

E-ALERT | Anti-Corruption

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FORMER COMPANY EXECUTIVES PLEAD GUILTY TO AUTHORIZING CORRUPT PAYMENTS Company Made Corrupt Payments in China and Other Countries

On April 16, 2012, Stuart and Hong “Rose” Carson pleaded guilty to separate one-count superseding informations charging them with violating the US Foreign Corrupt Practices Act (“FCPA”). The husband and wife are former executives of Control Components, Inc. (“CCI”), a California-based valve company that admitted to making corrupt payments in China and numerous other countries when it pleaded guilty to FCPA-related charges in 2009. According to the US Department of Justice (“DOJ”), Stuart and Hong Carson each sent an email that authorized corrupt payments to foreign officials.

Alleged Conduct

Stuart Carson, 73, was President of CCI, a Delaware company based in Rancho Santa Margarita, California, that manufactures control valves for use in the nuclear, oil and gas, and power generation industries. Hong Carson, 48, was CCI’s Manager of Sales for China and Taiwan from 1995 to 2000, and Director of Sales for China and Taiwan from 2000 to 2007. CCI is a wholly-owned subsidiary of IMI plc, a UK company.

In a 16-count indictment filed in April 2009, the DOJ charged the Carsons and four other former CCI executives with making corrupt payments to officials at state-owned enterprises. The DOJ alleged that Stuart Carson was the architect of CCI’s “friend-in-camp” sales model, through which CCI employees and agents developed relationships with employees of state-owned and private customers. The DOJ also alleged that this model operated in part through corrupt payments paid by CCI employees and agents to friends-in-camp for the purpose of obtaining or retaining business with CCI. According to the DOJ, Stuart and Hong Carson caused CCI employees to pay approximately \$5.3 million to foreign officials at nine state-owned enterprises (“SOEs”), including six Chinese SOEs: Jiangsu Nuclear Power Corporation, Guohua Electric Power, China Petroleum Materials and Equipment Corporation, PetroChina, Dongfang Electric Corporation, and China National Offshore Oil Corporation.

In July 2009, CCI pleaded guilty to violating the anti-bribery provisions of the FCPA and the Travel Act. In pleading guilty, CCI admitted that from 1998 to 2007, it made corrupt payments to foreign officials in approximately 36 countries, including China. The company paid an \$18.2 million criminal fine and agreed to engage a three-year compliance monitor at company expense.

While one of CCI’s vice presidents, Flavio Ricotti, pleaded guilty and agreed to cooperate with the government, the Carsons and several other former executives decided to contest the charges, in part arguing that the improper payments to state-owned enterprises did not

violate the FCPA because an SOE is not an “instrumentality” under the statute, and therefore its employees should not be deemed to be “foreign officials.”

In 2011, however, a federal judge denied the Carsons’ motion to dismiss the case against them on that ground, agreeing with DOJ that a state-owned enterprise *could* be an instrumentality (but stating that whether a *particular* SOE is an instrumentality is a question of fact for the jury to determine).

On April 16, 2012, the DOJ charged the Carsons with one count of violating the FCPA in separate superseding indictments. According to the DOJ, the Carsons each “corruptly caused an e-mail to be sent authorizing the payment” of money to foreign officials in order to secure business for CCI. (The indictments do not contain additional details of the conduct for which CCI was charged, likely because the Carsons and the government agreed to a plea bargain, in which the charges against the Carsons were reduced in exchange for the Carsons agreeing to plead guilty rather than go to trial.)

Consequences and Implications

At sentencing on October 15, 2012, Stuart Carson faces up to ten months in prison. Hong Carson faces up to three years’ probation, including up to six months of home confinement.

The Carsons’ guilty pleas follow one in a series of unsuccessful attempts to challenge the DOJ’s interpretation of the definition of “foreign official” under the FCPA.¹ Their guilty pleas, the second conviction for husband and wife co-defendants,² are also a product of the DOJ’s recent focus on FCPA enforcement actions against individuals, and on conduct related in whole or in part to China.³

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¹ FCPA defendants’ challenges of the definition of a “foreign official” also failed in the *Lindsey, Esquenazi*, and *O’Shea* cases.

² In 2009, a jury convicted Gerald and Patricia Green of violating the FCPA. They served six months in prison.

³ In 2011 and thus far in 2012, five additional companies have settled FCPA allegations involving conduct in China: [Maxwell Technologies](#) (January 2011), [IBM](#) (March 2011), [Rockwell Automation](#) (May 2011), [Watts Water](#) (October 2011), and [Biomet](#) (March 2012).

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