



# ANTI-CORRUPTION DIGEST

July 2015

Welcome to Dorsey & Whitney’s monthly Anti-Corruption Digest. Anti-corruption enforcement crosses boundaries like no other, so keeping up to date is more important than ever. In this digest, we draw together news of enforcement activity throughout the world and aim to reduce your information overload. Our London, Minneapolis, New York and Washington DC offices edit the digest and select the most important material so that you can use this digest as a single source of information.

## ■ THE USA

### **Construction Company Pays \$17 Million to Resolve FCPA Offenses**

It has been reported that New Jersey based construction management company Louis Berger International Inc. (“Louis Berger”) has entered into a deferred prosecution agreement (“DPA”) with the DOJ.

It is said that between 1998 and 2000, the firm admitted paying \$3.9 million (£2.5 million) in bribes to foreign officials in various countries, including India, Indonesia, Vietnam and Kuwait. According to prosecutors, the payments were concealed as “commitment fees” and were allegedly in return for lucrative government contracts.

The terms of the DPA reportedly include a \$17 million (£11 million) criminal penalty, the implementation of enhanced internal controls and an agreement to retain a compliance officer for at least three years. Reports state that the DOJ gave Louis Berger the DPA because the company had self-reported the offenses and

assisted with the investigation, for example by making foreign employees available for interviews.

Louis Berger has said in a statement that it has taken responsibility for its misconduct, cooperated with the investigation and established an independent ethics and compliance department in an effort to reform. According to the Louis Berger’s Chairman, Nicholas Masucci, it is now a “much more efficient, responsible and transparent company”.

### **Army Sergeant Pleads Guilty to Conspiracy to Commit Bribery**

On July 2, U.S. Army Sergeant First Class Ramiro Pena Jr. reportedly pleaded guilty to conspiracy to commit bribery. While stationed at the Humanitarian Assistance Yard at Bagram Airfield in Afghanistan, Sergeant Pena was responsible for contracting with local vendors to purchase the supplies needed to support humanitarian relief efforts.

Together with his supervisor, Army Master Sergeant Jimmy Dennis, Sergeant Pena allegedly

received money and jewelry from suppliers in exchange for favorable treatment. Sergeant Pena is said to have admitted accepting a Rolex watch and \$100,000 (£64,000) in bribes. Between June 2008 and March 2009, Sergeant Pena and Sergeant Dennis are alleged to have entered into more than 200 contracts totaling over \$30 million (£19 million) in value.

According to reports, Sergeant Dennis also pleaded guilty to conspiracy to launder bribe payments in May 2014. He was sentenced to 41 months in prison and ordered to forfeit \$115,000 (£74,000).

### **Vice President Biden Warns Ukraine Stronger Action Against Corruption is Needed**

Vice President Joseph Biden delivered the closing speech at the U.S.-Ukraine Business Forum on July 13. Mr. Biden took the opportunity to warn the country that it must start actively curbing and punishing corruption. Audience members included Ukrainian Prime Minister Arseniy Yatsenyuk.

In his speech, Mr. Biden stated corruption was an “affront to the dignity of the people of Ukraine.” He recognized “Ukraine has a strategy and new laws to fight corruption,” but cautioned that “the changes being enacted now have to be real and lasting,” and must not “be reforms [only] on paper.”

After the speech, Mr. Biden held a private meeting with Prime Minister Yatsenyuk, Finance Minister Natalie Jaresko, and other officials from both countries. Although it was not included on President Barack Obama’s public schedule, it was later disclosed that he was present at the meeting, emphasizing the need for Ukraine to make progress in stamping out corruption.

### **Senate Commerce Subcommittee Conduct Hearings on FIFA Corruption Scandal**

The Senate Commerce, Science and Transportation Subcommittee on Consumer Protection, Product Safety, Insurance and Data Security held hearings on July 15 to examine the role the United States plays in the governance of international soccer. An aide to Senator Jerry Moran (R-Kan.), the subcommittee chairman, raised the threat of U.S. withdrawal from the organization: “If we don't think we can reform FIFA, do we need to start questioning our participation in the organization?”

FIFA President Sepp Blatter, a Swiss national, reportedly declined the subcommittee’s request to appear. Individuals scheduled to testify include U.S. Soccer Federation CEO Dan Flynn, Michael Hershman, who served on FIFA’s independent governance committee from 2011 to 2013, and Andrew Jennings, the British investigative journalist who led efforts to expose corruption in the organization. Mr. Hershman has been vocal about his dissatisfaction with FIFA’s response to last month’s indictments, telling the press “it is outrageous that Sepp Blatter continues in [his] role.”

Congressional aides said that the hearings would likely focus on the question of what U.S. soccer officials knew about the corruption and dysfunction inside FIFA, and what they plan to do to prevent corruption from occurring in the future.

### **Fourth Circuit Rejects Former Virginia Governor’s Appeal of Corruption Conviction**

Former Virginia Governor, Bob McDonnell, was convicted in September 2014 on 11 counts of corruption for accepting gifts in exchange for facilitating meetings between state officials and businessman Johnnie Williams. Mr. McDonnell’s wife, Maureen McDonnell, was also convicted on federal corruption charges

stemming from the same events. The McDonnells allegedly accepted approximately \$177,000 (£114,000) in gifts and favors from Mr. Williams while Mr. McDonnell was in office.

Mr. McDonnell is said to have contested his conviction on numerous grounds, including the trial court's rejection of his motion to be tried separately from his wife, the jury instructions on the "quid pro quo" and "official acts" elements of the charges, and the sufficiency of the evidence. The jury instructions on the "official acts" element included an instruction that a public official "need not have actual or final authority over the end result sought by a bribe payer so long as the alleged bribe payer reasonably believes that the public official had influence, power or authority over a means to the end sought." Mr. McDonnell argued that this instruction was erroneous because the subjective beliefs of a third-party cannot "convert non-official acts into official ones." The court declined to reach a holding on that argument, finding that even if Mr. McDonnell's position was correct, the error was harmless because Mr. McDonnell "most certainly had power and influence over the results Mr. Williams was seeking."

A wide range of Democratic and Republican politicians, legal scholars, and retired federal judges filed multiple amici briefs arguing that the convictions should be overturned. One brief, signed by 44 former state attorneys general, argued that the case federalized charges that should be handled at the state level, and unnecessarily criminalized routine interactions with lobbyists and interest groups.

The court's opinion, which was handed down on July 10, was unanimous. McDonnell has indicated he will be seeking *en banc* review of the decision.

## **Former Mayor of Harrisburg Charged with Nearly 500 Counts in Corruption Matter**

Stephen Reed, who served as mayor of Harrisburg, Pennsylvania from 1981 through 2009, is accused of using money from the issuance of public debt to buy thousands of artifacts for museums that were never built. The purchase of the items, which allegedly includes a \$6,500 (£4,000) "vampire hunter's set" and a \$14,900 (£9,500) playbill from Ford's Theatre on the night of Lincoln's assassination, is said to have contributed to the city's massive debt, which eventually forced the city into receivership and resulted in the forced sale of assets. The 499 counts include charges of running a corrupt organization, misappropriation of entrusted property, and bribery.

The current mayor noted that Mr. Reed could not have acted without the complicity of others and suggested that charges would be brought against the other individuals with culpability.

Mr. Reed has proclaimed his innocence and stated that he will fight the charges.

## **Department of Justice Files Civil Forfeiture Complaint Against Napoles**

The DOJ has initiated a civil forfeiture action to seize \$12.5 million (£8 million) worth of property and assets from Janet Lim Napoles. Ms. Napoles has been charged in the Philippines for her alleged role in the so-called "pork barrel scam."

Ms. Napoles has been accused of bribing Philippine officials to direct more than \$200 million (£128.5 million) in funding for development projects and disaster relief to NGOs under her control. After receiving the funds, the NGOs are alleged to have under-delivered on the projects, or in some cases, outright failed to perform the work at all.

Ms. Napoles is currently serving a life sentence in the Philippines for kidnapping and detaining her cousin Benhur Luy, a whistleblower who revealed the matter.

### **D.C. Circuit Upholds Ban on Political Contributions from Federal Contractors**

In a unanimous opinion issued on July 7, the U.S. Court of Appeals for the D.C. Circuit upheld a ban on all contributions to candidates for federal office, certain types of political committees, and political parties from federal contractors from the commencement of negotiations until performance under the contract is completed.

The court, sitting *en banc*, held that the government's interest in preventing corruption justifies the restriction. To support this point, the opinion provides a history of political corruption stretching back to the 1870's:

“As “[m]ore recent evidence confirm[ing] that human nature has not changed since corrupt quid pro quos and other attacks on merit-based administration first spurred the development of the present legislative scheme.”

The opinion names several members of Congress who have pleaded guilty to corruption charges in recent years and refers readers to “the Defense Department’s aptly named *Encyclopedia of Ethical Failure*.”

### **SEC Announces Declination for Gold Fields Ltd.**

On June 22, South African mining company Gold Fields Ltd. announced the SEC had closed its FCPA investigation and would not recommend an enforcement action against the company.

The investigation began in 2013 amid allegations that some payments under the 2010 Black Economic Empowerment (“BEE”) program were improper. The stated purpose of

the BEE program is to redress the inequalities established by the apartheid regime. After the BEE program was implemented, questions arose as to whether the program ended up unduly favoring politically connected individuals.

## **THE UNITED KINGDOM**

### **Former UN Consultant on Trial for Allegedly Accepting Bribes**

It has been reported that Sijbrandus Scheffer, a former United Nations consultant, allegedly accepted bribes to fix a £40 million (\$62 million) contract to supply drugs treating HIV and malaria to the Democratic Republic of Congo. According to reports, Mr. Scheffer, together with Guido Bakker, faces allegations which relate to the obtaining of corrupt payments from the Danish pharmaceutical company, Missionpharma, along with the subsequent laundering of payments through corporate structures in the UK.

Counsel for the prosecution, John Black QC, reportedly told the court that, “what the prosecution are alleging here is that Missionpharma paid bribes to Mr. Bakker and Mr. Scheffer to ensure they got the contract.” The prosecution further alleges that, with the assistance of a solicitor in London, Mr. Scheffer and Mr. Bakker incorporated a company called HC Consultants to receive the payments on their behalf. In total, it is estimated that the matter generated £700,000 (\$1.1 million) for the individuals.

In 2011, Missionpharma is said to have “accepted responsibility and admitted wrongdoing” with regards to the alleged payments made to Mr. Bakker and Mr. Scheffer, however, neither were investigated by the Danish authorities.

The trial is ongoing.

## Anti-Corruption Groups Wary of DPAs

In a letter to David Green, the Director of the Serious Fraud Office (the “SFO”), a number of corruption watchdogs have expressed their concern with regard to the introduction of Deferred Prosecution Agreements (“DPAs”) in the UK.

In essence, DPAs allow companies to pay fines in return for the suspension of criminal charges without prosecution and any formal admission of guilt. As reported in last month’s *Digest*, the agency has recently issued its first invitation letters giving companies the opportunity to enter into DPAs and the SFO’s Joint Head of Bribery and Corruption, Ben Morgan, recently provided an insight into how the SFO will use DPAs.

In their letter, Transparency International, Corruption Watch and Global Witness state that:

“The UK is embarking on DPAs at a time when their use has become increasingly controversial in the US and we believe that the UK must, and can, avoid the more controversial elements of the settlement process.”

The anti-corruption bodies list a number of key principles which they “urge” the SFO to take account of:

- Prosecution should be the norm and DPAs should only be offered where there is a very strong public interest argument in favor of their use.
- There must be no immunity from prosecution for individuals included in a DPA.

- A full admission of wrongdoing must be made by the company as a prerequisite for a DPA.
- The sanctions imposed by a DPA must have significant deterrent value.

The SFO is said to be considering the letter and will reportedly provide a detailed response to the specific points raised.

A copy of the letter can be found [here](#).

## Libor Trial: Update

As reported in last month’s edition of the *Digest*, Tom Hayes is the first individual to stand trial for allegedly rigging Libor, a rate designed to reflect the cost of interbank borrowing and to price \$450 trillion of financial products. The SFO alleges that between 2006 and 2010 Mr. Hayes established a network of brokers and traders from some of the most powerful financial institutions around the world to manipulate Libor rates to benefit him and prejudice the interests of others.

Mr. Hayes is said to have told the court that he had not done anything wrong and had just wanted to do his job as “perfectly as he could”. When asked by his defense counsel to respond to the accusations that the fake trades initiated by him amounted to bribes, he responded that:

“I wouldn’t describe it as bribes at all. They were primarily done because liquidity dried up ... I was trying to find the cheapest way for [my employer] to pay brokers.”

The prosecution alleges that Mr. Hayes persuaded and occasionally bribed a number of contacts in brokerages and banks to influence Libor in ways to increase his profits. Mr. Hayes was questioned about various electronic chats, including one that took place in 2009, in which he was liaising with a trader at another bank to

try to get the Yen Libor rate increased at a certain date. He is said to have repeatedly insisted on this position, until the other trader replied “enough, enough”. Mr. Hayes, who has been diagnosed with Asperger’s Syndrome, is noted to have told the court, “that’s my obsessiveness for you ... why say something once when you can say it five times?”

The trial continues.

## **THE REST OF THE WORLD**

### **Australia**

According to “top-secret” reports, the Australian arm of the Mafia allegedly paid millions of dollars in bribes to judges in New South Wales in return for lenient jail sentences. The reports also state that the price of some foods, such as certain types of seafood in Sydney, may be more expensive due to the Mafia allegedly having control of the supply chain across Australia.

It is said that the reports, which relate to police investigations between 2003 and 2014, highlight “major weaknesses” in the country’s anti-organized crime measures. One report allegedly described how leading Mafia figures had been “receiving information from a person connected to the police in Griffith and the court”. It continues with allegations that an Italian organized crime member based in Sydney received “light sentences ... because he paid off [Sydney] judges” with bribes said to total \$2.2 million.

The reports are said to have concluded that the protection provided by the judiciary and police to the Mafia came “in many forms, ranging from the simple criminal code of silence or perjury, to more sinister acts involving corrupt influence and abusing a position of responsibility”.

### **Brazil**

The investigation into corruption at Petrobras, the Brazilian state-run oil producer, continues to expand. Brazilian officials have reportedly requested that the U.S. DOJ investigate the use of offshore accounts by Odebrecht, a construction company accused of bribing Petrobras in exchange for receiving contracts. Prosecutors have also reportedly notified the DOJ that four non-Brazilian companies have paid bribes that are potentially actionable under the U.S. FCPA.

A related class action securities suit was filed on July 1 in the Southern District of New York, alleging that Braskem SA’s stock price was inflated as a result of bribes paid to Petrobras, which artificially lowered raw material prices. A separate lawsuit, brought by investors in Petrobras, survived a motion to dismiss in a ruling handed down on July 10. Petrobras had argued that the case should be dismissed because the company itself was the victim of “rogue” actors.

### **India**

A number of mysterious deaths linked to a high-profile corruption matter is said to have initiated public outrage in India. Reports state that since 2007, a number of politicians and businessmen have allegedly been involved in the manipulation, on a “huge scale”, of the selection process for thousands of governmental jobs along with that for places at professional colleges in the state of Madhya Pradesh. Tens of thousands of students and job applicants are said to have been affected, allegedly paying large sums to bureaucrats and politicians to rig test results.

According to reports, at least 30 people who stand accused of either facilitating or benefitting from the matter, reportedly worth \$1 billion (£642 million), have died since it first came to light. Anti-corruption activists are said

to be cynical, with one stating that, “it is not a coincidence that all the accused are dying of one ailment or another ... there is something more to it”.

The most recent spate of deaths has reportedly forced the Chief Minister of Pradesh, Shivraj Singh Chouhan, into reassigning the inquiry to a federal body. Having made the request, he reportedly stated that he “do[es] not want to leave anybody in doubt over our intention to clean the system and punish the guilty”. Mr. Chouhan is also said to have denied claims put forward by opposition politicians that he had himself benefitted from the matter.

### **Kazakhstan**

It has been reported that a subsidiary of Compass Group (“Compass”), a global market leader in the catering and services industry, allegedly paid bribes to members of the Kazakh government in return for high value contracts.

The matter surfaced last year when Karim Pabani, the finance director of Eurest Support Services (“ESS”) between 2011 and 2013, sued his former employer, which is said to have fired him after he blew the whistle regarding alleged corruption within the company. Mr. Pabani won the right to have his case heard by an employment tribunal in the UK, on the grounds that “the dismissal took place in the UK, to a UK citizen and resident”, despite attempts made by Compass to block it.

The new allegations reportedly appear in documents, said to relate to the ongoing employment tribunal, highlighting additional instances of bribery which seem to indicate that Compass was aware of such practices. According to reports, Mr. Pabani alleges in his tribunal witness statement that “a Compass Kazakhstan staff member was routinely given cash advances to make bribes to government officials”. Further to this, it is alleged that a

Compass document co-authored by the group’s Human Resources Director and its General Counsel, which concerned the Group’s implementation of adequate procedures to prevent bribery and corruption, highlighted that Compass was aware of the illicit payments:

“the Group became aware of small facilitation payments being made through the freight forwarders in Kazakhstan in order to release goods from customs and immediately required the practice to stop.”

According to reports, Compass has not yet provided a detailed response to the claims made by Mr. Pabani, however, a spokesman for the Group stated that, “Compass is vigorously defending these allegations”.

### **Romania**

The Prime Minister of Romania, Victor Ponta, has reportedly been indicted by prosecutors on charges of corruption. The charges are said to be in connection with his professional activities as a lawyer between 2007 and 2011.

Mr. Ponta is accused of forging documents to justify his income while he had a private legal practice. These are said to include expense claims worth 181,000 Lei (\$45,000/£29,000) from Dan Sova, a political ally. Prosecutors allege that he pretended that he carried out legal work to justify getting money from him. The funds were allegedly used to pay for two luxury apartments. Prosecutors further claim that after Mr. Ponta became Prime Minister in 2012, he appointed Mr. Sova a minister three times.

The Prime Minister is said to have disregarded calls from the country’s President, Klaus Iohannis, for him to step down, denying any wrongdoing.

## South Korea

The former Prime Minister of South Korea along with the Governor of a province in the south of the country, have reportedly been charged with bribery related offences. According to South Korean prosecutors, the individuals stand accused of receiving illegal political funds from a businessman who recently committed suicide.

Sung Wan-jong, who was the chairman of an insolvent construction company, Keangnam Enterprises, was reportedly found dead earlier this year on the day he was scheduled to appear before a court to face accusations of corruption. It is alleged that in a memo he left behind, Mr. Sung noted a list of eight politicians along with amounts of cash he claims to have given to five of them. The list reportedly includes Lee Wan-koo, who stepped down as the country's Prime Minister in April of this year with regards to the corruption matter, and Hong Joon-pyo, Governor of South Gyeongsang province.

The law in South Korea prohibits political contributions of more than 100,000 Won (\$88/£55). Mr. Lee is reportedly accused of taking 30 million Won (\$26,500/£17,000) in unlawful political donations from Mr. Sung in 2013 while Mr. Hong is alleged to have taken 100 million Won (\$88,000/£57,000) in 2013. Mr. Lee and Mr. Hong have both reportedly denied the charges against them.

## Tanzania

A Tanzanian court has reportedly sentenced the country's former Finance Minister, Basil Mramba, along with its former Energy and Minerals Minister, Daniel Yona, to three years in jail on corruption charges. The convictions are said to be the most high profile in the government's anti-corruption campaign.

Reports state that court documents highlight that the former ministers stood accused of abusing their authority by "arbitrarily" awarding a contract to audit gold in 2002. Tanzania is Africa's fourth largest producer of the precious metal. Further reports indicate that Mr. Mramba was also found guilty of abusing his position as Finance Minister by issuing illegal tax exemptions. It is alleged that he unlawfully exempted a subsidiary of an auditing firm from paying 11.75 billion Tanzanian shillings (\$5.3 million/£3.4 million). Lawyers for the former ministers have said that their clients will appeal.

## Ukraine

It has been reported that two high-ranking Ukrainian judicial officials have been detained on suspicion of corruption following raids on their homes and offices by the country's security service. The individuals are said to be the deputy head of the office's Central Investigations Department, Volodymyr Shapakin, and the deputy chief prosecutor for Kyiv Oblast, Oleksandr Korniets.

Reports state that the individuals stand accused of extorting bribes from a local sand excavation company. It is alleged that, having seized the company's equipment, the officials demanded and received 3.3 million Hryvnia (\$150,000/96,500) through intermediaries, for their "help" in returning the equipment to the company. The raids on their property is said to have uncovered "\$400,000 (£257,000) in cash, securities, jewelry (including 65 diamonds) and a Kalashnikov automatic rifle".

Following the detention of Mr. Shapakin and Mr. Korniets, an internal affairs controller unit within the Prosecutor General's Office is said to have stated that, "this case is a warning to all – no prosecutors are above the law."

If charged, the officials could face up to 12 years in prison.

---

## CONTACTS

---

### LONDON

**Nicholas Burkill**

Partner

+44 (0)20 7031 3783

[burkill.nick@dorsey.com](mailto:burkill.nick@dorsey.com)**Aidan Colclough**

Associate

+44 (0)20 7031 3720

[colclough.aidan@dorsey.com](mailto:colclough.aidan@dorsey.com)

### MINNEAPOLIS

**Katherine Arnold**

Associate

+1 (612) 492 6767

[arnold.katherine@dorsey.com](mailto:arnold.katherine@dorsey.com)**Beth Forsythe**

Associate

+1 (612) 492 6747

[forsythe.beth@dorsey.com](mailto:forsythe.beth@dorsey.com)**Annie Trimberger**

Associate

+1 (612) 492 6787

[trimberger.annie@dorsey.com](mailto:trimberger.annie@dorsey.com)

### NEW YORK

**Nick Akerman**

Partner

+1 (212) 415-9217

[akerman.nick@dorsey.com](mailto:akerman.nick@dorsey.com)

### WASHINGTON DC

**Thomas Gorman**

Partner

+1 (202) 442-3507

[gorman.tom@dorsey.com](mailto:gorman.tom@dorsey.com)

---

Corruption issues are also addressed in the Anti-Fraud Network's newsletters: see [www.antifraudnetwork.com](http://www.antifraudnetwork.com) for current and archived material; see also the Computer Fraud website at <http://computerfraud.us> and [www.secactions.com](http://www.secactions.com).

---

This update is provided for general informational purposes and is not intended to constitute advice. If you require advice on any of the matters raised in this update, please let us know and we will be delighted to assist.