

## The Aon Case: Lessons from the Latest FCPA Action Involving the Americas

<http://mattesonellislaw.com/fcpamericas/>

*January 5, 2012*

The latest FCPA enforcement action to involve Latin America is against Aon Corporation. It ended in a \$16.2 million [settlement](#) with the DOJ and SEC for bribes paid in Costa Rica, Panama, and other developing countries throughout the world. Another oil and gas case? Maybe defense or telecommunications? No, this one involves insurance. Foreign bribery risk in the reinsurance industry is more common than one might think.

### **FCPA Exposure in Reinsurance**

Aon Corporation is a reinsurance broker. The business of reinsurance provides insurance for insurance companies. Reinsurance brokers have a particular interest in working for state owned-insurance companies that have monopolies in developing countries. The companies control considerable market share and are therefore highly exposed when a catastrophic event occurs. A volcano, earthquake, or hurricane can cause widespread damage in a country like Costa Rica. Thus, companies need reinsurance policies to spread the risk. These policies are brokered by a few international outfits, like [Willis Re](#), [Marsh](#), [JLT](#), and Aon.

The brokers' market is fiercely competitive. Costs are low. Profit margins are high. A broker stands to make 40% off of a deal reinsuring a state-owned company.

Where is the FCPA risk? As Aon shows, brokers regularly educate their clients. Trainings are standard in the industry and have a legitimate business purpose. Brokers need to teach their clients about the complicated products they sell so that clients can make sound decisions based on their particular needs. When insurers better evaluate risk, everyone benefits.

But at some point, a training becomes a bribe under the FCPA and other international anti-corruption laws. Aon's "Training and Education Fund" was originally created to educate employees of the Costa Rican state-owned insurance company, INS. Then it started being used for boondoggles. Seminars in Monte Carlo had no connection to the business of insurance. Resulting expenses were not recorded accurately on Aon's books and records, creating additional liabilities.

### **Common Industry Practice and Enforcement Sweeps**

The Aon settlement suggests that the practice of "entertaining" state officials is common in the industry. A business executive at Aon wrote an e-mail to others at the company stating that INS officials "started telling [another brokerage company] how [various reinsurers] were inviting their managers to seminars and were contributing positively to INS's technological improvement with all expenses paid by the reinsurers. The message was clear to both [the other brokerage

company] and ourselves that unless we did the same we would see the gradual process of disintermediation and a continued erosion of our orders.”

If this is true, Aon’s competitors would be wise to take a razor-focused approach to enhancing their anti-corruption compliance programs. FCPA enforcement officials have been vocal about their continued intention to conduct “sweeps,” industry by industry, sector by sector.

### **Medical Devices as a Benchmark**

How can companies in the reinsurance industry conduct legitimate training while not running afoul of international anti-corruption laws? They should take lessons from other industries that have already been hit by FCPA enforcement.

The medical devices industry is a helpful benchmark. It is currently being swept and, as a result, has developed common standards for its doctor education programs. The industry certainly has a legitimate business reason to pay doctors, including doctors from state-owned hospital (considered “foreign officials” under the FCPA). They have expertise in the use of the companies’ products – the latest prosthetic hip or leg – and are best positioned to train others in this complex technology.

To ensure that these practices are compliant, the industry has established commonly accepted rates to compensate doctors for the work, permissible hours for the actual training and preparation time, and appropriate travel expenses. Compliance programs are now built around these standards. Anything spent that exceeds these levels could be considered improper. Strict internal controls help ensure that employees follow these policies and that expenses are correctly recorded in books and records.

Reinsurance companies could certainly benefit from a study of compliance “best practice,” if they have not done so already.

*This article is reprinted from the FCPA Americas Blog. It is not intended to provide legal advice to its readers. Blog entries and posts include only the thoughts, ideas, and impressions of the authors and contributors, and should be considered general information only about the Americas, anti-corruption laws including the U.S. Foreign Corrupt Practices Act, issues related to anti-corruption compliance, and any other matters addressed. Nothing in this publication should be interpreted to constitute legal advice or services of any kind. Furthermore, information found on this blog should not be used as the basis for decisions or actions that may affect your business; instead, companies and businesspeople should seek legal counsel from qualified lawyers regarding anti-corruption laws or any other legal issue. The Editor and the contributors to this blog shall not be responsible for any losses incurred by a reader or a company as a result of information provided in this publication. For more information, please contact [Info@MattesonEllisLaw.com](mailto:Info@MattesonEllisLaw.com).*

*The author gives his permission to link, post, distribute, or reference this article for any lawful purpose, provided attribution is made to the author.*

*@2011 Matteson Ellis Law, PLLC*