Case Studies from Two Companies

Documents filed in two recent Foreign Corrupt Practices Act cases demonstrate what the government does—and doesn't—want from corporate defendants.

• The government doesn't want Titan Corp.'s compliance plan, which it described as no plan at all.

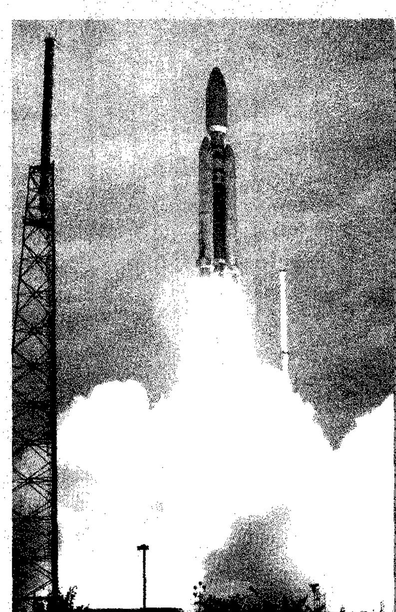
The San Diego-based defense and communications company in March 2005 paid the largest FCPA penalty to date, which included a $13 million criminal fine and $15.5 million in profit disgorgements after it pleaded guilty to funneling millions of dollars to an agent in the African nation of Benin. Included was $2 million toward the 2001 re-election campaign of Mathieu Kerekou, then Benin's president.

"Despite utilizing over 120 agents and consultants in over 60 countries, Titan never had a formal companywide FCPA policy, failed to implement an FCPA compliance program, disregarded or circumvented the limited FCPA policies and procedures in effect, failed to maintain sufficient due diligence files on its foreign agents, and failed to have meaningful oversight over its foreign agents," the SEC said in a litigation release announcing the joint settlement of the case with the Justice Department.

The scandal also killed a $1.7 billion buyout offer from Lockheed Martin Corp., which discovered the problems in 2004 as part of its own premerger investigation. Lockheed forced Titan to report the violations to the government but later pulled out of the deal after Titan failed to resolve the matter.

And Titan wound up with a compliance program and ethics officer anyway as part of its sentence, which included three years of supervised probation. The dubious distinction of entering Titan's guilty plea went to newly hired ethics officer David W. Danjczek, an international business consultant from Washington, D.C.

"I am not a lawyer, and I had never been in a federal court before in my life," Danjczek recalls. "It was a humbling experience and not one I care to repeat—to feel the full wrath of the law coming down on me."



Defense contractor Titan Corp. in 2005 paid the largest FCPA fine levied thus far.

• Schnitzer Steel Industries Inc. of Portland, Ore., could have experienced the law's full wrath as well, had it tried to let slide more than $1.8 million in corrupt payments made by a subsidiary to mill managers in China and South Korea. The bribes, paid from 1999 to 2004, were to induce the managers to buy scrap metal from Schnitzer. They included cash, jewelry, gift certificates, cosmetics, golf club memberships and time-shares.

Schnitzer caught a break after one of its employees returned from a company-sponsored FCPA training course in the summer of 2004 and told his superiors that he and other workers routinely had participated in making such payments. Schnitzer's audit committee hired outside counsel to do an internal investigation and reported the results to the government in November 2004.

Besides making the initial disclosure to the government, Schnitzer preserved electronic and paper documents, produced results of interviews with employees and urged them to further cooperate with the Justice Department by paying their travel expenses. The company also encouraged certain employees to hire their own lawyers and volunteered to pay their legal fees.

Prosecutors were particularly impressed that Schnitzer, a family-controlled business, also replaced senior officers and for the first time appointed a board of directors with a majority of independent members.

"In such a business environment, the decisions ... were undoubtedly quite painful, but also sent a strong message about the lack of tolerance for unethical and illegal business practices and about the importance of a modern corporate governance structure," deputy Justice fraud section chief Mark F. Mendelsohn wrote in an Oct. 15 letter to U.S. District Judge Garr M. King.

As a result, the subsidiary, SSI International Far East Ltd., pleaded guilty to FCPA violations and related charges and was fined $7.5 million, significantly less than the minimum $24.5 million fine recommended under the sentencing guidelines. Parent Schnitzer was permitted to enter into a deferred prosecution agreement with the government, which allowed it to escape the stigma of a criminal conviction. And though the government calculated the company's profits from the bribes at $61 million—about one-third of its net income during the period—it walked away from a companion civil action with a $7.7 million penalty.

"Here, there can be no question but that the cooperation provided by the company, under the leadership of Schnitzer Steel's audit committee, was sincere and unflinching," Mendelsohn told the judge. "Indeed, the cooperation was, in a word, exceptional."

Still, the government found Schnitzer's FCPA compliance planning inadequate and forced the company to rework it from top to bottom. But Schnitzer isn't a convicted felon.

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