



Month in a Minute: November 2023

Hughes Hubbard's anti-corruption "Month in a Minute" offers a quick look-back at the biggest foreign corruption-related developments from the prior month. The Month in a Minute is intended to provide a quick snapshot of the latest news and developments. We hope you find it a useful and perhaps even enjoyable resource.

Highlights from November 2023 include probation for a 1MDB conspirator, a corporate declination, DPAs for two FCPA violators, a Speedy Trial dismissal, and a new DOJ anti-bribery initiative.

Ex-DOJ Employee Receives Probation for Involvement in 1MDB Scheme

On November 7, 2023, U.S. District Judge Colleen Kollar-Kotelly of the U.S. District Court for the District of Columbia sentenced George Higginbotham, a former congressional affairs liaison for the U.S. Department of Justice, to three months of probation for his involvement in two schemes to influence the U.S. government on behalf of China and 1MDB mastermind Jho Low. In 2018, Higginbotham pleaded guilty to one count of conspiracy to make false statements to a bank as part of two, ultimately unsuccessful, campaigns to lobby the Obama and Trump administrations. The first campaign was funded by Jho Low and sought to convince the Obama and Trump administrations to pressure the DOJ into dropping its investigation into 1MDB. The second campaign was an attempt to lobby the administrations into sending Chinese dissident Guo Wengui back to China. Per Higginbotham's admissions, to carry out these campaigns, Higginbotham helped conceal and funnel approximately \$100 million from Low and the Chinese government to his co-conspirators, who included Fugees rapper Pras Michel, Republican fundraiser Elliott Broidy, and political consultant Nickie Lum Davis. To facilitate these payments, Higginbotham created false contracts and lied to financial institutions. At one point, Higginbotham met with the Chinese ambassador and falsely assured China that Guo would be removed to China.

Based on Higginbotham's extensive cooperation, which spanned five years and led to the convictions of Michel, Broidy, and Lum Davis, Judge Kollar-Kotelly imposed a sentence of 3 months' probation, significantly less than the statutory maximum of five years in prison. In addition, Judge Kollar-Kotelly ordered Higginbotham to forfeit \$70,000 and complete 24 hours of community service.

Lifecore Biomedical, Inc. Receives Declination in Relation to Bribery Scheme

On November 16, 2023, the DOJ issued a declination letter announcing that it would not prosecute Lifecore Biomedical, Inc. ("Lifecore"), a Minnesota-headquartered life sciences company, for a bribery scheme involving its U.S.-based subsidiary, Yucatan Foods L.P. ("Yucatan"). According to the declination letter, between May 2018 and August 2019, Yucatan employees utilized a third-party intermediary to pay approximately \$14,000 in bribes to a Mexican government official in exchange for

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One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

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securing a wastewater discharge permit. In addition, employees of Procesadora Tanok ("Tanok"), a manufacturing plant owned by Yucatan, paid a third-party service provider approximately \$310,000, in part to create fake documents showing it had delivered wastewater to a municipal water company for disposal. The third party paid some of these funds to one or more local government officials who signed the false documents to make them appear legitimate. The bribery scheme took place prior to and after Lifecore's December 2018 acquisition of Yucatan and Tanok and allowed the companies to avoid paying approximately \$1.3 million in costs associated with on-site wastewater treatment as well as duties and fees to Mexican regulatory authorities. Lifecore did not discover the misconduct until after the acquisition, at which point it began an investigation into the potential misconduct. Pursuant to its Corporate Enforcement and Voluntary Self-Disclosure Policy, the DOJ declined to take action against Lifecore. The DOJ found that Lifecore timely and voluntarily self-disclosed the misconduct; indeed, Lifecore reported the misconduct to the government within three months of first discovering the possibility of misconduct and just hours after its internal investigation confirmed misconduct had taken place. The DOJ also noted that Lifecore engaged in timely and appropriate remedial measures, which included terminating a Yucatan officer who attempted to conceal the misconduct from Lifecore and its auditor, as well as withholding that officer's bonus and other compensation. Lifecore also agreed to disgorge the costs it had avoided paying by engaging in the scheme, which amounted to \$406,505 (this is less than the \$1.3 million that was initially avoided because Lifecore ultimately paid \$879,555 in regulatory duties and funds to Mexican regulators to build a wastewater treatment plant).

DPAs for UK Reinsurers Involved in Ecuador Bribery Scheme

On November 20, 2023, the DOJ announced that Tysers Insurance Brokers ("Tysers") and H.W. Wood Limited ("H.W. Wood"), two UK-based reinsurance brokers, each entered into a three-year deferred prosecution agreement ("DPA") with the DOJ to resolve charges that they conspired to violate the anti-bribery provisions of the FCPA. Between 2013 and 2017, Tysers and H.W. Wood paid approximately \$2.8 million to the then-chairman of two Ecuadorian state-owned insurance companies and three other Ecuadorian officials in exchange for business advantages that allowed them to obtain and retain contracts with state insurance companies. The bribes were paid using a network of bank accounts in Florida and elsewhere. In addition, Tysers paid \$20.3 million in commissions and H.W. Woods paid \$7.9 million in commissions and premium payments to an intermediary company that facilitated the bribe payments. According to their DPAs, Tysers and H.W. Wood retained commissions of approximately \$10.5 million and \$2.3 million, respectively, from the scheme.

As part of its DPA, Tysers agreed to pay a \$36 million criminal penalty and to forfeit \$10.5 million. Tysers received a 25% reduction off the bottom of the applicable guidelines fine range for its cooperation efforts, which included promptly responding to the DOJ's requests, making foreign employees available for interviews, sharing volumes of documents, making detailed presentations to the DOJ, and accepting responsibility. In addition, the DOJ noted that Tysers engaged in timely remedial measures, which included placing the employees involved in the misconduct on paid administrative leave, ending all business with the intermediary company, and enhancing its compliance program.

H.W. Wood initially faced a criminal penalty of \$22.5 million and disgorgement of \$2.3 million under the U.S. Sentencing Guidelines. However, based on H.W. Wood's financial condition and the DOJ's inability-to-pay guidance, the DOJ and H.W. Wood agreed to a criminal penalty of \$508,000 and no forfeiture. Like Tysers, DOJ granted a 25% discount in calculating H.W. Wood's criminal penalty under the Sentencing Guidelines due to its cooperation, which included promptly responding to DOJ requests, making employees available for interviews, making presentations to the DOJ, and accepting responsibility. H.W. Wood also received credit for its timely remedial measures, which included terminating the employee involved in the misconduct and revising and enhancing its compliance program, including its monitoring of third parties.

Fifth Circuit Affirms Murta Dismissal on Speedy Trial Grounds

On November 28, 2023, the U.S. Court of Appeals for the Fifth Circuit affirmed the district court's dismissal of the indictment against Paulo J.D.C. Casqueiro-Murta ("Murta") pursuant to the Speedy Trial Act, but remanded the case for further analysis and directed the case be reassigned to another judge on remand. Murta, a Portuguese citizen, was indicted on one count of FCPA conspiracy and three related money-laundering counts for his alleged involvement in setting up bank accounts to facilitate bribe payments to officials at Venezuela's state-owned energy company, Petróleos de Venezuela, S.A. ("PDVSA"). U.S. District Judge Kenneth Hoyt of the U.S. District Court for the Southern District of Texas first dismissed the charges against Murta in July 2022 based on lack of jurisdiction, statute of limitations, vagueness of the FCPA "agent" language, and failure to give a *Miranda* warning. Prosecutors appealed the dismissal, which the Fifth Circuit reversed. On remand, Judge Hoyt dismissed the case on the grounds that the government intentionally delayed proceedings in violation of the Speedy Trial Act and the Sixth Amendment. Judge Hoyt found that the government caused unwarranted delay when, on March 3, 2022, just three weeks before trial, it sought to postpone proceedings in order to review classified information that it admitted was irrelevant and failed to explain why it waited to raise the issue despite having previously reviewed the classified information on December 1, 2021. Judge Hoyt thus found that the delay was intentional and in bad faith and required dismissal with prejudice. On June 13, 2023, the DOJ appealed the dismissal.

In its November 28, 2023 opinion, the Fifth Circuit affirmed Judge Hoyt's dismissal pursuant to the Speedy Trial Act but reversed to the extent that the dismissal was made with prejudice, holding that Judge Hoyt failed to properly consider statutory factors relevant to the prejudice analysis. Specifically, the Fifth Circuit took issue with Judge Hoyt's conclusion that criminal charges pending against Murta in Portugal mitigated the need for charges in the U.S. As a result, the Fifth Circuit remanded the case so the district court could conduct the proper statutory analysis. The Fifth Circuit also directed that the case be reassigned to another district judge on remand.

DOJ Announces New International Corporate Anti-Bribery Initiative

On November 29, 2023, Principal Deputy Assistant Attorney General Nicole Argentieri spoke at ACI's 40th International Conference on the FCPA, where she announced the DOJ's new International Corporate Anti-Bribery Initiative ("ICAB"). The ICAB aims to foster cooperation and information-sharing in foreign-bribery investigations by building on existing bilateral and multilateral partnerships and creating new partnerships with foreign counterparts. The initiative will target regions where it can have the most impact on cooperation and case generation and will focus on key threats to financial markets and the rule of law. Three experienced FCPA Unit prosecutors will lead the initiative; however, the initiative will also draw on the expertise of individuals across the DOJ's Fraud and Money Laundering and Asset Recovery Sections, the DOJ's Criminal Division, as well as the State Department and local law enforcement.

FACT OF THE MONTH

As part of Thanksgiving celebrations, many Americans watch the annual Macy's Thanksgiving Day Parade, a Thanksgiving Day tradition since 1924. However, Macy's was not the first department store to host a Thanksgiving Day parade. That title goes to Gimbels, a Philadelphia-based department store that hosted the first Thanksgiving Day parade in Philadelphia in 1920.

2023 FCPA & Anti-Bribery Alert update!!

The latest edition of Hughes Hubbard's comprehensive annual FCPA & Anti-Bribery Alert is available for download. For the 15th consecutive year, the Alert discusses the last year's anti-bribery developments in detail, and once again includes a deep dive into FCPA enforcement, as well as anti-bribery enforcement and developments in France, Brazil, the UK, and China, and by multilateral development banks. [**Click here to receive your copy.**](#)