

NOW +

NEXT

GOVERNMENT INVESTIGATIONS & WHITE-COLLAR DEFENSE ALERT | NIXON PEABODY LLP

NOVEMBER 13, 2019



The not-so-secret “agent”: DOJ secures FCPA conviction of former Alstom exec. by demonstrating his role as agent to a U.S. subsidiary

By Isabelle De Smedt, Mark Knights, and Michael Strauss

Last week, in a closely followed trial, the Department of Justice secured the conviction of former Alstom SA executive Lawrence Hoskins, who was charged with FCPA violations for his role in bribing Indonesian officials to award a lucrative government energy contract. Hoskins’ case set legal and practical precedents worthy of consideration. Below we explain how and why a federal jury in Connecticut convicted a U.K. national working for a French company’s U.K. subsidiary, and the key takeaways from his several-years’ long criminal saga.

The charge

At the time of the alleged violations, Alstom SA was a global company headquartered in France and Hoskins worked for its U.K. subsidiary.¹ The government alleged that Hoskins, along with other Alstom executives, used two consultants to bribe Indonesian officials to influence the decision as to which energy company would receive a government-owned power company’s \$118 million energy contract. This scheme, said the government, was undertaken on behalf of an Alstom U.S. subsidiary.

The appeal to the Second Circuit

Although Hoskins’ trial did not end favorably for him, he did secure an important win in the early stages of his case. Among other counts, the government charged Hoskins with violating the FCPA under an accomplice liability theory. That is, the government sought to hold Hoskins criminally liable under the FCPA even if he did not fall into one of the statute’s specifically delineated categories of defendants (e.g., issuers, “domestic concerns,” employees, or agents thereof), but merely aided and abetted an FCPA violation.

Hoskins challenged the government’s approach, arguing that the government could not use accomplice liability to avoid its burden of proving he acted as an agent of an issuer or domestic

¹ Alstom has since been acquired by U.S.-based General Electric, but the relevant conduct occurred prior to that acquisition, which did not bear on the issues at play in the case.

concern. The trial court and Second Circuit agreed, restricting criminal prosecutions under the FCPA to only those categories of defendants the statute expressly codified. In other words, as a result of this decision, the government was *required* to prove that Hoskins—again, a U.K. national (who never set foot in the United States during the period of the alleged scheme) working for a U.K. subsidiary of a French company—was acting as an *agent* of Alstom’s U.S. subsidiary.

Practically speaking, this meant the government’s trial evidence needed to show that Alstom U.S. and Hoskins were in a principal-agent relationship. And the government did just that.

The trial

Evidence at trial revealed that Hoskins enlisted the services of two consultants who, on paper, were helping Alstom navigate its Indonesian government energy contract bid. But, in practice, the evidence showed that Alstom paid these consultants hundreds of thousands of dollars into U.S. bank accounts, and they in turn funneled that money to Indonesian government officials who could (and ultimately did) sway the contracting process in Alstom’s favor. With a mandate to prove an agency relationship existed between Alstom U.S. and Hoskins, DOJ highlighted emails Hoskins sent to co-conspirators that demonstrated his role in selecting the consultants and strategizing about their value to the bribery scheme. In the end, the emails showcased Hoskins acting on behalf of the Alstom U.S. subsidiary, which established his role as an agent of a domestic concern. The jury thus convicted.

Hoskins’ conviction appears to have wrapped up DOJ’s investigation into Alstom’s bribery practices throughout the world. The nearly decade-long investigation yielded significant monetary returns from the various Alstom entities that opted to settle their criminal liability outside the courtroom.

The key takeaways

Third party reviews are necessary

The Indonesian bribery scheme attributed to Alstom and its executives was effectuated through third parties: two consultants. Global compliance regimes must account for the use of third parties and have established protocols for vetting them. Indifference to whether a third party is actually providing bona fide services will not suffice as a defense under the FCPA. The expectation is clearly that companies will take the appropriate steps to understand the third party involved, the nature of that party’s interactions with government officials, and any relationships that third party has thereto. Unexplained requests for front-loaded payments to consultants should be a red flag that such money may be passed on to someone else.

Collaborative international anti-corruption efforts

After the verdict was announced, DOJ publically thanked law enforcement agencies across the globe. This nod of gratitude to DOJ’s international counterparts serves as an important reminder of the government’s ability to access reliable foreign intelligence about multinational companies and their conduct outside the United States.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

- Isabelle De Smedt at idesmedt@nixonpeabody.com or 212-940-3145
- Mark Knights at mknights@nixonpeabody.com or 603-628-4027
- Michael Strauss at mestrauss@nixonpeabody.com or 603-628-4074