

Client Alert.

August 9, 2011

Another Successful FCPA Prosecution Against Individuals—More Terra Telecom Execs Appear Headed for Prison for Haiti Bribes

By Paul T. Friedman and Ruti Smithline

After a two-and-a-half-week trial and five hours of deliberation, a federal jury in Miami last week returned yet another favorable verdict for the Department of Justice (the DOJ) in a Foreign Corrupt Practices Act (“FCPA”) prosecution. Joel Esquenazi and Carlos Rodriguez, former executives of Terra Telecommunications Corp., were convicted on all counts for their roles in a scheme to pay bribes to Haitian government officials at Telecommunications D’Haiti S.A.M. (Haiti Teleco).¹

THE TRIAL AND CONVICTION

Esquenazi was the president and Rodriguez was the executive vice president of Terra, a Miami-based telecommunications firm. Terra had several contracts with Haiti Teleco—the sole provider of land-line telephone service in Haiti and a state-owned company.

According to evidence presented at trial, from 2001 through 2005, Terra paid more than \$890,000 to shell companies to be used for bribes to Haiti Teleco officials. The company allegedly hid these payments through false records claiming that the payments were for “consulting services,” which were never intended or actually performed. The DOJ alleged that the purpose of the bribes “was to obtain various business advantages from the Haitian officials for Terra, including the issuance of preferred telecommunications rates, reductions in the number of minutes for which payment was owed, and the continuance of Terra’s telecommunications connection with Haiti.”²

The jury found Esquenazi and Rodriguez guilty of one count of conspiracy to violate the FCPA and wire fraud, 7 counts of substantive FCPA violations, one count of money laundering conspiracy, and 12 counts of money laundering.

Commenting on the verdict, Assistant Attorney General Lanny A. Breuer said:

This verdict is another powerful example that bribery of government officials – whether at home or abroad – has serious consequences. In finding the defendants guilty on all charged counts, the jury sent an unmistakable message that paying off foreign officials does not, in fact, pay off.³

¹ DOJ Press Release No. 11-1020, Two Telecommunications Executives Convicted by Miami Jury on All Counts for Their Involvement in Scheme to Bribe Officials at State-Owned Telecommunications Company in Haiti (Aug. 5, 2011), available at <http://www.justice.gov/opa/pr/2011/August/11-crm-1020.html>.

² *Id.*

³ *Id.*

Client Alert.

Esquenazi and Rodriguez are scheduled to be sentenced on October 13, 2011. The defendants face up to 5 years imprisonment on each of the FCPA-related and wire fraud counts, and a maximum penalty of 20 years in prison for each of the conspiracy and substantive money laundering counts. The defendants also face hefty penalties and the forfeiture count included in the indictment that the court will determine at a later date. In the meantime, Esquenazi was remanded to custody and Rodriguez remains free on bond.

NOT THE ONLY ONES

Esquenazi and Rodriguez, while the first to go to trial, are not the first to face jail time in connection with the far-reaching Haiti Teleco scandal. Back in April 2009, Antonio Perez, a former controller at Terra, entered a guilty plea to one count of conspiracy to violate the FCPA and money laundering. In January 2010, he was sentenced to 24 months in prison. Likewise, two third-party intermediaries, Juan Diaz and Jean Fourcand, also admitted to receiving and transmitting bribe money, and each has been sentenced to 57 months and 6 months imprisonment respectively.

And Robert Antoine, a former director of international affairs at Haiti Teleco, admitted to receiving more than \$1 million in bribes from Miami-based telecommunications companies. While he was not prosecuted under the FCPA—after all, the FCPA does not cover the receipt of a bribe—Antoine was charged with one count of conspiracy to commit money laundering. Antoine was sentenced to 48 months in jail.

Moreover, the DOJ has made clear that its investigation into alleged corruption in connection with Haiti Teleco is ongoing.⁴ Acknowledging the substantial assistance from the government of Haiti in gathering evidence, the DOJ recently announced a superseding indictment charging six defendants—including a Florida telecommunications company (Cinergy Telecommunications, Inc.), two of its executives, one intermediary, and two former Haitian government officials—with being part of the bribery and money-laundering scheme.⁵

CONCLUSION

The Haiti Teleco cases underscore the promise made by the DOJ in 2009 that the prosecution of individuals is a “cornerstone” of the DOJ’s FCPA “enforcement strategy.”⁶ Next to the record-breaking Shot-Show case where 22 individuals were arrested on the same day as part of massive undercover sting, the ongoing Haiti Teleco cases have netted the most individual defendants of any case in FCPA enforcement history.

Further, DOJ’s decision to include foreign officials—through the money laundering statutes—in the indictments is also a reflection of the regulators’ aggressive stance against corruption. While the FCPA does not reach the conduct of the foreign officials accepting the bribes, the Haiti Teleco cases show that the DOJ has a wide-ranging arsenal of tools beyond the FCPA to combat bribery.

⁴ DOJ Release No. 11-910, Florida Telecommunications Company, Two Executives, and Intermediary and Two Former Haitian Government Officials Indicted for Their Alleged Participation in Foreign Bribery Scheme (July 13, 2011), available at <http://www.justice.gov/opa/pr/2011/July/11-crm-910.html>.

⁵ See *id.*

⁶ See DOJ, Lanny A. Breuer, *Prepared Address to the 22nd National Forum on the Foreign Corrupt Practices Act* (Nov. 17, 2009), available at <http://www.justice.gov/criminal/pr/speeches-testimony/documents/11-17-09aagbreuer-remarks-fcpa.pdf>.

Client Alert.

Contact

Morrison & Foerster's FCPA and Anti-Corruption Task Force:

Paul T. Friedman
San Francisco
(415) 268-7444
pfriedman@mofo.com

Carl H. Loewenson, Jr.
New York
(212) 468-8128
cloewenson@mofo.com

Randall J. Fons
Denver
(303) 592-2257
rfons@mofo.com

Robert A. Salerno
Washington, D.C.
(202) 887-6930
rsalerno@mofo.com

Daniel P. Levison
Tokyo
+ 81 3 3214 6717
dlevison@mofo.com

Sherry Yin
Beijing
+ 86 10 5909 3566
syin@mofo.com

Kevin Roberts
London
+ 020 7920 4160
kroberts@mofo.com

Ruti Smithline
New York
(212) 336-4086
rsmithline@mofo.com

About Morrison & Foerster:

We are Morrison & Foerster—a global firm of exceptional credentials in many areas. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology and life science companies. We've been included on *The American Lawyer's* A-List for seven straight years, and *Fortune* named us one of the "100 Best Companies to Work For." Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at www.mofo.com.

Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.