

"Gun Sting with No Powder"

On November 5, 1920, Two Oklahoma law enforcement personnel helped uncover the details of a liquor raid. In the process, one gallon of corn juice, one quart of gasoline, and one live prisoner were taken into custody. Seems paltry compared to the twenty-one citizens taken into custody in Las Vegas, Nevada where they were preparing to attend the 2010 Shooting, Hunting & Outdoor Trade ("SHOT") Show. But alas, it appears that in the end, the 1920 raid may have captured more loot than the 2010 raid.

On January 19, 2010, the Department of Justice issued a Press Release entitled "Twenty-Two Executives and Employees of Military and Law Enforcement Products Companies Charged in Foreign Bribery Scheme". The Release stated that "This ongoing investigation is the first large-scale use of undercover law enforcement techniques to uncover FCPA violations and the largest action ever undertaken by the Justice Department against individuals for FCPA violations". The press release also contained a warning from Assistant Attorney General Lanny A. Breuer to would be FCPA violators, "The fight to erase foreign bribery from the corporate playbook will not be won overnight, but these actions are a turning point. From now on, would-be FCPA violators should stop and ponder whether the person they are trying to bribe might really be a federal agent."

The indictments allege that the defendants engaged in a scheme to pay bribes to the minister of defense of a small African country. However, the indictments are slightly misleading due to the fact that a foreign official was never involved in the scheme, because the defense minister's existence was fabricated as part of an elaborate undercover operation crafted by the FBI in attempt to catch would be FCPA violators. During the undercover operation, the defendants allegedly agreed to pay a 20 percent "commission" to a sales agent whom the defendants believed represented the minister of defense, in order to win a portion of a \$15 million deal to outfit the country's presidential guard. In reality, the "sales agent" was an undercover FBI agent. The defendants were informed that half of the "commission" would be paid directly to the minister of defense. The defendants allegedly agreed to create two price quotations in connection with the deals, with one quote representing the true cost of the goods and the second quote representing the true cost, plus the 20 percent "commission." The defendants also allegedly agreed to engage in a small "test" deal to show the minister of defense that he would personally receive the 10 percent bribe.

The practical pointer for today's blog is this –there is a trend within the DOJ and SEC to perform industry wide investigations. If you are in an industry that is related to one that has already been investigated or is in the process of being investigated- don't stick you head in the sand. Be proactive and examine where you are and where you have been in your compliance program. Initially, the government began its industry wide investigations with an investigation into the customs clearance and permitting practices of the oil and gas services sector, which investigation encompassed global logistics firm Panalpina World Transport and eleven of its oil and gas services customers. In 2007, the DOJ and SEC would turn their attention to the orthopedic medical device industry and corrupt payments made to government-employed health care providers in Greece. The medical device industry sweep was followed closely by the Iraq "Oil for Food" cases. Consequently, It should be no big surprise that FCPA investigations are continuing to be structured to leverage leads learned in one investigation to catch multiple companies' throughout an industry.

Ultimately, the Gun Sting ended with a dud instead of a bang; however, it would be foolish to consider this the end of the industry sweeps. The industry sweep has simply proven too successful and profitable to let this FCPA enforcement plan go by the way side.

Tomorrow is another historical day for our country- Election Day. For those of you who are as tired of ugly ads as I am- we will celebrate not only the election of our President, but the end to fliers, phone calls at night and TV ads that are more annoying than normal. Therefore, tonight when you sit and wonder who will be the next president of the United States, ask yourself another question: Who exactly is a "Government Official", and tune in tomorrow to find out.

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