

## WSGR ALERT

OCTOBER 2009

# DEPARTMENT OF JUSTICE EVIDENCES TREND TOWARD COMBINING FCPA AND TRAVEL ACT CHARGES

## Department of Justice Prosecutes the Payment of Bribes to Both Foreign Government Officials and Foreign Private Entities

On July 31, 2009, Control Components, Inc. (CCI), a Delaware corporation headquartered in Rancho Santa Margarita, California, pleaded guilty to violating both the anti-bribery provisions of the Foreign Corrupt Practices Act (FCPA), 15 U.S.C. §§ 78dd-1, *et seq.*, and the Travel Act, 18 U.S.C. § 1952. According to CCI's plea agreement, from 1998 through 2007 CCI made corrupt payments to employees and officers of both state-owned and private companies in more than 30 countries in order to obtain and retain business opportunities. Following its plea, CCI was sentenced by United States District Court Judge James V. Selna to three years' organizational probation, and ordered to pay an \$18.2 million criminal fine, implement a compliance program, and retain an independent compliance monitor for three years.

CCI's plea is part of a comprehensive prosecution that also has yielded charges against eight former executives of CCI. Six of those executives, including Stuart Carson, CCI's former chief executive officer, and Rose Carson, CCI's former director of sales for China and Taiwan, have pleaded not guilty to the 16-count indictment against them, and currently are scheduled for trial on December 8, 2009. The other two former CCI executives, Richard Morlok, CCI's former finance director, and Mario Covino, CCI's former director of worldwide factory sales, pleaded guilty to conspiracy to violate the FCPA in December 2008 and January 2009, respectively. They are scheduled to be sentenced on January 25, 2010.

The prosecution of CCI and its officers and employees illustrates the broad sway of the Department of Justice's efforts to prosecute corruption abroad. Not only will the Department of Justice prosecute bribes to foreign government officials through FCPA charges, it also will charge defendants for the payment of bribes to the employees of foreign *private* entities using other federal statutes, such as the Travel Act.

### The FCPA and the Travel Act

Pursuant to the FCPA's anti-bribery provisions, it is unlawful for any issuer, domestic concern, or person acting in the United States to offer anything of value to members of a foreign government, international organization, or political party for the purpose of: (1) influencing improperly the performance of their official duties; (2) inducing them to use their influence to affect a foreign government's or agency's decision; (3) obtaining or retaining business for anyone; or (4) directing business to anyone.

Pursuant to the Travel Act, it is unlawful to use interstate or foreign commerce with the intent to promote, manage, establish, carry on, or facilitate certain specified unlawful activities, including bribery in violation of *state* or *federal* law, and to thereafter perform or attempt to perform the unlawful activity. The Travel Act is significantly broader than the FCPA in that it encompasses conduct that violates either state or federal law, so long as

a defendant employs interstate or foreign commerce to effectuate such conduct. Thus, the Travel Act will reach conduct that violates state anti-corruption statutes, and thereby can be used to prosecute bribery of foreign privately owned entities. In the CCI prosecution, the government based its Travel Act charges on CCI's use of interstate and foreign commerce to commit acts that violated California's anti-corruption laws.

### The CCI Prosecution

CCI designs and manufactures control valves for use in the nuclear, oil and gas, and power generation industries worldwide. According to CCI's plea agreement, Stuart Carson was the primary architect of the company's "friend-in-camp" (FIC) business model, whereby its employees and agents would develop special relationships with employees of foreign state-owned and private customers. Stuart and Rose Carson, as well as the other individual defendants, caused employees and agents of CCI to make corrupt payments, also called "flowers," to the FICs in order to obtain or retain business. Some of these payments were approved or even personally made and negotiated by CCI senior executives. As the CCI plea agreement notes, in some instances CCI employees made corrupt payments directly to the employees of customers. CCI representatives also inflated the fee paid by the company to representatives by the amount of the corrupt payment, or would use a third party as a pass-through for the bribes.

*Continued on page 2...*

## **Department Of Justice Evidences Trend . . .**

*Continued from page 1...*

According to the plea agreement, the individual defendants arranged holiday trips to Disneyland, Hawaii, and Las Vegas for officers and employees of customers, while disguising them as training or inspection trips. The plea agreement also states that the defendants paid the college tuition for children of at least two executives employed by CCI's customers, held lavish sales events, and gave expensive gifts to customer employees.

Finally, CCI admitted that Stuart Carson and other of the individual defendants instructed CCI employees to withhold information from internal auditors, created false invoices to conceal the bribes, and destroyed documents relevant to CCI's internal investigation into commission payments, including by tearing up the documents and flushing them down the toilet in a CCI restroom.

As a result of these acts, from 2003 through 2007 CCI employees and agents made approximately 236 unlawful payments: \$4.9 million in corrupt payments to officers and employees of foreign state-owned customers in various countries including China and Malaysia, and \$1.9 million to officers and employees of private foreign companies. The sales related to these alleged corrupt payments resulted in net profits of approximately \$46.5 million.

### **Prior FCPA and Travel Act Charges**

While the CCI case is a recent example of the Department of Justice's ability and willingness to prosecute the payment of bribes to foreign private entities, this is not the first time that the Travel Act has been used in conjunction with the FCPA to fight bribery abroad.

In June 2005, the Department of Justice charged Steven Ott, Roger Young, and Yaw Osei Amoako, three former executives of ITXC Corporation (ITXC), an international telecommunications carrier based in New Jersey, with conspiring to violate both the FCPA and the Travel Act. As part of their guilty pleas, the three executives admitted that between 2001 and 2004 they conspired with each other and other former ITXC employees

and officers to make corrupt payments to employees of foreign state-owned and foreign privately owned telecommunications carriers in multiple African nations to obtain and retain contracts for ITXC. The three executives paid over \$267,000 in bribes, and ITXC made over \$11 million in net profits from the contracts secured through the bribes.

All three defendants received significant sentences. Ott was sentenced to serve five years' probation, including six months in a community confinement center and six months of home confinement, and to pay a \$10,000 fine. Young was sentenced to serve five years' probation, including three months in a community confinement center and three months of home confinement, and a \$7,000 fine. Amoako was sentenced to 18 months of imprisonment, a \$7,500 fine, and two years of supervised release.

More recently, on July 10, 2009, a federal jury in the United States District Court for the Southern District of New York convicted Frederic Bourke, co-founder of well-known handbag maker Dooney & Bourke, for conspiring to violate the FCPA and the Travel Act, and for lying to FBI agents. Bourke was an investor with co-defendant Viktor Kozeny in a scheme to gain control of the State Oil Company of Azerbaijan Republic (SOCAR), a state-owned oil and natural gas corporation in Azerbaijan. Using two investment vehicles, Minaret Ltd. and Oily Rock Ltd., Kozeny purchased a controlling block of vouchers distributed under the Azeri government's official privatization program. In early 1998, Kozeny began soliciting investments in Oily Rock. Kozeny's campaign yielded over \$180 million in investments by individuals, including Bourke, who invested \$8 million. Kozeny, who resides in the Bahamas and has successfully avoided extradition to the United States, has admitted that he gave over \$300 million in payments and gifts to senior Azeri officials in order to ensure that the Azeri government would proceed with SOCAR's privatization and redeem the purchase-option vouchers. In the end, the bribery proved fruitless when the Azeri government decided not to privatize SOCAR.

Although Bourke claimed during trial that he was unaware of the corrupt payments, the government argued that even if he had no knowledge of his business partner's bribes, his willful blindness to the payments was sufficient to establish his criminal culpability. The jury rejected Bourke's defense and found him guilty in connection with the payments. Sentencing is scheduled for October 13, 2009, and Bourke's lawyer has stated that his client is likely to appeal.

### **Implications for Individuals and Corporations**

The CCI case, as well as the prosecutions of ITXC executives and Bourke, reflect a strategy by the Department of Justice to broadly prosecute bribery abroad. These cases are reminders that the government has a number of resources at its disposal to prosecute corrupt payments in foreign countries. And although infrequently used together in the past, the FCPA and Travel Act provide the Department of Justice with strong weapons in its ever-expanding scrutiny of foreign bribery and corruption. Moreover, charges under other statutes, such as the mail and wire fraud statutes, 18 U.S.C. §§ 1341, 1343, could likewise be pursued in similar circumstances.

These cases underscore that it is imperative to engage legal counsel with criminal expertise in developing and implementing effective corporate compliance programs and appropriate due diligence procedures to avoid the Department of Justice's wide-ranging efforts to prosecute corruption overseas.

For more information or if you have questions about the CCI prosecution or other recent developments regarding the Foreign Corrupt Practices Act, please contact Leo Cunningham (lcunningham@wsgr.com), Robert Gold (rgold@wsgr.com), Elizabeth Peterson (epeterson@wsgr.com), Lisa Prager (lprager@wsgr.com), or Michael Sommer (msommer@wsgr.com) in Wilson Sonsini Goodrich & Rosati's white collar criminal defense practice.

*Continued on page 3...*

## **Department Of Justice Evidences Trend . . .**

Continued from page 2...



Wilson Sonsini Goodrich & Rosati  
PROFESSIONAL CORPORATION

This WSGR Alert was sent to our clients and interested parties via email on October 7, 2009.

To receive future WSGR Alerts and newsletters via email, please contact Marketing at [wsgr\\_resource@wsgr.com](mailto:wsgr_resource@wsgr.com) and ask to be added to our mailing list.

This communication is provided for your information only and is not intended to constitute professional advice as to any particular situation. We would be pleased to provide you with specific advice about particular situations, if desired. Do not hesitate to contact us.

650 Page Mill Road  
Palo Alto, CA 94304-1050  
Tel: (650) 493-9300 Fax: (650) 493-6811  
email: [wsgr\\_resource@wsgr.com](mailto:wsgr_resource@wsgr.com)

[www.wsgr.com](http://www.wsgr.com)

© 2009 Wilson Sonsini Goodrich & Rosati,  
Professional Corporation  
All rights reserved.