

## Who Will Have the Better Season?

The baseball season is upon us and the Houston Astros have opened with their worst start since 1983. At 3-9, things may be looking a bit bleak for the hometown heroes. However several sportswriters have pointed out that the 1983 team ended up with a winning record, at 85-77. Things may be looking equally as bleak for Hewlett-Packard (HP) right about now. Will HP, or the Astros for that matter, come out of this with a winning record? At this point, it is too early to tell but this posting will review some of the issues that have been reported on the HP/Russia bribery and corruption scandal in the past week.

Several of this commentator's colleagues have noted something along of the lines of "even the WSJ has reported on this scandal, so it must be bad". The April 15, 2010 edition of the WSJ reported that German and Russian authorities are investigating whether HP executives paid millions of dollars in bribes to win a contract in Russia. German prosecutors are looking into the possibility that HP executives paid about \$10.9 million in bribes to win a \$47.3 million contract. Under this scheme, company sold computer equipment, through a German subsidiary, to the office of the prosecutor general of the Russian Federation. The April 16, 2010, edition of the WSJ reported that the US Securities and Exchange Commission (SEC) has joined the Russian and German investigations.

The WSJ reported that German prosecutors were investigating into whether HP *executives* funneled the suspected bribes through a network of shell companies and accounts in places including Britain, Austria, Switzerland, the British Virgin Islands, Belize, New Zealand, Latvia and Lithuania, and the states of Delaware and Wyoming (yes, you read that right-the great state of *Wyoming*). The bribery was said to be lead by a German HP subsidiary called Hewlett-Packard International Sales Europe GmbH which, after receiving the payment for the Russian contract, sent about \$10.9 million in suspected bribes back to unidentified officials in Russia. The bribes were paid through three German agents, who submitted fake invoices for non-existent sales and then paid the money on as bribes to un-named Russian governmental officials. The contract, which was for hardware; including notebook computers, workstations and servers, were to be used by the office of the prosecutor general of the Russian Federation. It would seem that attempting to bribe prosecutors is generally not a good practice.

Both the Astros and HP would seem to have several unanswered questions about themselves right about now. We shall present some of these questions and hope they may lead to greater discussion of where the two may be going over the rest of the 2010 season.

***Why didn't HP self report?***

The April 15, 2010 WSJ article reported that by December 2009, German authorities traced funds to accounts in Delaware and Britain. In early 2010, German prosecutors filed a round of legal-assistance requests in Wyoming, New Zealand and the British Virgin Islands, hoping to trace the flow of funds to new sets of accounts. Further, HP knew of the German investigation by at least December 2009, when police in Germany and Switzerland presented search warrants detailing allegations against 10 suspects. The New York Times, in an article dated April 16, 2010, reported that three former HP employees were arrested back in December 2009 by German prosecutors. Although it was unclear from the WSJ article as to the time frame, HP had retained counsel work with prosecutors in their investigation. Apparently, since the SEC only announced it had joined the German and Russian investigation last week, HP had not self-disclosed the investigation or its allegations to the US Department of Justice (DOJ) or SEC. All of this leads to the second question; which is...

### ***Where were the SEC and DOJ?***

On April 16, 2010, the FCPA Professor wondered in his blog if it was merely coincidence that a few weeks ago the US concluded a Foreign Corrupt Practices Act (FCPA) enforcement action against the Daimler Corporation, an unrelated German company, for bribery and corruption in Russia and now it is German and Russian authorities investigating a US company for such improper conduct in Russia. The Professor put forward the following query: is such an investigation “Tit for tat or merely a coincidence?” And much like Socrates, he answered his own question with the musing “likely the later”. The WSJ LawBlog noted in its entry of April 16, 2010, that it would be somewhat unusual for the DOJ or SEC to stand by and watch European regulators conduct a sizable bribery investigation of a high-profile US company; phrasing it as “It’s like asking a child to stand still after a piñata’s been smashed open”. With all these investigations going on we next wondered about...

### ***HP’s Response***

HP has not taken all of this bad publicity lying down. Although the WSJ reported that HP learned of the investigation back in December, 2009, the only public mention of this “investigation” was in its March 2010 SEC filing. This filing did not disclose any potential FCPA violation but it did mention that "in many foreign countries" illegal business practices are "common". Such actions, undertaken "in violation of our policies...could have a material adverse effect on our business and reputation". Finally, as also reported in the WSJ, a HP spokesperson said, "This is an investigation of alleged conduct that occurred almost seven years ago, *largely* by employees no longer with HP. We are cooperating fully with the German and Russian authorities and will continue to conduct our own internal investigation". Well, at least *largely*, the (alleged) HP employees who engaged in *alleged* bribery and corruption are no longer employees. Since HP had deemed fit to keep at least some of the alleged bribers and corrupters on its payroll; what is the “Tone at the Top?”...

### ***Where was Carly?***

The Buzz, reported on April 18, 2010, that former HP CEO, Carly Fiorina who is one of three candidates seeking the GOP Senate nomination for the state of California, has sought to distance herself from the scandal, saying that she was unaware of the alleged crimes and that she has not been contacted as part of the probe. However, one of the other candidates, Assemblyman Chuck DeVore, noted the obvious, by stating that the alleged crimes took place during Fiorina's tenure as CEO of HP. This commentator, who does not live (or vote) in California, has wondered about the effect of the investigation on her candidacy. If pressed further, she might well admit to being *shocked* to find out that bribery and corruption had occurred under her watch.

As many of you may recall, it was HP who reportedly ordered its 155,000 channel operation partners to take an FCPA compliance training course last October. Interesting, HP required these channel operations partners to also pay for this training. Such training was required in a very short time frame or the channel operations partners risked losing their status with HP. Is it possible this effort by HP was because they knew that an investigation was ongoing regarding its FCPA compliance efforts? We anxiously await further clarification on that issue.

So who do you think will have the better season, the 3-9 Astros or HP?