

## **Lindsey Convictions, Stevens Acquittal: Implications for the FCPA Compliance Officer**

It has been quite a week in the white collar criminal defense world. It began with the convictions, on all counts, of all defendants in the Lindsey Manufacturing case involving alleged violations of the Foreign Corrupt Practices Act (FCPA) and yesterday with the conviction of Raj Rajaratnam on all counts in his insider-trading trial. Sandwiched in between these two huge victories for the Department of Justice was the acquittal of former GlaxoSmithKline in-house attorney Lauren Stevens by the presiding Federal District Judge. As reported by the FCPA Judge Roger Titus granted an acquittal during a hearing and said,

*"I conclude on the basis of the record before me," Judge Titus said, "that only with a jaundiced eye and with an inference of guilt that's inconsistent with the presumption of innocence could a reasonable jury ever convict this defendant."*

This post will focus on the Stevens case and its implications for the compliance practitioner. One of the concerns I frequently hear expressed by compliance officers is their personal criminal liability, particularly if they work at a company where a Deferred Prosecution Agreement is in place. I believe that the Stevens case, contrasted with the Lindsey Manufacturing case, demonstrates the parameters of the type of conduct which will result in a criminal sanction.

Stevens had been indicted on four counts of making false statements, one count of obstruction of justice, and one count of falsifying and concealing documents related to the company's promotion of the anti-depressant drug for weight loss, which hadn't been approved by the Food and Drug Administration. The Lindsey defendants were charged with conspiracy to violate the FCPA and individual counts for violating the FCPA as well. One defendant was charged with a count of violation of money laundering laws.

However in the Stevens case she was providing legal advice to her company and then was dealing with US government regulators in an ongoing investigation. It is this prong which concerns compliance officers. As noted in yesterday's Wall Street Journal, "The government's defeat points to the difficulty of prosecuting individuals over alleged wrongdoing at large corporations, where teams of people may be involved in a matter and it is hard to show that executives intended to break the law." In the Lindsey Manufacturing case, it certainly appears that the government was able to demonstrate to the jury that the officers, directors and employees of Lindsey intended to violate the FCPA by the payment of bribes.

There is another obvious difference between the Lindsey defendants and Stevens. It is that she was an in-house lawyer (she left the company earlier this year) and the Lindsey defendants were from the business side of the company. Indeed as reported in the FCPA Blog, the trial judge said that the time of acquittal, *"There is an enormous potential for abuse in allowing prosecution of an attorney for the giving of legal advice. I conclude that the defendant in this case should never have been prosecuted and she should be permitted to resume her career."*

So what does all of this mean for the compliance officer? I have heard my colleague; attorney Mike Volkov say that no one is prosecuted for engaging in something less than *best practices*, they are prosecuted for engaging in *no practices* in the compliance arena. In Lindsey, it seems clear that the company had no compliance program to fall back on as some type of defense that the defendants had not engaged in bribery or did not have the intent to engage in bribery. In the Stevens case, she was able to demonstrate that she had relied on the advice of outside counsel in her legal work and she was not a rogue agent going off the reservation. So if your company has a compliance program, you should follow it. While as the compliance officer, you may well have to make some close or difficult calls, do not do so in a vacuum, obtain some legal advice or other assistance. One mechanism I have advocated is a Compliance Oversight Committee, which can review compliance decisions from the engagement and management of foreign business partners to all facets of a company's compliance efforts. This puts more resources in the hands of the compliance officer.

The differences and messages from the outcomes of Lindsey Manufacturing and the Stevens case seem clear. Do not engage in intentional conduct which violates the FCPA.

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