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Anti-Corruption

JEFFREY CLARK, JOHN DAVIS, MIKHAIL REIDER-GORDON, AND ALEXANDRA WRAGE*

I. Introduction

Anti-Corruption enforcement continued to be a top priority for U.S. regulators in 2009, and took on an increasingly visible role in the international arena. In the United States, overall Foreign Corrupt Practices Act (FCPA) enforcement activity kept pace with 2008. With U.S. agencies making greater use of specialized investigation and prosecution units, prosecutors placed greater emphasis on bringing charges against not only corporations, but also culpable executives and other individuals involved in bribery schemes. In a break with past experience, 2009 saw three FCPA trials, each ending in convictions. Outside the United States, the fight against corruption garnered more headlines. Nowhere was this more evident than in the United Kingdom, where the Serious Fraud Office (SFO) engaged in a showdown with British defense firm BAE Systems over whether the SFO would bring charges related to alleged bribery by BAE in Africa and Eastern Europe.

II. U.S. Developments

A. COMPANY PROSECUTIONS AND SETTLEMENTS

1. *Siemens AG*

Following on the heels of its landmark FCPA settlement with Siemens AG in December 2008, on January 8, 2009, the United States Department of Justice (DOJ) filed a forfeiture action against accounts that the DOJ alleged to be the proceeds of a conspiracy to bribe various Bangladeshi officials in connection with public works projects awarded to Siemens AG and China Harbor Engineering Company. As part of Siemens' overall settlement

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with the DOJ, its Bangladeshi subsidiary had pleaded guilty on December 15, 2008 to paying \$5,319,839 in bribes to the Bangladeshi officials from 2001 to 2006.¹

On July 2, 2009, the World Bank Group announced a settlement with Siemens regarding approximately \$3 million in alleged bribes paid by Siemens Russia in 2005 and 2006 in connection with Bank-funded transportation projects in Russia. Siemens agreed to pay \$100 million over fifteen years to fight corruption, a four-year debarment of its Russian subsidiary, and a two-year shut-out from bidding on Bank business for Siemens and its subsidiaries and affiliates.²

2. *ITT Corporation*

On February 11, 2009, the Securities and Exchange Commission (SEC) filed a settled enforcement action against ITT Corporation. The SEC alleged that a wholly-owned subsidiary of ITT paid over \$200,000 to employees of Chinese state-owned entities from 2001 to 2005 to influence the purchase of the subsidiary's water pumps, generating over \$4 million in revenue and \$1 million in improper profits for ITT. ITT agreed to pay over \$1.6 million in civil penalties, disgorgement, and prejudgment interest.³

3. *Kellogg Brown & Root LLC and Halliburton Co.*

On February 11, 2009, Houston-based Kellogg Brown & Root LLC (KBR) pleaded guilty to a five-count criminal charge arising from payments made to Nigerian government officials in exchange for contracts worth more than \$6 billion to build liquefied natural gas facilities on Bonny Island in Nigeria. KBR was part of a four-company joint venture that paid tens of millions of dollars in "consulting fees" to two hired agents for use in bribing Nigerian government officials in return for the contracts. Specifically, KBR admitted that its former CEO, Albert "Jack" Stanley, and others, asked top-level Nigerian officeholders to designate a representative with whom the joint venture should negotiate bribes to Nigerian officials. The representatives induced the joint venture to hire the two agents to pay the bribes. Subsequently, the joint venture paid approximately \$132 million to one agent and more than \$50 million to the other agent to be used, in part, for bribing Nigerian government officials. KBR agreed to pay a \$402 million criminal fine and retain an independent compliance monitor for three years.⁴

1. Press Release, U.S. Dep't of Justice, Department of Justice Seeks to Recover Approximately \$3 Million in Illegal Proceeds from Foreign Bribe Payments (Jan. 9, 2009), *available at* <http://www.usdoj.gov/opa/pr/2009/January/09-crm-020.html>.

2. Press Release, The World Bank, Siemens to Pay \$100m to Fight Corruption as Part of World Bank Group Settlement (July 2, 2009), *available at* <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:22234573~pagePK:64257043~piPK:437376~theSitePK:4607,00.html>.

3. Press Release, U.S. Securities & Exchange Comm'n, Litigation Release No. 20896: SEC Files Settled Charges Against ITT Corporation for Violations of the Books and Records and Internal Controls Provisions of the Foreign Corrupt Practices Act (Feb. 11, 2009), *available at* <http://www.sec.gov/litigation/litreleases/2009/lr20896.htm>. For SEC complaint, *see* www.sec.gov/litigation/complaints/2009/comp20896.pdf.

4. Press Release, U.S. Dep't of Justice, Kellogg Brown & Root LLC Pleads Guilty to Foreign Bribery Charges and Agrees to Pay \$402 Million Criminal Fine (Feb. 11, 2009), *available at* <http://www.usdoj.gov/opa/pr/2009/February/09-crm-112.html> [hereinafter DOJ - KBR]; *see also* *United States v. Kellogg Brown & Root LLC*, No. 09-cr-071 (S.D. Tex. Feb. 6, 2009).

Additionally, on February 11, 2009, the SEC settled civil charges against KBR's parent company, KBR, Inc., and its former parent company, Halliburton Company. The SEC alleged that Halliburton falsified its records in order to help conceal KBR's bribery scheme. KBR, Inc. and Halliburton agreed to disgorge \$177 million of ill-gotten profits. KBR agreed to retain an independent compliance monitor for three years, and Halliburton agreed to hire an independent consultant to review its FCPA compliance policies and procedures.⁵ Halliburton indemnified KBR from fines and monetary penalties arising from FCPA violations to facilitate the spin-off of KBR. It will thus pay \$382 million of KBR's \$402 million criminal fine.⁶

4. *Latin Node Inc.*

On April 7, 2009, Latin Node Inc. (Latinode) pleaded guilty to one count of violating the anti-bribery provisions of the FCPA and agreed to pay a \$2 million fine in connection with payments to officials in Yemen and Honduras. Latinode admitted that from 2004 to 2007, it paid \$1.1 million to third parties, knowing that some or all of the money would be passed on to officials of Hondutel, the Honduran state-owned telecommunications company, in exchange for favorable agreements and rates. In addition, from 2005 to 2006, Latinode paid an additional \$1.1 million to a third party, knowing that the money would be used to bribe Yemeni officials to secure favorable interconnection rates in Yemen. Latinode's parent company, eLandia, had discovered the conduct after acquiring Latinode in June 2007.⁷

5. *Novo Nordisk A/S*

On May 11, 2009, Danish corporation Novo Nordisk A/S entered a three-year deferred prosecution agreement with the DOJ, and agreed to pay a \$9 million penalty for illegal kickbacks paid to the former Iraqi government under the U.N. Oil for Food Program. Novo Nordisk acknowledged responsibility for making improper payments, disguised as ten percent "commissions" and totaling approximately \$1.4 million, to the Iraqi government in connection with contracts with the Iraqi Ministry of Health between 2001 and 2003.⁸ On the same day, the company settled civil charges with the SEC arising from the

5. Press Release, U.S. Securities & Exchange Comm'n, SEC Charges KBR and Halliburton for FCPA Violations (Feb. 11, 2009), *available at* <http://www.sec.gov/news/press/2009/2009-23.htm> [hereinafter SEC – KBR]; Complaint, SEC v. Halliburton Co., No. 09-cv-399 (S.D. Tex. Feb. 11, 2009).

6. Press Release, Halliburton Company, Halliburton Announces Settlement of Department of Justice and Securities and Exchange Commission Foreign Corrupt Practices Act Investigations (Feb. 11, 2009), *available at* http://www.halliburton.com/public/news/pubsdata/press_release/2009/corpnws_021109.html.

7. Press Release, U.S. Dep't of Justice, Latin Node Inc., Pleads Guilty to Foreign Corrupt Practices Act Violation and agrees to pay \$2 Million Criminal Fine (Apr. 7, 2009), *available at* <http://www.usdoj.gov/opa/pr/2009/April/09-crm-318.html>; Government's Sentencing Memorandum, United States v. Latin Node, Inc., No. 09-cr-20239 (S. D. Fla. Apr. 3, 2009).

8. Press Release, U.S. Dep't of Justice, Novo Nordisk Agrees to Pay \$9 Million Fine in Connection with Payment of \$1.4 Million in Kickbacks Through the United Nations Oil for Food Program (May 11, 2009), *available at* http://www.usdoj.gov/criminal/pr/press_releases/month_index.html?200905.

same conduct.⁹ Novo Nordisk agreed to pay more than \$3 million in civil penalties and \$6 million in disgorgement and pre-judgment interest.¹⁰

6. *United Industrial Corporation*

On May 29, 2009, United Industrial Corporation (UIC) settled an SEC administrative proceeding arising from UIC's role in improper payments made by Thomas Wurzel, the former president of a UIC subsidiary, in connection with a contract to build an F-16 combat aircraft depot and subsequent "add-on" contracts in Egypt. The SEC alleged that Wurzel authorized illegal payments, ostensibly for subcontracting work, \$100,000 worth of "equipment and materials," and \$50,000 worth of "marketing services," to a former Egyptian Air Force (EAF) General who bribed EAF officials. UIC agreed to pay \$337,679.42 in disgorgement and prejudgment interest.¹¹

7. *Avery Dennison Corporation*

On July 28, 2009, Avery Dennison Corporation settled FCPA internal controls and books and records charges with the SEC.¹² The SEC alleged that, between 2002 and 2005, Avery Dennison's Chinese subsidiary made approximately \$30,000 of corrupt payments to Chinese officials in the form of kickbacks, sightseeing trips, and gifts.¹³ In addition, employees of a company acquired by Avery Dennison in 2007 continued their pre-acquisition practice of making improper cash payments to officials in several foreign countries, making approximately \$51,000 of such payments.¹⁴ Avery Dennison agreed to pay a civil penalty of \$200,000, disgorgement of \$273,213, and prejudgment interest of \$45,257.¹⁵

8. *Helmerich & Payne Inc.*

On July 30, 2009, Helmerich & Payne Inc. (H&P) entered a two-year deferred prosecution agreement with the DOJ and settled SEC enforcement proceedings in connection with improper payments made to Argentinean and Venezuelan government officials. H&P acknowledged responsibility for payments made by its agents and subsidiaries to

9. *Id.*

10. *Id.*; see also Press Release, Securities and Exchange Comm'n, Litigation Release No. 21033: SEC Files Settled Books and Records and Internal Controls Charges Against Novo Nordisk for Improper Payments to Iraq Under the U.N. Oil for Food Program (May 11, 2009), available at <http://www.sec.gov/litigation/litreleases/2009/lr21033.htm>.

11. Press Release, Securities and Exchange Comm'n, Litigation Release No. 21063: SEC Sues Former President of United Industrial Corporation Subsidiary for Authorizing the Payment of Foreign Bribes (May 29, 2009), available at <http://www.sec.gov/litigation/litreleases/2009/lr21063.htm>; see also Cease-and-Desist Order, *In re United Industrial Corp.*, File No. 3-13495 (S.E.C. May 29, 2009).

12. Press Release, SEC, Litigation Release No. 21156: SEC Files Settled Charges Against Avery Dennison Corporation for Violating the Books and Records and Internal Controls Provisions of the Foreign Corrupt Practices Act (July 28, 2008), available at <http://www.sec.gov/litigation/litreleases/2009/lr21156.htm>.

13. *Id.*; see also Cease-and-Desist Order, *In re United Industrial Corp.*, File No. 3-13495, 2 (S.E.C. May 29, 2009), available at <http://www.sec.gov/litigation/admin/2009/34-60393.pdf>.

14. SEC Administrative Cease and Desist Order, *supra* note 13.

15. Press Release, Securities and Exchange Comm'n, Litigation Release No. 21156, *supra* note 12; Cease-and-Desist Order, *In re United Industrial Corp.*, *supra* note 13.

customs officials in both countries in order to evade import and export regulations, duties, and taxes. The deferred prosecution agreement required H&P to pay a \$1 million penalty and implement internal compliance procedures.¹⁶ The SEC alleged that H&P subsidiaries paid \$185,673 to the customs officials between 2003 and 2008. In connection with the SEC settlement, H&P agreed to pay over \$375,000 in disgorgement and prejudgment interest.¹⁷

9. *Control Components, Inc.*

On July 31, 2009, Control Components, Inc. (CCI), a California-based manufacturer of service control valves for use in the nuclear, oil and gas and power generation industries, pled guilty to violations of the FCPA and the Travel Act. CCI admitted that between 2003 and 2007, it made 236 corrupt payments to officials and employees at government-owned and private customers in more than thirty countries in order to secure contracts that yielded profits of approximately \$46.5 million. Specifically, CCI paid approximately \$4.9 million in bribes to officials at state-owned companies in countries including China, Korea, Malaysia, and the United Arab Emirates. It violated the Travel Act by using the U.S. mail or interstate wire facilities in connection with \$1.95 million of commercial bribes to private customers, contrary to California state law. CCI paid a criminal fine of \$18.2 million, was placed on organizational probation for three years, and agreed to retain an independent compliance monitor for a three-year period. In related actions, two former CCI executives pleaded guilty to FCPA violations while charges are pending against six others.¹⁸

10. *AGCO Corporation*

On September 30, 2009, AGCO Corporation, a Georgia-based agricultural equipment supplier, settled an SEC action and entered a deferred prosecution agreement with the DOJ in connection with kickbacks paid by AGCO subsidiaries to the Iraqi government under the U.N. Oil for Food Program. The SEC and DOJ alleged that AGCO subsidiaries paid the Iraqi Ministry of Agriculture kickbacks disguised as “after sales service fees” worth ten percent of a contract’s value. Altogether, the SEC alleged, AGCO subsidiaries paid nearly \$6 million in kickbacks in connection with sixteen contracts. In connection with FCPA books, records, and internal controls charges brought by the SEC, AGCO agreed to pay a civil penalty of \$2.4 million, disgorgement of \$13.9 million, and prejudgment interest of \$2 million. In connection with its deferred prosecution agreement with the DOJ, AGCO paid a \$1.6 million penalty. In addition, AGCO entered into a criminal disposition with the Danish State Prosecutor for Serious Economic Crime requiring AGCO to disgorge an additional \$630,000 in connection with Oil for Food Program contracts entered into by its Danish subsidiary.¹⁹

16. Press Release, U.S. Dep’t of Justice, Helmerich & Payne Agrees to Pay \$1 Million Penalty to Resolve Allegations of Foreign Bribery in South America (July 30, 2009), *available at* <http://www.usdoj.gov/opa/pr/2009/July/09-crm-741.html> [hereinafter DOJ- Helmerich].

17. *Id.*; Cease-and-Desist Order, *In re* United Industrial Corp., *supra* note 13.

18. See DOJ – Helmerich, *supra* note 16.

19. Press Release, U.S. Securities & Exchange Comm’n, Litigation Release No. 21229, SEC Files Settled Books and Records and Internal Controls Charges Against AGCO Corporation for Improper Payments to

11. *UTStarcom, Inc.*

On December 31, 2009, telecommunications equipment maker UTStarcom, Inc. (UTSI) settled FCPA charges with the DOJ and SEC. UTSI entered into a deferred prosecution agreement with the DOJ and agreed to pay a \$1.5 million criminal fine and agreed to a \$1.5 million civil fine to settle FCPA charges brought by the SEC. UTSI allegedly provided gifts, travel, and money to Chinese, Thai, and Mongolian officials, including phony "training" trips to popular U.S. tourist destinations, lavish gifts, and sham payments to third-party consultants in order to secure contracts.²⁰

B. INDIVIDUAL PROSECUTIONS

1. *Former Executives of Control Components, Inc.*

On January 8 and February 9, 2009, two former executives of California-based valve maker CCI pleaded guilty to conspiring to violate the FCPA.²¹ Mario Covino, CCI's former director of worldwide factory sales, admitted to being involved in approximately \$1 million in bribes to officials at state-owned entities in Brazil, China, India, Korea, Malaysia, and the United Arab Emirates.²² Richard Morlok, CCI's former finance director, admitted to being involved in approximately \$628,000 of bribes to officials in China, Korea, Romania, and Saudi Arabia.²³ Covino and Morlok also admitted to providing false information to auditors. Both Covino and Morlok are cooperating with the DOJ's ongoing investigation.²⁴

Similarly, on April 8, 2009, the DOJ charged six additional former executives of CCI with conspiracy, violations of the FCPA and Travel Act, and obstruction of justice in connection with a scheme to bribe government officials in over thirty countries. The defendants, Stuart Carson, Hong Carson, Paul Cosgrove, David Edmunds, Flavio Ricotti, and Han Yong Kim, were CCI's former chief executive officer, director of sales for China and Taiwan, director of worldwide sales, vice president of worldwide customer service, vice president and head of sales for Europe, Africa, and the Middle East, and president of

Iraq Under the U.N. Oil for Food Program—AGCO Agrees to Pay Over \$18.3 Million in Disgorgement, Interest, and Penalties (Sept. 30, 2009), *available at* <http://www.sec.gov/litigation/litreleases/2009/lr21229.htm>; Press Release, U.S. Dep't of Justice, AGCO Corp. to Pay \$1.6 Million in Connection with Payments to the Former Iraqi Government Under the U.N. Oil-for-Food Program (Sept. 30, 2009), *available at* <http://www.usdoj.gov/opa/pr/2009/September/09-crm-1056.html>.

20. Press Release, U.S. Dep't of Justice, UTStarcom, Inc. Agrees to Pay \$1.5 Million Penalty for Acts of Foreign Bribery in China (Dec. 31, 2009), *available at* <http://www.justice.gov/opa/pr/2009/December/09-crm-1390.html>; *see also* Press Release, U.S. Securities & Exchange Comm'n, SEC Charges California Telecom Company with Bribery and Other FCPA Violations, Lit. Release No. 21357 (Dec. 31, 2009), *available at* <http://www.sec.gov/litigation/litreleases/2009/lr21357.htm>.

21. Press Release, U.S. Dep't of Justice, Former Finance Director of California Valve Company Pleads Guilty to Bribing Foreign Government Officials (Feb. 3, 2009), *available at* <http://www.usdoj.gov/opa/pr/2009/February/09-crm-089.html> [hereinafter DOJ-Director]; *see also* Press Release, U.S. Dep't of Justice, Former Executive at California Valve Company Pleads Guilty to Bribing Foreign Government Officials (Jan. 8, 2009), *available at* <http://www.usdoj.gov/opa/pr/2009/January/09-crm-016.html> [hereinafter DOJ-Covino].

22. *See* DOJ-Covino, *supra* note 21.

23. *See* DOJ-Director, *supra* note 21.

24. *Id.*; DOJ-Covino, *supra* note 21.

CCI's Korean office, respectively. The scheme allegedly involved improper payments totaling approximately \$4.9 million to government officials, and \$1.95 million to officers and employees of privately owned companies in exchange for contracts that earned the company approximately \$46.5 million in profits.²⁵

2. *Jeffrey Tesler and Wojciech Chodan*²⁶

On February 17, 2009, two U.K. citizens, Jeffrey Tesler and Wojciech Chodan, were indicted for their alleged participation in KBR's decade-long scheme to bribe Nigerian government officials in connection with \$6 billion worth of contracts to build natural gas facilities on Bonny Island.²⁷ The DOJ alleged that a joint venture of four companies, including KBR, retained Tessler in 1995 and paid a corporation he controlled \$132 million for him to use in bribing Nigerian officials.²⁸ Chodan, as a salesperson and consultant for a KBR subsidiary that was part of the joint venture, allegedly discussed using Tesler and other agents to bribe Nigerian government officials at so-called "cultural meetings" with other co-conspirators.²⁹ The indictment also seeks more than \$130 million in forfeiture from the defendants.³⁰ U.K. authorities arrested Tesler on March 5, 2009 at the United States' request, and there is an outstanding arrest warrant for Chodan in the United States.³¹ The United States is seeking the extradition of both defendants from the U.K.³²

3. *Shu Quan Sheng*

On April 7, 2009, Shu Quan-Sheng (Shu) was sentenced to fifty-one months in prison after pleading guilty on November 17, 2008, to a three-count criminal information alleging violations of the Arms Export Control Act and the FCPA.³³ Shu offered bribes totaling \$189,300 in the form of "percentage points" to officials from China's 101st Research Institute to obtain a contract to develop a space launch fueling system.³⁴ The Arms Export Control Act violations related to Shu's export of defense articles and services without

25. Press Release, U.S. Dep't of Justice, Six Former Executives of California Valve Company Charged in \$46 Million Foreign Bribery Conspiracy (Apr. 8, 2009), *available at* <http://www.usdoj.gov/opa/pr/2009/April/09-crm-322.html> [hereinafter DOJ-Six Executives].

26. See DOJ-KBR, *supra* note 4; see also SEC-KBR, *supra* note 5.

27. Press Release, U.S. Dep't of Justice, Two UK Citizens Charged by United States with Bribing Nigerian Government Officials to Obtain Lucrative Contracts as Part of KBR Joint Venture Scheme, 1 (Mar. 5, 2009), *available at* http://www.justice.gov/criminal/pr/press_releases/2009/03/03-05-09tesler-charged.pdf.

28. *Id.* at 2.

29. *Id.* at 1.

30. *Id.*

31. *Id.*

32. Press Release, U.S. Dep't of Justice, Two UK Citizens Charged by United States with Bribing Nigerian Government Officials to Obtain Lucrative Contracts as Part of KBR Joint Venture (Mar. 5, 2009), *available at* http://www.usdoj.gov/criminal/pr/press_releases/month_index.html?200903.

33. Press Release, U.S. Dep't of Justice, Virginia Physicist Sentenced to 51 Months in Prison for Illegally Exporting Space Launch Data to China and Offering Bribes to Chinese Officials, 1 (Apr. 7, 2009), *available at* http://www.justice.gov/criminal/pr/press_releases/2009/04/04-07-09_sheng-sent.pdf.

34. *Id.* at 2.

obtaining the required export licenses from the U.S. State Department.³⁵ Shu has already forfeited \$386,740 to the federal government in connection with this case.³⁶

4. *Juan Diaz and Antonio Perez*

On May 15, 2009, and April 27, 2009, respectively, Juan Diaz and Antonio Perez each pleaded guilty to conspiring with three private Miami-Dade County telecommunications companies to violate the FCPA and money laundering laws in connection with a scheme to bribe officials of Haiti's state-owned telecommunications company.³⁷ Diaz served as an intermediary and admitted to making "side payments" to Haitian officials totaling over \$1 million in exchange for reduced telecommunications rates and charges from the state-owned company.³⁸ Perez, who had been an employee of one of the private telecommunications companies, assisted with \$36,375 of "side payments" to Haitian officials.³⁹

5. *Thomas Wurzel*

On May 29, 2009, the SEC settled a civil enforcement action against Thomas Wurzel arising from his actions as the former president of ACL Technologies, Inc., formerly a subsidiary of United Industrial Corporation. The SEC alleged that Wurzel authorized payments to an Egypt-based agent while he knew or consciously disregarded a high probability that the agent would make payments to officials of the Egyptian Air Force in order to influence the award of business related to a military aircraft depot in Cairo. The payments were ostensibly for subcontracting work, a \$100,000 advance payment for equipment and materials, and \$50,000 for marketing services. Wurzel also allegedly directed subordinates to create false invoices to conceal the fact that the advance payment was never repaid. Wurzel consented to the entry of a final judgment permanently enjoining him from future violations of the Exchange Act and ordering him to pay a \$35,000 civil penalty.⁴⁰

6. *William Jefferson*

On August 5, 2009, a federal jury convicted former Louisiana Congressman William Jefferson on charges of soliciting bribes, racketeering, money laundering, and related charges. The government's evidence showed that from August 2000 to August 2005, Jefferson sought hundreds of thousands of dollars worth of bribes in the form of consulting fees, retainers, shares of revenue and profits, and stock ownership in companies for him-

35. *Id.*

36. *Id.* at 1.

37. Press Release, U.S. Dep't of Justice, Two Florida Businessmen Plead Guilty to Participating in a Conspiracy to Bribe Foreign Government Officials and Money Laundering, 1 (May 15, 2009), available at http://www.justice.gov/criminal/pr/press_releases/2009/05/05-15-09diaz-guilty.pdf.

38. *Id.*

39. *Id.* at 2.

40. Press Release, U.S. Securities and Exchange Comm'n, Litigation Release No. 21063: SEC Sues President of United Industrial Corporation Subsidiary for Authorizing the Payment of Foreign Bribes (May 29, 2009), available at <http://www.sec.gov/litigation/litreleases/2009/lr21063.htm> [hereinafter SEC-Wurzel].

self and members of his family in exchange for performing official acts.⁴¹ Although the jury acquitted Jefferson of substantive FCPA charges related to an alleged scheme to pay a \$100,000 bribe to a Nigerian government official, it convicted him of a conspiracy charge that had as one of its objects the payment to the Nigerian official in violation of the FCPA.⁴² The jury's finding also resulted in a forfeiture by Congressman Jefferson of over \$450,000 in cash and stock certificates found to be proceeds of the crimes.⁴³

7. *Joseph T. Lukas*

On June 29, 2009, Joseph T. Lukas, a former partner at the Philadelphia-based export company Nexus Technologies, Inc., pled guilty to FCPA charges relating to bribes he and other Nexus Technologies employees allegedly paid to officials at Vietnamese state-owned or controlled entities in exchange for contracts. According to the indictment, the improper payments were mischaracterized as "commissions" in company records. Charges are pending against Lukas' three alleged co-conspirators, Nam Nguyen, Kim Nguyen, and An Nguyen.⁴⁴

8. *Frederic Bourke*

On July 10, 2009, a federal jury found Frederic Bourke guilty of conspiracy to violate the FCPA after a six-week trial.⁴⁵ The charges arose from Bourke's participation in Oily Rock Ltd., a company led by alleged co-conspirator Victor Kozeny.⁴⁶ Oily Rock attempted to gain control of Azerbaijan's state-owned oil company, SOCAR, during a privatization process.⁴⁷ Kozeny allegedly paid, or promised, millions of dollars of bribes to Azeri officials in order to ensure that Oily Rock would obtain control of SOCAR in a rigged auction process.⁴⁸ Bourke had invested approximately \$8 million.⁴⁹ At trial, federal prosecutors presented two theories related to Bourke's knowledge of Kozeny's illicit dealings: that Bourke actually knew of the bribe payments and that by being aware of FCPA red flags but not conducting sufficient due diligence to investigate those red flags, Bourke was "willfully blind" to the improper payment scheme. Either theory can satisfy the FCPA's knowledge element, and the jury's general verdict of guilt does not definitively state under which theory it found Bourke guilty. Kozeny has been indicted but has fought

41. Press Release, U.S. Dep't of Justice, Former Congressman William J. Jefferson Convicted of Bribery, Racketeering, Money Laundering and Other Related Charges (Aug. 5, 2009), *available at* <http://www.usdoj.gov/opa/pr/2009/August/09-crm-775.html> [hereinafter DOJ- Jefferson Conviction].

42. Verdict, *United States v. Jefferson*, No. 07-cr-209 (E.D. Va. Aug. 5, 2009) (acquittal as to Count 11 of Indictment); Indictment, *United States v. Jefferson*, No. 07-cr-209 (E.D. Va. June 4, 2009) (alleging violations of FCPA under Count 11).

43. Special Verdict, *United States v. Jefferson*, No. 07-cr-209 (E.D. Va. Aug. 6, 2009).

44. Press Release, U.S. Dep't of Justice, Former Executive of Philadelphia Company Pleads Guilty to Paying Bribes to Vietnamese Officials (June 29, 2009), *available at* http://www.usdoj.gov/criminal/pr/press_releases/month_index.html?200906.

45. Press Release, U.S. Dep't of Justice, Connecticut Investor Found Guilty in Massive Scheme to Bribe Senior Government Officials in the Republic of Azerbaijan (July 10, 2009), *available at* <http://www.usdoj.gov/opa/pr/2009/July/09-crm-677.html>.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

the DOJ's attempts to extradite him from the Bahamas.⁵⁰ On November 10, 2009, Bourke was sentenced to serve one year in prison.⁵¹

9. *Ousama Naaman*

On July 30, 2009, Canadian national Ousama Naaman was arrested in Germany pursuant to an August 7, 2008 indictment in the United States charging him with conspiracy to defraud the U.N. Oil for Food Program and bribe Iraqi officials. From 2001 to 2003, Naaman allegedly paid, on behalf of an unnamed U.S. chemical company and its subsidiary, a ten percent kickback to the Iraqi government in connection with five contracts under the Oil for Food Program to sell a chemical additive used to refine leaded fuel. Naaman allegedly received two percent of the contract value in exchange for handling the kickbacks. Additionally, in 2006, Naaman allegedly paid \$150,000 in bribes to officials Iraq's Ministry of Oil to make sure that a competing product failed a field test and would be excluded from the Iraqi market. Naaman allegedly submitted false invoices to the U.S. company in order to be reimbursed for the bribes. The DOJ is seeking Naaman's extradition from Germany to the United States.⁵²

10. *Oscar Meza*

On August 28, 2009, Oscar H. Meza, a former sales executive for software development and manufacturer Faro Technologies, Inc., settled an enforcement action with the SEC in connection with bribes paid to employees of Chinese state-owned companies. The SEC alleged that Meza authorized payments of \$444,492 to Chinese officials in order to secure contracts that generated approximately \$4.5 million in revenue and \$1.4 million in profits. Meza agreed to pay a civil penalty of \$30,000 and \$26,707 in disgorgement and prejudgment interest.⁵³ Faro had paid approximately \$2.95 million to settle FCPA charges with the SEC and DOJ in June 2008.

11. *Leo Winston Smith*

On September 3, 2009, Leo Winston Smith, the former director of sales and marketing for Pacific Consolidated Industries LP, pled guilty to FCPA and tax charges in connection with bribes paid to a U.K. Ministry of Defense (UK-MOD) official to obtain contracts to provide equipment to the U.K. Royal Air Force. Smith and Martin Eric Self, the former president of Pacific Consolidated Industries LP, paid more than \$70,000 in bribes to the UK-MOD official. Self pled guilty to related charges on May 8, 2008, and was sentenced

50. Press Release, U.S. Attorney's Office, U.S. Announces Charges In Massive Scheme To Bribe Senior Government Officials In the Republic of Azerbaijan (Oct. 6, 2005), available at <http://www.justice.gov/usao/nys/pressreleases/October05/kozenyetalindictmentpr.pdf>.

51. Sentence, *United States v. Kozeny*, No. 1:05-cr-00518-SAS-2 (S.D.N.Y. Nov. 10, 2009).

52. Press Release, U.S. Dep't of Justice, Canadian National Charged with Foreign Bribery and Paying Kickbacks Under the Oil for Food Program (July 31, 2009), available at <http://www.usdoj.gov/opa/pr/2009/July/09-crm-757.html>.

53. Press Release, U.S. Securities & Exchange Comm'n, Litigation Release No. 21190, SEC Sues Former Sales Executive for Foreign Bribery (Aug. 28, 2009), available at <http://www.sec.gov/litigation/litreleases/2009/lr21190.htm>.

to two years of probation on November 17, 2008. The U.K.-MOD official pled guilty in the U.K. to accepting bribes and was sentenced to two years in prison.⁵⁴

12. *Gerald and Patricia Green*

On September 11, 2009, a federal jury in California found film executives Gerald and Patricia Green guilty of conspiracy to violate the FCPA and money laundering laws, as well as substantive violations of both laws, in connection with bribes paid to Thai officials. The Greens paid over \$1.8 million in bribes to the former governor of the Tourism Authority of Thailand in exchange for contracts, including a contract to operate Thailand's yearly Bangkok International Film Festival. The payments were made to the Thai official through bank accounts in Singapore, the United Kingdom, and the Isle of Jersey in the names of the official's daughter and a friend of the official. The contracts generated over \$13.5 million in revenue for the Greens' businesses. Patricia Green was also found guilty of filing a false tax return.⁵⁵

13. *Paul G. Novak*

On November 12, 2009, Paul G. Novak, a former consultant to a subsidiary of Houston-based Willbros Group, Inc. (Willbros), pleaded guilty to one count of conspiring to violate the FCPA and to one substantive count of violating the FCPA. Novak admitted that from late 2003 to March 2005, he and his co-conspirators paid more than \$6 million to Nigerian government officials and political party leaders in return for \$387 million worth of contracts to build a natural gas pipeline in the Niger Delta. Novak admitted that he arranged for two consulting companies to issue false invoices for purported consulting services so that he could withdraw money from a bank account in Lebanon to pay Nigerian government officials. Previously, Willbros paid a \$22 million criminal penalty to settle FCPA charges, and former Willbros executives Jim Bob Brown and Jason Steph pled guilty to FCPA charges. Related charges against former Willbros executive Kenneth Tillery remain pending as of publication.⁵⁶

14. *Charles Paul Edward Jumet*

On November 13, 2009, Charles Paul Edward Jumet pled guilty to conspiring to pay bribes to Panamanian government officials in connection with contracts to "maintain lighthouses and buoys along Panama's waterway."⁵⁷ Jumet made the payments on behalf of Ports Engineering Consultants Corporation (PECC), which was affiliated with Vir-

54. Press Release, U.S. Dep't of Justice, Former Pacific Consolidated Industries LP Executive Pleads Guilty in Connection with Bribes Paid to U.K. Ministry of Defense Official (Sept. 3, 2009), *available at* <http://www.usdoj.gov/opa/pr/2009/September/09-crm-928.html>.

55. Press Release, U.S. Dep't of Justice, Film Executive and Spouse Found Guilty of Paying Bribes to a Senior Thai Tourism Official to Obtain Lucrative Contracts (Sept. 14, 2009), *available at* <http://www.usdoj.gov/opa/pr/2009/September/09-crm-952.html>.

56. Press Release, U.S. Dep't of Justice, Former Willbros International Consultant Pleads Guilty to \$6 Million Foreign Bribery Scheme (Nov. 12, 2009), *available at* <http://www.justice.gov/opa/pr/2009/November/09-crm-1220.html>.

57. Press Release, U.S. Dep't of Justice, Virginia Resident Pleads Guilty to Bribing Panamanian Officials for Maritime Contract (Nov. 13, 2009), *available at* <http://www.justice.gov/usao/vac/press.html>.

ginia-based engineering firm Overman Associates. Jumet admitted that, from 1997 through July 2003, he and others conspired to pay more than \$200,000 to Panamanian officials to secure a twenty-year, no-bid contract.⁵⁸ On December 16, 2009, PECC's former president, John W. Warwick, was indicted on charges of conspiracy to violate the FCPA in connection with the scheme.⁵⁹

15. *John Joseph O'Shea and Fernando Maya Basurto*

On November 16, 2009, John Joseph O'Shea, a former executive of a unit of ABB, was indicted on charges of conspiracy, violating the FCPA, money laundering, and obstruction of justice. O'Shea allegedly conspired to bribe Mexican government officials to secure electrical network management contracts with the Comisión Federal de Electricidad, a Mexican state-owned utility. The bribes were allegedly funneled through Fernando Maya Basurto, a Mexican national whose company served as the ABB unit's sales representative in Mexico. Basurto, who was originally charged with currency structuring charges following his arrest in April 2009, pled guilty on November 16, 2009 to charges of conspiring to violate the FCPA in connection with the payment to Mexican officials and agreed to cooperate with the DOJ.⁶⁰

16. *Joel Esquenazi, Carlos Rodriguez, and Marguerite Grandison*

On December 7, 2009, the U.S. Department of Justice unsealed an indictment charging Joel Esquenazi and Carlos Rodriguez, two former executives of a Florida-based telecommunications company, and Marguerite Grandison, a former executive of Florida-based Telecom Consulting Services Corp., with FCPA and money laundering offenses. The defendants allegedly paid more than \$800,000 to Haitian government officials through shell companies between November 2001 and March 2005 in exchange for favorable rates and other discounts for providing telecommunications in Haiti. Two former executives of the Haitian state-owned telecommunications company, Robert Antoine and Jean Rene Duperval, were charged with money laundering offenses in connection with the scheme.⁶¹

17. *Bobby Benton*

On December 11, 2009, the SEC charged Bobby Benton, Pride International, Inc.'s ("Pride") former Vice President of Western Hemisphere Operations, with FCPA violations relating to bribes paid to foreign officials in Mexico and Venezuela. Benton allegedly authorized bribes paid to a Mexican customs official in December 2004 in exchange for favorable treatment regarding customs deficiencies identified during an inspection of a

58. *Id.*

59. Press Release, U.S. Dep't of Justice, Virginia Resident Charged with Conspiring to Bribe Former Panamanian Officials for Maritime Contract (Dec. 16, 2009), available at <http://www.justice.gov/opa/pr/2009/December/09-ag-1348.html>.

60. Press Release, U.S. Dep't of Justice, Former General Manager of Texas Business Arrested for Role in Alleged Scheme to Bribe Officials at Mexican State-Owned Electrical Utility (Nov. 23, 2009), available at <http://www.justice.gov/opa/pr/2009/November/09-crm-1265.html>.

61. Press Release, U.S. Dep't of Justice, Two Florida Executives, One Florida Intermediary and Two Former Haitian Government Officials Indicted for Their Alleged Participation in Foreign Bribery Scheme (Dec. 7, 2009), available at <http://www.justice.gov/opa/pr/2009/December/09-crm-1307.html>.

supply boat. Benton also allegedly had knowledge of a scheme involving the bribery of an employee of Venezuela's state-owned oil company to secure extensions of three drilling contracts and redacted references to that bribery in documents relating to an internal audit.⁶²

C. NEW DOJ OPINION PROCEDURE RELEASES

In Release No. 09-01, dated August 3, 2009, a U.S. medical device design and manufacturing company (the Requestor) sought an opinion in connection with its desire to provide free medical devices to certain foreign government-owned health centers for evaluation purposes. The foreign government planned to purchase certain types of medical devices and re-sell them to patients in need in the country at a subsidized cost. A senior official at a government agency in the country informed the Requestor that all major manufacturers would be allowed to participate in the tender for the government purchases, but the government would only endorse products that it had technically evaluated with favorable results. At the official's request, the Requestor proposed to provide 100 sample devices and related accessories and follow-on support, with a market value of \$1.9 million, to ten clinics of its choosing for use on 100 patients. The patients would be selected by a panel of qualified medical professionals, including the country manager of the Requestor (a physician), according to agreed-upon objective criteria, including a certificate evidencing the patient's inability to pay for the device. In addition, the government agency and the Requestor agreed upon a prohibition against giving the devices to high-ranking government officials or their family members. The DOJ represented that it did not intend to take enforcement action against the Requestor in connection with the proposal. The DOJ noted that "the donated products w[ould] be provided to the foreign government, as opposed to individual government officials, for ultimate use by patients" in accordance with the criteria set forth by the Requestor.⁶³

III. Enforcement Actions Abroad

A. CASES

1. *Bahrain*

In September 2009, it was reported that Bahraini authorities are conducting an investigation into allegations of bribery by the Japanese commodities-trading giant Sojitz Group. Bahraini prosecutors are investigating \$8.7 million in alleged bribes made by units of Sojitz to employees at Aluminum Bahrain BSC, or Alba. The payments were reportedly made into secret accounts in Liechtenstein. Because some of the payments allegedly passed through U.S. banks, the Bahrainis reportedly have shared information with the

62. Press Release, U.S. Securities & Exchange Comm'n, SEC Charges Former Officer of Pride International with Violating the Foreign Corrupt Practices Act, Lit. Release No. 21335 (Dec. 14, 2009), *available at* <http://www.sec.gov/litigation/litreleases/2009/lr21335.htm>.

63. Opinion Procedure Release 08-02, U.S. Dep't of Justice No. 09-01 (Aug. 3, 2009), *available at* <http://www.justice.gov/criminal/fraud/fcpa/opinion/2009/0901.html>.

DOJ. Sojitz, which acts as a broker for Alba's products, allegedly received lower prices in exchange for the payments.⁶⁴

2. Canada

News accounts in January 2009 reported that the Royal Canadian Mounted Police are investigating Niko Resources Limited, a Calgary-based energy company, for alleged illegal payments to government officials in Bangladesh. Niko was also implicated in a previous bribery scandal in Bangladesh in 2007.⁶⁵

3. China

In July 2009, Chen Tonghai, a former chairman of China Petroleum & Chemical Corp., known as Sinopec, China's second-largest oil company, was given a suspended death sentence after being convicted of taking 196 million yuan (\$28.7 million) in bribes from 1999 to 2007. Chen was also convicted of illegally appropriating funds from projects and land transfers during the period. Court officials said that Chen's sentence was suspended because he "returned all the bribes he had taken, admitted his crimes, and provided clues on the offences of others."⁶⁶

China has accused the "Anglo-Australian mining giant Rio Tinto" of bribing sixteen of China's largest steel makers, all of whom are members of the China Iron and Steel Association, in an attempt to gain "access to confidential industry data."⁶⁷ In early July, Chinese authorities detained four Rio Tinto employees on suspicion of espionage, harming national security, and stealing state secrets. Chinese steel producers have given mixed responses; while some deny the existence of the investigation, at least one has indicated that it is cooperating with the Chinese government's investigation.⁶⁸ Rio Tinto has denied the bribery allegations, which came shortly after Rio Tinto's cancellation of a nearly \$20 billion investment deal with the state-owned Chinalco.⁶⁹

According to researchers for the Hurun Report, a Chinese publication that lists China's wealthiest individuals, nineteen billionaires of the 1,330 business tycoons on the list of China's richest people have been charged with bribery in the last ten years and are "either in jail or are waiting for sentencing on bribery charges."⁷⁰

64. Evan Perez, *U.S. Joins Kickback Probe of Sojitz*, WALL ST. J., Sept. 9, 2009, available at <http://online.wsj.com/article/SB125243977392393451.html>.

65. See, e.g., Posting of Cyndee Todgham Cherniak to Trade Lawyer's Blog, http://tradelawyersblog.com/blog/archive/2009/january/article/canadas-anti-corruption-investigation-niko-resources/?tx_ttnews%5Bday%5D=18&cHash=74f3115aea (Jan. 18, 2009, 12:57 PM); David Montero, *The Business of Bribes: Bangladesh: The Blowback of Corruption*, FRONTLINE/WORLD, Aug. 21, 2009, <http://www.pbs.org/frontlineworld/stories/bribe/2009/08/bangladesh-a-dirty-deal-back-fires.html>.

66. John Duce & Michael Forsythe, *Sinopec's Ex-chairman Gets Suspended Death Sentence*, BLOOMBERG, July 15, 2009, <http://www.bloomberg.com/apps/news?pid=20601080&sid=akrLKjFLc44>.

67. David Barboza, *Rio Tinto Gave Bribes to Many, China Says*, N.Y. TIMES, July 16, 2009, <http://www.nytimes.com/2009/07/16/world/asia/16riotinto.html>.

68. *Id.*

69. Kevin Voigt, *Rio Tinto: China Bribery Claims 'Without Foundation'*, CNN.COM, July 17, 2009, <http://www.cnn.com/2009/BUSINESS/07/17/china.rio.tinto/index.html>.

70. Wang Qian, *Bribery pervades list of wealthiest*, CHINA DAILY, Aug. 28, 2009, http://www.chinadaily.com.cn/bizchina/2009-08/28/content_8627308.htm.

4. *Germany*

On December 10, 2009, German truck manufacturer MAN SE announced that a German court had fined two of MAN's subsidiaries a total of €150 million (\$221 million). MAN stated its intention to pay the fine, which ended various investigations into suspected corruption taking place at the company between 2002 and 2009.⁷¹ The probe had reportedly focused on bribes paid in Germany and abroad to secure sales of trucks and buses.⁷²

5. *Hong Kong*

In October 2009, Hong Kong's Independent Commission Against Corruption charged a former HSBC Holdings PLC employee, Chen Ching-hsiao, with accepting \$60,000 from a Taiwanese client in June 2007 to approve applications by two companies for HSBC credit facilities. Ching-hsiao was a senior vice-president with HSBC's commercial banking department. According to the Commission, HSBC reported the alleged bribery to the anti-graft agency and is providing assistance during the investigation.⁷³

6. *India*

In June 2009, Defence Minister A.K. Antony blacklisted seven companies connected to a defense contracting bribery scandal: Israeli Military Industries (Israel), Singapore Technologies (Singapore), Media Architects (Singapore), BVT (Poland), HYT Engineering (India), T S Kishan, and Company (India), and R K Machine Tools (India). The companies are alleged to have made unlawful payments to obtain contracts worth \$2 billion to supply the Defence Ministry with artillery, ammunition, and weapons control systems.⁷⁴

In October 2009, the Indian Central Bureau of Intelligence announced a wide-ranging inquiry into the Indian Department of Telecommunications. Specifically, the Bureau is examining whether department officials provided improperly-priced cellular telephone contracts to "favored companies." The bureau has raised more than a dozen telecommunications company and government offices in connection with its investigation.⁷⁵

7. *Indonesia*

Two senior law enforcement officials were forced to resign in November 2009 after being accused of trying to undermine the country's anti-corruption agency, the KPK (Corruption Eradication Commission). Abdul Hakim Ritonga, a deputy attorney general,

71. Press Release, MAN SE, Investigations Against MAN Group Companies Brought to an End with Administrative Orders Imposing Fines (Dec. 10, 2009), available at http://www.man-mn.com/en/media/Press_releases/show_press.jsp?id=206827.

72. Vanessa Fuhrmans & David Crawford, *MAN Fined in Bribery Case*, WSJ.COM, Dec. 11, 2009, available at <http://online.wsj.com/article/SB10001424052748703514404574587670799801680.html>.

73. Mark Lee, *Former HSBC Banker to Contest Hong Kong Bribery Case*, BLOOMBERG, Oct. 23, 2009, http://www.bloomberg.com/apps/news?pid=20601127&sid=a.Ak3LR_RXus.

74. *Singapore Technology Blacklisted by India in Corruption Probe*, THE ONLINE CITIZEN, June 13, 2009, <http://theonlinecitizen.com/2009/06/singapore-technology-blacklisted-by-india-in-corruption-probe/>.

75. Heather Timmons & Vikas Bajaj, *Inquiries in India Point to New Government Focus on Corruption*, N.Y. TIMES, Oct. 29, 2009, at B3, available at <http://www.nytimes.com/2009/10/30/business/global/30fraud.html>.

and Commissioner General Susno Duadji, a high-ranking police official, resigned after being named in wiretapped conversations suggesting a plot to fabricate a case against two senior anti-corruption officials.⁷⁶

8. *Namibia*

Three Chinese companies are under investigation for alleged bribery in Namibia. Namibian prosecutors are investigating Nuctech, a supplier of airport security scanners, for alleged bribes to secure a \$56 million government contract. Nuctech is a Chinese state-owned company that, until 2008, was headed by Hu Haifeng, the son of Chinese President Hu Jintao. Days after the Nuctech issue became public, the chief of the Namibia Defence Force was suspended for allegedly taking a \$250,000 kickback on a Chinese arms deal. Also under investigation for alleged corruption is a third Chinese company, China National Machinery & Equipment Import and Export Company, which allegedly paid a ten percent kickback to secure a deal to build a \$61 million rail link.⁷⁷

9. *Nigeria*

In April 2009, Nigeria commenced what was announced to be an eight-week inter-agency panel to investigate the Halliburton/KBR scandal. The panel has reportedly questioned a number of senior officials, but has been hobbled by a series of issues including a change of chairman in the fall of 2009, as well as what the panel has characterized as "deficiencies" in international cooperation, including with the United States.

10. *New Zealand*

In August 2009, a former New Zealand Member of Parliament, Taito Phillip Field, was found guilty on eleven of twelve charges of bribery and corruption while in office. The Crown prosecution said that Field had Thai nationals carry out work on his properties in return for immigration assistance between November 2002 and October 2005.⁷⁸

11. *Philippines*

In March 2009, World Bank officials met with a senate committee from the Philippines to assist and discuss a corruption scandal involving a multi-million dollar road project that has implicated President Gloria Arroyo's husband in alleged bid rigging. The World Bank's investigation led to the blacklisting of several contractors involved in the road works project. The bank has blacklisted several companies it said colluded in the bidding for the \$33 million road project:

China Road and Bridge Corp. will not be allowed to bid for a World Bank-funded project for eight years, China State Construction Corp. and China Wu Yi Co. Ltd.

76. Norimitsu Onishi, *Indonesia Officials Resign in Graft Scandal*, N.Y. TIMES, Nov. 6, 2009, at A10, available at <http://www.nytimes.com/2009/11/06/world/asia/06indo.html>.

77. Sharon LaFraniere & John Grobler, *Namibians Say Inquiry on China Will Expand*, N.Y. TIMES, July 31, 2009, at A4, available at <http://www.nytimes.com/2009/08/01/world/africa/01namibia.html>.

78. Andrew Koubaridis, *Jailed MP Appeals Bribery Conviction*, NEW ZEALAND HERALD, Dec. 15, 2009, available at http://www.nzherald.co.nz/politics/news/article.cfm?c_id=280&objectid=10615562.

are barred for six years, and China Geo-Engineering Corp. for five years. Philippine firm E.C. de Luna Construction Corp. and its sole proprietor, Eduardo de Luna, were both barred indefinitely—the first permanent ban since 2004, the bank said. The other Philippine firms, Cavite Ideal International Construction and Development Corp. and CM Pancho Construction Inc., were each banned for four years.⁷⁹

12. South Korea

According to the Defense Security Command (DSC), Seoul's military spy agency, officials from the DSC and the National Intelligence Service raided [Swedish defense company] Saab's branch office in the South Korean capital [in September 2009] after receiving a seizure and search warrant from the Seoul Prosecutor's Office. The authorities also raided the [offices of] Security Management Institute (SMI), a private defense research agency . . . [and arrested a former military officer for allegedly providing] classified information to Saab.⁸⁰

The Swedish defense company has denied that it paid any "inducements" to get classified information.⁸¹

13. Sweden

In March 2009, three employees of AB Volvo, which a year earlier had settled FCPA and other charges related to kickbacks it paid to the government of Iraq in connection with contracts under the Oil-for-Food program, were charged in Sweden with committing grave sanction breaches in connection with the kickbacks. According to press accounts, the prosecutor intends to seek prison sentences for the executives, who are accused of participating in the payment of approximately \$1.8 million in kickbacks to Saddam Hussein's regime between 2000 and 2002 in connection with \$13.8 million in contracts.⁸²

14. United Arab Emirates

In March 2009, Dubai's public prosecutor charged several businessmen and former bank executives with bribery and fraud. The individuals, British businessmen Charles Ridley and Ryan Cornelius and Turkish businessman Erin Nil, were charged with defrauding the Dubai Islamic Bank of more than 1.84 U.A.E. dirhams (\$501 million). Two Pakistani nationals, Omair Mooraj and Rifat Usmani, were accused of receiving \$1.7 million in bribes to facilitate financing deals put together by Ridley, Cornelius, and Nil.⁸³

79. *World Bank Agrees to Meet Philippine Senate on Corruption Charge*, PINOY HERALD, Mar. 14, 2009, available at <http://www.pinyoherald.org/news/herald-news/world-bank-agrees-to-meet-philippine-senate-on-corruption-charge.html>.

80. Jung Sung-Ki & Gerard O'Dwyer, *Saab Denies Role in Seoul Bribery Case*, DEFENSE NEWS, Oct. 19, 2009, <http://www.defensenews.com/story.php?i=4328708&c=AI&s=ASI>.

81. *Id.*

82. Louise Nordstrom, *Volvo Executives Face Kickback Charges*, TAIWAN NEWS, Mar. 6, 2009, http://www.etaiwannews.com/etn/news_content.php?id=885353&lang=eng_news.

83. Mirna Sleiman, *Dubai Prosecutors Indict Several for Bribery, Fraud*, WALL. ST. J., Mar. 10, 2009, at A7, available at <http://online.wsj.com/article/SB123664177277477549.html>.

15. *United Kingdom*

Britain's SFO announced in October 2009 its intention to bring charges against British arms manufacturer BAE Systems for alleged bribery in Africa and Eastern Europe. The announcement came after BAE missed the October 1, 2009 deadline the SFO had set for entering into a plea agreement regarding arms deals in Tanzania, South Africa, the Czech Republic, and Romania, where BAE allegedly paid millions of dollars in bribes.⁸⁴ BAE reportedly rejected an offer by the SFO to settle bribery charges for £300 million. Reports have stated that the SFO has sought a penalty as high as £500 million (\$790.8 million).⁸⁵

On September 25, 2009, the U.K.-based bridge construction company Mabey & Johnson . . . was sentenced in . . . London to pay penalties and reparations totaling £6.6 million (approximately \$10.5 million) and required to submit its compliance program to review by an . . . [SFO-]approved independent monitor . . . The case arose after an internal investigation and a 2008 voluntary disclosure [by the company] . . . to the [SFO] . . . Following the disclosure, the firm was charged with improperly attempting to influence government decision makers to obtain bridge building contracts in both Jamaica and Ghana . . . [and with making improper payments under the Oil-for-Food program] . . . A subsequent internal investigation revealed additional corrupt payments made by Mabey in Madagascar, Angola, Mozambique[,] and Bangladesh.⁸⁶

In January 2009, [t]he U.K.'s Financial Services Authority ["FSA"]) . . . fined Aon Ltd. £5.25 million (\$8.05 million) for failing to recognize and control the risks of overseas payments being used as bribes. The fine is the largest the FSA has levied for financial crimes. Aon Ltd. is the principal U.K. subsidiary of Chicago-based Aon Corporation, the world's biggest insurance broker.⁸⁷

On December 1, 2009, the British SFO charged Robert John Dougall, former Vice President of Market Development for Johnson & Johnson subsidiary DePuy International Limited, with making corrupt payments to medical professionals working in the Greek public healthcare system. Mr. Dougall allegedly made the payments in connection with the sale of orthopedic products between February 2002 and December 2005.⁸⁸

84. David Leigh & Rob Evans, *SFO seeks BAE prosecution over bribery claims*, THE GUARDIAN, Oct. 1, 2009, <http://www.guardian.co.uk/world/2009/oct/01/bae-sfo-bribery-allegations-prosecution>.

85. Karl West, *Serious Fraud Office May Look to Make a £500m Example of BAE Systems*, DAILYMAIL, Oct. 19, 2009, <http://www.dailymail.co.uk/money/article-1221526/Serious-Fraud-Office-look-make-500m-example-BAE-Systems.html#>.

86. Rob Evans & David Leigh, *Mabey and Johnson Admits Bribing Officials Abroad to Secure Contracts*, THE GUARDIAN, July 10, 2009, <http://www.guardian.co.uk/business/2009/jul/10/mabey-johnson-guilty-plea-compensation>.

87. Aon Pays £5.25 million, <http://www.fcpablog.com/blog/2009/1/9/aon-pays-525-million-corruption-fine.html> (Jan. 9, 2009, 3:28PM).

88. Press Release, U.K. Serious Fraud Office, *Former Vice President of DePuy International Ltd Charged With Corruption* (Dec. 1, 2009), available at <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2009/former-vice-president-of-depuy-international-ltd-charged-with-corruption.aspx>.

B. ANTI-CORRUPTION EFFORTS

1. *Canada*

In May 2009, Canada's House of Commons introduced a bill proposing revisions to the Corruption of Public Officials Act (CPOA). The primary focus would be to extend the jurisdiction of Canadian courts to bribery committed abroad by Canadian citizens, permanent residents, and organizations, regardless of the transaction's connection with Canada. The existing CPOA was silent on this point and relied on a multi-factor common law test examining connections to Canada.⁸⁹

2. *China*

In June 2009, China launched an anti-corruption hotline to encourage whistleblowers to report corruption among government officials. Within a week of its launch, the hotline received more than 11,000 calls. An additional 6,000 whistleblowers visited the government website supporting the hotline. Whistleblowers may leave reports with hotline operators or submit tips through voice messages or faxes.⁹⁰

3. *Israel*

In February and March 2009, Israel became a signatory to the U.N. Convention against Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, respectively. In November 2009, Attorney General Menachem Mazuz issued a directive providing new procedures for enforcing the law enacted in mid-2008 pertaining to the bribery of foreign officials. Under the new procedures, Israeli police must investigate any allegation of corruption, whether derived from a complaint, press report, or request by a foreign country. Israel's defense and foreign ministries have also been instructed to cooperate with the police and provide any relevant information they have. Under the new directive, if the police launch an investigation, the Attorney General's office would be provided with a detailed written recommendation on whether an indictment should be filed.⁹¹

4. *United Kingdom*

In July 2009,

the SFO issued formal guidance on its new approach to dealing with corruption by British nationals overseas. The guidance confirmed that the SFO is moving towards a U.S.-style negotiation system [incorporating such concepts as voluntary disclosures and] . . . deferred prosecution agreements In return for receiving voluntary self disclosures, the SFO has pledged to use civil fines instead of criminal penalties wher-

89. *FCPA Spring Review*, INTL. ALERT, June 12, 2009, <http://www.millerchevalier.com/Publications/MillerChevalierPublications?find=10202>.

90. *Whistleblowers Flood China's Anti-Corruption Hotline*, CCTV, June 30, 2009, <http://english.cctv.com/20090630/104343.shtml>.

91. Amit Benaroya, *AG hands down new rules for bribery law*, HAARETZ, Nov. 6, 2009, <http://www.haaretz.com/hasen/spages/1126084.html>.

ever possible [T]he SFO also indicated that it would rely on . . . [an] independent monitoring system [similar to that which has been used by the DOJ].⁹²

This guidance likely informed the disposition of the Mabey & Johnson case discussed above. Also in July, the FSA announced that in February 2010, it will create a new fine structure that “could potentially treble the size of fines” imposed on parties that violate FSA regulations.⁹³

In March 2009, the U.K. government announced that it would take control of the Turks & Caicos Islands due to reports of widespread corruption. The U.K. announced that it would formally seize power when a final report on the extent of corruption was published in April 2009. “As a British Overseas Territory, the Turks and Caicos are ultimately” subject to U.K. sovereignty; the “Turks and Caicos Premier . . . called on the United Nations to intervene on the country’s behalf.”⁹⁴

As mentioned above, on December 1, 2009, the British SFO charged Robert John Dougall, a former vice president at Johnson & Johnson subsidiary DePuy International Limited, with making corrupt payments to medical professionals working in the Greek public healthcare system.⁹⁵

IV. International Anti-Corruption Treaties and Public International Organizations

A. MUTUAL EVALUATION MECHANISMS

In 2009, the OECD Working Group on Bribery (WGB)⁹⁶ issued a review of the legislation implementing the Anti-Bribery Convention in Israel, raising concerns about criminalization of bribes paid through third parties, the low level of maximum penalties for the offense, restrictions on the exercise of nationality jurisdiction, and the ability to dismiss an investigation based on an absence of “public interest.” The WGB also issued follow-up reports on implementation of the Convention by Chile and Turkey. Chile was reevaluated due to new developments in Chilean law since the initial review, and the WGB found that, with the exception of liability for legal persons, Chile’s legislation conforms to the standards of the Convention.⁹⁷ Turkey was reevaluated due to problems related to the implementation of investigation and prosecution of foreign public officials, lack of liability of legal persons, and insufficient awareness-raising by the Turkish Government.⁹⁸ On re-review, the WGB concluded that while progress has been made, Turkey is

92. *FCPA Spring Review*, *supra* note 89.

93. *Id.*

94. Mark Deen & Bill Faries, *U.K. Readies Turks & Caicos Takeover for Corruption*, BLOOMBERG, Mar. 17, 2009, http://www.bloomberg.com/apps/news?pid=20601086&sid=amWD.mZN7t18&refer=latin_america#.

95. Press Release, U.K. Serious Fraud Office, *supra* note 88.

96. WGB reports are available at <http://www.oecd.org>.

97. Press Release, Organisation for Economic Co-Operation and Development, Chile Invited to Become a Member of the OECD (Dec. 15, 2009), available at http://www.oecd.org/document/28/0,3343,en_2649_201185_44267356_1_1_1_1,00.html.

98. ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS, TURKEY: PHASE 2, 26 (2009), available at <http://www.oecd.org/dataoecd/2/18/43198860.pdf>.

still not compliant with Article 2 of the Convention due to a lack of investigations and prosecutions.

The Group of States Against Corruption (GRECO) continued its third evaluation round, issuing reports on Albania, Belgium, France, Malta, Norway, Poland, Spain, and Sweden.⁹⁹ The Committee of Experts for the Inter-American Convention Against Corruption launched its third round of review, covering tax treatment of bribes, prevention of bribery, criminalization of transnational bribery, illicit enrichment, and extradition. The Committee issued third round reports for Argentina, Bolivia, Costa Rica, Paraguay, Peru, and Uruguay.¹⁰⁰ Evaluation of the United States for the third round will begin in mid-2010.

B. U.N. CONVENTION AGAINST CORRUPTION

In 2009, the States Parties to the U.N. Convention Against Corruption (UNCAC) continued its self-assessment mechanism and pilot project for mutual evaluation. The Secretariat drew up draft terms of reference for the mechanism for review by member states. Many responses to the self-assessment checklist are publicly available.¹⁰¹ The Third Conference of the States Parties to UNCAC met in Doha, Qatar in November 2009¹⁰² and continued the focus on implementation, technical assistance, and asset recovery.

C. MULTILATERAL DEVELOPMENT BANKS

At the time of the drafting of this report, the World Bank had debarred thirty-four companies and individuals for fraudulent and corrupt practices in 2009.¹⁰³ Neither the Integrity Division of the Asian Development Bank¹⁰⁴ nor the Office of Institutional Integrity of the Inter-American Development Bank had reported any sanctions in 2009 for corrupt practices.¹⁰⁵

V. Civil Society Efforts in 2009

The non-profit and non-governmental communities remained active on some key long-standing projects, while launching a number of new initiatives in 2009. The OECD Working Group on Bribery hosted an Open Study Group on October 5, 2009 on Small Facilitation Payments, inviting interested non-profit organizations and multinational companies to discuss this issue in the context of the Working Group's ongoing review of the OECD anti-bribery instruments. On December 9, the OECD released its Recom-

99. When countries choose to make them public, GRECO reports are *available at* <http://www.coe.int/t/dg1/greco>. The Third Round evaluations of Denmark and Lithuania are not public.

100. MESICIC reports are *available at* http://www.oas.org/juridico/english/mesicic_II_rep.htm.

101. The U.S. self-assessment is *available at* <http://www.state.gov/documents/organization/91995.pdf>.

102. Documents related to the Third Conference of States Parties are *available at* <http://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session3.html>.

103. An up-to-date list of debarred firms is *available at* the World Bank's website, <http://www.worldbank.org/debarr>.

104. A list of the Asian Development Bank Office cases is *available at* <http://www.adb.org/Integrity/list.asp?fld=0&srt=1>.

105. An up-to-date list of debarred firms is *available at* the Office's website, <http://www.iadb.org/topics/transparency/IAD/sanctionedfirms.cfm?lang=en>.

mendation for the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. The Recommendation includes a strongly worded recommendation to member countries to prohibit or discourage facilitation payments.¹⁰⁶

The Sixth Global Forum for Fighting Corruption and Safeguarding Integrity was hosted in Qatar on November 7 and 8, 2009. The United Nations Global Compact Working Group on the 10th Principle held its fifth meeting in Doha immediately prior to the Forum. During the Global Forum, at the invitation of the International Chamber of Commerce, Transparency International, the United Nations Global Compact, and the World Economic Forum Partnering Against Corruption Initiative, a letter signed by dozens of corporate CEOs was presented, expressing strong support for the UN Convention against Corruption and calling for implementation of a review mechanism at the Conference of States Parties held in Doha in November 2009. A review mechanism was agreed on at the Conference of States Parties, although with a less prescriptive format than originally proposed.¹⁰⁷

Also in November 2009, TRACE launched its international anti-bribery Compendium, a publicly-available, fully searchable collection of international anti-bribery cases and investigations.¹⁰⁸ EITI, the Extractive Industries Transparency Initiative, completed validation—the EITI's quality assurance mechanism—of Azerbaijan and Liberia. Norway began implementation, and Indonesia and Iraq committed to the EITI.¹⁰⁹

106. See generally OECD Anti-Bribery Convention website, <http://www.oecd.org/daf/nocorruption>.

107. See generally Sixth Global Forum for Fighting Corruption and Safeguarding Integrity website, <http://www.gf6.pp.gov.qa/index.htm>.

108. See generally The TRACE Compendium website, <https://secure.traceinternational.org/compendium/>.

109. See generally Extractive Industries Transparency Initiative (EITI) website, <http://eiti.org/countries>.