

Top 2011 Enforcement Actions-Corporate Division

As December is a time for reflection on the past twelve months, I have been considering the FCPA Enforcement Action year. I submit for your consideration my Top 10 FCPA Enforcement Actions for 2011 in the Corporate Division. Happy New Year to all!

- 1. Alcatel-Lucent (\$137MM) or *non-cooperation will cost you***.-the company lost between \$10MM to \$20MM in penalty reduction because its initial investigative counsel did not fully cooperate with the DOJ after self-disclosure.
- 2. AON-(\$16.2MM)(NPA) or *it's still not a good thing to send that foreign official to Disneyland***-the world wide insurer Aon was issued an NPA for setting up a "educational fund" which paid for travel and entertainment of Nicaraguan insurance officials and then not recording it properly.
- 3. Armor Holdings (\$10.29MM)(NPA) or *you can step back from the abyss***-the company which had 92 separate instances of disguising bribes yet was able to obtain a NPA, through self-disclose, cleaning house, remediation and implementing a *best practices* compliance program.
- 4. Bridgestone (\$28MM)-*don't double down a FCPA violation by adding Anti-Trust violations***-the company was found to have engaged in both bribery of foreign officials by using such corrupt acts in furtherance of bid-rigging.
- 5. JGC (\$218.8MM)-*and then there were none***-the final corporate conclusion of the infamous Bonney Island, Nigeria Bribery Scandal. Joining with previously settled defendants, Halliburton, Technip and Snamprogetti/ENI to bring a total settlement amount of over \$1.5 *billion*. Four of the top 6 FCPA settlements of all-time came out of this enforcement action and that does not even count the \$147MM in disgorgement agreed to by Jeffery Tessler.
- 6. Johnson and Johnson (\$77MM)-*enhanced compliance obligations, the new normal?***-not only did J&J agree to implement a minimum *best practices* compliance program, it also agreed to "enhanced compliance obligations".
- 7. Maxwell Technologies (\$14.3 MM) -*start you day with a risk assessment***-one of several cases where the DOJ specified some of the parameters of the risks you should assess to inform your compliance program. Further the implementation or enhancement of any anti-corruption compliance program should occur after and not before you complete your risk assessment. (Same holds true for the UK Bribery Act)
- 8. SciClone (\$2.5MM to date) or *the plaintiff's bar finds compliance***-not an enforcement action but the settlement of a shareholder derivative action during the pendency of a FCPA investigation, where the company agreed to implement a *best practices* compliance program. Settlement of the enforcement action is yet to come.

9. Tenaris (\$8.9MM) or the SEC joins the DPA party-the first instance of the SEC entering into a Deferred Prosecution Agreement for the settlement of civil FCPA violations.

10. Watts Water (\$3.7MM) or it is a good thing to keep up with the news-the company's General Counsel read about an enforcement action involving a non-related company in a different industry but with the same sales model as his company and wondered if it the same sales model might be a FCPA problem for his company. It was.

This publication contains general information only and is based on the experiences and research of the author. The author is not, by means of this publication, rendering business, legal advice, or other professional advice or services. This publication is not a substitute for such legal advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified legal advisor. The author, his affiliates, and related entities shall not be responsible for any loss sustained by any person or entity that relies on this publication. The Author gives his permission to link, post, distribute, or reference this article for any lawful purpose, provided attribution is made to the author. The author can be reached at tfox@tfoxlaw.com.

© Thomas R. Fox, 2011