



## DOJ Going After Smaller Companies for FCPA Violations

By Christopher M. Matthews | January 28, 2010

Last week's dramatic arrest of 22 individuals on charges that they violated the Foreign Corrupt Practices Act could have profound implications for small to mid-size companies, according to experts in the FCPA community.

While the companies themselves have not been charged, many believe it is likely they will ultimately be indicted, in part because of their size. Alexandra Wrage, the founder of TRACE International, a non-profit anti-bribery compliance association, said that because many of the companies had a small number of employees, it would be difficult to argue that the entire company was not involved in the bribery scheme.

"Yeah, I think the companies will be charged," said Wrage. "A lot of these individuals are senior executives and, most of these companies are small, and the individuals sort of are the company."

Wrage's point is backed up by a quick look at the companies that the 22 defendants are believed to work for, either currently or in the recent past. With some notable exceptions, like Smith & Wesson, almost all of the companies are relatively small. ALS Technologies, where defendants Daniel Alvarez and Lee Allen Tolleson work, is a family operation run out of Bull Shoals, Ark. Mushriqui Consulting L.L.C., owned and operated by sibling defendants John and Jeana Mushriqui, has only four employees.

The indictments announced last week allege that over a period of two and a half years, the 22 defendants – from both the U.S. and foreign countries — were led to believe they were participating in a bribery scheme to acquire a \$15 million contract from the minister of defense of an unnamed African country. The purported contracts to outfit the country's presidential guard were for products that included tear-gas grenade launchers, M4 rifles, bullet-proof vests and handguns.

The defendants, most of whom work in the arms and defense products industry, agreed to pay a 20 percent bribe to a sales agent supposedly representing the defense minister. In reality, the sales agent was an undercover FBI agent.

More than a week after the arrests, heads are still swirling as interested observers attempt to assess the implications of the largest-ever indictment against individuals under the FCPA. Many have focused on the most spectacular aspect of the news – the two and a half year undercover FBI investigation. But the implications of the case for smaller companies are worth heeding as well.

"It sends a strong message to a certain size firm — small and midsize," said Michael Hershman, the president of the Fairfax Group, a Virginia-based risk-management firm that deals with FCPA issues.

Before last week's sting, most of the recent notable FCPA cases have involved large, multinational corporations. German engineering giant Siemens AG's decision in 2008 to pay American and German authorities \$1.6 billion in fines for violations of the FCPA and other laws generated unprecedented media coverage.

Hershman said that focusing on small- and middle-market companies would be new territory for the DOJ's Fraud Section, which handles FCPA enforcement.

"There has been some conversation recently about DOJ focusing far too much on large companies," he said. "This is an indication that they're beginning to refocus their priorities."

But this new priority may catch smaller companies by surprise.

People in the FCPA community say that many small- to medium-sized companies believe they are not at risk because of their low profile. Hershman says this belief is misplaced.

As the economy becomes increasingly global, smaller companies are doing more business overseas. But, because they lack the resources of large multinational corporations, they are often forced to employ independent agents to represent them in foreign countries. This presents problems because these intermediaries frequently don't understand or don't care about the FCPA.

"Some of these businesses see the hiring of an agent, a middleman, as a quick route to easy money," Hershman said. "But they are not sufficiently educated about the FCPA and what the implications are."

Wrage said that smaller companies have been slow to install effective FCPA compliance procedures.

"[Small companies] have either completely ignored the issue, or they have made the decision that they're not at risk," she said. "[Last week's] case changes that."

Beyond the risk factor, many smaller firms don't implement steps to assure compliance because of its perceived cost, said Mike Koehler, an Assistant Professor of Business Law at Butler University who writes on and speaks about the FCPA.

"There's less of a corporate push or desire to put money into something that is proactive," said Koehler, who writes the FCPA Professor blog. "That's a hard pill for most CEOs and CFOs to swallow. They're business people, not lawyers."

Most legal practices that specialize in FCPA practices are large firms in Washington and New York whose fees may be out of reach for a smaller company.

But compliance doesn't have to be unaffordable for small to middle market companies, said Edmund Searby, the chairman of the Chicago-based McDonald Hopkins' white collar crime practice.

"It's not enough to have a paper policy, but it doesn't have to cost seven figures," said Searby, who has written on the FCPA and middle-market companies. "You can install a meaningful compliance policy on a budget."

Wrage said that there are a variety of compliance resources available to smaller companies. Trace, the non-profit organization that Wrage founded, offers access to the best compliance practices of large and small companies alike. In general, Wrage believes that companies must simply decide they will not tolerate bribery.

"Bribery is a crime, and it shouldn't be hard for [smaller companies] to say 'we're not going to do this,'" she said. "If they stood up and said 'this going to be a priority, we're going to take some prudent steps,' they could take themselves from high risk to low risk pretty easily."