



Major FCPA Case in Jeopardy Because of Prosecutors' Errors

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In late June, U.S. District Court Judge Howard Matz of the Central District of California, the judge in the Foreign Corrupt Practices Act (FCPA) case against Lindsey Manufacturing Co. and two of its executives, invited both sides to submit briefs on the question of whether the defendants' convictions should be dismissed. It had been revealed in post-verdict proceedings that the government violated a court order by failing to turn over portions of grand jury testimony from the FBI agent investigating the case.

On May 10, a jury convicted Lindsey Manufacturing; its CEO, Keith Lindsey; and its CFO, Steve Lee, on one count of conspiracy to violate the FCPA and five substantive FCPA violations. The case was based on allegations that the company, Lindsey, and Lee violated the FCPA by paying sales representative Grupo Internacional de Asesores SA to heap gifts and money on high-level executives of Comision Federal de Electricidad to get a contract with the state-owned Mexican utility company. Lindsey and Lee face a maximum of five years in prison if sentenced.

FBI Special Agent Susan Guernsey testified in front of two grand juries in the case: one that indicted Angela Aguilar, a director of Grupo Internacional de Asesores S.A., and a separate grand jury that indicted the company and the two executives. During cross-examination of Guernsey at trial, there was some suggestion that information that Guernsey provided to the grand jury may have been wrong and that certain key facts may have been omitted. The failure to turn over the testimony of Guernsey could have hindered the defense's ability to fully cross-examine her during the trial.

Judge Matz was clearly disturbed by the revelation that the testimony was withheld, calling it "a sloppy investigation and prosecution," and adding that "[t]here are a lot of troubling things that have gone on here." He went on to say, "I don't know if there was a stench that developed in this case, but there was a bad odor at times, and so the issue that I'm inviting both sides to address is ... something akin to the whole being greater than the sum of its parts justifies throwing out this conviction, because a lot of the parts that led up to this conviction are extremely troublesome."

Arguments on the motion to dismiss will be heard on September 8.



This case has been closely watched because it is seen as a recent and significant indication of the Justice Department's more aggressive use of the FCPA to go after U.S. companies. The Lindsey case was also the first-ever jury conviction against a corporation in an FCPA case, and Assistant Attorney General Lanny Breuer promised in a statement after the verdict that it would not be the last.

Now the case will be closely watched for yet another reason: It may be yet another instance of discovery misconduct or even ethics violations by federal prosecutors. In the wake of the Ted Stevens prosecution and other instances, the Justice Department recently set up a new unit to keep an eye on prosecutors' misconduct, but perhaps the lessons are not being learned quickly enough by prosecutors in Eric Holder's Justice Department.

The judge was right in seeking briefs on whether the verdict should be overturned, because the government had clearly failed to produce documents that were called for. Under the Jencks Act the government must turn over the grand jury testimony of witnesses who testify at trial. The failure to turn over the materials was also in direct violation of an order from Judge Matz. Just as Judge Matz has done in this case, courts need to strongly enforce the rules requiring parties to turn over required documents to prevent further abuses of the system and injustices for defendants.

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