing across Africa. Durable and vibrant democracies are emerging across the continent helping to debunk the myth that Africa is unprofitable. Since 1990, more than 30 African countries have held free elections, and the overwhelming majority has launched economic reform programs. This climate of economic and political stability is attracting foreign investment and stimulating new domestic business enterprise. American enterprise is now beginning to see firsthand the enormous potential of Africa, the strength of its people and its boundless possibilities. The perception that Africa is one entire quagmire of poverty, inefficiency and instability is no longer tenable.

In today's global market, U.S. companies interested in foreign business opportunities can no longer afford to ignore the SSA region, particularly when the African Growth and Opportunity Act (AGOA) and other initiatives have spawned new investment and infrastructural development in the African continent.[1] The African Union has made it clear that they will not recognize or tolerate military governments anymore. Africa generally – and especially the leaders of its biggest countries – is taking constitutional democracy much more seriously than it did in the past. The continent is ready to blossom and can "leapfrog" into a much stronger position in the global economy of the 21st century.

The second "Scramble for Africa" is well underway, but unlike the first scramble for the African continent, which was a self-serving predatory adventure by the European participants (France, Britain, Germany, Belgium and Italy), this time around it appears that the catalyst, the United States Government and its African Growth and Opportunity Act (AGOA) initiative, is designed to benefit Africa as an economic development vehicle.

While the SSA marketplace is an attractive one for many reasons, including its large population and natural resources, particularly oil and gas, it has also, however, been associated with a large number of FCPA enforcement actions. The combination of cultural, historical, economic, and social factors in SSA will continue to create a "perfect storm" for FCPA violations. Many pending investigations reportedly involve SSA. Of the ten countries considered

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[1] *See* African Growth and Opportunity Act (AGOA), Summary of AGOA I, available at http://www.agoa.gov/agoa_legislation/agoa_legislation.html

most corrupt in the world, six are in Sub-Saharan Africa, according to Transparency International. Corruption in Africa ranges from high-level political graft or mega bribes on the scale of millions of dollars to low-level or petty bribes to police officers or customs officials. A 2002 African Union study estimated that corruption cost the continent roughly $150 billion a year. Security issues coupled with FCPA challenges unique to SSA have sometimes caused companies to cease operations or deter them from venturing into the region in the first place.

II. THE GENESIS OF BRIBERY AND CORRUPTION IN SUB-SAHARAN AFRICA

The genesis and entrenchment of bribery and corruption in SSA dates back to the era of colonization of Africa by European countries following the first scramble for Africa. The anti-social phenomenon is deeply rooted in the historical process of colonialism when viewed as the by-product of traits of fraudulent and deceptive behavior derived from British, French, and other colonial rulers.[2] This is an aspect of the elusive and rarely mentioned "supply side" of the global bribery and corruption equation. More directly articulated, bribery and corruption emanated from the colonial corroding of the pre-colonial African socio-cultural practices of gift giving, through the practices of old colonial administrators and on to the post-colonial practices of African bureaucrats and politicians.[3]

Discussions of how to combat corruption have usually focused on the recipients of bribes rather than on those who pay them. However, both the giver and the receiver in a corrupt transaction are equally corrupt. The taker may be blamed more for initiating the protocol or dirty deed, but both the giver and the taker are equally responsible for the consummation. So a more balanced anti-corruption approach, which is beginning to emerge globally and which promises to make anti-corruption efforts more effective, holds both parties equally accountable.

It is noteworthy that the problem of corruption is both an endemic and a universal one, which affects all the nations of the world but in varying degrees and forms. SSA nation states did not discover corruption, nor was corruption first discovered in SSA. It exists in China, India, most of Eastern Europe, and all over the Arab world. In fact, a Transparency International index that surveyed thirty leading exporting countries determined that the main culprits of international bribery and corruption are India, China, Russia, Turkey, Taiwan, Malaysia, and South Africa. According to this same index, the least likely countries to engage in graft for business were Switzerland, Sweden, Australia, Canada, and the United Kingdom. The findings were based on interviews with more than 12,000 business executives from corporations in 125 countries about the practices of foreign businesses in their country.

Societies differ in their views as to what constitutes corruption, but it is essentially the abuse or misuse of public power, position or authority for a private benefit. Or, stated another way, it is a form of aberrant social behavior by individuals in the public or private sector to gain unjust or fraudulent benefits to the detriment of decent society. And lest we forget, money

[2] Munyae Mulinge & Gwen Lesetedi, *Corruption in Sub-Saharan Africa: Towards a More Holistic Approach*, Afr. J. Sci (2002), Vol. 7, No. 1.
[3] *Id.*

laundering is the handmaiden of international corruption because those who take bribes must find safe international financial channels through which they can secretly bank their loot. Therefore, efforts to curb and/or undermine money laundering can help fight corruption.

While mega bribes are usually driven by greed, petty bribes and corruption comes from a slightly different perspective, not unconnected with poverty, unemployment, underemployment, desperation and sometimes, instinct of self-preservation or survival. Under these types of difficult circumstances the citizenry easily disavows any sense of civic virtue by engaging in corrupt practices such as taking bribes and embezzlement. While this can be understood, it nevertheless, cannot be condoned.

Corruption creates many forms of injustice and negatively impacts almost every aspect of daily life in SSA. It undermines political institutions, weakens accountability of government, erodes economic growth, discourages foreign investment, and reduces resources for infrastructure development, public services and anti-poverty programs.[4] Unfortunately, SSA governments are not too keen on doing very much to address the problem, as they are major benefactors. This lack of political commitment to eradicating corruption is clearly reflected in the failure or reluctance on the part of African governments to enforce existing anti-corruption statutes and to prosecute those involved in corrupt practices.

III. FCPA OVERVIEW

The FCPA is a product of the Watergate years, when the U.S. government started to grow increasingly uncomfortable with some U.S. companies' practice of bribing foreign officials to "grease the wheels" of commerce. Specifically, the U.S. Congress enacted the FCPA in 1977 in response to an SEC investigation that uncovered illegal payments by certain U.S. companies to foreign politicians, political parties and officials. The SEC found that the payments were made to secure unfair advantage over other competing entities for contracts and provision of certain services in the foreign countries. Stated bluntly, bribes were being paid to foreign government officials to facilitate favorable action.

The FCPA was designed to level the playing field and for American businesses to be seen by the rest of the world as fair, transparent and imbued with the ability to achieve their goals internationally on merit rather than through corruption. The legislation also gave the U.S. the high moral ground to implore and push other countries to put in place similar anti-bribery legislation.

[4] GAO, Report to the Subcommittee on African Affairs, Committee on Foreign Relations, U.S. Senate (April 2004).

A. Anti-Bribery Provisions of the FCPA

In general, the anti-bribery provisions of the FCPA prohibit U.S. companies and their officers, directors, employees, agents and any stockholder acting on behalf of the company, from bribing foreign officials for the purpose of influencing decisions to obtain business contracts or business advantage.[5] Bribery involves paying, offering, promising to pay (or authorizing to pay or offer) money or anything of value to a foreign official, a foreign political party or party official, or any candidate for foreign political office.[6] The term "foreign official" in the FCPA includes officers or employees of a foreign government, officials of a public international organization, or any person acting in an official capacity.[7] Indirect payments that pass through overseas intermediaries (agents, consultants and distributors) and then end up with the foreign official for a corruptive purpose also violate the FCPA.[8]

Individuals who are citizens, nationals, or residents of the United States are also considered "domestic concerns."[9] Finally, officers, directors, employees, agents and stockholders of issuers and domestic concerns are subject to the FCPA as well.

Foreign corporations and foreign subsidiaries of U.S. corporations are not subject to the FCPA unless they are issuers, have their principal place of business in the United States or commit acts in violation of the FCPA while in the U.S.[10] In contrast, issuers and domestic concerns may be vicariously liable for the acts of foreign corporations and subsidiaries.[11] Furthermore, foreign individuals who act as agents or employees of issuers or domestic concerns are subject to the FCPA.[12] Finally, U.S. citizens or residents who violate the FCPA on behalf of foreign corporations may be liable as domestic concerns.[13]

In order to prove a violation of the anti-bribery provisions of the FCPA, the government must establish:

(a) a payment of (or an offer, authorization, or promise to pay) money or anything of value, directly, or through a third party;

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[5] Foreign Corrupt Practices Act 1977, 15 U.S.C. § 78, *available at* http://www.usdoj.gov/criminal/fraud/docs/statute.html

[6] U.S. Department of Justice, Lay-Person's Guide to FCPA, Foreign Corrupt Practices Act, Antibribery Provisions (hereinafter referred to as DOJ Lay-Person's Guide, *available at* http://www.usdoj.gov/criminal/fraud/docs/dojdocb.html.

[7] *Id.*

[8] *Id.*

[9] *See* 15 U.S.C. § 78dd-2(h)(1)(A).

[10] *See* R. Witten and K. Parker, Complying with the Foreign Corrupt Practices Act, § 2.02 (Matthew Bender 2007)

[11] *Id.*

[12] *Id.*

[13] *Id.*

(b) to (i) any foreign official, (ii) any foreign political party or party official, (iii) any candidate for foreign political office, (iv) any official of or a public international organization, or (v) any other person "knowing" that the payment or promise to pay will be passed on to one of the above;

(c) the use of an instrumentality of interstate commerce (such as telephone, telex, facsimile, email, or the mail) by any person (whether U.S. or foreign), or an act outside of the U.S. by a domestic concern or U.S. person, or an act in the U.S. by a foreign person in furtherance of the offer, payment or promise to pay;

(d) for the corrupt purpose of influencing any official act or decision of that person, inducing that person to do or omit to do any act in violation of his/her lawful duty, securing any improper advantage, or inducing any person to use his/her influence with a foreign government to affect or influence any government act or decisions; and

(e) in order to assist the company in obtaining or retaining business or in directing business to any person or to secure an improper advantage.[14]

The FCPA also carves out narrow permissible payments and contains two affirmative defenses to liability under the anti-bribery provisions. It is important to note, however, that these ameliorative measures do not prevent the allegations and/or charges from being brought in the first instance. It simply means one may interpose them as affirmative defenses after being charged.

B. Permissible Payments and Affirmative Defenses

1) "Facilitating" Payments Exception (e.g., Grease Payments, Gifts or Tips):

One limited exception to the anti-bribery provision is payments to foreign officials to facilitate or expedite performance of a "routine governmental action," which are actions ordinarily and commonly performed by a foreign official.[15] The statute lists the following examples: obtaining permits, licenses, or other official documents; processing governmental papers, such as visas and work orders; providing police protection, mail pick-up and delivery; providing telephone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration; or actions of a similar nature.[16] Routine

[14] *See* 15 U.S.C. § 78dd-1(a); 15 U.S.C. 78dd-2(a); 15 U.S.C. § 78dd-3(a).
[15] 15 U.S.C. § 78dd-1 (b).
[16] 15 U.S.C. § 78dd-1 (f) (3) (A)(i)- (v). *See also* DOJ Lay-Person's Guide.

governmental action does not include a decision by a foreign official to award new business or to continue business with a particular party.[17]

2) Promotional or Marketing Expenses Affirmative Defense (e.g., Entertainment)

A company or person charged with violating the anti-bribery provisions may assert as a defense that that the payment or promise of payment was a reasonable and bona fide expenditure, incurred by or on behalf of a foreign official, to promote or demonstrate a product or to execute a contractual obligation.[18]

3) Payments Lawful Under Foreign Laws Affirmative Defense

A company or person charged with violating the anti-bribery provisions may assert as a defense that the payment or promise of payment was lawful under the written laws and regulations of the foreign country.[19]

C. The Accounting Provisions

The FCPA also contains two interrelated accounting provisions; one requiring the keeping of accurate books and records, and the other requiring the maintenance of adequate internal controls. The record-keeping and internal controls provisions of the FCPA only apply to issuers. Issuers and their employees or agents are required to "make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions" of their assets.[20] The accounting provisions apply to issuers, regardless of whether they have foreign operations and whether bribery is involved. Reasonableness, rather than materiality, is the threshold standard.

In addition, issuers are required to "devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances" that transactions and assets are properly maintained.[21] The FCPA defines the term "reasonable assurances" to mean "such level of detail and degree of assurance as would satisfy prudent officials in the conduct of their own affairs."[22]

Several factors are considered when determining the adequacy of a system of internal controls, including: (i) the role of the board of directors; (ii) communication of corporate procedures and policies; (iii) assignment of authority and responsibility; (iv) competence and

[17] 15 U.S.C. § 78dd-1 (f) (3) (B).
[18] 15 U.S.C § 78dd-1 (c)(2)(A)-(B).
[19] 15 U.S.C § 78dd-1 (c)(1).
[20] *See* 15 U.S.C. § 78m(b)(2)(A).
[21] *See* 15 U.S.C. § 78m(b)(2)(B)(i)-(iii).
[22] *See* 15 U.S.C. § 78m(b)(7).

integrity of personnel; (v) accountability for performance and compliance with policies and procedures; and (vi) objectivity and effectiveness of the internal audit function.[23]

Criminal liability under the accounting provisions may only be imposed where a person "knowingly" circumvented or failed to implement a system of internal accounting controls or "knowingly" falsified any book, record or account. Civil liability, however, may arise for issuers if their books fail to adequately represent an improper payment, even though the falsification, for example, occurred at a subsidiary with no evidence of involvement by the parent.[24] The test used by the SEC as to whether to impose civil liability on the parent is that of control.[25]

IV. New Opportunities in Sub-Saharan Africa & History of FCPA Enforcement Activity

Despite the problems stated, there is a wind of change blowing across SSA that is now creating a promising atmosphere for American businesses. There is unprecedented relative peace and political stability in most parts of SSA and there has been relatively peaceful democratic change of governments in Ghana, Nigeria, South Africa, Senegal, Uganda, Botswana, and Tanzania, to mention a few. But that is not to say that elections creating these changes were considered highly free and fair.[26]

In almost all cases, opposition parties complained that there were massive corruption and vote rigging. Regardless, the fact that there were elections at all is considered an improvement from the past where military and civilian dictatorships, coupled with one party system of government, was the order of the day. Almost all SSA countries have signed on or ratified the UNCAC and the AU Convention. The mandate for the AU to set up what is called the African Peer Review Mechanism's (APRM) Country Review has now been honored.[27] In addition to the UNCAC, some of these countries have actually enacted legislation and created agencies to combat corruption.

Despite these efforts, the public perception of corruption in SSA is very high. Very few influential people or top officials have been prosecuted under any of the anti-corruption legislations. Even when prosecuted and incarcerated, top officials and influential private figures tend to successfully slither away from confinement after the dust settles, and people no longer watching with interest, again via corrupt practices. Cultural issues, overlapping authority, discrimination within and outside the complex quota system for public offices have left the governments in SSA with little power to govern, and they are systematically undermined by corrupt public officials, the military and the patronage networks.

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[23] *See* SEC Statement of Management on Internal Accounting Controls, Exchange Act Release NO. 34-16877, 1980 WL20857, *12-13 (6 June 1980).
[24] *Id.*
[25] *Id.*
[26] United States Dept. Country Report on Human Rights Practices, (2007)
[27] 37th Summit of the Organization of African Unity (OAU), July 2001.

Against this background, it is very difficult for U.S. companies to effectively operate in SSA countries and stay true to the FCPA. When local or even some expatriate employees of U.S. entities and their affiliated concerns in SSA are placed in situations where their very integrity is tested by the offer of a significant bribe, they will almost always ask themselves two basic questions – (1) will I get caught? and (2) does the bribe in question trump my job? Another ethical dilemma emanates in situations where employees may believe that improper payments are essential for them to make their quota or achieve stated bottom tier corporate goals.

Although the U.S. government continues to secure record fines against corporations settling violations of the FCPA,[28] the Department of Justice (DOJ) has faced significant setbacks in FCPA trials, most recently in the "Africa Sting" case, United States v. Amaro Goncalvez, et. al.

Two years ago, in January 2010, DOJ announced that 22 executives and employees of companies in the military and law enforcement products industry had been indicted for conspiring to bribe foreign government officials to obtain and retain business. Using large-scale undercover law enforcement techniques, the Africa Sting case was hailed as the largest single investigation and prosecution against individuals in DOJ's history of enforcing FCPA. At the time, Assistant Attorney General Lanny A. Breuer called the investigation a "turning point" in the FCPA playbook and warned, "would-be FCPA violators should stop and ponder whether the person they are trying to bring might really be a federal agent."[29]

On February 23, 2012, U.S. District Court Judge Richard Leon dismissed the indictments in the Africa Sting case, ending what he referred to as "a long and sad chapter in the annals of white collar criminal enforcement." The government sought dismissal of the indictments after failing to convict a single defendant in two separate trials. The trials exposed significant weaknesses with the government's case, including discovery problems that Judge Leon described as "sharp practices that have no place in a federal courtroom."

The dismissal of the indictments in the African Sting case represents a dramatic stumbling block in DOJ's greatly publicized efforts to prosecute individuals for FCPA violations. Since the 2010 indictments, DOJ officials showcased the Africa Sting case, asserting that it "vividly illustrates one cornerstone of [DOJ's] FCPA enforcement policy: the aggressive prosecution of individuals."[30]

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[28] *See*, “"2011 Ends With Over $100 Million in Penalties and Disgorgements for FCPA Violations at Insurance Company and Telecom Company," (Jan. 5, 2012) *available at* http://www.mofo.com/files/Uploads/Images/120105-2011-FCPA-Penalties.pdf

[29] *See* DOJ Press Release, Twenty-Two Executives and Employees of Military and Law Enforcement Products Companies Charged in Foreign Bribery Scheme, (Jan. 19, 2010), *available at* http://www.justice.gov/opa/pr/2010/January/10-crm-048.html

[30] Remarks by Lanny A. Breuer, Assistant Attorney General for the Criminal Division, at the American Bar Association National Institute on White Collar Crime, (Feb. 25, 2010), *available at* http://www.justice.gov/criminal/pr/speeches-testimony/2010/02-25-10aag-

Briefly described below are FCPA enforcement matters arising out of the SSA region to date:

1. Securities and Exchange Commission v. Mark A. Johnson and James. J. Ruehlen
Also see: Securities and Exchange Commission v. Thomas F. O'Rourke

On February 24, 2012, the Securities and Exchange Commission (SEC) charged three oil services executives with violating the FCPA by taking part in a bribery scheme to obtain illegal permits for oilrigs in Nigeria for the purpose of retaining lucrative drilling contracts. In the complaint filed in the United States District Court, Southern District of Texas, the SEC charged that Johnson, former Noble Corporation CEO, and Ruehlen, current Director and Division Manager of Noble's subsidiary in Nigeria, violated the FCPA by allowing its customs agents to pay bribes on Noble's behalf "to Nigerian government officials to influence or induce them to (1) favorably process false paperwork, (2) grant temporary import permits (TIPs) based on the false paperwork, and (3) favorably exercise or abuse their discretion in granting extensions to these illicit TIPs." *See* SEC Complaint at Page 1, http://www.sec.gov/litigation/complaints/2012/comp-pr2012-32-2.pdf

2. United States v. Amaro Goncalvez, et. al
Court Docket Number: 09-CR-335-RJL (Charges Dismissed)
Also see: United States v. Pankesh Patel: Docket No. 09-CR-347-RJL; and
United States v. Ofer Paz: Doket No. 09-CR-339-RJL

On February 23, 2012, the United States District Court for the District of Columbia granted the government's Motion to Dismiss the charges against Amaro Goncalvez and 15 others. Mr. Goncalvez's case was part of a record string of 22 indictments by the Department of Justice against executives and employees who violated the FCPA through foreign bribery in the military and law enforcement products industry. During an FBI undercover operation, the defendants allegedly agreed to pay a 20 percent commission to a sales agent who they believed was the defense minister for an African country. The sales agent was actually an undercover FBI agent. The defendants hoped their commission would lead them to win a portion of a $15 million deal to outfit the country's presidential guard.

AmericanBarAssosiation.pdf ; For additional discussion of Mr. Breuer's comments, please see our client alert, "DOJ Official Proclaims 'New Era' of FCPA Enforcement," (Nov. 19, 2010), *available at* http://www.mofo.com/files/Uploads/Images/101118-FCPA-Enforcement.pdf

3. United States v. Marubeni Corporation
Court Docket Number: 11-CR-260

On January 18, 2012, the Marubeni Corporation, a Japanese trading company headquartered in Tokyo, agreed to pay a $54.6 milllin criminal penalty to resolve one count of conspiracy and one count of aiding and abetting FCPA anti-bribery provisions charges lodged against it. The Marubeni investigation arose out of the same Bonny Island, Nigeria conduct in which the joint venture consisting of Technip, S.A., Snamprogetti Netherlands B.V., KBR, and JGC ("TSKJ") participated. Specifically, TSKJ hired Marubeni to help it procure business contracts in Nigeria through illicit bribes to state officials. By June 2005, TSKJ had paid Marubeni up to $51 million for its services, which included bribing Nigerian officials.

4. United States v. JGC Corporation
Court Docket Number: 11-CR-260

On April 6, 2011, the fourth and final partner of the TKSJ Joint Venture entered into a deferred prosecution agreement with the Department of Justice and agreed to pay a criminal penalty of $218.8 million for FCPA violations. TSKJ was a Joint Venture in Nigeria comprised of four business entities: Technip, S.A.; Snamprogetti Netherlands B.V.; KBR (Kellogg Brown & Root, Inc.); and JGC. The Department of Justice alleged that the Joint Venture was tantamount to a conspiracy with the purpose of bribing local Nigerian officials "in obtaining and retaining billions of dollars in contracts related to the Bonny Island Project through the promise and payment of tens of millions of dollars in bribes to those officials." *See* Criminal Information, U.S. Department of Justice, February 6, 2009, http://www.justice.gov/criminal/fraud/fcpa/cases/kelloggb/02-06-09kbr-info.pdf

5. United States v. Jeffrey Tesler, *et al*
Court Docket Number: 09-CR-098 (Nigeria Bonny Island Project)

Jeffrey Tesler ("Mr. Tesler") was hired in 1995 as an agent of a four-company joint venture that was awarded four engineering, procurement and construction (EPC) contracts by Nigeria LNG Ltd., (NLNG) between 1995 and 2004 to build liquefied natural gas (LNG) facilities on Bonny Island, Nigeria. The EPC contracts were valued at more than $6 billion.

On March 11, 2011, Mr. Tesler pleaded guilty to one count of substantive violation of the Foreign Corrupt Practices Act,and to one count of conspiring to violate the FCPA. Mr. Tesler admitted to helping the joint venture pay more than $180 million in bribes to Nigerian government officials from 1994 to 2004 in order to obtain the EPC contracts. He controlled a Gibraltar-based consulting firm called Tri-Star Investments Ltd. that received about $132 million in wire transfers from the joint venture to pay the bribes to or for the benefit of various Nigerian government officials, including officials of the executive branch, NNPC, NLNG, and for the benefit of a political party in Nigeria. Under the plea agreement, he agreed to forfeit nearly $149 million.

6. United States v. Transocean Inc.
Court Docket Number: 10-CR-768 (Panalpina bribery scheme)

Transocean Ltd. is a global provider of offshore oil drilling services and equipment based in Vernier, Switzerland (collectively "Transocean"). Transocean Inc. is a Caymans Island subsidiary of Transocean Ltd. Transocean and four other oil and gas services companies were charged with conspiring to violate the anti-bribery and books and records provisions of the FCPA, and with aiding and abetting a violation of the books and records provisions for payments made by Panalpina Inc. (global freight forwarding company). On November 4, 2010, the DoJ and Transocean entered into a three-year, deferred prosecution agreement that requires Transocean to pay a $13.44 criminal penalty.

Panalpina Inc., admitted that the companies, through subsidiaries and affiliates (collectively "Panalpina"), engaged in a scheme to pay bribes to numerous foreign officials on behalf of many of its customers in the oil and gas industry from 2002 to 2007. The charges against Transocean relate to approximately $90,000 in bribes paid by Transocean Inc.'s freight forwarding agents in Nigeria to Nigerian customs officials to circumvent Nigerian customs regulations regarding the import of goods and materials and the import of Transocean's deep-water oil rigs into Nigerian waters.

7. SEC v. GlobalSantaFe Corp.

On November 4, 2010, in the U.S. District Court for the District of Columbia, the SEC charged GlobalSantaFe Corp ("GSF") with bribery and other FCPA violations. From about January 2002 through July 2007, GSF made illicit payments to Nigerian Customs Service ("NCS") officials through companies acting as customs brokers for GSF. GSF also made illegal payments to NCS officials to obtain documentation falsely stating that the company's oil drilling rigs had moved out of Nigerian waters, when in fact they had not. GSF agreed to pay about $5.9 million to settle the charges.

8. United States v. Tidewater Marine International, Inc.
Court Docket Number: 10-CR-770 (Panalpina bribery scheme)

Tidewater Inc. (collectively "Tidewater") is a global operator of offshore service and supply vessels for energy exploration headquartered in New Orleans. New Tidewater Marine International Inc. (Tidewater Marine) is a Cayman Island subsidiary of Tidewater Inc. Tidewater Marine and four other oil and gas services companies were charged with conspiring to violate the anti-bribery and books and records provisions of the FCPA, and with aiding and abetting a violation of the books and records provisions for payments made by Panalpina Inc. (global freight forwarding company). Panalpina Inc., admitted that the companies, through subsidiaries and affiliates (collectively "Panalpina"), engaged in a scheme to pay bribes to numerous foreign officials on behalf of many of its customers in the oil and gas industry from 2002 to 2007. They did so to circumvent local rules and regulations relating to the import of goods and materials into numerous foreign jurisdictions.

The charges against Tidewater Marine relate to approximately $160,000 in bribes paid through its employees and agents to tax inspectors in Azerbaijan to improperly secure favorable tax assessments and approximately $1.6 million in bribes paid through Panalpina to Nigerian customs officials to induce the officials to disregard Nigerian customs regulations relating to the importation of vessels into Nigeria. On November 4, 2010, the DoJ and Tidewater entered into a deferred prosecution agreement that requires Tidewater Marine to pay a $7.35 million criminal penalty. The agreement also requires Panalpina, Tidewater, and the other companies to fully cooperate with U.S. and foreign authorities in any ongoing investigations of the companies' corrupt payments. In addition, each company must implement and adhere to enhanced corporate compliance and reporting obligations.

**9. United States v. Shell Nigeria Exploration and Production Company Ltd.
Court Docket Number: 10-CR-767 (Panalpina bribery scheme)**

Shell Nigeria Exploration and Production Company Ltd. ("SNEPCO") is a Nigerian subsidiary of Royal Dutch Shell PLC (collectively "Shell"). SNEPCO and four other oil and gas services companies were charged with conspiring to violate the anti-bribery and books and records provisions of the FCPA, and with aiding and abetting a violation of the books and records provisions for payments made by Panalpina Inc. (global freight forwarding company). Panalpina Inc., admitted that the companies, through its subsidiaries and affiliates (collectively "Panalpina"), engaged in a scheme to pay bribes to numerous foreign officials on behalf of many of its customers in the oil and gas industry from 2002 to 2007. They did so to circumvent local rules and regulations relating to the import of goods and materials into numerous foreign jurisdictions.

The charges against SNEPCO relate to approximately $2 million paid to its subcontractors with the knowledge that some or all of the money would be paid as bribes to Nigerian customs officials by Panalpina to import materials and equipment into Nigeria. SNEPCO admitted that it approved or condoned the payment of bribes on its behalf in Nigeria and falsely recorded the bribe payments made on its behalf as legitimate business expenses in their corporate books, records and accounts. On November 4, 2010, the DoJ and Shell entered into a three year, deferred prosecution agreement that requires SNEPCO to pay a $30 million criminal penalty.

10. United States v. Panalpina, Inc
Court Docket Number: 10-CR-765

AND

11. United States v. Panalpina World Transport (Holding) Ltd.
Court Docket Number: 10-CR-769

The Panalpina Group is a leading international supplier of forwarding and logistics services, focusing on intercontinental air freight and ocean freight shipments. Panalpina World Transport (Holding) Ltd. ("PWT") is a Swiss corporation headquartered in Basel, Switzerland. Panalpina, Inc. ("Panalpina U.S.") is a wholly-owned subsidiary and agent of PWT, with 38 branches throughout the US and with its principle place of business in Morristown, New Jersey.

On November 4, 2010, in the U.S. District Court for the Southern District of Texas, PWT and Panalpina U.S. admitted to violating FCPA's anti-bribery provisions. Both companies paid bribes to various foreign officials on behalf of numerous customers in the oil and gas industry. The purpose of the bribes was to avoid local rules and regulations connected to the import of goods and materials into a range of foreign jurisdictions, including Nigeria and Angola. Between 2002 and 2007, both corporations paid bribes totaling at least $27 million to foreign officials. Shell Nigeria Exploration and Production Company Ltd. (SNEPCO), Transocean Inc., and Tidewater Marine International Inc. acknowledged that both PWT and Panalpina U.S. endorsed and condoned the payment of bribes on the customers' behalf in Nigeria as lawful business expenditures in their corporate books, records, and accounts. PWT entered into a deferred prosecution agreement, while Panalpina U.S. pled guilty to conspiring to violate the FCPA's books and records provisions. The Panalpina Group was required to pay a $70.56 million criminal penalty.

12. In re Noble Corporation (Involving payments to Nigerian Customs Service)

Noble Corporation ("Noble") was a Cayman Islands company headquartered in Sugar Land, Texas. One of Noble's subsidiaries was Noble Drilling Nigeria. In March 2009, Noble became a wholly-owned subsidiary of a Swiss company, which also assumed the name of Noble.

Noble's operations in Nigeria from January 2003 to July 2007 resulted in FCPA violations. Noble's employees, agents, and subsidiaries made improper payments to officials of the Nigerian Customs Service related to the company's import and export of goods. Under Nigerian law, a rig, or similar equipment had to be imported through a temporary import permit ("TIP") that met certain requirements. Whenever a rig's TIP expired, a Nigerian Customs Agent, with Noble's acquiescence, submitted false paperwork on Noble's behalf to avoid the time, cost, and risk connected to exporting and re-importing the rig back into Nigeria. On November 4, 2010, the DoJ entered a Non-Prosecution Agreement ("NPA") that required Noble to pay about $74,000 to a Nigerian Customs Agent and admit to falsely recording the bribe payments as legitimate business expenses in its corporate accounts. Noble also admitted that some of its employees were clearly aware of the corrupt payments. Noble still had to pay a $2.59 million criminal penalty.

13. United States v. Snamprogetti Netherlands B.V.
Court Docket Number: 10-CR-460 (Nigeria Bonny Island Project)

Snamprogetti Netherlands B.V. ("Snamprogetti") is a Dutch company, which was part of a four-company joint venture that was awarded four engineering, procurement and construction (EPC) contracts to build liquefied natural gas (LNG) facilities by Nigeria LNG Ltd. (NLNG), between 1995 and 2004 on Bonny Island. The EPC contracts to build on Bonny Island, Nigeria, were valued at more than $6 billion.The DoJ charged Snamprogetti with one count of conspiracy and one count of aiding and abetting violations of the Foreign Corrupt Practices Act (FCPA). On July 7, 2010, Snamprogetti agreed to pay a $240 million criminal penalty to resolve charges related to the FCPA for its participation in a decade-long scheme to bribe Nigerian government officials to obtain the EPC contracts in a deferred prosecution agreement. Under the terms of the deferred prosecution agreement, the Department agreed to defer prosecution of Snamprogetti for two years. Snamprogetti, its current parent company, Saipem S.p.A., and its former parent company, ENI S.p.A. (ENI), agreed to ensure that their compliance programs satisfied certain standards and to cooperate with the Department in ongoing investigations.

Snamprogetti and ENI also reached a settlement of a related civil complaint filed by the SEC, charging Snamprogetti with violating the FCPA's anti-bribery provisions, falsifying books and records, and circumventing internal controls and charging ENI with violating the FCPA's books and records and internal controls provisions. As part of that settlement, Snamprogetti and ENI agreed jointly to pay $125 million in disgorgement of profits relating to those violations.

14. United States v. Daimler AG (Bribes in several countries, including Ivory Cost)
Court Docket Number: 10-CR-063-RJL

Daimler AG ("Daimler") is a German vehicle manufacturing company with business operations throughout the world. Daimler is owned by individual and institutional investors in the U.S., Europe, and elsewhere. On April 1, 2010, in the U.S. District Court for the District of Columbia, Daimler AG's Russian subsidiary DaimlerChrysler Automotive Russia SAO (DCAR) and its German subsidiary, Export and Trade Finance GmbH (ETF) pled guilty to one count of conspiracy to violate the FCPA's anti-bribery provisions. The two subsidiaries also pled guilty to one count of violating the FCPA's provisions. Pursuant to the plea agreement, DCAR and ETF agreed to pay criminal fines of $27.26 million and $29.12 million, respectively.

Additionally, Daimler accepted a deferred prosecution agreement and pled guilty to one count of conspiracy to violate the FCPA's books and records provisions and one count of violating those provisions. Under the agreement, Daimler will retain an independent compliance monitor for three years to supervise its compliance with the FCPA. Daimler's Chinese subsidiary, DaimlerChrysler China Ltd. (DCCL), also committed to a deferred prosecution agreement and pled guilty to one count of conspiracy to violate FCPA's anti-bribery provision and one cont of violating those provisions. Ultimately, Daimler and its three subsidiaries agreed to pay $93.6 million in criminal fines and penalties. The criminal charges against Daimler and its subsidiaries arise from an established practice of paying bribes to foreign government officials through various mechanisms, such as corporate ledger accounts, internally referred to as "third-party accounts" ("TPAs), corporate "cash decks," offshore bank accounts, false pricing arrangements and third-party brokers.

15. United States v. Technip S.A.
Court Docket Number: 10-CR-439 (Nigeria Bonny Island Project)

Technip S.A. ("Technip") is a global engineering, construction and services company based in Paris, which was part of a four-company joint venture that was awarded four engineering, procurement and construction (EPC) contracts to build liquefied natural gas (LNG) facilities by Nigeria LNG Ltd. ("NLNG") between 1995 and 2004 on Bonny Island. The EPC contracts to build on Bonny Island, Nigeria, were valued at more than $6 billion. The Department of Justice charged Technip with one count of conspiracy and one count of violating the FCPA On January 28, 2010, Technip agreed to pay a $240 million criminal penalty to resolve the charges.

16. United States v. Jim Bob Brown
Court Docket Number: 06-CR-316 (Nigeria NNPC dealings with Willbros Group Inc.)

Jim Bob Brown was a former executive at Willbros Group Inc. In January 2010, Mr. Brown pled guilty to one count of conspiracy for violating the FCPA by conspiring with others to bribe government officials in Nigeria and Ecuador. He was sentenced to 12 months and one day in prison, two years of supervised release, and a $1,000 monthly fine during the supervised release period.

Mr. Brown's attempt to secure the Eastern Gas Gathering System (EGGS) Project led to the FCPA charges. In early 2005, he conspired with others to pay bribes to Nigerian government officials in order to retain the EGGS Project. Starting in 1996 and continuing through at least 2004, Mr. Brown also tried to bring about lower federal and state tax obligations in exchange for illegal payments from various Nigerian officials. The purpose of these payments was to ensure Willbros' advantage in its dealings with Nigerian contractors.

17. United States v. William J. Jefferson (Congressman)
District Court Docket No: 07-CR-209-TSE
Court of Appeals Docket Nos: 08-4215, 09-5130
Supreme Court Docket No: 08-1059 (Nigerian Companies and South African companies involved with bribe requests.)

William J. Jefferson was a Representative in the United States House, representing Louisiana's 2nd Congressional District. He was co-chair of the Africa Trade and Investment Caucus; co-chair of the Congressional Caucus on Nigeria; and a member of the Ways and Means Committee. Additionally, Mr. Jefferson controlled and directed the actions of various petroleum companies. On August 5, 2009, a federal jury in Alexandria, Virginia convicted Mr. Jefferson of

11 charges of violating the FCPA, including conspiracy to commit bribery. The Representative was sentenced to 13 years in prison and three years of supervised release. He was also ordered to forfeit over $470,000. From about January 2001 through August 2005, Mr. Jefferson used his elected position to illegally seek, solicit and direct money and property to himself, his family members, and his business enterprises in exchange for his performance of official acts to promote the interests of people and businesses who offered him the bribes. The illicit payments involved Nigerian and South African companies.

18. United States v. Kellogg Brown & Root LLC
Court Docket Number: 09-CR-071 (Nigeria Bonny Island Project)
Also See: United States v. David Kay, *et al*: Docket No. 01-CR-914

On February 11, 2009, in federal court in Houston, Kellogg Brown & Root LLC ("KBR") pled guilty to five counts of violating FCPA's anti-bribery provisions and agreed to pay a $402 million criminal fine. KBR's prosecution is the result of its 10-year conspiracy to bribe foreign officials in Nigeria in order to secure international engineering, procurement, and construction ("EPC") contracts to build liquefied natural gas ("LNG") plants on Nigeria's Bonny Island. KBR was part of a four-company joint venture formed in 1991 with the directive to bid on and perform contracts to construct LNG plants on Bonny Island. Before the EPC contracts were awarded, KBR's former CEO, Albert Stanley met with individuals who had held high-level positions in the Nigerian executive branch. Mr. Stanley and others asked the Nigerian officials to appoint a point-person with whom the joint venture should negotiate bribes with Nigerian officials. The joint venture agreed to hire two agents to pay the bribes. The venture paid about $132 million to the first agent, a consulting company incorporated in Gibraltar. The second agent, a global trading company headquartered in Tokyo, was paid over $50 million. During the plea negotiations, KBR admitted that the purpose of the agents' fees was partly to finance bribes to Nigerian officials.

19. United States v. Siemens Aktiengesellschaft
Court Docket Number: 08-CR-367-RJL (Bribes paid to Nigerian officials)

On December 15, 2008, Siemens Aktiengesellschaft (Siemens AG), a German corporation, and three of its subsidiaries pled guilty to violations of and charges related to the Foreign Corrupt Practices Act, which were brought by the Department of Justice and SEC. Since the mid-1990s, Siemens AG engaged in systematic efforts to falsify its corporate books and records and knowingly failed to implement and circumvent existing internal controls. As a result of Siemens AG's knowing failures, from the time of its listing on the New York Stock Exchange on March 12, 2001, through approximately 2007, Siemens AG made corrupt payments totaling approximately $1.36 billion through various mechanisms in numerous foreign jurisdictions, including Nigeria. Approximately $554.5 million was paid for unknown purposes, including approximately $341 million in direct payments to business consultants for unknown purposes. The remaining $805.5 million of this amount was intended in whole or in part as corrupt payments to foreign officials through the payment mechanisms, which included cash desks and slush funds.

20. United States v. Aibel Group Limited
Court Docket Number: 07-CR-005 (Nigeria Bonga Project)

Aibel Group Limited, a UK corporation, was engaged in the manufacture and sale of sub-sea, surface and drilling equipment for the oil exploration and production industry. On November 21, 2008, Aibel Group pled guilty to violating the FCPA's anti-bribery provisions. It was required to pay a $4.2 million criminal fine and serve two years on organizational probation. The judgment against Aibel Group and its affiliates largely resulted from the voluntary disclosure of information by the involved parties to the DoJ, and their promise to take considerable remedial steps. From at least September 2002 to at least April 2005, the Aibel Group tried to obtain preferential treatment by Nigerian officials during customs clearance processes by conspiring with others to make at least 378 corrupt payments to customs officials, totaling approximately $2.1 million. The payments were organized by an affiliated company in Houston, Texas and were paid to Nigerian officials through an international forwarding and customs clearance company. As a result, certain materials were smuggled into Nigeria without the payment of customs duties.

21. United States v. Albert Jackson Stanley
Court Docket Number: 08-CR-597 (Nigeria Bonny Island Project)

Albert Jackson Stanley was the CEO and director of Kellogg Brown & Root LLC ("KBR") a global engineering, construction and services company based in Houston. Mr. Stanley pleaded guilty to conspiring to violate the FCPA by participating in a decade-long scheme to bribe Nigerian government officials to obtain engineering, procurement and construction (EPC) contracts and to conspiring to commit mail and wire fraud as part of a separate kickback scheme. The EPC contracts to build liquefied natural gas (LNG) facilities on Bonny Island, Nigeria, were valued at more than $6 billion.

On September 3, 2008, Mr. Stanley pleaded guilty to two criminal counts: one for conspiracy to violate the FCPA and one for conspiracy to commit mail and wire fraud. Mr. Stanley admitted that he authorized the joint venture to hire two agents, Jeffrey Tesler and a Japanese trading company, to pay bribes to a range of Nigerian government officials, including top-level executive branch officials, to assist KBR and the joint venture in obtaining the EPC contracts. The joint venture paid approximately $132 million to a corporation controlled by Tesler and more than $50 million to the Japanese trading company during the course of the bribery scheme. Mr. Stanley intended for these payments to be used for bribes to Nigerian government officials.

22. United States v. Willbros Group, Inc., *et al*
Court Docket Number: 08-CR-287 (Willbros' EGGS Project in Nigeria)

On May 14, 2008, the Department of Justice entered into a three-year deferred prosecution agreement with Willbros. In the agreement, Willbros agreed to pay a $22 million criminal penalty in connection with corrupt payments to Nigerian and Ecuadorian government officials in violation of the FCPA. Willbros admitted that its employees agreed to make corrupt payments totaling more than $6.3 million to Nigerian government officials to assist in obtaining and retaining a $387 million contract for work on a major engineering, procurement and construction gas pipeline project known as the Eastern Gas Gathering System (EGGS).

23. United States v. James K. Tillery, *et al*
Court Docket Number: 08-CR-022 (Willbros' EGGS Project in Nigeria)

Mr. Tillery was an executive of Willbros. He was charged with conspiring to make more than $6 million in corrupt payments to Nigerian and Ecuadorian government officials. The bribes were allegedly paid in order to obtain and retain gas pipeline construction and rehabilitation business from state-owned oil companies in Nigeria and Ecuador in violation of the FCPA. The four-count indictment charged Tillery and others with one count of conspiracy to violate the FCPA, two counts of violating the FCPA in connection with the authorization of specific corrupt payments to officials in Nigeria and Ecuador, and one count of conspiring to launder the bribe payments through purported consulting companies.

The January 17, 2008 indictment alleged that from late 2003 through March 2005, Mr. Tillery, a German construction partner, and another co-conpirator conspired to make millions of dollars in corrupt payments to assist in obtaining and retaining a major gas pipeline engineering, procurement and construction project known as the Eastern Gas Gathering System (EGGS). In exchange for being awarded the EGGS project, the indictment alleged that Tillery and others corruptly paid, promised to pay and authorized payments to Nigerian officials.

24. United States v. Jason Edward Steph
Court Docket Number: 07-CR-307 (Willbros' EGGS Project in Nigeria)

On November 7, 2007, Jason Edward Steph, an executive at Willbros, pleaded guilty to one count of conspiracy for violating the FCPA by conspiring with others to bribe government officials in Nigeria and Ecuador. On January 28, 2010, the U.S. Southern District of Texas Court sentenced Mr. Steph to 15 months in prison. In addition, Mr. Steph was ordered to serve two years of supervised release following his prison term and to pay a $2,000 fine. Mr. Steph admitted that he conspired with others to make a series of corrupt payments totaling more than $6 million to various Nigerian officials to assist Willbros in obtaining and retaining the Eastern Gas Gathering System (EGGS) Project. Mr. Steph also admitted that he, together with former Wilbros executive Mr. Brown and others, arranged for the payment of approximately $1.8 million in cash to government officials in Nigeria to further the conspiracy.

25. In re Bristow Group Inc.

Bristow Group is a Houston-based, New York Stock Exchange listed helicopter and transportation services and oil and gas production facilities operation company. In September 2007, Bristow Group consented to an SEC order, delineating FCPA violations and alleging that the Nigerian affiliate of the company made illicit payments to Nigerian state officials in return for the officials' reduction of the employment taxes owed to Nigerian state governments. Bristow Group neither denied nor confirmed the charges in the SEC's order, but it did cooperate with the Commission's investigation, allowing an independent consultant to review and evaluate its books and records. Bristol Group also implemented guidelines and procedure to reduce future FCPA charges.

26. United States v. Roger Young & United States v. Steven J. Ott
Court Docket Number: 07-CR-609-GEB; 07-CR-608-GEB
Also see: United States v. Steven J. Ott: Docket No. 07-CR-608-GEB; and
United States v. Yaw Osei Amoako: Docket No. 06-CR-702-GEB

Roger Michael Young (Mr. Young") was an Executive of Internet Telephone Exchange Carrier ("ITXC"). On July 25, 2007, Mr. Young pleaded guilty to conspiring to violate the FCPA's anti-bribery provisions and the Travel Act. He, along with several former ITXC executives, admitted to paying approximately $267,000 in bribes to employees of various African stated-owned telecommunications companies. The bribes took the form of "commissions" paid to certain foreign employees and officials, the purpose of which was to increase ITXC's likelihood of obtaining and retaining various telecommunications contracts. From 2001 until May 2004, the commissions totaled about $226,000. Particularly, ITXC paid approximately $166,000 in commission to a foreign official at Nitel, a company owned by the Nigerian government; approximately $26,000 to an official at Rwandatel, a company owned by the Rwandan government; and approximately $74,000 to an employee of Sontatel, a company partly owned by the Senegalese government. The U.S. District Court of New Jersey sentenced Mr. Young to serve five years probation, including three months of home confinement and three months in a community confinement center. He was also ordered to pay a $7,000 criminal fine.

27. United States v. Vetco Gray Controls Inc., *et al*.
Court Docket Number: 07-CR-004

On February 6, 2007, Vetco Gray Controls Inc., Vetco Gray Controls Ltd., and Vetco Gray UK Ltd., wholly owned subsidiaries of Vetco International Ltd., ("collectively Vetco") pleaded guilty to violating the anti-bribery provisions of the FCPA. Vetco admitted that it violated and conspired to violate the FCPA in connection with the payment of approximately $2.1 million in corrupt payments over approximately a two-year period to Nigerian government officials. These corrupt payments were paid through a major international freight forwarding and customs clearance company to employees of the Nigerian Customs Service to induce those officials to provide the defendants with preferential treatment during the customs process. To resolve the issue, Vetco entered into a deferred prosecution agreement for three years. As part of the agreement, it was agreed that Vetco Gray Controls Inc., Vetco Gray Controls Ltd., and Vetco Gray UK Ltd. would pay criminal fines of $6 million, $8 million, and $12 million, respectively, for a total of $26 million. The plea agreement also required the defendants to: (1) hire an independent monitor to oversee the creation and maintenance of a compliance program; (2) undertake and complete an investigation of the companies' conduct in various other countries; and (3) ensure that in the event that any of the companies are sold, the sale shall bind any future purchaser to the monitoring and investigating obligations.

28. United States v. Richard John Novak
Court Docket Number: 05-CR-180-LRS (False diploma scheme using Liberia as site of incorporation)

Richard John Novak ("Mr. Novak") was employed by Dixie Ellen Randock (Mrs. Randock) and Steven Karl Randock, Sr. ("Mr. Randock") between April 2002 and August 11, 2005, when a federal search warrant was executed at his residence. The Randocks owned and operated several so-called "internet businesses" which used the following names: "St. Regis University," "Robertstown University," and "James Monroe University." In reality, these businesses were diploma mills with no actual faculty, academic curriculum, or required coursework and were not recognized by the Department of Education. Mr. Novak was the diploma mill's primary liaison to the Liberian government, requiring him to visit Washington D.C. and meet with high-ranking officials, including the Liberian Consul. Throughout these meetings, Mr. Novak paid bribes to certain officials for the purpose of acquiring accreditation documents that would certify that the Randocks' "universities" were legitimate. Bribes were also paid in order to ensure that the Liberian embassy staff in Washington D.C. and Liberian officials elsewhere would make positive comments about the Randocks' "universities" if inquiries were made from the public. Ultimately, Mr. Novak's bribe payments to Liberian officials were valued at over $30,000. On October 20, 2006 Mr. Novak pled guilty to one count of "Conspiracy to Commit Wire Fraud and Mail Fraud," in violation of the FCPA, and one count of violating the FCPA. He was sentenced to 3 years of probation with each count to run concurrently and 300 hours of community service, and charged a special assessment of $200.

29. United States v. Steven Lynwood Head
Court Docket Number: 06-CR-1380-BEN (South Africa Titan Africa Inc.)
Also see: U.S. v. Titan Corporation: Docket No. 05-CR-314-BEN

Titan Corporation ("Titan") and its subsidiaries were involved in developing and constructing wireless telephone systems for various developing states. Steven Lynwood Head ("Mr. Head") acted as program manager of Titan's business enterprises in the Republic of Benin. In 1999, Titan succeeded in acquiring the rights to develop and operate a wireless telephone system in Benin. Titan's contract in Benin required that the company pay part of its profits as subsidies to Benin's government for the development of specific economic sectors. These payments were referred to as "social payments." Around December 2000, the President of Benin's Business Advisor solicited money from Titan under the pretense of these social payments. Mr. Head thought that part of the payments would help fund the President's re-election campaign. Nevertheless, he still made the payments through false invoices. Furthermore, in order to greater influence Titan's rights under the telephone system contract, Mr. Head used the scheduling and timing of the social payments as leverage. Ultimately, Mr. Head approved about $2 million of illegal payments to the President's reelection campaign. He was not, however, the only member of Titan to violate the FCPA. On June 23, 2006, Mr. Head pleaded guilty to falsifying the books and records of an issuer under the FCPA. In 2005, Titan Africa, Inc. pled guilty to FCPA violations and paid $28.5 million in criminal penalties, disgorgement, and prejudgment interest.

30. In Re Paradigm B.V. (2007)

Paradigm B.V. ("Paradigm") is a private limited liability company, registered in the Netherlands. It focuses on providing enterprise software solutions, designed to locate oil and natural gas reservoirs and production from new and existing reservoirs. In September 2007, the DoJ entered into a Non Prosecution Agreement (NPA) with Paradigm regarding the company's improper payments to numerous foreign government officials in violation of the FCPA. As part of the NPA, Paradigm was required to pay a $1 million fine, implement strict internal controls, employ outside compliance counsel, and continue to cooperate with the DoJ.

The DoJ investigation arose out of Paradigm's conduct in several countries, including China, Indonesia, Kazakhstan, Mexico, and Nigeria. In Nigeria, Paradigm operated through its subsidiary, Paradigm Geophysical Nigeria Ltd. In 2003, Paradigm entered into negotiations with Integrated Data Services Limited ("IDSL"), one of the eleven subsidiary companies of the Nigerian National Petroleum Corporation ("NNPC"). The two companies were seeking to create a partnership in which they would form a service alliance to perform services and processing work in Nigeria. In 2004, Paradigm submitted a bid for a joint venture with IDSL. In May 2005, Paradigm representatives conspired to make corrupt payments of between $100,000 and $200,000 to Nigerian politicians in order to secure the IDSL agreement.

31. United States v. Yaw Osei Amoako
Court Docket Number: 06-CR-702-GEB (Nigeria Nitel Tellecom)
Also see: United States v. Steven J. Ott: Docket No. 07-CR-608-GEB

Yaw Osei Amoako ("Mr. Amoako"), a resident of Hillsborough, New Jersey, was the Regional Manager for Africa for the Internet Telephone Exchange Carrier ("ITXC"), a publicly traded corporation, which provided global telecommunications services. ITXC specialized in Voice Over Internet Protocol ("VOIP") services, a technology that lets users make telephone calls using a broadband internet connection instead of a telephone line. Mr. Amoako served in the capacity of a Regional Manager from about September 1999 to about August 2004, frequently traveling to Africa. His responsibilities included securing and negotiating contracts with foreign telecommunications companies on ITXC's behalf. Mr. Amoako was also charged with hiring third-party sales agents in African countries to assist ITXC in negotiating its contracts.

In September 2006, Mr. Amaoko pled guilty to conspiring to violate the FCPA's anti-bribery provisions and the Travel Act, relative to the payment of approximately $266,000 in bribes through illegal commissions to employees of foreign state-owned telecommunications carriers and foreign-owned carriers in various African countries. In July 2007, in the U.S. District Court in Trenton, New Jersey, Mr. Amaoko was sentenced to 18 months in prison, two years of supervised release and ordered to pay a $7500 fine. In the past, ITXC had experienced difficulties obtaining contracts in Africa. Consequently, Mr. Amaoko and his co-conspirators engaged employees of state-owned or foreign-owned telecommunications companies to act as ITXC's agents. They made payments to the employees so that those employees would use their influence to assist ITXC in acquiring and keeping contracts with the foreign carriers.

32. United States v. Titan Corporation
Court Docket Number: 05-CR-314-BEN

Titan Corporation ("Titan") was a publicly traded corporation headquartered in San Diego, California. Titan and its subsidiaries were involved in developing and constructing wireless telephone systems for various developing states. On March 1, 2005, Titan pleaded guilty to a three-count under the anti-bribery and books and records provisions of the FCPA. Titan entered its guilty plea before the U.S. Federal District Court of San Diego. According to plea agreement, Titan was sentenced to pay a criminal fine of $13 million and was ordered to serve 3 years of supervised probation. As a condition of probation, Titan was ordered to create a strict compliance program and internal controls designed to prevent future FCPA violations.

In 1998, Titan became involved in a venture to develop Benin's telephone system and, in the process, generate revenue from operating the system for a number of years. Titan's contract in Benin required that the company pay part of its profits as subsidies to Benin's government for the development of specific economic sectors. These payments were referred to as "social payments." Around December 2000, the President of Benin's Business Advisor solicited money from Titan under the pretense of these social payments. In 2005, Titan Africa, Inc. pleaded guilty to FCPA violations and paid $28.5 million in criminal penalties, disgorgement, and prejudgment interest.

33. United States v. ABB Vetco Gray, Inc., *et al.*
Court Docket Number: 04-CR-279 (Nigeria Bonga Project)

ABB Vetco Gray Inc. and ABB Vetco Gray UK Ltd. are the United States ("US") and United Kingdom ("UK") subsidiaries of the Swiss Company, ABB Ltd. ABB Vetco Gray Inc. is based in Houston, Texas and is the main center for Vetco Gray's Western Hemisphere operations. ABB Vetco Gray UK Ltd. is located in Aberdeen, Scotland and serves as Vetco Gray's Eastern Hemisphere's center of operations. The Department of Justice (DoJ) charged the two companies with two counts of bribery in violation of the FCPA. On July 6, 2004, before the

U.S. District Court for the Southern District of Texas, both companies pled guilty and agreed to pay fine of $5.25 million.

The companies were charged with paying more than $1 million of bribes to officials of the National Petroleum Investment Management Services ("NAPIMS"), a Nigerian government organization that evaluates and approves potential bidders for contract work on oil exploration projects in Nigeria, including bidders looking for subcontracts with foreign oil and gas companies. The company's bribes were exchanged for confidential bid information and favorable endorsements from Nigerian government agencies connected to seven oil and gas construction contracts in Nigeria. Both companies expected to earn profits of almost $12 million from the contracts. Due to its illegal conduct, ABB Vetco Gray Inc. was charged under 15 USC Section 78dd-2 of the FCPA. ABB Vetco Gray UK Ltd. was charged pursuant to 15 USC Section 78dd-3 of the FCPA, which implements the Organization for Economic Cooperation and Development ("OECD") Convention on Combating Bribery of Foreign Public Officials in International Business Technology.

34. United States v. Ramendra Basu
District Court Docket No: 02-CR-475-RWR
Court of Appeals Docket No: 08-3031
Supreme Court Docket No: 09-9308 (World Bank road Project in Kenya)
Also see: United States v. Gautam Sengupta: Docket No. 02-CR-040-RWR

Ramendra Basu ("Mr. Basu") is an Indian national and legal permanent resident of the U.S. On December 17, 2002, he pled guilty in the U.S. District Court for the District of Columbia for violating the FCPA's anti-bribery provisions. Specifically, Mr. Basu conspired to direct World Bank contracts to consultants in exchange for kickbacks and assisted a contractor in bribing a foreign official. On April 22, 2008, he was sentenced to 15 months in prison, two years of supervised release, and 50 hours of community service.Mr. Basu was a Trust Funds Manager in Washington D.C. at the World Bank's Consultant Trust Funds Office from 1996 to 2000. Trust funds are furnished to the World Bank by member states to fund contracts to consultants from that member state. Mr. Basu's duties included recommending consultants to World Bank Task Managers to work on projects they managed, and approving the Task Managers' requests for allocation of Consultant Trust Funds to pay the consultants.

Between 1997 and 2000, Mr. Basu conspired with a Swedish consultant and others to guide World Bank contracts for business in Ethiopia and Kenya to specific Swedish companies in exchange for kickbacks totaling $127,000. Additionally, Mr. Basu assisted the Swedish consultants in bribing a Kenyan government official by arranging for $50,000 to be wire transferred to a foreign account for the official's benefit.

35. United States v. Gautam Sengupta
Court Docket Number: 02-CR-040-RWR
(World Bank Task Manager in Africa received bribes in connection with consultations in Kenya and Ethiopia.)
Also see: United States v. Ramendra Basu: Supreme Court Docket No. 09-9308

From about 1981 until about May 2000, Gautam Sengupta ("Mr. Sengupta"), an Indian national and lawful permanent resident of the U.S., was employed by the World Bank as a Task Manager responsible for the World Bank's Africa Region. Mr. Sengupta's prosecution is closely associated to that of Mr. Basu, who served as a Trust Funds Manager in Washington D.C. at the World Bank's Consultant Trust Funds Office from 1996 to 2000. Mr. Basu conspired with a Swedish consultant and with Mr. Sengupta to guide World Bank contracts for business in Ethiopia and Kenya to specific Swedish companies in exchange for kickbacks totaling $127,000. Additionally, Mr. Basu assisted the Swedish consultants in bribing a Kenyan government official by arranging for $50,000 to be wire transferred to a foreign account for the official's benefit. In February 2002, Mr. Sengupta pled guilty to violating the FCPA's anti-bribery provisions. In February 2006, he was sentenced to two months in prison in the U.S.

V. Tips to Reduce Risks and Exposure Under The FCPA in Sub-Saharan Africa

A. Retention of Foreign Consultants

A major and complex area of exposure under the FCPA involves the retention of foreign consultants to assist a company in doing business abroad and must be approached with fastidiousness. This is particularly so where the consultant or representative is retained to assist the company in obtaining contracts with a foreign government or government-owned corporation, or in obtaining legislation, licenses, permits or other governmental actions. There are two basic steps a company can take to reduce the likelihood that a prohibited payment will be made by a consultant to the official of a foreign government, and to minimize the risk that knowledge of the unlawful deed will be attributed to the company if it does occur. First, the company must be meticulous in scrutinizing the background of the consultant. Second, the company, in a written agreement for the provision of the desired services, must secure representations with respect to FCPA compliance.

Further, when retaining a consultant, there are certain "red flags" which, at a minimum, require further investigation. The following is a list of red flags that should raise such concerns:

(1) excessive or unusually high compensation and request for increase in compensation during sales campaign;

(2) requests for payments to third countries or third parties;

(3) representative or consultant recommended by government official or customer;

(4) the payment is being made in a country with a widespread history of corruption;

(5) the representative refuses to affirm in writing that he will abide by the provisions of the FCPA;

(6) lack of written agreement and/or reluctance to enter into a written agreement;

(7) the representative has familial, close or business ties with government officials;

(8) the representative has a bad reputation in the business community;

(9) the representative requires that his identity not be disclosed;

(10) misrepresentation or inconsistencies in the application or during the due diligence process;

(11) a government official recommends the representative;

(12) the representative makes unusual requests such as a request to backdate or alter invoices;

(13) the representative asks for commissions that are substantially higher than the "going rate" in that country;

(14) the representative asks for payment by unorthodox or convoluted means such as through strange bank accounts outside the country where the services are being offered;

(15) the representative requests checks to be made out to "bearer" or "cash" or requests payments to be made in cash or some other anonymous form;

(16) there are multiple middlemen performing the same task;

(17) the representative requests unusually large bonuses or substantial up-front payments;

(18) lack of facilities or qualified staff;

(19) use of shell companies;

(20) lack of experience or any track record with the product line or industry;

B. MONETARY MATTERS

1. **Pay foreign national employees by U.S. wage standards, which will certainly kill the incentive to engage in corrupt practices**. Additionally, companies operating in SSA need to have in place a proactive, top-down, bottom-up anti-corruption control policy involving tailored to audience training, how employees are rewarded, and their general behavior to address any vulnerability to bribery.

2. **With respect to U.S. expatriates, do not tie financial incentives and bonuses to striking business deals as this represents the "kiss of death" in so many ways.** Seek to develop wages or a pay structure that is based on the amount of work performed and not the size of the prime contract. U.S. based companies doing business in the region must make allowances for constraints inflicted on their associates in SSA and acknowledge that they are playing in an uneven field so that accommodations should be made realizing that they may lose business opportunities to remain compliant with the FCPA.

C. Cultural Competence

1. **Liaise with culturally competent personnel in the worthwhile endeavor to combat corruption.** U.S. based corporations must first arm themselves with internal controls and be very cautious about local agents and the roles that they are permitted to play. Continuous education of SSA employees in FCPA and other anti-bribery regimes is critical to the effort. Said education must also take place in their native languages in order to bear fruit. A foreign language compliance-training regime may not sufficiently focus on the special problems of SSA and is likely to be doomed from the start.

2. **Train local agents and partners in native languages on FCPA compliance**. Compliance training in English may not sufficiently focus on specific FCPA problems in the relevant country and is likely to be doomed ab initio. Therefore, said training should be conducted in native languages and tailored specifically to the special issues that arise in the particular country.

3. **Learn the business culture of the country from a competent and reputable third party**. Such training may be the ultimate key to navigating "gray areas" that pose the most challenges in FCPA compliance in the region.

D. Local Liaisons

1. **Liaise with a competent entity to identify government-owned businesses**. At a minimum, it must include database research, industry inquiries, and contacts with the US Embassy and other government agencies within the country.

2. **Always use a reputable auditor to audit operations in the country**. Unlike in the US, detailed information might not be a matter of record in Sub-Saharan Africa. This makes skilled culturally fluent auditors and investigators all the more important.

E. AVOID THE "USUAL SUSPECTS"

Be watchful or alert to the following "unusual suspects" of fraudulent schemes prevalent in many parts of SSA:

(1) Cash payments or "greasing the wheels" with cash to expedite business transactions has been standard practice in SSA since the colonization of African nations by the Europeans. It is often justified by a saying that the "left and right hand must necessarily wash one another." Even though most SSA countries are now attempting to reverse this custom by enacting anticorruption laws and seeking to prosecute violators, the problem remains endemic, posing a high risk for companies doing business there.

(2) Bribes can be disguised in payments to shell companies – entities with limited or no operations, or limited or no assets that generally lack a bona fide business purposes. Invoices for fictitious services are typically generated and the payments are made to the shell entities in order to pass money to government officials.

(3) Bribery payments can also be disguised as payments to agents, distributors, vendors, and other third-party intermediaries, who then channel the funds to government officials. Common schemes include payments that exceed the "stated" or "normal" commission rate for similar goods and services, upfront commissions, and "success fees."

(4) Bribery schemes can also be masked as charitable contributions. Payments are typically "contributed" to a charity that lacks a bona fide charitable purpose, with the funds later funneled to government officials, or made to a legitimate charity, with some benefit later directed to government officials.

(5) Bribery can also be masked through fraudulent accounting entries in which payments may appear legitimate in a company's books and records (for example, as invoices for consulting projects, environmental studies, etc.), though no product or service is actually provided.

To avoid the usual suspects, practice the following:

1. No "greasing the wheels" payments: People in many Sub-Saharan African countries are not shy in asking for "greasing the wheels" payments to expedite business transactions. This has been standard practice since the colonization of Africa by the Europeans, and is often justified by the saying that "the left and right hands must necessarily wash each other."

2. No payment to shell companies. In many countries in the region, invoices for fictitious services are typically generated and payments made to the shell companies in order to pass money to government officials.

3. No charitable contributions that may benefit a government official.

4. No payments or other benefits to relatives, friends and acquaintances of foreign officials in an effort to gain special benefits or obtain new business.

5. No payments that exceed the stated or normal rate for similar goods or services.

F. Company Policies Related to FCPA Compliance

1. It is paramount to promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

2. Set detailed guidelines and establish a clear protocol on what persons should do if they suspect a FCPA violation has occurred. Use hotlines, surveys, and other anonymous reporting mechanisms to ensure candid responses.

3. Be visible – the company's anti-corruption policies need to be communicated clearly in order for them to be effective. Post them on the corporate Web site and in public meeting places. Have these policies translated in local languages.

4. Give policy "teeth" by ensuring appropriate disciplinary action for violators; ensure policies are implemented consistently.

5. Reinforce your message in live compliance training sessions; require attendance one or two times a year for all vulnerable employees that are geared toward vulnerable groups. Provide meaningful examples that could arise in their work.

VI. Conclusion

The problem of corruption in Sub-Saharan Africa can be curbed and eventually eradicated or at least reduced to tolerable or incidental levels, just as in the United States and Europe. China and India are making efforts in this regard, but it has not stifled their economic growth as is said to be the case in SSA. But most supporters and believers of Africa's future economic hegemony anticipate that SSA will soon be extricated from their quagmire of bribery and corruption.

Serious judicial reforms are imperative in most African countries to effectively combat corruption. Most African nations today have some form of anti-corruption statutes and criminal codes but lack the wherewithal to enforce those laws. Without an honest and effective judicial system to support these values and enforce the law by prosecuting offenders and punishing the guilty, corruption will persist and thrive in this region.

It is fortunate that combating corruption is now a priority for the international community and that some international tools have now been sharpened to tackle the problem. For instance, the United States has stepped up enforcement of the FCPA and the United Kingdom has passed a similar anti-corruption legislation, the new UK Bribery ACT, which became effective in July

2011. The IMF, OECD, and the World Bank have all signaled their desire for SSA governments to step up their pace of combating this menace to society. And finally, the once secretive Swiss bank and the governments of most Western nations have begun freezing bank accounts created through corrupt practices and repatriating the proceeds of corruption to its rightful owners who are citizens of the countries involved.

In the final analysis, however, the responsibility for stamping out corruption in SSA rests overwhelmingly with its people, beginning with the African political leaders. Also, international governments, agencies, and organizations must be part of the solution if the problem of corruption in SSA is to be successfully brought down to tolerable levels where its corrosive impact will no longer be felt.