FCPA Prosecution: Lessons Learned From Deferred And Non-Prosecution Agreements

By Richard Deutsch, Esq., and Kara Altenbaumer-Price, Esq.

News of government investigations into a company’s violations of the Foreign Corrupt Practices Act conjure images of dramatic public trials that conclude with handcuffed executives and financial penalties that leave the offending company on the brink of collapse. In reality, however, such scenes rarely come to life. This is because of the Justice Department’s growing use of deferred prosecution agreements and non-prosecution agreements to settle many of its more recent FCPA matters with large corporations. In these DPAs and NPAs, the offender obligates itself to certain penalties and compliance measures.

The recent spate of investigations and subsequent settlements has made it possible to predict, more or less, which of the three primary FCPA standards will be found to have been violated. Accurately forecasting the penalty that will accompany the breach, however, remains nearly impossible. The increase in cases has provided more insight into the types of behavior being investigated, but the cases have not revealed a consistent pattern as to the reasons behind using either DPAs or NPAs or ties between the bad act and the penalties levied in those agreements.

The Justice Department’s 2008 release of guidelines for application of compliance monitors should assist with at least that aspect of penalties, but many other key questions remain unclear. Using the most recent known DPAs and NPAs, as well as other recent FCPA-related settlements, as sources, this article will attempt to shed light on the reasons that DPAs or NPAs were used in certain circumstances and also identify correlations between the violation and the types of penalties assessed by the government.

The Focus on Corporate Assistance Spurs Use of DPAs and NPAs

The Justice Department’s emphasis on the importance of meaningful company assistance in internal fraud investigations came to light with its 2003 issuance of the Thompson Memorandum.1 It focused on the authenticity of the company’s cooperation with the government investigation to determine
whether it qualified for a deferred or non-prosecution agreement. In December 2006 the agency released the McNulty Memorandum, which listed criteria for the Justice Department to consider when determining whether criminal charges should be brought.

These two directives triggered the government’s increasing use of DPAs and NPAs to resolve cases against companies under investigation for FCPA violations and other forms of corporate misconduct. Generally, these agreements require:

- The payment of restitution to victims and/or fines to the government;
- Cooperation by the corporation with ongoing government investigations of individuals or other corporations; and
- Implementation of an ethics and compliance program, which typically includes internal controls to effectively prevent, detect and respond to any future corporate misconduct.

DPAs and NPAs are perceived as a more efficient option than conviction. These agreements avoid the sometimes massive expenditure of manpower and other resources necessary for prosecuting cases involving mammoth corporations. Using these agreements also avoids difficult issues such as the suffering of innocent third parties and the general public due to the conviction of a major corporation. The use of DPAs and NPAs is likely to increase as the government continues to focus on corporate misconduct.

Since December 2006, 18 known deferred and non-prosecution agreements have been entered into for FCPA violations. Of those, seven were exclusively related to violation of the United Nations’ oil-for-food program in Iraq. An eighth, involving York International, was based in part on violations of that program and in part on violations in other countries. Of the 12 agreements containing non-program violations, six were deferred prosecution agreements, and six were non-prosecution agreements. This article examines only the agreements based on violations of the FCPA and not those related to the oil-for-food program.

Companies entering into DPAs include AGA Medical Corp., Willbros Group, Baker Hughes, York International, Aibel Group Ltd. (a wholly owned subsidiary of Vetco Gray not purchased by GE) and Siemens AG. Although not technically a DPA, the Siemens deal effectively functions as a deferred prosecution agreement. NPAs were entered into by Faro Technologies, Westinghouse Air Brakes, Lucent Technologies, Paradigm B.V., Omega Advisors and Halliburton. During this same period, several companies also consented to cease-and-desist orders.

**DPAs Apparently Are Used When Larger Dollar Amounts Are Involved**

While there are no known guidelines as to when each agreement type is to be used, one trend has emerged. The decision to use a DPA or NPA may be contingent on the dollar amounts involved. DPAs seem to be used when large bribes and profits amounting to millions of dollars are involved. For instance, an agreement akin to a DPA was used in the case of Siemens, which involved $1.4 billion in bribes to government officials. Likewise, in one of the earliest and best-known cases, Willbros Group entered into a DPA in May 2008 after an investigation revealed more than $600 million in bribes to Nigerian officials.

For those cases involving bribes less than $500,000, NPAs have been used. Such was the case with Faro Technologies, which agreed to an NPA in June 2008 based on $444,500 in “referral fees” to Chinese state employees. Likewise, Textron entered into an NPA in August 2007 after, among other things, making 36 payments totaling almost $115,000.

**Analysis of Penalties Assessed In the Agreements**

Justice Department Relies on Compliance Monitors

The government’s imposition of independent monitors is becoming more frequent in corporate fraud matters and has also grown more frequent in DPAs or NPAs in certain FCPA cases. Inclusion of a monitor in a DPA or NPA is supposed to ensure years of compliance for a previously troublesome corporation. The appointment of a monitor allows the government to verify whether the corporation is fulfilling its obligations as set forth in the agreement. The government finds monitors particularly useful when the agreement
requires the corporation to overhaul its ethics and compliance programs and to bolster internal controls.¹⁹

Last year the Justice Department issued guidelines for the selection and use of independent corporate monitors. The guidelines state that a monitor is an “independent third party” whose primary responsibility is to “assess and monitor a corporation’s compliance with those terms of the agreement that are designed to address and reduce the risk of recurrence of the corporation’s misconduct.”²⁰

In most cases, this will require the monitor to evaluate internal controls and corporate ethics and compliance programs. While the monitor may need to understand the full scope of the corporation’s misconduct, his or her responsibilities should be no broader than necessary, depending on the facts of the case. Communication among the monitor, corporation and government is expected to occur.

In certain circumstances, the monitor may need to make periodic written reports to the government and corporation. If the monitor makes recommendations to the corporation regarding ethics and compliance that the corporation chooses not to adopt, the government may consider this fact in determining whether the corporation has fulfilled its obligations under the agreement.

In the event the monitor finds evidence of previously undisclosed or new misconduct, he or she has the discretion to report it to the corporation and/or the government. This type of detail regarding the selection process and the role of a monitor has been lacking in DPAs, but that is sure to change following the implementation of these guidelines.

Agreements Vary as to Type of Monitor, Roles and Duration

In the agreements examined, various types of compliance monitors were assigned. The DPAs refer to these monitors in various terms, including compliance monitors, independent compliance consultants and outside compliance counsel. Traditional or independent monitors were required of all companies entering into DPAs, except Aibel Group and Paradigm, which were required to retain outside compliance counsel.²¹ An independent compliance consultant was required of Faro and Westinghouse.

In the recent case of Kellogg, Brown & Root and Halliburton (which involved an NPA for Halliburton and a criminal plea for KBR), KBR agreed to an independent monitor for three years, while Halliburton agreed to retain an independent consultant for 60 days and then again one year later but for a 30-day period.²² But the agreements leave unclear the reasons for the types of monitor selected, the role to be played by the monitor and the selection process.

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*DPAs apparently are used when larger dollar amounts are involved.*

Specific details for the selection process were lacking in the agreements. The agreements generally state that independent compliance consultants must be acceptable to both the Securities and Exchange Commission and the Justice Department (where both are applicable). For example, the SEC ordered Westinghouse to retain an independent compliance consultant “not unacceptable to the staff of the commission.”²³ Agreements mandating monitors state that the companies and the Justice Department will work together to find a monitor, and if they cannot reach a mutually acceptable choice, the government will select one.

The factors affecting the selection of a compliance officer over a monitor may be the amount of money involved and the cooperation of the company. For instance, Aibel’s matter involved an illegal payment of less than $50,000, and the company was required only to retain outside compliance counsel. (It is interesting to note that Aibel initially did not receive a criminal fine either.)²⁴

The distinction between the type of overseer is also unclear. Typical monitor duties include reviewing and evaluating internal controls, record-keeping, and following financial reporting procedures as they relate to FCPA compliance.

The tasks assigned to an independent compliance consultant appear similar to those normally designated to a monitor.

For example, the role of the compliance consultant in Westinghouse’s agreement is “to review and evaluate [its] internal controls, record-keeping, and financial reporting policies and procedures as they relate to [its] compliance with the books and records, internal
accounting controls, and anti-bribery provisions of the FCPA ... and other applicable foreign bribery laws.”

Likewise, the role of the corporate monitor for Willbros was to “assess and monitor the company’s compliance, including evaluating the company’s compliance program with respect to the [FCPA] and other relevant anti-corruption laws.”

In agreements in which a monitor was mandated, the term of the agreement does not appear to correlate to the size of the criminal penalty. Two of the companies entering into DPAs not involving the oil-for-food program received three-year terms, including AGA Medical, with a $2 million fine and no civil penalty, and Willbros, with a $22 million fine plus disgorgement. Baker Hughes, with an $11 million criminal fine, $10 million in civil penalties and $24 million in disgorgement — at the time one of the largest payouts ever in a FCPA case — received only a two-year term.

Reasons for the term of an NPA seem unclear because the agreements are not public.

Both AGA and Willbros had provisions allowing for a one-year extension solely at the discretion of the Justice Department, but Baker Hughes did not. York International, which entered into a DPA for both oil-for-food program and non-program violations, received a three-year term with a $10 million criminal fine, $2 million civil penalty, and $10 million in disgorgement and prejudgment interest.

The difference in monitor term length between Baker Hughes, at two years, and AGA, Willbros and York, each at three years, may have been influenced by the offending individuals’ ranking in the corporation’s chain of command. At AGA, illegal conduct was committed by a “high-ranking officer and part owner of AGA who had authority to set company policy, contract with distributors, hire and fire employees, set sales prices, and approve sales practices in foreign countries.” At Willbros, the president was involved in the illegal conduct, and a vice president was involved at York. The highest-ranking employee who appears to have been involved at Baker Hughes was a business development manager.

There is no discernible pattern in the length of non-prosecution agreements. Again, because the agreements are not public, the term is unknown for Omega Advisors. For the remaining five, terms range from 18 months for Paradigm to three years for Westinghouse Air Brake. Paradigm was assessed a criminal fine of $1 million and no civil penalty (private company); the ranks of the offenders in this matter were not revealed in the agreement. Westinghouse paid a criminal fine of $300,000, a civil penalty of $87,000, and $288,000 in disgorgement and prejudgment interest. The illegal conduct at Westinghouse reached the vice-president level.

Size of the Total Sanction: Patterns for Criminal and Civil Penalties

The monetary sanctions in the agreements ranged from $675,000 for Westinghouse to $800 million for Siemens. Sanctions consisted of both criminal fines and civil penalties, as well as disgorgement of profits, a recent phenomenon that first arose in FCPA enforcement five years ago.

As one might expect, more egregious FCPA violations and larger ill-gotten profits resulted in larger penalties.

Westinghouse, for example, paid $137,400 to foreign officials and was penalized a total of $675,000 in fines and disgorgement. Baker Hughes, on the other hand, paid $9.3 million in bribes and was assessed $45 million in sanctions. Siemens, in the largest payout ever in an FCPA case, paid $1.4 billion in bribes and was hit with $800 million in sanctions in the United States alone.

In some of the agreements criminal fines appear to be loosely tied to the disgorgement amounts, either slightly higher or lower. For example, Faro disgorged $1.4 million and paid a criminal penalty of $1.1 million. However, Willbros disgorged $8.9 million but paid a $22 million criminal fine. One factor that may have led to this is that one of Willbros’ violations was a tax-avoidance scheme in Bolivia for which no disgorgement was assessed; disgorgement may not have been possible in this scenario, and a greater fine was awarded as a result.

Meaningful cooperation by corporations facing FCPA charges appears to play a significant role in the penalties assessed.

For instance, the massive scope of bribery at Siemens could have left if facing up to $2.7 billion in fines under the federal sentencing guidelines. Instead, the
Justice Department recommended a penalty reduction to $450 million because of Siemens’ “exceptional ... wide-ranging cooperation efforts throughout this investigation, which included a sweeping internal investigation, the creation of innovative and effective amnesty and leniency programs, and exemplary efforts with respect to preservation, collection, testing and analysis of evidence.”

Similarly, the government made note of eLandia Group’s extreme cooperation in its cease-and-desist order, and the company ended up with a $2 million criminal penalty, which was far below the $4.2 million to $8.4 million range in the U.S. sentencing guidelines.

Privilege Waiver

A trend that was borne out in our review, and which is becoming an increasingly hot topic for commentators, is that, contrary to popular belief, agreeing to waive the attorney-client privilege does not necessarily earn the company favorable governmental treatment. Aibel, the sole company to make a full waiver, still received a three-year term and a $4.2 million criminal fine for a $45,500 bribe. Such results explain why a broad waiver has become the exception, rather than the rule.29

Recent actions by the Justice Department may make broad waivers even more unlikely. According to the agency’s Filip Letter announcing new corporate prosecution guidelines in the U.S. attorneys’ manual, prosecutors may no longer request a privilege waiver.30 Specifically, under the new guidelines, cooperation credit will no longer be tied to an agreement by the company to waive attorney-client privilege or work product protection. Companies will be given cooperation credit for disclosure of relevant facts, whether or not those facts are contained in privileged or non-privileged material.

Conclusion

Numerous investigations into violations of the FCPA are presently underway, and more are surely to come as the government will keep a close eye on companies dealing in notoriously troublesome regions. If recent history is an accurate indicator, many of these will result in deferred or non-prosecution agreements. As more agreements come to light, so too should the reasons for using a particular type of agreement and the penalties assessed. Until then, the prior DPAs and NPAs provide valuable insight into what types of agreements and penalties a company that finds itself in violation of the FCPA may be able to negotiate.

Notes

1 U.S. Dep’t of Justice, Memorandum from Larry D. Thompson, Deputy Attorney General, to Heads of Department Components, U.S. Attorneys (Jan. 20, 2003), available at http://www.usdoj.gov/dag/ctfl/corporate_guidelines.htm. The Thompson Memo focused on the authenticity of the corporation’s cooperation with the government investigation to determine whether it should qualify for an agreement.


6 The SEC Takes It Back, supra note 4.


15 These include Delta & Pine Land Co. and subsidiary Deltapine, Dow Chemical Co., Con-way Inc., and United Industrial Corp. Latin Node Inc. (a company purchased by Elanida) is potentially unique and was not required to enter a DPA or NPA.


18 The Justice Department disclosed May 22, 2008, that it used DPAs 85 times in recent years. Congressional investigations identified an additional 12 that had not been disclosed, bringing the total number of DPAs to 97. Eric Lichtblau & Kitty Bennett, 30 Former Officials Became Corporate Monitors, N.Y. TIMES, May 23, 2008.
Letter from Mark Filip, Deputy Attorney General, to U.S. Sens. Patrick Siemens AG also paid more than $569 million to the Munich public
The SEC Takes It Back,
It is a private company not subject to the SEC's regulation.
United States v. Willbros Group Inc. et al., No. H-08-287, deferred
Aibel's 2007 agreement was subsequently revoked for the compa
See note 15,
Press Release, supra note 7; Press Release, supra note 12; Press
Release, Dep't of Justice, supra note 10; Litigation Release, supra
note 10; Press Release, supra note 3; Press Release, Dep't of Justice,
York International, supra note 16; Litigation Release No. 20319,
supra note 16.
22
See note 15, supra.
23
In re Westinghouse Air Brake Techs., File No. 3-12957 (Feb. 14,
Aibel's 2007 agreement was subsequently revoked for the compa
ny's failure to abide by its terms. Press Release, U.S. Dep't of Justice,
Aibel Group Ltd. Pleads Guilty to Foreign Bribery and Agrees to Pay
$4.2 Million in Criminal Fines (Nov. 21, 2008), available at http://
www.usdoj.gov/opa/pr/2008/November/08-crm-1041.html. The
discussions of Aibel's agreement relate to the original agreement
entered and not to any subsequent revocation.
25
United States v. Willbros Group Inc. et al., No. H-08-287, deferred
prosecution agreement filed (S.D. Tex. May 14, 2008), available at
http://www.whitecase.com/files/Publication/95d58d9b-6e08-41c7-a777-3da795789277/Presentation/PublicationAttachment/
f074e1f8-a571-4ea0-953c-3f2200090682/Alert_whitecollar_
051508_addendum.pdf.
It is a private company not subject to the SEC's regulation.
The SEC Takes It Back, supra note 4.
28
Siemens AG also paid more than $569 million to the Munich public
prosecutor's office. The company is also an example of another
trend of note in FCRA prosecutions: prosecution by foreign authori-
ties and, at times, cooperation between U.S. and foreign authorities
in FCRA prosecutions.
Dealing with the DOJ, http://fcpablog.blogspot.com/2009/01/
dealing-with-doj.html (Jan. 28, 2008) (“We saw that the privilege
waiver language in DPAs was the exception (statistics from 2007
showed only 3 waivers, while in 2008 we found but two.”).
Letter from Mark Filip, Deputy Attorney General, to U.S. Sens. Patrick
Leahy and Arlen Specter (July 9, 2008); U.S. Attorneys' Manual

Richard Deutsch is an attorney in the Houston office of Andrews Kurth LLP. Richard focuses his practice in
litigation, international dispute resolution and corporate invest-
igations, including compliance with the FCPA. His expe-
rience includes assisting in the representation of an energy
services company regarding an SEC and DOJ investigation
into transactions implicating the FCPA. He has also assisted
in the representation of an oil company regarding an invest-
igation by the U.S. Commodity Futures Trading Commiss-
ion and has advised companies on dealings in the Middle
East and West Africa. Richard has represented and advised
clients in international arbitration claims arising from bilat-
eral investment treaties and the North American Free Trade
Agreement, including a primary role in the representation of the
claimant in the largest award rendered in a NAFTA claim.
Richard was recognized as a Future Star in litigation by
Benchmark Litigation in its annual survey of America’s
Leading Litigation Firms and Attorneys (2009).
Kara Altenbaumer-Price is an attorney in the firm’s
Dallas office. Kara’s experience includes representing cli-
ents in litigation, government investigations and internal
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forcement. She has worked on a range of regulatory and
financial issues including the Foreign Corrupt Practices Act;
revenue recognition and other accounting and financial re-
porting issues; insider trading; commercial bribery; investor
advisor regulations; securities registration violations; Medi-
care and Medicaid fraud and Stark law violations; white-
collar criminal defense; and special litigation committee
representation. She has spoken and written on the subjects
of the FCPA, deferred prosecution, parallel investigations,
the subprime crisis and privilege issues in government and
internal investigations.

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<td>United Industrial Corp.</td>
<td>05/05/09</td>
<td>Yes*</td>
<td>Unlawful scheme and device that was used to fraudulently obtain government funds</td>
<td>Misuse of government funds to dishonestly obtain funds through the use of a scheme and device</td>
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<td>Russia</td>
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### Deferred Prosecution Agreements and Non-Prosecution Agreements in FCPA Cases Since December 2006

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<td>NDA</td>
<td>Bribery, bribery and record a</td>
<td>Internal control</td>
<td>Global engineering, construction and services company</td>
<td>Nigeria</td>
<td>Unknown</td>
<td>$21.6 million in revenue, 5,000 employees</td>
<td>Unknown</td>
<td>$402 million paid by KGR</td>
<td>Company jointly liable for $177 million in disgorgement</td>
<td>Negligent insider</td>
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<td>Unknown</td>
<td>$21.6 million in revenue, 5,000 employees</td>
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<td>Company jointly liable for $177 million in disgorgement</td>
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<td>Self Report</td>
<td>Member</td>
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<td>Team Size</td>
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<td>Country</td>
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<td>Bid Act and Business Benefit</td>
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**Deferred Prosecution Agreements and Non-Prosecution Agreements in FCPA Cases Since December 2006**

<table>
<thead>
<tr>
<th>Company</th>
<th>Date</th>
<th>DPA/NPA</th>
<th>Alleged Violation</th>
<th>Industry:</th>
<th>Country</th>
<th>Company Size</th>
<th>Term</th>
<th>Criminal Fine</th>
<th>SEC Penalties</th>
<th>Monitor</th>
<th>Self-Report</th>
<th>Privilege Waiver</th>
<th>How High up?</th>
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<tr>
<td>Convey Inc.</td>
<td>06/25/08</td>
<td>C</td>
<td>Concerned to the entry of a commercial deposit officer</td>
<td>International transportation and logistics</td>
<td>Philippine</td>
<td>1.1 billion in revenue</td>
<td>Unknown</td>
<td>No</td>
<td>$10,000,000</td>
<td>Unknown</td>
<td>Yes</td>
<td>Unknown</td>
<td>Convey did not know about the illegal payments until 2009 when it disclosed the information to the SEC. SEC's willingness to prosecute regardless of criminal knowledge</td>
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<tr>
<td>Pace Technologies Inc.</td>
<td>08/03/08</td>
<td>NPA</td>
<td>Antitrust, books and records, internal controls</td>
<td>China</td>
<td>150 employees, $4.0 million market capitalization</td>
<td>2 years</td>
<td>$1.1 million</td>
<td>$1.4 million in disgorgement, $4.4 million prejudgment interest</td>
<td>Independent corporate官委任 to both SEC and Justice Department</td>
<td>Yes</td>
<td>No</td>
<td>Director of Asia-Pacific region</td>
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Deferred Prosecution Agreements and Non-Prosecution Agreements in FCPA Cases Since December 2008

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<tr>
<td>AdMedus Corp</td>
<td>06/04/08</td>
<td>DPA</td>
<td>Antitrust (corrupting to commit bribery)</td>
<td>Kickbacks up to 20% to state-owned and operated hospitals and government employees for using AGA payments labeled as &quot;consultations&quot; $20,000 to a patent official in 2001 in approval of patent. Up to $1,000 innette to government employees in excess paid for AGA product purchased. Business benefit $83.5 million in China sales from 1997 to 2000</td>
<td>Medical device manufacturer</td>
<td>China</td>
<td>Private company</td>
<td>$130 million in revenue in 2007; S100-500 employees</td>
<td>3 years (plus 1-year extension possibility)</td>
<td>$2 million</td>
<td>WA (private company)</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
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<tbody>
<tr>
<td>Willbros Group</td>
<td>03/14/08</td>
<td>DPA</td>
<td>Anti-trust, bid rigging, and business records</td>
<td>$6 million in bribes to Nigerian officials and employees of government-owned joint ventures</td>
<td>Oil and gas services</td>
<td>Nigeria, Ecuador, Bolivia</td>
<td>5,475 employees; $1.75 million market cap</td>
<td>3 years (plus 1-year probation)</td>
<td>$22 million</td>
<td>$85 million disgorgement; $14 million prejudgment interest; no civil penalty to company itself</td>
<td>Yes</td>
<td>Yes, &quot;prudent&quot;</td>
<td>Limited attorney-client privilege waiver</td>
<td>Fraudulent bidding in Nigeria, subsidiaries in Ecuador.</td>
</tr>
<tr>
<td>Westinghouse Air Brake</td>
<td>02/10/08</td>
<td>NPA</td>
<td>Anti-trust, bid rigging, and business record</td>
<td>$177,403 in cash payments to Indian officials of Railways Consolidated; payments disguised as consulting expenses and supplier</td>
<td>Manufacturing of buses, subcomponents and related parts for Indian and foreign vehicles</td>
<td>India</td>
<td>4,023 employees; $2.2 billion market cap</td>
<td>3 years</td>
<td>$300,000 civil penalty; $230,000 disgorgement; $52,000 prejudgment interest</td>
<td>Yes</td>
<td>Yes</td>
<td>Unknown</td>
<td>Vice presidential levels of publicly traded Indian subsidiary</td>
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<tr>
<td>Lucent Technologies</td>
<td>12/1/07</td>
<td>DPA</td>
<td>Books and records, internal controls</td>
<td>355 premium products shipped to unauthorized individuals Unlawful conduct</td>
<td>Communications (voice service providers, business and governmental relationships)</td>
<td>China</td>
<td>75,490</td>
<td>2 years</td>
<td>$1 million</td>
<td>$5.5 million</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
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<tr>
<td>York International</td>
<td>10/1/07</td>
<td>DPA</td>
<td>Books and records, accounting, internal controls, and all related program violations</td>
<td>Non-CFFP acts: Hundreds of improper payments to employees of government agencies and government contractors to obtain and retain government contracts in Bahama, Egypt, India, and United Arab Emirates; achieved by submitting false invoices for services never performed; invoices paid in cash Payments to third-party agents performed commissions</td>
<td>Global recruiter of business, air travel, housing, and other benefits</td>
<td>Iraq (CFFP), China, India, Nigeria, Iran, Turkey, UAE</td>
<td>China</td>
<td>140,000</td>
<td>3 years</td>
<td>$10 million</td>
<td>$10 million</td>
<td>Yes</td>
<td>Yes (no partial offsetting CFFP penalty)</td>
<td>Yes</td>
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<tr>
<th>Company</th>
<th>Date</th>
<th>DPA/NPA</th>
<th>Alleged Violation</th>
<th>Industry</th>
<th>Country</th>
<th>Company Size</th>
<th>Term</th>
<th>Criminal Fine</th>
<th>SEC Penalties</th>
<th>Monitor</th>
<th>Self-Report</th>
<th>Privilege Waiver</th>
<th>How High up?</th>
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<tbody>
<tr>
<td>Parsifal B.V.</td>
<td>06/24/07</td>
<td>NPA</td>
<td>Alleged to involve in a scheme to pay kickbacks to secure favorable treatment</td>
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<td>in the design of a field in Nigeria related to offshore supply contracts.</td>
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Deferred Prosecution Agreements and Non-Prosecution Agreements in FCPA Cases Since December 2004

- Served with Nigeria National Petroleum Co. and others.
- Payments to Indian Navy officials.
- $550,000 to UAE officials related to construction of government-owned luxury boat.
- $7.5 million in "kickback payments" to secure order on government and commercial projects in Nigeria, India, China, France, and Europe.

*Note: Additional information not visible in the image.*
### Deferred Prosecution Agreements and Non-Prosecution Agreements in FCPA Cases Since December 2006

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<td>Total</td>
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Deferred Prosecution Agreements and Non-Prosecution Agreements in FCPA Cases Since December 2009

| Company                          | Date    | DPA/NIA | Alleged Violation                                      | Industry                      | Country      | Company Size | Term          | Criminal Fine | SEC Penalty | Monitor Information | Self-Report | Privilege Waiver | How High up?   |
|----------------------------------|---------|---------|--------------------------------------------------------|-------------------------------|--------------|--------------|---------------|---------------|--------------|--------------|--------------------|-------------|-----------------|---------------|
| Dalka & Pime Ltd Co. and Turk Delgine (AL-Allaqy) | 07/20/07 | DPA     | Concerned to the entity of a commercial deal without an agreed-to entry and fair judgment | Turkey | $16 million in revenue | Unknown | None | $350,000 | Independent compliance consultant | No          | Unknown         | "Cleared"      |
| Bechtel Initiates | 04/23/07 | DPA     | Alleged bribery, kickbacks and record-keeping controls to secure oil service contracts for work performed on behalf of a government-owned company | Kazakhstan, Nigeria, Argentina, Russia, Liberia | 5,000 | 3 years | $11 million | $10 million-100% cap, $25 million disgorgement | Yes          | Yes            | Business development manager |
### Deferred Prosecution Agreements and Non-Prosecution Agreements in FCPA Cases Since December 2009

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<tr>
<td>Dow Chemical Co.</td>
<td>12/7/07</td>
<td>DPA</td>
<td>Convinced to the entity of a common and downstream order</td>
<td>$400,000 in improper payments to a Hispanic government official to subsidiary</td>
<td>Pharmaceuticals, hydrogen, ammonia, and nitrogen</td>
<td>India</td>
<td>30 million in revenue, 46,102 employees</td>
<td>Unknown</td>
<td>None</td>
<td>$35,000</td>
<td>Yes</td>
<td>Yes</td>
<td>Unknown</td>
<td>No</td>
</tr>
<tr>
<td>Altri Group Ltd. (formerly owned subsidiary of Value Group not purchased by GE)</td>
<td>02/14/07</td>
<td>DPA</td>
<td>On May 17, 2005, the Justice Department notified the firm of a civil and criminal proceeding against a previously unidentified party.</td>
<td>$48,000 payment for performance bonus to customers pursuant to customer program for salesperson, system technology and other product</td>
<td>Nigeria</td>
<td>1100 employees</td>
<td>5 years</td>
<td>$4.2 million</td>
<td>$650,000</td>
<td>Yes</td>
<td>Yes</td>
<td>Deputy General Manager</td>
<td>Yes</td>
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<tr>
<th>Company</th>
<th>Date</th>
<th>DIA/NPA</th>
<th>Alleged Violation</th>
<th>Bad Acts and Business Benefit</th>
<th>Industry</th>
<th>Country</th>
<th>Company Size</th>
<th>Term</th>
<th>Criminal fine</th>
<th>SEC Penalties</th>
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<tbody>
<tr>
<td>Omega Advisors (hedge fund)</td>
<td>07/2007</td>
<td>Yes</td>
<td>Anti-trust</td>
<td>Funds off-shore in a scheme in which he invested, including $400 million in return for gain of control of mRNA in all industry.</td>
<td>Hedge fund</td>
<td>Asia</td>
<td>Unknown</td>
<td>$6 billion</td>
<td>Unknown</td>
<td>$900,000</td>
<td>Unknown</td>
<td>Unknown</td>
<td>No, but condition met</td>
<td>Unknown</td>
</tr>
<tr>
<td>Nuxia Technologies Inc.</td>
<td>NA</td>
<td>No</td>
<td>Anti-trust, bribes and record</td>
<td>Paid at least $500,000 in bribes, disguised as “consultation” to government officials to gain business for the company.</td>
<td>Vietnam</td>
<td>Unknown</td>
<td>Unknown</td>
<td>Unknown</td>
<td>Unknown</td>
<td>Unknown</td>
<td>Unknown</td>
<td>Unknown</td>
<td></td>
<td>Founder and president</td>
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