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C-Suite to J-Cell: Individual culpability in corporate criminal cases still a top priority under the Biden administration

By Mark Knights and Michael Strauss

Last week, Jose Carlos Grubisich, the former CEO of Brazilian oil company Braskem, pled guilty to conspiring to violate the U.S. Foreign Corrupt Practices Act (FCPA). His guilty plea came nearly two years after he was first indicted for his role in what the feds described as a "massive bribery scheme" in the Americas, brought to light in the "Operation Car Wash" investigation. Grubisich is among the highest-ranking corporate executives to face FCPA charges arising from the investigation. He now awaits sentencing, where his corrupt conduct—authorizing and concealing millions of dollars in improper payments to Brazilian government officials and political parties—will be on full display. No matter his sentence, Grubisich's guilty plea serves as a teachable moment for companies and their compliance departments for two principal reasons.

First, Grubisich's guilty plea sends a clear message to enterprises that the principles espoused by the so-called "Yates Memo"—formally titled *Individual Accountability for Corporate Wrongdoing*—will continue to be in full force and effect despite the change in presidential administrations. The Yates Memo, to refresh, reconfigured and affirmed the U.S. Department of Justice's commitment to holding business executives accountable for their roles in perpetrating corporate wrongdoing. It accomplishes this by conditioning corporate cooperation credit on DOJ receiving *all* relevant non-privileged information about the individuals responsible for the corporate foul play.

Global compliance departments should welcome DOJ's continued application of the Yates Memo's edict. It serves as a persuasive reminder for c-suite executives and senior management about the risks they face personally for causing their companies to act unlawfully. Compliance teams should consider using Grubisich's recent guilty plea to connect with company leaders about their roles in ensuring a robust compliance program and culture.

Second, Grubisich's guilty plea also is a cautionary tale about how an extensive bribery scheme can occur for decades without detection. Grubisich and other executives funneled millions of dollars to a separate business division, which the government dubbed a "stand-alone bribe department," through a complex web of U.S. and offshore entities, bank accounts, and intentionally mislabeled or unrecorded earnings. Once that money was in the division's slush fund, Grubisich oversaw the negotiation and approval of the improper payments to foreign officials, which was accomplished in

large part because company personnel used an off-the-grid communications system to coordinate the bribes.

Compliance officers should consider using the details of this bribery scheme and the various roles Grubisich and executives played in carrying it out as a case study for future compliance trainings. Grubisich's indictment is filled with real-world examples of corrupt conduct in action—bogus business divisions, shell companies that provided no legitimate services, back-channel communication platforms, deceptive financial record-keeping, and more. Providing anti-corruption trainings that go beyond merely reciting the elements of a corrupt payment are critical to having—and potentially demonstrating to regulators—a satisfactory compliance program.

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