

From: [REDACTED]

To: Undisclosed recipients;

Subject: FCPA Daily Digest

Date: Thu, 19 Dec 2019 22:56:02 +0000

Importance: Normal

FCPA DAILY DIGEST

Miami businessman sentenced in PetroEcuador bribery case

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Criminal Division weakens monitor diversity provision, sparking criticism

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DOJ Found New Ways To Coax Corporate Compliance In 2019

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Ex-Legal Chief Says Cognizant Withholding Defense Atty Fees

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Eight need-to-know compliance takeaways from Russia this year

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The FCPA Turns 42

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Miami businessman sentenced in PetroEcuador bribery case

By Clara Hudson

Frank Robert Chatburn Ripalda, a US and Ecuadorian citizen, was sentenced in a Miami federal court on 18 December to 42 months in prison for his role in a bribery scheme at Ecuador's state-owned oil company, PetroEcuador. In an October deal with prosecutors, Chatburn [pleaded guilty](#) to one count of conspiracy to commit money laundering.

As well as the prison time, US District Judge Marcia Cooke sentenced Chatburn to three years supervised release and ordered him to pay a \$40,000 fine. The chambers of Judge Cooke told GIR that the courtroom was packed, as one side of the gallery was filled with Chatburn's family and friends.

Chatburn was indicted in April 2018 for allegedly facilitating bribe payments worth \$3.2 million to officials at PetroEcuador to secure contracts for an Ecuadorian company, GalileoEnergy SA. Chatburn originally pleaded not guilty in 2018 to a variety of money laundering and Foreign Corrupt Practices Act-related charges.

US federal prosecutors in Miami, together with lawyers from the DOJ's criminal division in Washington, DC, have successfully prosecuted almost a dozen individuals in a scheme in which businessmen bribed PetroEcuador officials for contracts on a refinery project, and then laundered the proceeds in the US.

Counsel to Chatburn, Jackie Perczek at Black Srebnick Kornspan & Stumpf, told GIR that the defense team is "grateful" to the court for rejecting what could have been a sentence of over 15 years under the US sentencing guidelines. The 42-month sentence gives Chatburn "an opportunity to rebuild his life and return as a contributing member" of the community, Perczek said.

In [a sentencing memorandum](#) filed on 16 December, lawyers for Chatburn asked for a sentence below 53 months, which they determined to be the highest sentence imposed in the PetroEcuador case so far. That sentence was handed to Marcelo Reyes Lopez, a former lawyer at PetroEcuador. He was described by a co-conspirator as among the "bosses" who demanded payment.

Chatburn's lawyers described "deep scars" he accrued from his "sad and dark childhood". The lawyers, and a letter from Chatburn's brother to the court, referenced emotional and physical abuse as well as alcoholism in his family. His lawyers also described Chatburn's bid to live the American dream, moving from Ecuador to the US to attend college, where he "scrambled to make ends meet" and worked on campus for \$4.50 an hour.

The government, however, said in [its sentencing submission](#) on 13 December that Chatburn's crimes "were serious and deceitful", and asked that he be sentenced within the US guidelines range of 87 to 108 months.

Prosecutors alleged that the Miami businessman was also engaging in a completely separate corruption scheme involving Brazilian construction company Odebrecht.

In December, prosecutors upped the ante by adding allegations to Chatburn's indictment that he also [facilitated bribe payments from Odebrecht](#) executives to PetroEcuador officials. The indictment was the first public evidence in the US linking the Brazilian construction giant specifically to the PetroEcuador bribery allegations.

"This was not a momentary lapse in judgment or a single bad decision," prosecutors wrote in their sentencing memo.

The government alleged Chatburn engaged in "outright lies", for example when he repeatedly caused fake documents to be submitted to banks in order to justify illegal transactions.

The government emphasised that Chatburn's co-conspirator and childhood friend whom Chatburn recruited to the scheme, Jose Larrea, had a "comparatively lesser role in the overall conspiracy". Larrea was sentenced [to more than two years in prison](#) in November 2018 for his role in laundering \$1 million in bribes for PetroEcuador officials. Larrea's counsel argued at his sentencing hearing that he was an unwitting pawn of "his hero", Chatburn.

Larrea had "a comparatively unsophisticated and far less important role in the scheme to the defendant's opening of foreign shell companies and bank accounts across the globe from Switzerland to Curacao," the government said.

Counsel to Frank Roberto Chatburn Ripalda

Black Srebnick Kornspan & Stumpf

Partner Howard Srebnick and Jackie Perczek in Miami, Florida

For the DOJ

Trial attorneys Lorinda Laryea and David Fuhr of the FCPA unit in the criminal division's fraud section; Randall Warden and Mary Ann McCarthy in the criminal division's money laundering and asset recovery section; assistant US attorney Karen Rochlin at the US Attorney's Office for the Southern District of Florida resolution rules, the report said.

Criminal Division weakens monitor diversity provision, sparking criticism

By Ines Kagubare

In a little noticed move, the US Department of Justice criminal division appears to have scaled back previously robust language promoting ethnic and gender diversity in the selection of corporate monitors.

A provision in standard monitoring agreements, adopted in the waning days of the Obama administration, had stated that "monitor selections shall be made in keeping with the department's commitment to diversity and inclusion." But last year, the Trump administration DOJ changed the boilerplate to read that "any submission or selection of a monitor candidate by either the company or the criminal division should be made without unlawful discrimination against any person or class of person."

The newest wording was introduced by criminal division chief Brian Benczkowski in a footnote to an October 2018 [memo](#) on monitor selection policies. The provision was applied a year later in a [deferred prosecution agreement](#) with Ericsson. The Swedish telecoms company [settled](#) with the DOJ and the US Securities and Exchange Commission on 6 December, agreeing to pay \$1 billion to resolve FCPA conspiracy violations. Ericsson was required to retain a corporate monitor for three years, but the consultant has not yet been named.

[GIR reported](#) in February 2018 that more than 40 white men had been selected to be FCPA monitors since 2004, while only three women and three non-white male lawyers had been picked. No women of colour have ever been selected as monitors in a foreign bribery case.

In April 2018, the criminal division's previous diversity language from the Obama-era DOJ first appeared publicly in a DPA with [Panasonic Avionics](#); Paul Hastings partner Kwame Manley, who is African-American, was selected as the Panasonic monitor.

GIR previously reported that the diversity policy was strengthened in January 2017. The decision to beef up the language appears to have been a last-minute decision by the outgoing Obama administration DOJ, though neither the current Justice Department office of public affairs nor former Obama-era officials could or would clarify when exactly the stronger language was adopted. President Trump was sworn into office on 20 January 2017.

Pablo Quiñones, a former deputy chief of the criminal fraud section who served under both the Obama and Trump administrations, said the now-jettisoned stronger provision had been established to reflect the DOJ's commitment to diversity and to encourage companies to be mindful of inclusion when nominating and presenting monitors to the department. He expressed concern over its potential weakening.

"The fact that the department says don't 'unlawfully discriminate' against potential monitors does nothing to encourage companies to present diverse candidates, and makes it unlikely the department will ever know whether diverse candidates were even considered, let alone discriminated against," said Quiñones, who left the DOJ in January 2018 and now runs Quiñones Law PLLC.

The earlier push for diversity had brought results. Since February 2018, one woman and two non-white men have been appointed monitors in three ongoing FCPA settlements. They are Fresenius monitor Erin Sloane of WilmerHale; Panasonic Avionics monitor Manley of Paul Hastings; and Mobile TeleSystems monitor Leonard McCarthy of LFMcCarthy Associates.

Quiñones added: "I think the department could be taking a step back from being interested in how the company selects the monitor candidates it proposes."

However, Quiñones cautioned that it's too early to tell whether the language shift will have an impact on the actual practices of companies or the department in reviewing monitor candidates, adding that "what would be significant to find out is why DOJ decided to do it now."

A DOJ spokesperson told GIR in an email: "The monitor selection policy is intended to ensure both that the selected monitor is the most qualified and that there is no inside bias for or against any monitor candidate. Therefore, it is important that non-discrimination language be included in department agreements and policies.

"This provision change has no meaningful change in the Department's practice," the spokesperson added.

Other lawyers called the shift "a mistake" and "concerning".

Claudius Sokenu, a former senior official at the SEC and deputy general counsel at petroleum refiner Andeavor, told GIR the new language reflects the current administration's "patently obvious disregard for issues of diversity and inclusion, particularly racial diversity."

Sokenu added that "even if there is no obvious change in how monitors are picked, the message the change in language sends is that the department is no longer committed to seeking and encouraging the engagement of diverse monitors. In light of the historical disparity in this area, the language change is a mistake."

Hui Chen, the fraud section's former compliance counsel, said the two versions of the language exemplify the difference between ethics and compliance.

"Committing to diversity and inclusion is commitment to principles and values (ethics), while prohibition of 'unlawful discrimination' – not even de facto discrimination but only unlawful ones – is doing the bare minimum not to violate the law," Chen said in an email. Karen Popp, chair of the Women's White Collar Defense Association, said that although she has no knowledge of the motive behind the language shift, she hopes it doesn't minimise what the prior provision intended to do.

"It could just be a tightening of the language without there being any impact in practice... (but) I would hope that the Department of Justice is actively looking for ways to appoint more qualified women to monitorships," Popp said.

A white male alumnus of the fraud section, who asked to speak anonymously, said there is an "old boys network (at the DOJ) that can form and sometimes work, in effect if not by intent, to exclude diverse candidates with the highest qualifications from supervisory and monitorship positions."

He added that conservatives who now control the Justice Department have not prioritised diversity requirements in general, "so it is not shocking to see this policy dialled back to being no more than what the law already requires," the fraud section alumnus said, calling the shift "concerning".

The Biggest White Collar Cases Of 2019

By Jody Godoy

From men on the periphery of a presidential scandal to rich parents bribing their kids' way into college, 2019 was rife with headline-grabbing white collar cases, even while prosecutors suffered defeat in some of their most complicated fraud trials.

Here, Law360 looks back at a few of the biggest white collar rulings of 2019.

In With a Bang, Out With a Whimper

Several complex, high-profile financial fraud cases ended in acquittals by judges or juries in 2019, raising questions about fraud cases dealing with sophisticated markets and transactions. While some defense attorneys think the losses indicate a rejection of prosecutorial overreach, others view the rare losing streak as an indicator prosecutors aren't playing it safe.

Just this month, a team of prosecutors from across the [U.S. Department of Justice](#) had a jury [reject their theories](#) at the \$1 billion securities fraud trial of Jean Boustani. The complex case theory was that investors in Mozambican sovereign debt were defrauded by not

being told that [Credit Suisse](#) and Russian bank VTB won the country's loan business through bribes. Boustani, an executive at shipping services firm Privinvest, took the stand and admitted to bribery but denied defrauding investors.

In October, a Brooklyn federal jury acquitted three former executives at hedge fund [Platinum Partners](#) on charges of defrauding investors by concealing cash flow problems at their funds. A judge [also overturned](#) a guilty verdict on other charges for chief investment officer David Levy and granted Platinum founder Mark Nordlicht a new trial, saying evidence of criminal intent was lacking.

In March, a California federal judge [made a bold move](#) to acquit former Barclays trader Robert Bogucki at trial without sending the case to the jury. Prosecutors from the DOJ's Fraud Section had sought to convict Bogucki of frontrunning a foreign currency options transaction for Barclays' client HP in order to make more money for the bank at HP's expense. The judge found that such conduct "violated no clear rule or regulation."

And the long-running, heavily litigated Fraud Section case against former Libor derivatives traders Matthew Connolly and Gavin Black ended in [no jail time](#) for either defendant. Along the way, the judge criticized the government and admonished prosecutors for using [Deutsche Bank's](#) lawyers at [Paul Weiss Rifkind Wharton & Garrison LLP](#) as government investigators.

The Connolly and Platinum cases are still subject to appeal.

Considered together, they show courts reacting where cases are more gray than black and white, said Sean Hecker of [Kaplan Hecker & Fink LLP](#), who defended Bogucki.

"They are cases where I think judges and juries are finding the government overreached," Hecker said. "Either in terms of how they conducted the investigations or in the conduct they are attempting to police where the markets involved were unregulated or the rules weren't clear, or at the end of the day it doesn't feel like it should be the U.S. government that is the one pursuing enforcement actions."

On the other hand, Peter W. Baldwin, a partner at [Drinker Biddle & Reath LLP](#) who left the Brooklyn U.S. attorney's office last year after a decade as a prosecutor, sees them as evidence that prosecutors are not balking at difficult cases.

"If you are going to do the tough cases, you are not going to win them all. They are tough for a reason," Baldwin said.

The cases are U.S. v. Boustani et al., case number [1:18-cr-00681](#) and U.S. v. Nordlicht et al., case number [1:16-cr-00640](#), in the [U.S. District Court for the Eastern District of New York](#), U.S. v. Bogucki, case number [3:18-cr-00021](#), in the [U.S. District Court for the Northern District of California](#) and U.S. v. Connolly et al., case number [1:16-cr-00370](#), in the [U.S. District Court for the Southern District of New York](#).

Prosecuting the Rich and Powerful

One of the biggest cases of 2019 was one nobody expected: the March indictment of dozens of parents and university coaches for their parts in a national scheme to trick colleges into admitting students on false pretenses.

Dubbed Operation Varsity Blues, [the case](#) took aim at a scheme orchestrated by admitted mastermind William "Rick" Singer involving cheating on tests and creating fake athletic achievements. The well-heeled parents who allegedly paid Singer to help their kids get admitted to top schools included former [Willkie Farr & Gallagher LLP](#) co-chair Gordon Caplan, Hollywood actresses, private equity investors and executives. Some, including Caplan and Singer, have pled guilty, while others are fighting the charges.

The case put the world of higher education on notice and prompted universities to consider whether their own admissions processes, sports programs and donor policies are airtight, said Ilene Jaroslaw of [Phillips Nizer LLP](#).

"If universities are wise, they will find this stuff before the government does," Jaroslaw said. "The smart thing to do in terms of minimizing reputation risk, is to bring in people to do an independent investigation, see if there is a problem and fix it."

The case was one of several that seemed to illustrate the maxim that nobody is above the law.

After outcry over a decade-old non-prosecution deal for Jeffrey Epstein, federal prosecutors in Manhattan [charged the wealthy financier](#) with trafficking underage girls. Epstein died by suicide in federal detention, leading to charges against guards who allegedly failed to check on him, and federal prosecutors [continue investigating](#) others who may have been a part of the alleged trafficking.

Varsity Blues' Caplan wasn't the only big legal name caught up in a criminal scandal this year. Legal provocateur and celebrity lawyer Michael Avenatti was slapped with three separate cases variously alleging he stole money from multiple clients and used another client's intel to try to extort millions from [Nike](#). He [pled not guilty](#) in each case.

For their part, some courts renounced better treatment for wealthy defendants this year. In a significant ruling, the Second Circuit [put the kibosh](#) on rich defendants remaining at home instead of in pretrial detention simply because they can afford to pay for private security.

The cases are U.S. v. Sidoo et al., case number [1:19-cr-10080](#), in [U.S. District Court for the District of Massachusetts](#), U.S. v. Epstein, case number [1:19-cr-00490](#) and U.S. v. Avenatti, case number [1:19-cr-00373](#), in the U.S. District Court for the Southern District of New York and U.S. v. Boustani, case number 19-1018, in the [U.S. Court of Appeals for the Second Circuit](#).

FCPA Enforcement Hits High Watermark

This year set a new high watermark for Foreign Corrupt Practices Act enforcement. Corporate FCPA settlements brought in a record \$1.6 billion dollars, and the DOJ's FCPA Unit charged 34 individuals, more than in any previous year.

The record in penalties can largely be attributed to high dollar settlements with Ericsson and [Mobile TeleSystems PJSC](#) over separate allegations they bribed foreign officials to win government contracts. Ericsson paid a [\\$1 billion settlement](#) and MTS paid [\\$850 million](#).

This year also saw the [resolution](#) of the long-outstanding [Walmart Inc.](#) investigation, in which the retailer admitted failing to ensure subsidiaries in Brazil, China, India and Mexico had adequate anti-corruption programs.

Derek Cohen, a partner at [Goodwin Procter LLP](#), said that continued enforcement in the FCPA area was an exception to the sharp decline in white collar cases reported by Syracuse University.

"They sort of buck the trend of what the DOJ has been doing with white collar cases in general," Cohen said. "So the fact that you are seeing a more robust enforcement in the FCPA area is noteworthy in and of itself."

Perhaps the most highly anticipated FCPA trial was that of former [Alstom SA](#) executive Lawrence Hoskins. After years of litigation over whether Hoskins could be an "agent" of one of the parent company's subsidiaries, a jury ultimately decided that he was one when hiring consultants to bribe Indonesian officials and [convicted him](#) on 11 counts. The trial judge is now considering post-trial motions.

The case is U.S. v. Hoskins, case number [3:12-cr-00238](#), in the [U.S. District Court for the District of Connecticut](#), among others.

Cracking Down on Foreign Influence

Foreign interference in U.S. politics and elections has been a focus area for the DOJ over the past few years. While there were previously high-profile guilty pleas, 2019 saw two connected individuals face trial for alleged failures to register work for foreign governments as required by the Foreign Agents Registration Act.

Prosecutors' efforts met with skepticism in the courts. Former [Skadden Arps Slate Meagher & Flom LLP](#) partner Gregory Craig saw a FARA-related charge thrown out ahead of a trial where he was [ultimately acquitted](#). And Bijan Rafiekian, a former business partner of ex-national security adviser Michael Flynn, was convicted but saw those [convictions vacated](#) by the trial judge. The government has appealed the ruling.

Tessa Capeloto of [Wiley Rein LLP](#) said that while mixed trial results may give prosecutors temporary pause, they are still "just the start" of an effort begun a couple years ago to aggressively enforce FARA.

"I think we are going to continue to see criminal prosecutions for willful violations. I don't think this is going to die down anytime soon," Capeloto said.

This year also saw multiple cases alleging campaign finance violations, some of them involving straw donors who allegedly funneled foreign cash into U.S. elections.

On that front, the biggest ongoing case is in Manhattan against Lev Parnas and Igor Fruman, associates of President Donald Trump's personal lawyer Rudy Giuliani. The pair have [denied allegations](#) of funneling Russian money into U.S. elections.

Another case brought in D.C. illustrated how foreign corruption can have effects in the U.S. Prosecutors allege that Malaysian financier Jho Low [channeled cash](#) embezzled from the country's sovereign wealth fund into President Barack Obama's 2012 reelection campaign via former Fugees member Pras Michel.

The cases are U.S. v. Parnas et al., case number [1:19-cr-00725](#), in U.S. District Court for the Southern District of New York, U.S. v. Craig, case number [1:19-cr-00125](#), U.S. v. Rafiekian et al., case number [1:18-cr-00457](#), and U.S. v. Michel et al., case number [1:19-cr-00148](#), in U.S. District Court for the District of Columbia.

DOJ Found New Ways To Coax Corporate Compliance In 2019

By Jody Godoy

This past year, multiple federal enforcement agencies issued guidance on what they expect to see in corporate compliance programs and offered credit for self-reporting, an indicator that the [U.S. Department of Justice Criminal Division's](#) emphasis on compliance is catching on.

Over the past several years, the Criminal Division has developed policies that offer incentives for companies to self-report violations, cooperate with prosecutors and remediate the situation by improving their compliance programs. The division also issued a [guidance document](#) in April detailing how prosecutors should evaluate corporate compliance programs.

That 19-page document built on DOJ policies dating back to 2012, and standards the [Organisation for Economic Co-operation and Development](#) published even before that, said Kara Brockmeyer of [Debevoise & Plimpton LLP](#). Brockmeyer added that the guidance provides a lot of insight into what prosecutors are looking for.

“For compliance officers at a company, it does give you a really good window into how the DOJ will evaluate your compliance program if you run into a problem,” Brockmeyer said.

Brockmeyer noted, however, that while the compliance guidance presents a picture of best practices at a large corporation, it may not make sense for every company to tick all the boxes. In general, she noted that prosecutors mostly encounter compliance programs at their worst, when violations are discovered, or at their best when a company has already gotten ahead of the problem.

“It’s not like companies are coming to the DOJ before they have a problem, saying, ‘Let me show you what my compliance program looks like,’” she said.

Further discussion of industry-specific best practices would be helpful to flesh out the guidance for a range of companies, Brockmeyer said.

The DOJ’s Antitrust Division issued [similar guidance](#) on compliance expectations in July, along with an announcement that the division would start considering the status of companies’ compliance programs when making charging decisions.

In May, the Department of the Treasury’s [Office of Foreign Assets Control](#) also [unveiled guidance](#) on what it considers the “essential components” of a sanctions compliance program.

Back at the DOJ’s Criminal Division, officials continued to tweak the Foreign Corrupt Practices Act corporate enforcement policy — a leniency policy started in 2016 as an experiment which is now part of the DOJ prosecutors’ handbook. The policy states that companies can presume prosecutors will decline to bring charges where the company self-reported a potential violation, fully cooperated with prosecutors and effectively remediated the situation.

The change to the FCPA corporate enforcement policy that had the most impact in 2019 was a [revision in March](#) that eliminated a previous requirement that companies had to essentially ban employees from using disappearing message apps in order to receive full remediation credit. The amended policy only requires companies to put safeguards in place around the use of apps such as WhatsApp that allow users to keep messages private by automatically erasing them.

The change made a difference for companies where such apps are used in the course of business, said Pam Davis of [Winston & Strawn LLP](#).

“That ended up being significant, because a lot of companies were struggling with it. Before, the DOJ was effectively taking away a business technology choice,” Davis said.

The DOJ’s National Security Division followed the Criminal Division’s lead and adopted the broader concept of offering lenient treatment to companies that self-disclose, cooperate and remediate, announcing on [a policy](#) on Dec. 13 styled after the FCPA corporate enforcement policy.

Karen A. Popp of Sidley [Austin LLP](#) welcomed the additional transparency provided by the updated policies and new guidance, saying they make public what would previously only be revealed in defense attorneys’ meetings with the DOJ attorneys after a problem has already arisen.

“Transparency can help companies who are not under investigation by the government and in preparations for those who are subject to DOJ scrutiny,” Popp said.

However, she said it remains to be seen how the policies and guidance shake out in practice.

“We will need more time to assess how the guidance is being applied by the DOJ attorneys,” Popp said.

Ex-Legal Chief Says Cognizant Withholding Defense Atty Fees

By Jody Godoy

Data technology firm Cognizant is flouting its obligations under an employment agreement to pay for its former chief legal officer’s defense against foreign bribery charges, the attorney told a Delaware court Monday.

Steven Schwartz was indicted in February alongside former [Cognizant Technology Solutions Corp.](#) President Gordon Coburn over their alleged involvement in bribing an Indian official to secure a permit to build Cognizant’s office in Chennai. In a Delaware chancery court suit, Schwartz now claims the company is shirking an indemnification agreement by cutting off fees for one of his three defense firms.

According to the Delaware complaint, one of Cognizant’s lawyers at [Latham & Watkins](#) dropped the news the day before Thanksgiving that the company was going to stop advancing fees to Bohrer PLLC, which is representing Schwartz along with BigLaw mainstay [Paul Weiss](#) and New Jersey-headquartered [Gibbons PC](#).

The cut-off firm was founded by Jeremy Bohrer, the former general counsel at Level Global Investors when the hedge fund was a target of Manhattan federal prosecutors’ crackdown on insider trading.

Level Global famously got its settlement with the [Securities and Exchange Commission refunded](#) after a favorable Second Circuit ruling

set a higher bar for insider trading cases. That ruling [also overturned](#) Level Global co-founder Anthony Chiasson's conviction.

Samuel T. Hirzel, who represents Schwartz in the Delaware suit, told Law360 the former chief legal officer has a right to defend his innocence via counsel of his choice.

"As a former chief legal officer, he has extensive experience assembling legal teams and has chosen the team that he believes can most ably represent him. And he has a clear contractual right to the advancement of fees for that team," Hirzel said.

Schwartz started lawyering up in 2016 when Cognizant began investigating potential violations of the Foreign Corrupt Practices Act in the company's operations in India. He hired [Hoguet Newman Regal & Kenney LLP](#) as employment counsel and then added [Steptoe & Johnson LLP](#).

As background to the Bohrer dispute, the complaint alleges that in 2017, Cognizant withheld fees from Steptoe while demanding the return of Schwartz's company-issued laptop. Schwartz alleged in the complaint that the laptop contained material important to his defense. A source familiar with the facts confirmed that the company had sought the return of a copy of the laptop's contents that Steptoe had made, and that the laptop itself had already been returned.

In mid-2018 after learning he was a target of the criminal investigation, Schwartz hired Bohrer's firm and replaced Steptoe with Paul Weiss, according to the complaint. Gibbons came on after that and appeared in the criminal case two months ago.

Cognizant paid Bohrer's legal fees through September, only to reverse course last month, Schwartz claims. The underlying agreement states that legal expenses will be "presumed conclusively to be reasonable" if Schwartz's attorneys have signed affidavits calling them reasonable.

"The company has not offered any reason why the company's own views of reasonableness suddenly override the company's contractual obligations under the indemnification agreement and Mr. Schwartz's judgment in his selection of counsel," he wrote.

Cognizant issued a statement Wednesday pointing out that Schwartz "has hired three separate law firms" in the criminal case but saying that the dispute only relates to Bohrer, not the others.

"Cognizant has advanced legal fees to Mr. Schwartz for more than two years and has had no billing disputes with two of his law firms. As this billing dispute with Bohrer PLLC has moved into court, we look forward to vigorously defending ourselves in court," the company said.

The dispute comes as pretrial litigation in the criminal case ramps up. Schwartz and Coburn have filed motions to dismiss the case, and Schwartz's attorneys at Gibbons filed a letter last week citing "serious issues relating to the government's close coordination" with the company and its lawyers.

Cognizant and construction firm [Larsen & Toubro Construction](#) have been represented in the matter by Latham, [DLA Piper LLP](#), [Goodwin Procter LLP](#) and [Debevoise & Plimpton LLP](#), according to the letter.

Schwartz alleged that prosecutors' "coordination with, and reliance upon" Cognizant and its counsel during the government investigation precipitated prosecutors' failure to hand over evidence that Schwartz could use for his defense.

Prosecutors replied in a filing on Dec. 18 that claims they had outsourced the investigation were "meritless," and that the defense should explain what legal authority it has to request the additional material that it seeks. The government had previously denied giving the companies any guidance on what to ask employees in their internal investigation.

Schwartz's lawyers at Paul Weiss have some experience with judicial scrutiny of outsourced investigations. Earlier this year, a judge called out prosecutors in another case for essentially [using Paul Weiss' internal probe](#) at [Deutsche Bank](#) as a proxy for a government investigation.

Cognizant got recognition from the Department of Justice for its own cooperation. At the same time Schwartz and Coburn were charged, prosecutors publicly declined to bring charges against the company in exchange for \$19.4 million in allegedly tainted profits. The company had also self-reported the alleged bribery in India and remediated the situation to the [DOJ's](#) satisfaction.

Despite the company's cooperation, the fact that Schwartz was in-house counsel meant that some material potentially relevant to the case was held back from prosecutors on privilege grounds, Schwartz said in his letter.

Bohrer did not reply to a request for comment Wednesday.

Schwartz is represented in the Delaware case by Samuel T. Hirzel II and Aaron M. Nelson of [Heyman Enerio Gattuso & Hirzel LLP](#) and in the criminal case by Theodore V. Wells Jr., Roberto Finzi, Justin D. Lerer and Meredith A. Arfa of Paul Weiss Rifkind Wharton & Garrison LLP; Jeremy I. Bohrer, Jonathan E. Jason and Arthur T. Tergesen of Bohrer PLLC; and Lawrence S. Lustberg and Daniel B. Weinstein of Gibbons PC.

Counsel information for Cognizant in Delaware was not immediately available Wednesday.

The government is represented in the criminal case by Nicholas P. Grippo and Courtney A. Howard of the [U.S. Attorney's Office](#) for the District of New Jersey and David A. Last and Sonali D. Patel of the DOJ's Fraud Section.

The Delaware case is *Schwartz v. Cognizant Technology Solutions Corp*, case number 2019-1004, in the [Court of Chancery of the State of Delaware](#), the criminal case is *U.S. v. Coburn et al.*, case number [2:19-cr-00120](#), in [U.S. District Court for the District of New Jersey](#).

Eight need-to-know compliance takeaways from Russia this year

By Hannes Lubitzsch

It has been an eventful year for anti-corruption compliance in Russia. Here are the eight crucial developments companies need to know.

Investigation of large-scale bribery. Until recently, it was one of the peculiarities of Russian enforcement practice that companies were prosecuted almost exclusively for small and mid-scale bribery. Recent cases indicate that Russian enforcement actions, finally, may extend to more severe offenses as well: To date, ten convictions of companies for large-scale or extra large-scale bribery with penalty payments of RUB 20 million (\$32,000) or more have been disclosed in 2019 – compared to only four cases in the whole of 2018. While the disclosed maximum penalty in 2018 was RUB 30.5 million (\$50,000), the current year has already seen a penalty payment of RUB 50 million (\$800,000).

Punishment of bigger companies. Until recently, Russian authorities also used to look the other way when bribery offenses were committed by bigger companies. This may change now as well: In July 2019, AO Russian Standard Bank, which is among Russia's 200 largest companies according to Forbes Russia, had to pay a penalty of RUB 26.5 million (\$42,000) for bribing bailiffs in Crimea in order to speed up enforcement proceedings against defaulted debtors. This is the first time that a large Russian bank has been convicted for bribery in Russia.

Foreign companies in focus. Also foreign companies so far were mostly exempted from prosecution for bribery. There could be a change of political course now: Legislative changes entering into force in December 2019 provide for an extension of the investigation term to up to twelve months in cases where international judicial assistance is required. The express purpose of this extension is to prosecute foreign companies for bribery. The question arises whether this is only a symbolic reaction to foreign enforcement actions against Russian companies (in particular by U.S. authorities) or whether foreign companies will now indeed be targeted by domestic investigations.

Extended scope of corporate liability. As in previous years, the legislator has strengthened anti-corruption laws. In particular, legislative changes which entered into force in February 2019 closed gaps in the liability of companies for bribery. For example, bribery became equally punishable if it was committed for the benefit of related companies. At the same time, the rather questionable initiative provided by the National Anti-Corruption Plan for 2018 to 2020, according to which anti-corruption rules may not apply in certain cases of “force majeure,” currently seems to be on hold.

Scope of anti-corruption measures. Considering the increased liability risks for companies, implementing a compliance management system in accordance with the Russian requirements is becoming more important. Based on the mandatory requirement of the Russian Anti-corruption Law to take anti-corruption measures, in September 2019 the Russian Labour Ministry again issued detailed recommendations for their implementation. However, also in 2019 authorities and courts failed to answer the decisive question: to what extent the implementation of these measures may exempt companies from liability, or reduce their liability, in a specific bribery investigation.

First self-reporting cases. Court practice from 2019 for the first time allows an assessment of how the new self-reporting rules for corporate bribery which were introduced in August 2018 work in practice. Due to the current restriction of enforcement actions to smaller bribery cases, none of the available court decisions deals with the reporting of large-scale bribery. However, these cases confirm that self-reporting may generally be an option to exempt companies from liability. At the same time, given the general concerns regarding reliable cooperation with Russian authorities, the benefits and risks of self-reporting should be calculated in each individual case.

No whistleblower protection. In June 2019, the legislative initiative aimed at the protection of whistleblowers in corruption cases ultimately failed. The draft law, which had been adopted at the first reading in December 2017, provided for comprehensive rights of whistleblowers, and responsibilities of employers and law enforcement authorities. Since August 2018, Russian authorities have been authorized to pay whistleblowers rewards which may exceed RUB 3 million (\$5,000). However, rewards alone will hardly suffice to incentivize whistleblowing.

Restricted cross-border data transfer. Finally, foreign companies which have integrated their Russian subsidiaries into group-wide compliance procedures may now face additional difficulties. These are caused by fines for violations of Russian data localization rules of up to RUB 18 million (\$300,000) which were introduced in December 2019. These fines could also apply to whistleblower channels from Russia abroad and data transfers during corporate investigations. In these cases, group-wide procedures may have to be adjusted.

The FCPA Turns 42

By Mike Koehler

Today our favorite statute, the Foreign Corrupt Practices Act, turns 42.

In signing the FCPA into law, President Jimmy Carter stated:

"I am pleased to sign into law S. 305, the Foreign Corrupt Practices Act of 1977 and the Domestic and Foreign Investment Improved Disclosure Act of 1977. During my campaign for the Presidency, I repeatedly stressed the need for tough legislation to prohibit corporate bribery. S. 305 provides that necessary sanction. I share Congress's belief that bribery is ethically repugnant and competitively unnecessary. Corrupt practices between corporations and public officials overseas undermine the integrity and stability of governments and harm our relations with other countries. Recent revelations of widespread overseas bribery have eroded public confidence in our basic institutions.

This law makes corrupt payments to foreign officials illegal under United States law. It requires publicly held corporations to keep accurate books and records and establish accounting controls to prevent the use of 'off-the-books' devices, which have been used to disguise corporate bribes in the past. The law also requires more extensive disclosure of ownership of stocks registered with the [SEC]. These efforts, however, can only be fully successful in combating bribery and extortion if other countries and business itself take comparable action. Therefore, I hope progress will continue in the United Nations toward the negotiation of a treaty on illicit payments. I am also encouraged by the International Chamber of Commerce's new Code of Ethical Business Practices."

[S. 305](#), of course, did not fall out of the sky onto President Carter's desk forty-two years ago. Rather, S. 305 was the result of more than two years of Congressional investigation, deliberation, and consideration.

If the FCPA is your area of practice or interest, you owe it to yourself to read the most extensive piece ever written about the FCPA's history – "[The Story of the Foreign Corrupt Practices Act](#)."

The article weaves together information and events scattered in the FCPA's voluminous legislative record to tell the FCPA's story through original voices of actual participants who shaped the law.

Among other things, you will learn: (i) how the foreign corporate payments problem was discovered, specific events that prompted congressional concern, and the policy ramifications of those events which motivated Congress to act; (ii) how seeking new legislative remedies to the foreign corporate payments problem was far from a consensus view of the U.S. government and the divergent views as to a solution; (iii) the many difficult and complex issues Congress encountered in seeking a new legislative remedy; (iv) the two main competing legislative responses to the problem—a disclosure approach as to a broad category of payments and a criminalization approach as to a narrow category of payments, and why Congress opted for the later; and (v) how Congress learned of a variety of foreign corporate payments to a variety of recipients and for a variety of reasons, but how and why Congress intended and accepted in passing the FCPA to capture only a narrow category of such payments.

FCPA Fun fact: Dreaming of a green Christmas? Household waste increases by 25 percent between Thanksgiving and New Year's Day. This year, consider trying out a new way of celebrating the season to help reduce your holiday waste:

- Give a gift that needs no packaging—an experience!
- When shopping for holiday foods, decorations, and gifts use reusable shopping bags.
- Once it's time to pack up the decorations set aside your Christmas tree for recycling. Many areas collect trees in the first few weeks after Christmas to be mulched and used for water conservation.

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