



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.

July 2023 highlights included a renewed effort by Congress to potentially close a perceived gap in the scope of the FCPA, denials of motions to suppress certain evidence in two separate FCPA-related prosecutions, an important decision by a district judge in New Jersey regarding the implications of internal investigations conducted while cooperating with the government, a development in the ongoing 1MDB saga, and an expedited appeal of the dismissal of an FCPA case in the Fifth Circuit. Plus, *Barbenheimer!*

Judge Denies Request to Suppress Emails Related to Bribery Case

On July 7, 2023, U.S. District Judge Eric N. Vitaliano of the U.S. District Court for the Eastern District of New York denied a motion to suppress electronically stored information ("ESI") made by Javier Aguilar, a former oil trader for Vitol Group ("Vitol"). Aguilar is accused of paying approximately \$920,000 in bribes to a former senior manager at Petroecuador, Ecuador's national oil company, as well as to an official in the Ecuadorian Ministry of Hydrocarbons in exchange for securing a \$300 million fuel oil contract for Vitol. Aguilar allegedly concealed the bribe payments through the use of shell companies, various bank accounts, and false consulting and service agreements. On March 3, 2023, Aguilar moved to suppress evidence the government obtained pursuant to a search warrant executed on Google, which sought Aguilar's emails and other ESI from between August and October 2020. Aguilar argued that the warrant was overbroad and unreasonable because it resulted in the seizure of 174,300 records. Aguilar also argued that the warrant was unreasonably executed because it took the government two-and-a-half years to complete its review of the emails and identify privileged and nonresponsive information. Judge Vitaliano rejected Aguilar's arguments and held that the scope of the warrant was specifically described and permitted the government to seize only responsive materials. Judge Vitaliano also held that the warrant was reasonably executed, noting that there is no established time limit as to when the government must review seized data to determine whether it falls within the scope of a warrant. Rather, the timing of such a review depends on the circumstances, and may take longer especially where, as in Aguilar's case, code words are used to facilitate the misconduct. Aguilar has pleaded not guilty. His trial is scheduled for January 2024.

Malaysian Authorities Announce Arrest of 1MDB's General Counsel

On July 12, 2023, Malaysian authorities announced that they had arrested Jasmine Loo Ai Swan ("Loo"), 1MDB's former general counsel and executive director from 2012 to 2013, for her involvement in the 1MDB bribery scheme. The 1MDB scheme is well documented, with prosecutions, investigations, and enforcement actions spanning several jurisdictions, including the U.S., Malaysia, Abu Dhabi, and Switzerland. As part of the 1MDB scheme, 1MDB officials, in concert with Goldman Sachs employees, raised \$6.5 billion through bond sales. Instead of being used for their stated

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purpose, the proceeds on the bonds sales were used for bribe payments to officials in Malaysia and elsewhere and kickbacks to individuals involved in 1MDB (and two Goldman Sachs employees). Loo allegedly served as a main point of contact in relation to three of the bond deals. Reports allege that, in late 2012, at least \$5 million from the bond deals was wired to a Swiss bank account Loo controlled in the name of a shell company. Loo faces up to 20 years in prison, among other penalties, for her actions. In addition, she has been named in a forfeiture suit filed by the U.S. government in the U.S. District Court for the Central District of California, which seeks to claw back millions of dollars in assets and money that was stolen from the 1MDB fund. According to reports, Loo's arrest may be a sign that Malaysian authorities are close to apprehending Jho Low, the alleged mastermind behind the 1MDB scheme. Low has evaded authorities since 2016 but is rumored to be hiding in Macau. Loo has indicated that she is willing to cooperate with Malaysian authorities.

U.S. Lawmakers Introduce Foreign Extortion Prevention Act

On July 18, 2023, Senators Sheldon Whitehouse (D-RI) and Thom Tillis (R-NC) in tandem with Representatives Sheila Jackson Lee (D-TX) and Joe Wilson (R-SC) introduced legislation in their respective chambers that would penalize foreign officials who solicit or accept bribe payments from U.S. individuals or companies, or who use the U.S. financial system to facilitate such payments. The legislation, known as the Foreign Extortion Prevention Act, covers an area of bribery not addressed by the Foreign Corrupt Practices Act ("FCPA"), namely the solicitation or acceptance of a bribe by a foreign government official. Rather than amend the FCPA, the Foreign Extortion Prevention Act would amend 18 U.S.C. § 201, which covers bribery of domestic public officials and witnesses. Under the Foreign Extortion Prevention Act, foreign officials who solicit or receive a bribe covered by the statute could face a 15-year prison sentence and a fine of \$250,000 or up to three times the amount of the bribe. Prior versions of the Foreign Extortion Prevention Act were introduced in 2019 and 2021, but failed to pass.

Court Denies Motions Seeking to Suppress Statements and Obtain *Brady* Materials Premised on Allegations of Corporate/DOJ Joint Investigation

On July 20, 2023, U.S. District Judge Kevin McNulty of the U.S. District Court for the District of New Jersey denied motions to suppress statements and motions seeking *Brady* materials filed by Cognizant Technology Solutions's ("Cognizant") former general counsel, Steven Schwartz, and former president, Gordon Coburn (together, "the defendants"). The defendants are charged with paying a bribe of \$2.5 million to officials in India in violation of the Foreign Corrupt Practices Act. After learning of the potential misconduct, Cognizant hired DLA Piper to conduct an internal investigation into the matter. In July 2022, Schwartz and Coburn moved to suppress statements they made to DLA Piper during the internal investigation, arguing that the statements were constitutionally inadmissible because DLA was acting as an arm of the government and had compelled the interviews. The defendants argued that DOJ policies, like the DOJ's 2015 Yates Memo, incentivize corporations to cooperate with the government and provide information related to individual executives and thus the company's actions should be deemed those of the government. In response, the government argued that it conducted its own investigation and did not direct or orchestrate Cognizant's investigation. Judge McNulty sided with the government and found that, while Cognizant provided information to DOJ, including witness interview reports, the defendants failed to show that the government directed Cognizant's interviews and thus the interviews were not fairly attributable to the government. Relatedly, the Court denied the defendants' request to compel the government to search the company's files for exculpatory evidence on the grounds that the defendants did not prove that the company worked on behalf of the government, that the company and the government worked jointly as a team or that the government had ready access to Cognizant's files. Schwartz and Coburn's trial is scheduled for October 2, 2023.

Fifth Circuit Orders Expedited Review of Second Murta Dismissal

On July 31, 2023, the Fifth Circuit issued an order expediting its review of the second dismissal of the U.S. Department of Justice's case against Paulo J.D.C. Casqueiro-Murta. Murta, a Portuguese citizen, was indicted on one count of conspiracy to violate the FCPA 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 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 Court of Appeals reversed in March 2023. On remand, Judge Hoyt dismissed the case for a second time on the grounds that the government intentionally delayed proceedings in violation of the Speedy Trial Act and the Sixth Amendment. In a memorandum opinion issued in early June 2023, 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. Per Judge Hoyt, the government admitted that the information was irrelevant, and failed to explain why it waited three months to raise the issue despite having reviewed the classified information on December 1, 2021. In light of the facts, Judge Hoyt found that the delay was intentional and in bad faith, and required dismissal with prejudice. On June 13, 2023, the DOJ appealed the dismissal. The Fifth Circuit subsequently issued an order for an expedited hearing on the matter.

FACT OF THE MONTH

July 2023 may ultimately be remembered for the unlikely pairing and co-dependent success of two Hollywood films, *Barbie* and *Oppenheimer*, collectively known as “*Barbenheimer*.” The two films share virtually nothing in common in terms of theme, genre, tone, color palate, or actors, but became linked by identical release dates and the power of social media creating a joint phenomenon that has led to one of the biggest box-office weeks in years. Together, the films have grossed over \$1 billion worldwide. Rather than cannibalizing each other, the movies became inseparable and each helped boost the performance of the other. Perhaps the most remarkable fact from *Barbenheimer*’s expectation-defying opening: by some estimates, more than 200,000 people in North America bought tickets for same-day viewings of both movies, a combined 294 minutes (4 hours and 54 minutes) of run time.