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Covington Saves Small Company From FCPA Peril

By Jenna Greene
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When a small oil exploration company came under investigation for violating the Foreign Corrupt Practices Act, it could have been the end.

Houston-based Hyperdynamics had a single asset: the concession to drill for oil off the coast of Guinea in West Africa.

But in 2013, it was hit with a grand jury subpoena from the U.S. Department of Justice seeking information about how the company got the concession, followed by another from the U.S. Securities and Exchange Commission.

The company's drilling partner initially said the existence of the investigation justified a refusal to proceed with the drilling. And then, there was the Ebola crisis. By January 2015, Hyperdynamics' stock price had declined by 85 percent; in February 2015, it was delisted from the New York Stock Exchange.

For help, Hyperdynamics turned to a team at Covington & Burling led by partner Nancy Kestenbaum, along with Lanny Breuer and Barbara Hoffman.

The strategy, according to the firm: "real-time, extensive cooperation with the government, including frank discussions of the company's finances and prospects, to try to resolve the investigations quickly enough to allow the company to survive and get back to drilling for oil."

It worked.



Nancy Kestenbaum



Lanny Breuer

In May, the DOJ closed its investigation without bringing any charges. And on Tuesday, the company settled with the SEC, agreeing to pay a \$75,000 penalty for alleged books and records violations, without admitting wrongdoing.

The settlement didn't even merit a press release from the SEC.

In the administrative order settling the case, the SEC said Hyperdynamics failed to accurately record \$130,000 in public relations and lobbying expenses in 2007-2008. The payments were listed as being made to unrelated third parties, but the company later determined that an employee in Guinea controlled the entities.

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