Appendix D. Grand Corruption: 10 Case Studies

Case Study 1: Bruce Rappaport and IHI Debt Settlement

Overview

In 1990, the Government of Antigua and Barbuda (GOAB), under former Prime Minister Lester Bird, issued to GOAB Ambassador Bruce Rappaport[111] the authority to renegotiate the GOAB's debt with the Japanese company Ishikawajima-Harima Heavy Industries Co., Ltd. (hereinafter referred to as IHI).[112] According to the civil complaint filed in Florida, the United States, by the GOAB, Rappaport manipulated the debt settlement numbers so that the GOAB in effect agreed to make periodic overpayments to IHI Debt Settlement Company Ltd. (IHI Debt Settlement)—a company beneficially owned by Rappaport and that purportedly was used to administer the terms of the debt.[113] The IHI debt required monthly payments of only US$199,740.25 to IHI for 25 years; Rappaport had allegedly manipulated the numbers so that the GOAB instead was to pay US$403,334 on a monthly basis for 25 years.[114] The GOAB actually began making the payments on December 31, 1996, eight months before Rappaport claimed to have reached an agreement with IHI.[115] As a result of this scheme, the GOAB was deceived into making payments in excess of US$14 million.[116] As will be described later, in further detail the GOAB eventually was able to recoup the majority of the US$14 million through a settlement with IHI Debt Settlement and Bruce Rappaport.[117]

111. As stated in the second amended civil complaint filed in Florida by the Government of Antigua and Barbuda, " 'World-Check,' a leading provider of intelligence to the financial community, which tracks the identities of known heightened-risk financial customers, including money launderers, fraudsters, terrorists, PEPs, [and] organized criminals . . . reports that Rappaport is linked to various financial controversies over the last 25 years, including an investigation into his relationship with the Bank of New York and Inter-Maritime Bank." Second Amended Complaint at 12-13, Antigua and Barbuda v. Rappaport, No. 06-03560 CA 25 (11th Fla. Cir. Ct. March 21, 2006).

112. Ibid.

113. Ibid., p. 15.

114. Ibid., pp. 15, 17.

115. Ibid., p. 16.

116. Ibid., p. 3.

117. Press Release, Government of Antigua and Barbuda, "Government of Antigua and Barbuda Recoups US$12 million in case against former government officials and others" (February 10, 2009), http://www.ab.gov.ag/gov_v2/government/pressreleases/pressreleases2009/prelease_2009Feb10_1.html (accessed July 3, 2010).

From December 1996 to October 2003, the monthly payments were made into IHI Debt Settlement's bank account at Bank of N.T. Butterfield in Bermuda.[118] After the money was moved into the account of IHI Debt Settlement, court documents show that Rappaport then funneled the stolen overpayments to a web of various other corporate vehicles (CVs) beneficially owned by him and a number of other government officials, allegedly including Bird's Chief of Staff Asot Michael and his mother Josette Michael.[119] Among those CVs named in the complaint were a Cayman Islands corporation, Giddie Ltd. Co., and a Panamanian corporation, Bellwood Services S.A. (Bellwood).[120]

This scheme was predicated on the misuse of CVs. As a result of Rappaport's status as ambassador and the alleged involvement of various other influential government officials like Bird and Michael, the success of the scheme was wholly reliant on maintaining complete anonymity.[121] Hiding behind the shield of entities, the officials were able to transfer funds from one CV to the next without any of the Politically Exposed Person's (PEP's) names appearing on the transfers.[122] Two notable issues from this case were the choice of jurisdictions employed in the scheme and the use of shelf companies.

Choice of Jurisdictions: From Hong Kong SAR, China, to Florida, United States

IHI Debt Settlement, the corporate predecessor to Rappaport's Debt Settlement Administration LLC (discussed in the section "Use of Shelf Companies") was set up in Hong Kong SAR, China, by Bruce Rappaport or his wife Ruth Rappaport.[123] Although both were listed as directors on the company's 2006 annual return, only Ruth Rappaport's signature appeared on the return.[124] According to the annual return, IHI Debt Settlement issued Hong Kong SAR, China dollars (HKD) $200 worth of shares, with two other companies—Dredson Limited (Dredson) and Gregson Limited (Gregson)—listed as the principal shareholders.[125] IHI Debt Settlement, Dredson, and Gregson all shared the same registered office and corporate secretary in Hong Kong SAR, China.[126]

In late 2003, the banking component of the scheme moved from Bermuda to Florida.[127] On September 24, 2003, Debt Settlement Administrators LLC (DSA) was formed in

118. Complaint at 22, Antigua and Barbuda v. Rappaport, No. 06-03560 CA 25 (11th Fla. Cir. Ct. March 21, 2006).
119. Ibid., pp. 6, 22-24.
120. Ibid., pp. 9–10.
121. Ibid., p. 4.
122. Ibid., pp. 22–25.
123. Ibid., pp. 9, 12.
124. IHI Debt Settlement Co. Ltd., Annual Return (Form AR1), p. 9 (May 29, 2006) (H.K.)
125. Ibid., p. 3.
126. Ibid., p. 1. *See also* Dredson Ltd, Annual Return (Form AR1), p. 1 (July 31, 2006) (H.K.). *See also* Gregson Ltd. Annual Return (Form AR1), p. 1 (July 31, 2006) (H.K.).
127. Complaint at 22, Antigua and Barbuda v. Bruce Rappaport, No. 06-03560 CA 25 (11th Fla. Cir. Ct. March 21, 2006).

Florida.[128] The GOAB alleged that DSA was created for the sole purpose of facilitating and administering the fraud of the GOAB. In October 2003, IHI Debt Settlement wire transferred US$569,767.92 from its Bermuda bank account to the Florida bank account of DSA. One month later, the GOAB began making payments directly to DSA's bank account. Essentially, DSA was taking over IHI Debt Settlement's role in the scheme, whereby DSA would transfer the US$199,740.25 payments to IHI.[129]

The broad protection against creditors and civil court judgments provided under the homestead exemption of the Florida Constitution may make the state an attractive destination for incorporators seeking asset protection.[130]

Use of Shelf Companies

IHI Debt Settlement, Dredson, and Gregson were all shelf companies. IHI Debt Settlement was incorporated under the name Offshore Services Limited in 1970.[131] It was not until September 1997 that the company changed its name to IHI Debt Settlement.[132] The other two companies—Dredson and Gregson—were both incorporated in 1972, 17 years before being named as IHI Debt Settlement's principal shareholders.[133]

People may choose to use shelf companies for a variety of reasons. One such reason may be to create the appearance of legitimacy that comes with longevity. Another reason might be to circumvent information requirements required at incorporation. According to then–senior counsel for the U.S. Department of Justice, Jennifer Shasky,

> criminals can easily throw investigators off the trail by purchasing shelf companies and then never officially transferring the ownerships. In such cases the investigation often leads to a formation agent who has long ago sold the company with no records of the purchaser and no obligation to note the ownership change.[134]

Investigation and Asset Recovery

A potential obstacle in this case dealing with the Hong Kong SAR, China, entities was the corporate ownership structure. The listing of Gregson and Dredson as the principal

128. Debt Settlement Adm'rs LLC, Electronic Articles of Organization (September 24, 2003).
129. Complaint at 22, Antigua and Barbuda v. Rappaport, No. 06-03560 CA 25 (11th Fla. Cir. Ct. March 21, 2006).
130. Fla. Constitution §4 (1968), http://www.flsenate.gov/Statutes/index.cfm?Mode=Constitution&Submenu=3&Tab=Statutes#A10S04 (accessed July 3, 2010).
131. Offshore Services Ltd., Certificate of Incorporation (May 29, 1970) (H.K.).
132. Offshore Services Ltd., Certificate of Incorporation on Change of Name (September 24, 1997) (H.K.).
133. *Supra* note 126. *See also* Dredson Ltd, Certificate of Incorporation (July 21, 1972) (H.K.). See also Gregson Ltd., Certificate of Incorporation (July 21, 1972) (H.K.).
134. Business Formation and Financial Crime: Finding a Legislative Solution Before the Comm. on Homeland Sec. and Gov't Affairs for the U.S. Senate (2009) (statement of Jennifer Shasky, then–Senior Counsel to the Deputy Attorney General for the U.S. Department of Justice).

shareholders to IHI Debt Settlement, created a further layer of anonymity, potentially allowing the Rappaports to further separate their ownership from the CV.[135]

Another potential obstacle to investigators was the fact that,[136] for both corporations and limited liability corporations (LLCs) formed in Florida, ownership information does not need to be disclosed upon incorporation, and it does not need to be disclosed in annual reports filed with the state.[137] Legal ownership information is required to be kept only with the corporation or the LLC.[138] Information on ownership structure is critical to learning who ultimately is controlling the scheme—or, at least, the particular CV. When such information is not publicly available, the only remaining option is to obtain it from the company through legal procedure.

Fortunately for the GOAB, they were able to recover some of the stolen assets despite these obstacles. In March 2006, GOAB Attorney General Justin Simon filed a civil claim concerning the IHI matter in the High Court of Antigua and Barbuda for special damages in the sum of US$14,414,904 plus interest, as well as general damages and exemplary damages for fraudulent misrepresentation and misfeasance in public office.[139] The GOAB also brought a similar suit in the Eleventh Judicial Circuit Court in Miami-Dade Country, Florida, to recover assets there.[140] Along with Rappaport and IHI Debt Settlement, the other defendants in the claim were Bird, Asot Michael, Bellwood, and DSA.[141] The GOAB secured the services of forensic investigator Mr. Robert Lindquist to prepare an investigative report on the matter.[142] The collaboration between the GOAB and Lindquist proved essential in reaching a settlement with Rappaport.

On February 10, 2009, Bruce Rappaport agreed to settle the civil claim against himself and IHI Debt Settlement by paying to the GOAB US$12 million.[143] The settlement was the result of months of hard negotiations between the GOAB and the Rappaports

135. *Supra* note 126.
136. Fla. Stat. § 607.0202.
137. Ibid. Fla. Stat. §607.1622 (2009), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0607/SEC1622.HTM&Title=->2009->Ch0607->Section%201622#0607.1622 (accessed July 3, 2010). Fla. Stat. § 608.407 (2009), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0608/SEC407.HTM&Title=->2009->Ch0608->Section%20407#0608.407 (accessed July 3, 2010). Fla. Stat. § 608.4511 (2009), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0608/SEC4511.HTM&Title=->2009->Ch0608->Section%204511#0608.4511 (accessed July 3, 2010).
138. Fla. Stat. §608.4101 (2009), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0608/SEC4101.HTM&Title=->2009->Ch0608->Section%204101#0608.4101 (accessed July 3, 2010).
139. Press Release, *supra* note 117.
140. Second Amended Complaint at 12-13, Antigua and Barbuda v. Rappaport, No. 06-03560 CA 25 (11th Fla. Cir. Ct. March 21, 2006)
141. Press Release, *supra* note 117.
142. Ibid.
143. Ibid.

based on information provided in Mr. Lindquist's report.[144] A Notice of Discontinuance was filed in the High Court of the GOAB with respect to the two defendants; the effect of the notice was to inform the court and seek the court's permission to discontinue the civil claim against the two defendants, but to continue the civil claim against the other defendants.[145] A similar notice was filed in the Miami, Florida, court.[146] At the time of writing, litigation against Bird and Michael and the other named defendants is pending.[147]

Case Study 2: Charles Warwick Reid

Overview

Charles Warwick Reid, a lawyer from New Zealand, arrived in Hong Kong SAR, China,[148] to join the Attorney General's Chambers in 1975 and eventually worked his way up to principal crown counsel and the head of Hong Kong SAR, China's Commercial Crime Unit.[149] By 1989, he had acquired control of assets amounting to roughly HK$12.4 million.[150] In October 1989, Reid was suspended from duty and arrested by Hong Kong SAR, China's then–Independent Counsel Against Corruption (ICAC) on suspicion of corruption.[151] Reid jumped bail two months later, fleeing through Macau[152] and China before being apprehended in and deported from the Philippines.[153] Accepting a deal with Hong Kong SAR, China prosecutors, Reid pled guilty to a single count of unexplainable possession of pecuniary resources and property disproportionate to his present and past official emoluments. He testified in the trials of several barristers and solicitors who had participated in his corrupt activities that the funds were in fact bribes received for obstructing prosecutions of certain criminals.[154] He served four-and-a-half years of his eight-year sentence, and then was deported to New Zealand, arriving November 30, 1994.[155] Despite being stripped of his status and reputation, Reid became embroiled in another bribery scandal shortly upon his return to New Zealand.[156]

144. Mr. Robert Lindquist was also instrumental in the forensic investigation of the Piarco International Airport scandal in Trinidad and Tobago. Ibid.
145. Ibid.
146. Plaintiff's Notice of Dropping Certain Parties. Antigua and Barbuda v. Rappaport, No. 06-03560 CA 25 (11th Fla. Cir. Ct. February 20, 2009).
147. Press Release, *supra* note 117.
148. Now Hong Kong SAR, China.
149. *In re* Reid, [1993] No. CACV149/1993, ¶4 (H.K.).
150. Att'y Gen. for H.K. v. Reid, [1994] 1 A.C. 324 (P.C.) (appeal taken from N.Z.) (N.Z.).
151. *In re* Reid, [1993] No. CACV149/1993, ¶5 (H.K.). The Independent Counsel Against Corruption was the precursor to the current Hong Kong Independent Commission Against Corruption.
152. Now Macao SAR, China.
153. Ibid., ¶¶6-9.
154. Ibid., ¶11, ¶¶13-14.
155. Ch'ngPoh v. Chief Executive of the HKSAR, [2002] No. HCAL182/2002, ¶74 (H.K.).
156. Ibid.

Although dated, the case of Charles Warwick Reid is informative because of the noteworthy strategies that he employed to maintain anonymity through the use of corporate vehicles (CVs) to keep distance from the laundering of the bribery funds, namely, his misuse of legal arrangements. Additionally, the challenges encountered in recovering the ill-gotten gains and Reid's ostensible cooperation with the recovery process provide valuable insight as well.

Misuse of Legal Arrangements

The evidence presented in the various trials involving Reid show the frequent use of trust arrangements on his part to obscure the ownership and control of his illegal assets. Reid held money in trust in the trust accounts of his local solicitors,[157] and his family lived in a home that was legally registered to Solicitor Marc Molloy, who served as trustee.[158] Following his deportation from Hong Kong to New Zealand, Reid was alleged to have received an additional bribe payment to help derail another trial, with a trust being created by Reid's accountant; the bribe giver acted as settlor, the accountant as trustee, and Reid and his family as beneficiaries. The trust money was transferred to and managed from a foreign bank account.[159]

A short time passed between Reid's release from incarceration in Hong Kong SAR, China, to his setting up of a new trust. In a period of just over a week, Reid was again in possession of corrupt assets that flowed from a foreign jurisdiction into New Zealand and back out to another foreign jurisdiction.[160] Circumstances in New Zealand have certainly changed since Reid operated.[161] However, the risks of money laundering from tactics employed by Reid (transferring assets into and out of the jurisdiction's financial institutions through trusts and similar arrangements, especially by utilizing agents, lawyers, and straw persons) still exist.[162] As in a number of countries throughout the world, New Zealand faces a dangerous absence of regulatory and due diligence safeguards specifically designed to detect and mitigate the risks of these abuses.[163]

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157. Att'y Gen. for H.K. v. Reid, [1992] Appeal No: 44 of 1992, at 10-27 (C.A.) (reasons for judgment of Penlington J) (N.Z.).
158. Ibid.
159. Ch'ng Poh v. Chief Executive of the HKSAR, [2002] No. HCAL182/2002, ¶74 (H.K.).
160. Ibid.
161. In 1996 the Financial Transactions Reporting Act (FTRA) came into effect, however the 2009 FATF New Zealand Mutual Evaluation Report reported specific deficiencies with the New Zealand's AML regime: "Even though it is not explicitly stated, the application of the FTRA prevents financial institutions from keeping anonymous accounts or accounts in fictitious names, but the CDD [customer due diligence] requirements of the FTRA do not apply to accounts opened before the FTRA entered into force in 1996. In addition, clarification is needed of the verification requirements to ensure that the documents being used are reliable and from an independent source." *Financial Action Task Force & Asia-Pacific Group, Mutual Evaluation Report*, Executive Summary ¶18 (2009).
162. Ibid., Table 1.
163. According to the MER, "[m]ost money laundering occurs through the financial system; however, the complexity usually depends on the sophistication of the offenders involved. There appears to be a higher degree of sophistication in laundering the proceeds of crime now than in previous years. Since 2007, the

Development of the Constructive Trust Doctrine

As a result of Reid's crime, the attorney general of Hong Kong was forced to fight a precedent-setting battle through New Zealand's lower courts all the way up to the Judicial Committee of the Privy Council in London. These steps were necessary to recover the portions of approximately HK$12.4 million of bribe money that had been converted into property after passing through various CVs and legal owners in New Zealand on Reid's behalf.[164]

The issue at stake was that the Government of Hong Kong maintained it held a caveatable interest in the Reid-owned properties in New Zealand, as they represented the proceeds of bribery, while Reid was in dereliction of his fiduciary duties as a civil servant. The Privy Council judgment took for granted that the New Zealand properties were purchased with Reid's bribe money, and that neither Mrs. Reid nor Mr. Molloy was a bona fide purchaser of a legal estate without notice.[165]

The Privy Council judgment was based on the principle of equity, which considers "as done that which ought to have been done." The Council determined that the assets received by Reid as bribe payments should have been "paid or transferred instead to the person who suffered from the breach of duty."[166] This point is of great consequence to the legal relationship held between the bribe-receiving fiduciary and the party whose trust has been betrayed; it provides a means of redress.[167] Due to the Privy Council ruling, English common law (and many other legal systems) now recognizes that property acquired—either innocently or criminally—in breach of trust belongs in equity to the *cestui que* trust; in other words, persons holding such property do so on constructive trust for the true owner.[168] Although not without its controversies, the Constructive Trust Doctrine is now a useful tool for those who seek to prevent the dispersal of corrupt funds and recover the proceeds of corrupt activities, such as bribery.

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purchase of real estate, the use of professional services and foreign exchange dealers have been popular means to launder funds." Ibid., ¶4. According to the MER's Ratings of Compliance with FATF Recommendations, New Zealand, while found to have a "quite robust" AML/CFT measures in place, was rated Non-Compliant with Recommendations 5, 6, 9, 12, 34. Ibid., Table 1. For explanation of these relevant recommendations, please see FATF 40+9 Recommendations.

164. *In re* Reid, [1993] No. CACV149/1993, ¶4 (H.K.).

165. Att'y Gen. for H.K. v. Reid, [1994] 1 A.C. 324 (P.C.) (appeal taken from N.Z.) (N.Z.).

166. Ibid.

167. Had the precedent on the treatment of bribes not been overturned by the Reid case, the absence of such a proprietary remedy would mean that the government of Hong Kong, would first have to procure a personal restitutionary order and see it enforced in order to recover assets. This would have meant that the government's only option would have been to pursue a claim in personam against the fiduciary. Additionally, if the fiduciary in breach is bankrupt, the injured party (*i.e.,* the owner of a debt) would be required to compete with any other unsecured creditors for what assets are available. Att'y Gen. for H.K. v. Reid, [1992] Appeal No: 44 of 1992, pp. 50-51 (C.A.) (reasons for judgment of Penlington J) (N.Z.).

168. Att'y Gen. for H.K. v. Reid, [1994] 1 A.C. 324 (P.C.) (appeal taken from N.Z.) (N.Z.).

Investigation

The bribery schemes involving Reid used several CVs, agents, straw persons, and a combination of foreign and domestic bank accounts to evade detection. He kept his name from being attached to the bribe money, as the funds were transferred into secretive trusts and portions converted into real property purchases. These several methods created investigative obstacles and were employed across a range of jurisdictions; the persons, accounts, and properties stretched across Hong Kong, SAR, China; Singapore; Vanuatu; and New Zealand.

An additional investigative obstacle was caused by Reid's dual foreign and domestic status. Reid took advantage of the fact that while his residence was in Hong Kong, SAR, China, during his tenure as a civil servant, he remained a citizen of New Zealand.[169] As noted, his bribe money stayed out of his name and out of Hong Kong, SAR, China, in Hong Kong, SAR, China, it appeared as though he had not been accruing such assets at all. Had things gone as planned, the assets would have been waiting for him upon retiring to his homeland.[170]

Proving every instance of bribery would have been a challenging task for the prosecution. ICAC was able to rely on an "illicit enrichment" provision of the Prevention of Bribery Ordinance of the Hong Kong Legal Code to investigate and arrest Reid.[171] Illicit enrichment laws, although not embraced by all nations,[172] are listed in the United Nations Convention against Corruption (UNCAC).[173] By convicting Reid on the illicit enrichment charge, ICAC was able to leverage an offer of immunity from further prosecution into getting a detailed account of Reid's misdeeds and money laundering[174] while still getting a sentence of eight years imprisonment and an order of restitution in the amount of HK$12,415,900.72.[175]

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169. Att'y Gen. for H.K. v. Reid, [1992] Appeal No: 44 of 1992, at 16 (C.A.) (reasons for judgment of Penlington J) (N.Z.).

170. Reid admitted to receiving official emoluments of HK$4,795,123.77 over his 14 years of service in Hong Kong and had expended nearly the entire amount of those licit funds on living expenses for himself and his family. Ibid. p. 27.

171. Ibid. p. 34.

172. The United States and Canada have refused to adopt illicit enrichment provisions, on the basis that such provisions would be incompatible with their constitutional principles and legal systems. United States, B-58: Inter-American Convention against Corruption, http://www.oea.org/juridico/english/sigs/b-58.html (accessed July 1, 2010).

173. According to the United Nations Convention against Corruption, "Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income." G.A. Res. 58/4, Art.20, U.N. Doc. A/RES/58/4 (October 31, 2003).

174. Att'y Gen. for H.K. v. Reid, [1992] Appeal No: 44 of 1992, p. 26 (C.A.) (reasons for judgment of Penlington J) (N.Z.).

175. Ibid. p. 19.

Asset Recovery

In May 1990, the Government of Hong Kong SAR, China, lodged caveats in New Zealand, claiming an estate or interest in the properties listed as belonging to Reid, his wife, and his solicitor. The caveats were accepted and registered by the Assistant Land Registrar.[176] In December 1990 and February 1991, Reid and the others tried to register instruments of mortgage on the caveated properties; such an application has the effect of causing the caveats to lapse unless the caveator gets an order from the High Court of New Zealand.[177] In the summer of 1991, the High Court of New Zealand judged in favor of Reid,[178] although he acknowledged the strength of the attorney general of Hong Kong SAR, China's, claims that the bribe money Reid had received had been funneled into the properties and that the nominal owners had knowledge of these facts.[179] This ruling was later upheld by the Court of Appeal in December 1991.[180] Upon final appeal to the Privy Council, however, a favorable judgment for the attorney general was reached on November 1, 1993, restoring the Crown's claim of beneficial ownership interest in the Reid properties.[181] In this manner, through the civil legal process, asset recovery was effected.[182]

Case Study 3: Diepreye Alamieyeseigha

Overview

Diepreye S. P. Alamieyeseigha was arrested at Heathrow Airport in September 2005 by the London Metropolitan Police on suspicion of money laundering offences.[183] A search of "his" apartment (it was registered in the name of a company) revealed nearly a million pounds' worth of British, European, and U.S. currency.[184] After his arrest, he fled the United Kingdom and returned to Nigeria where he was impeached and dismissed from his position as governor of Bayelsa State.[185] During Alamieyeseigha's initial two terms of public office in Nigeria, from 1999 to 2005, the Federal Republic of

176. Att'y Gen. for H.K. v. Reid, [1992] Appeal No: 44 of 1992, ¶7 (C.A.) (case for the respondents) (N.Z.).
177. Ibid., ¶8.
178. Ibid., ¶12.
179. Ibid., ¶14.
180. Ibid., ¶1.
181. Att'y Gen. for H.K. v. Reid, [1994] 1 A.C. 324 (P.C.) (appeal taken from N.Z.) (N.Z.).
182. It should be noted that none of the money in the accounts at the time of Reid's flight from Hong Kong was ever recovered. *Supra* note 149. Speculating as to the reasons for Reid's prolonged legal efforts to prevent asset forfeiture, Lord Templeton bluntly stated in his judgment that: "Since an unfulfilled order has been made against Mr. Reid in the courts of Hong Kong to pay HK$12.4m, his purpose in opposing the relief sought by [the government of Hong Kong at the time] in New Zealand must reflect the hope that the properties, in the absence of a caveat, can be sold and the proceeds whisked away to some Shangri La which hides bribes and other corrupt monies in numbered bank accounts." Ibid.
183. Nigeria v. Santolina Inv. Corp., [2007] EWHC (Ch) 3053, ¶6 (Eng.).
184. Ibid.
185. Ibid.

Nigeria alleged that by participating in corrupt activities, he had enriched himself by tens of millions of dollars worth of internationally held monetary assets and property holdings, often registered in the name of corporate vehicles (CVs).[186]

Alamieyeseigha created at least five CVs that separated his name and beneficial interest from the legal ownership and control of various financial and real estate assets. Following typical trends of misusing CVs, the majority were private limited companies in a variety of jurisdictions (acquired and managed through a variety of banking and administration trust and company service providers[TCSPs]): Santolina Investment Corporation (incorporated in the Seychelles), Solomon & Peters Limited (incorporated in the British Virgin Islands), Falcon Flights Inc. (incorporated in the Bahamas), and Royal Albatross Properties 67 (Pty) Limited (incorporated in South Africa).[187] The ownership and control of Falcon Flights, Inc. was held by a Bahamas trust that he established, as settlor, for the benefit of his wife and children.[188] As will be described in the section "Misuse of Trusts to Obscure Beneficial Ownership of CVs and Assets," the misuse of this trust to obscure his beneficial ownership of these CVs and assets was an essential part of his scheme.

Misuse of Trusts to Obscure Beneficial Ownership of CVs and Assets

In May 2001, upon the advice of Alamieyeseigha's bank, UBS AG,[189] Alamieyeseigha settled "the Salo Trust" for the benefit of his wife and children.[190] Alamieyeseigha later acknowledged that he was a beneficiary of the trust, but he maintained that he was initially unaware that he was himself listed as a beneficiary along with his wife and children.[191] The trustees of the Salo Trust either purchased or incorporated Falcon Flights, Inc. pursuant to the terms of the trust agreement.[192]

In the first claim made against Alamieyeseigha and his companies in early 2007, the England and Wales High Court (Chancery Division) held that it was either commonground or incontrovertibly established by documentation that in September 1999 Alamieyeseigha opened a U.S. dollar account with UBS in London (No. 323940.01) with an initial deposit of US$35,000 and a balance in December 2005 of US$535,812 attributable to various sources. The originator often was recorded simply as "Foreign Money Deposit."[193] Alamieyeseigha stated that the UBS account funds amounted to "contributions from friends and political associates towards the education of my

186. Nigeria v. Santolina Inv. Corp., [2007] EWHC (Ch) 437, ¶1 (Eng.).
187. Nigeria v. Santolina Inv. Corp., [2007] EWHC (Ch) 3053, ¶6 (Eng.).
188. Ibid. at ¶34. Nigeria v. Santolina Inv. Corp., [2007] EWHC (Ch) 437, ¶¶4, 13, 39 (Eng.).
189. UBS AG, a Swiss bank, was named as the 9th defendant in the civil case in London. Nigeria v. Santolina Inv. Corp., [2007] EWHC (Ch) 437, ¶1 (Eng.).
190. Defence of the Third Defendant [10.1]. Nigeria v. Santolina Inv. Corp., [2007] EWHC (Ch) 437, ¶1 (Eng.).
191. Defence of the Third Defendant, ¶37.
192. Defence of the Third Defendant, ¶10.2.
193. Nigeria v. Santolina Inv. Corp., [2007] EWHC (Ch) 437, ¶6, ¶38 (Eng.).

children," a claim that the court would later find dubious in light of the governor's inconsistent and changing explanations as to why money entered the account.[194] Alamieyeseigha's defense further stated that the UBS account's status as a trustee-account led him to not list the account on the declaration-of-assets form that is required for all Nigerian governors.[195]

The net effect of the preceding evidence was that Alamieyeseigha represented himself as or admitted to being, in various capacities, (a) the settlor, though claiming the true economic settlements came from "friends" whom he could not specifically recall; (b) the trustee, insofar as the UBS account legally opened and controlled in his own name was held out to be a trust account; and (c) a beneficiary, a concession made by his defense. The existence of this trust separated Alamieyeseigha from the legal and beneficial ownership and control of the assets contained therein, and added another layer of complexity to those who would have tried to discover that he did indeed hold such assets.

In addition, this account received funds in the amount of approximately US$1.5 million, through two deposits made in 2001 by one Aliyu Abubakar (described elsewhere in the judgment as the "moving spirit" behind a company called A Group Property that received contracts with Bayelsa state either in 2001 or 2002.)[196] Abubakar, a state contractor, made the acquaintance of Alamieyeseigha just one year earlier in 2000.[197] These deposits were immediately converted into bonds, which were then transferred to the portfolio holdings of Falcon Flights, Inc. (the private company procured by the trust) in January of 2002, effectively burying Alamieyeseigha's claim over the assets within a nested CV structure.[198]

Investigation

As mentioned earlier, the London Metropolitan Police arrested Alamieyeseigha in the United Kingdom on September 15, 2005, for suspicion of money laundering and fled the country while on bail. On December 9, 2005, immediately following his impeachment—which stripped him of government immunity—Alamieyeseigha was arrested by the Economic and Financial Crimes Commission (EFCC) of Nigeria. Charged along with him were the following private companies: Solomon & Peters Limited, Santolina Investment Corporation, Pesal Nigeria Limited, Salomein & Associated (Nig) Limited, Kpedefa Nigeria Limited, Jetty Property Limited, and Herbage Global Services Limited.[199]

194. Nigeria v. Santolina Inv. Corp., [2007] EWHC (Ch) 3053, ¶70 (Eng.).
195. Nigeria v. Santolina Inv. Corp., [2007] EWHC (Ch) 437, ¶39 (Eng.). As stated earlier, Alamieyeseigha's defense to the charge was that he was unaware that he was the beneficiary of the trust, despite the fact the UBS account was opened under his name. Defence of the Third Defendant, ¶¶10.1, 37.
196. Nigeria v. Santolina Inv. Corp., [2007] EWHC (Ch) 437, ¶¶14, 40 (Eng.).
197. Ibid.
198. Ibid., ¶¶26, 28, 38.
199. Nigeria v. Santolina Inv. Corp., [2006] No. CA/L/01/2006, pp. 1-2 (Nig.).

Concurrent with the criminal proceedings in Nigeria, the federal government of Nigeria went abroad to seize suspect assets in a number of jurisdictions. The most significant attempt was a petition for summary judgment filed in a civil asset recovery case in the U.K. High Courts to claim various identified monetary and real estate properties in that country.[200] The hearing took place on February 27, 2007, and judgment was delivered on March 7, 2007.[201] While conceding that the Federal Republic of Nigeria had presented a strong case for such a ruling, the court concluded that by presenting only inferential arguments, relying on suspect witness testimony, and lacking a criminal conviction from the home jurisdiction, any move to deprive the defendants of the right to a trial by seizing his assets would have been ill-advised.[202]

In July 2007, Alamieyeseigha pleaded guilty before a Nigerian High Court to six charges of making false declaration of assets and caused his companies to plead guilty to 23 charges of money laundering. Alamieyeseigha was sentenced to two years in prison and the court ordered the seizure of assets in Nigeria. He also pled guilty on behalf of Solomon & Peters Limited and Santolina Investment Corporation, two of the CVs he had employed as part of his money laundering scheme (the governor's signing of the guilty plea for each company being a sign of control that was noted as significant in mid-2007).[203] All of the companies charged were found guilty and subsequently wound up and had their assets forfeited to the government.[204] This change in circumstances destroyed any possibility that Alamieyeseigha would had been able to mount a reasonable defense against the suit and, accordingly, the Chancery Division allowed a second hearing for summary judgment, which was granted on behalf of Nigeria.[205] Claims were initiated against Alamieyeseigha's real estate in South Africa.

Asset Recovery

Nigeria was able to reclaim a sizable amount of Alamieyeseigha's tainted assets that had been dispersed among CVs and bank accounts around the world. US$2 million belonging to Alamieyeseigha was also returned to Nigeria by the British government.[206] The Lagos High Court ruling of 2007 contained an explicit seizure order for the government

200. Nigeria v. Santolina Inv. Corp., [2007] EWHC (Ch) 437, ¶1 (Eng.).
201. The basis of summary judgment is to save the time and expense of going to a whole trial in those instances where the defendant has no real prospect of successfully defending the issue, and must be decided on such grounds, if such a matter can be decided without conducting a "mini-trial" to determine the reasonableness of the defense. Ibid.
202. Nigeria v. Santolina Inv. Corp., [2007] EWHC (Ch) 437, ¶¶72-74 (Eng.).
203. Nigeria v. Santolina Inv. Corp., [2007] No. FHC/L/328C/05, at 3-4 (Nig.). Nigeria v. Santolina Inv. Corp., [2007] EWHC (Ch) 3053, ¶¶3-5 (Eng.).
204. Nigeria v. Santolina Inv. Corp., [2007] No. FHC/L/328C/05, at 6 (Nig.).
205. Nigeria v. Santolina Inv. Corp., [2007] EWHC (Ch) 3053, ¶¶52-54 (Eng.).
206. Damilola Oyedele culled from *This Day Newspapers*, posted on the website of the Economic and Financial Crimes Commission, "UK to Return £40m Stolen Funds to Nigeria" (June 2, 2008), at http://efccnigeria.org/index.php?option=com_content&task=view&id=102&Itemid=34 (accessed March 23, 2011).

to take control of millions of pounds of assets of the various CVs involved in Alamieyeseigha's misdeeds, as well as 10 properties held in Nigeria and abroad.[207] As a result of the civil suit in London, the government recovered three residential properties in London (registered to Solomon & Peters) and assets held at the Royal Bank of Scotland PLC (in the accounts of Santolina Investment Corp).[208]

This recovery process culminated in a July 2009 ceremony whereby the current head of the EFCC participated in a handover ceremony in which the federal government remitted to Bayelsa state the misappropriated funds. The funds totaled 3,128,230,294.83 Nigerian Naira (₦), US$441,000, €7,000, and £2,000.[209] Additionally, control of two unsold real properties (valued respectively at ₦2.8 billion and ₦210 million) was transferred to Bayelsa. In May 2011, U.S. Assistant Attorney General Lanny Breuer announced that the U.S. Department of Justice's Kleptocracy Asset Recovery Initiative had filed, in March and April 2011, two civil asset forfeiture actions to recover more than $1 million in Alamieyeseigha's alleged illicit proceeds in the United States. According to Mr. Breuer's May speech, in the state of Maryland, the Department of Justice was seeking forfeiture of a private residence worth more than US$600,000 and in Massachusetts, the forfeiture of close to US$400,000 in a brokerage account.[210]

Case Study 4: Frederick Chiluba

Overview

Dr. Frederick Jacob Titus Chiluba was the President of the Republic of Zambia from 1991 to 2001.[211] In 2007, the attorney general of Zambia brought a private civil action in the United Kingdom on behalf of the Republic of Zambia to recover funds that had been transferred from Zambia's Ministry of Finance for the private use of then-President Chiluba and various other co-conspirators.[212] Although the U.K. case was composed of three different sets of allegations, this study's focus is limited to the Zamtrop conspiracy and the BK conspiracy.[213] Both schemes were complex, involving dozens of persons, corporate vehicles (CVs), and intermediaries as tens of millions of dollars were siphoned out of the Zambian treasury. Charges were brought

207. Nigeria v. Santolina Inv. Corp., [2007] No. FHC/L/328C/05, pp. 6-8 (Nig.).
208. Nigeria v. Santolina Inv. Corp., [2007] EWHC (Ch) 3053, ¶¶7-8, ¶¶52-54 (Eng.).
209. Press Release, Economic and Financial Crimes Commission, "Remarks by the Executive Chairman, Mrs. Farida Waziri, AIG (RTD), at the Handover Ceremony of Chelsea" (July 14, 2009), http://efccnigeria.org/index.php?option=com_content&task=view&id=667&Itemid=34 (accessed July 1, 2010).
210. U.S. Department of Justice, "Assistant Attorney General Lanny Breuer of the Criminal Division Speaks at the Fritz-Hermann Bruner Memorial Lecture at the World Bank," May 25, 2011, available at www.justice.gov/criminal/pr/speeches/2011/crm_speech_110525.html (accessed June 2, 2011).
211. Republic of Zambia v. Meer Care & Desai, [2007] EWHC (Ch) 952, ¶5 (Executive Summary) (Eng.).
212. Ibid. at ¶3.
213. The three separate components are individually known as 'The Zamtrop Conspiracy," "The BK conspiracy," and "The MOFED Claim." This case study does not delve in the claims of fiduciary breaches involved in the MOFED claim, as the presiding Justice dismissed it. Ibid., ¶¶3, 51.

against 18 defendants, and 76 other individuals and companies were implicated in the convoluted web of illicit activities in President Chiluba's misdeeds.[214]

The Zamtrop conspiracy centered around the alleged misuse of a significant portion of US$52 million of Zambian Ministry of Finance funds that had been transferred into a bank account (known as Zamtrop) at the Zambia National Commercial Bank Limited in the United Kingdom.[215] This account was opened in December 1995 by Xavier Franklin Chungu, a close associate of President Chiluba and the head of the Zambia Security Intelligence Service (ZSIS).[216] The account opening forms were filled out improperly and Chungu was, at various times over the life of the account, the sole signatory.[217] Funds originating in the Zambian Ministry of Finance entered the account from the official state budget as a result of the overpayment of debts originating in fraudulent contracts with Wilbain Technology, Inc., and Systems Innovations, Inc.—corporations based in Delaware and Virginia, United States, respectively.[218] The money was then routed through Access Financial Services Limited (AFSL), a Zambian non-bank financial institution, and into the control of the various other individuals and companies to make payments and purchases on behalf of the conspirators. Total misappropriations by the conspiracy were demonstrated to be US$25,754,316.[219]

The BK conspiracy was a similar scheme in which President Chiluba, Chungu, and others allegedly acted in breach of their fiduciary duties to the Republic of Zambia.[220] A fraudulent financing agreement involving a 10-year US$100 million loan for the purpose of purchasing military equipment for Zambia was entered into in 1999.[221] No evidence existed of any such deal and yet US$20,200,719 was paid into bank accounts in Belgium and Switzerland created for this purpose. The England and Wales High Court (Chancery Division) concluded that the money had been "dissipated away" in favor of the conspirators.[222]

A common theme in both of these schemes was the misuse of professional intermediaries, otherwise known as Designated Non-Financial Businesses and Professions (DNFBPs). Two other interesting aspects of the case were the misuse of a publicly tradable entity and the distance between the conspirators and the CVs.

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214. Republic of Zambia v. Meer Care & Desai, [2007] EWHC (Ch) 952 (Dramatis Personae) (Eng.).
215. Republic of Zambia v. Meer Care & Desai, [2007] EWHC (Ch) 952, ¶2, ¶123 (Eng.).
216. Ibid., ¶127. Republic of Zambia v. Meer Care & Desai, [2007] EWHC (Ch) 952 (Dramatis Personae) (Eng.).
217. Republic of Zambia v. Meer Care & Desai, [2007] EWHC (Ch) 952, ¶¶127-128 (Eng.).
218. Ibid., ¶151. Republic of Zambia v. Meer Care & Desai, [2007] EWHC (Ch) 952 (Dramatis Personae) (Eng.).
219. Republic of Zambia v. Meer Care & Desai, [2007] EWHC (Ch) 952, ¶¶40-42 (Executive Summary) (Eng.).
220. Republic of Zambia v. Meer Care & Desai, [2007] EWHC (Ch) 952, ¶1054 (Eng.).
221. Ibid., ¶¶1056-1059.
222. Ibid., ¶¶1058, 1069.

Misconduct by DNFBP Intermediaries

Figuring prominently in both the Zamtrop and BK conspiracies were two firms of English solicitors: Meer Care & Desai (MCD) and Cave Malik & Co. (CM), as well as its Zambian offshoot, Cave Malik & Ndola, Zambia.[223] Both firms participated in the creation and operation of various corporate vehicles and their bank accounts for the benefit of the two conspiracies.[224]

Iqbal Meer, a partner of MCD, undertook an agreement with Chungu to act on behalf of AFSL in the receipt and disbursement of Republic funds for official ZSIS business.[225] MCD, through Meer, effectively "washed" the illicit government money through their client accounts.[226] Although Meer and MCD had made little or no money at all for their participation in these activities,[227] Chungu singled out Meer for this role because of his perceived susceptibility to the benefit of being associated with the politically powerful.[228]

In court, Meer maintained that he held himself to a higher professional ethical standard and received a character reference from Nelson Mandela, another client of his firm.[229] Nevertheless, the court found that Meer's professional responsibilities, as well as his international savvy, should have prevented him from carrying out the dubious transactions he unquestionably performed.[230] MCD and CM were both found liable for conspiracy and dishonest assistance with judgments entered against them for several (U.S.) million dollars each, although the ruling against MCD were later overturned on the grounds that the judge had made an inappropriate leap between negligence and dishonest assistance.[231]

Distance between the Primary Conspirators and the Corporate Vehicles

The attorney general of Zambia alleged that both conspiracies materially concerned President Chiluba and Chungu. They were, in the case of the Zamtrop conspiracy, its primary architects; in the BK matter, they breached their fiduciary duties to the Republic and knowingly received tainted money.[232] The court expressed a belief that the

223. Republic of Zambia v. Meer Care & Desai, [2007] EWHC (Ch) 952 (Dramatis Personae) (Eng.).
224. Ibid.
225. Republic of Zambia v. Meer Care & Desai, [2007] EWHC (Ch) 952, ¶544 (Eng.).
226. Ibid., ¶435.
227. Professional intermediaries, because of their knowledge, abilities, and the deference shown to them, can help parties to grand corruption smoothly navigate the world's financial systems. Justice Smith highlights this notion in his decision: "[t]he sad thing however is that there have been many cases in the courts where professionals have become embroiled in fraud for little or no personal benefit. They often commit the fraud out of a desire to please clients whom they wish to impress. They are sometimes flattered that famous or powerful people use them. Ibid., ¶¶556-561.
228. Ibid., ¶561.
229. Ibid., ¶543.
230. Ibid., ¶¶564-565.
231. Ibid., ¶¶128-129, ¶¶133-134.
232. Republic of Zambia v. Meer Care & Desai, [2007] EWHC (Ch) 952, ¶¶87, 1054 (Eng.).

secrecy surrounding Chungu and the ZSIS was used as "an engine of fraud at the expense of the Republic" to shield the conspirators' illicit activities from challenge or enquiry.[233] Chungu also recruited another primary figure to the conspiracy to act on his behalf: Faustin Kabwe, a friend since childhood.[234]

The primary conspirators sought to maintain as much distance as possible between themselves and the illegal activity by inserting friends and associates between themselves and the various transactions. In addition, they created further distance by using their prestige and the secrecy prerogative of the ZSIS to convince others to assist them without asking too many questions. As noted, to operate the various CVs and their bank accounts, Chungu sought out intermediaries from whom he maintained a degree of separation on a personal level.[235]

Misuse of a Publicly Tradable Entity

One of the 18 defendants in this matter was a Belgian company, Belsquare Residence N.V. (Belsquare).[236] Belsquare was part of a chain of CVs; it was a *naamloze vennootschap*, the equivalent of a public limited liability entity, and was wholly acquired by Jarban S.A., a Luxembourg company that in turn was owned by Harptree Holdings, a British Virgin Islands International Business Company with bearer shares.[237] Harptree Holdings and Jarban both were incorporated by Iqbal Meer of MCD for the benefit of Faustin Kabwe/ZSIS.[238]

Because publicly traded companies are usually subject to a number of disclosure regulations, reported cases of the misuse of these entities are rare. Through this chain of CVs, however, a person engaging in grand corruption, by holding a bearer share in his hand, was able to acquire control of a publicly held Belgian entity. This entity converted misappropriated Ministry of Finance funds into European real estate purchases.[239]

Investigation and Asset Recovery

President Chiluba stepped down in 2001 and Xavier Chungu retired in 2002 after the election of Levy Mwanawasa SC.[240] The schemes perpetrated by the two men and other conspirators began receiving widespread publicity after the Zambian newspaper

233. Ibid., ¶¶145, 150.
234. Ibid., ¶486.
235. Iqbal Meer had been friends with Faustin Kabwe for over 20 years, but was not shown to have any personal connection to Chungu. Ibid.
236. Ibid., ¶¶593-597. Republic of Zambia v. Meer Care & Desai, [2007] EWHC (Ch) 952 (Dramatis Personae) (Eng.).
237. Ibid.
238. Ibid.
239. Publicly held entities typically qualify for simplified due diligence measures by financial institutions (less oversight); the use of real estate for money laundering, while a common practice and known in theory, is also still not regarded as particularly high risk. Ibid.
240. Ibid., ¶¶222-224.

The Post ran an article that uncovered the Zamtrop account activities. Chiluba, Chungu, Kabwe, MCD, and CM were implicated as recipients of the Zamtrop funds.[241] Shortly thereafter, Chungu departed from Zambia.[242]

Zambia initiated criminal proceedings against Chiluba, Kabwe, and former AFSL executive director Aaron Chungu on October 11, 2004, centering on charges of theft and possession of stolen assets (by a public official in the case of Chiluba; by private citizens in the case of Kabwe and Chungu).[243] This trial would last just short of five years, with an eventual verdict being rendered that saw Chiluba acquitted on the grounds that the defense failed to prove beyond a reasonable doubt that any of the assets traced to Chiluba originated from the stolen money.[244] Kabwe and Aaron Chungu were found guilty of three theft-related charges.[245] The judge speculated that the undoing of the prosecution's case was their failure to produce Xavier Chungu, whose flight had precluded any opportunity to gather his testimony.[246]

Concurrent with these criminal proceedings, the attorney general of Zambia initiated a civil case in the United Kingdom. The trial opened on October 31, 2006, and the final judgment was rendered on April 5, 2007.[247] The full range of defendants involved in the Zamtrop and BK conspiracies and subconspiracies were found guilty and collectively held liable for the roughly US$25 million (from the Zamtrop conspiracy) and US$20 million (from the BK conspiracy); damages for fiduciary breaches and dishonest assistance were also awarded.[248] At the time of writing, the Supreme Court of Zambia is weighing whether the London judgment can be registered locally.

Case Study 5: Jack Abramoff

Overview

In 2006, Jack Abramoff pled guilty to charges of fraud, bribery, and tax evasion.[249] He was later ordered to pay more than US$23 million in restitution to his victims, with most of it going to the Native American gaming tribes he had defrauded through a

241. Ibid., ¶¶226-227.
242. Ibid., ¶75.
243. The People v. Chiluba (2009) No. SSP/124/2004, at 1 (Zambia).
244. Ibid., ¶178.
245. Ibid., ¶¶179-180.
246. Ibid., ¶178.
247. Republic of Zambia v. Meer Care & Desai, [2007] EWHC (Ch) 952, ¶49, ¶53 (Eng.).
248. Ibid. at ¶¶1119-1136. In the words of Justice Smith, "[t]he people of Zambia will know that whenever FJT [Chiluba] appears in public wearing a smart handmade suit of a pair of his 'signature' shoes that they were acquired by stealing money from the people—the vast majority of whom live at subsistence levels." Ibid.
249. Plea Agreement and Factual Basis for the Plea of Jack A. Abramoff, United States v. Abramoff, No. 06-cr-001-ESH, (D.D.C. January 6, 2006).

secret kickback scheme with his coconspirator, Michael Scanlon.[250] According to Abramoff's plea agreement, he and his associates "offered and provided a stream of things of value to (high) public officials"[251]—generally congressmen and their staffers—in exchange for official acts and influence favorable to Abramoff's objectives. The U.S. Senate Committee on Indian Affairs, which conducted a two-year investigation into the case, concluded that Abramoff and Scanlon's use of corporate entities and nonprofit organizations to "receive funds [and] conceal their destination" was a constant in their scheme.[252]

As of August 2009, 20 individuals connected to Abramoff had been convicted, pleaded guilty, or were awaiting trial.[253] They include Michael Scanlon, a former top aide to then–House Speaker Tom DeLay;[254] Congressman Robert Ney;[255] and senior administration officials, senior legislative aides, and lobbyists.[256] House Speaker Tom DeLay resigned from Congress three days after his top aide, Tony Rudy, pleaded guilty in connection with the Abramoff scandal in 2006.[257]

The Abramoff case raises two key issues relating to CV misuse: (a) the role of a Delaware, United States, nonprofit corporation in the scheme, and (b) the role of a tax advisor in facilitating Abramoff's misuse of a private charitable foundation.

Misuse of Sham Delaware Nonprofit Corporation

The U.S. Government Accountability Office, in a 2000 report examining the use of Delaware shell corporations by Russian Federation entities for possible money laundering activities, concluded that, "[i]t is relatively easy for foreign individuals or entities to hide their identities while forming shell corporations that can be used for the purpose of laundering money."[258]

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250. United States v. Abramoff, No. 06-cr-001-ESH, (D.D.C. September 19, 2009) (order granting restitution).
251. Plea Agreement, p. 9, United States v. Abramoff, No. 06-cr-001-ESH, (D.D.C. January 3, 2006).
252. Ibid. *See also* Comm. on Indian Affairs, 109th Cong., "Gimme Five"—Investigation of Tribal Lobbying Matters (2006).
253. Press Release, U.S. Department of Justice, "Former Government Official Indicted on Public Corruption Charges Related to Ongoing Abramoff Investigation" (August 21, 2009). Abramoff himself pleaded guilty in January 2006 to charges of conspiracy to commit honest services fraud, honest services fraud and tax evasion, and was sentenced in September 2008 to 48 months in prison. Ibid.
254. Plea Agreement and Attachment A: Factual Basis for the Plea of Michael P.S. Scanlon, United States v. Scanlon, No. 05-cr-411-ESH, (D.D.C. November 11, 2005).
255. Plea Agreement and Attachment: Factual Basis for the Plea of Robert W. Ney, United States v. Ney, (D.D.C. September 13, 2006).
256. U.S. Department of Justice, Report to Congress of the Activities and Operations of the Public Integrity Section for 2009, pp. 22–23 (2009).
257. Plea Agreement and Information, United States v. Rudy, No. 06-cr-082, (D.D.C. March 31, 2006). See also Jonathan Weisman and Chris Cillizza, "DeLay to Resign from Congress," *Washington Post*, April 4, 2006.
258. U.S. Government Accountability Office (GAO), *Suspicious Banking Activities: Possible Money Laundering by U.S. Corporations Formed for Russian Entities* 11 (2000). In a later report, the GAO noted that Delaware ranked fourth in 2004 among all U.S. states for the most number of domestic corporations and

Although Abramoff and Scanlon employed a number of entities that they or their associates owned or controlled as part of their scheme, the U.S. Senate Committee on Indian Affairs (Senate Committee) investigating the scheme delved into the two men's use of the American International Center (AIC), a supposed think-tank based in Rehoboth Beach, Delaware. According to information retrieved from the Delaware corporate registry, AIC was formed on February 28, 2001, as a domestic nonprofit corporation. Its registered agent is listed as American International Center, Inc. at 53 Baltimore Avenue, Rehoboth Beach, Delaware 19971.[259]

According to the Senate Committee's 2006 investigative report, "With two of Scanlon's beach buddies sitting on its board, AIC's purpose was actually to collect fees associated with activities conducted by others and, in some cases, divert those fees to entities owned or controlled by Scanlon or Abramoff. In other words, AIC was a sham."[260] The Senate Report continues, "[e]arly in 2001, Scanlon called his long-time friend and fellow lifeguard David Grosh and asked him whether he wanted to serve as a director of an 'international corporation.' Grosh, who knew quite well that his background was unsuited for such a position, thought that this was a joke but finally agreed."[261] Grosh was paid $500 per month to serve as director of AIC.[262] The other "director" of AIC was Grosh's housemate, Brian Mann, a yoga instructor.[263]

For his part in making AIC appear to be a legitimate entity, on January 19, 2002, Abramoff e-mailed to Benjamin Mackler of MackDesign Studios: "Ben, I need to set up a website for the American International Center, which should have all sorts of goodies to make it look real."[264] The website set forth AIC's mission statement as "a Delaware-based corporation with the global minded purpose of enhancing the methods of empowerment for territories, commonwealths, and sovereign nations in possession of and within the United States."[265]

Limited Liability Corporations (LLCs) formed within its jurisdiction. *U.S. Government Accountability Office, Company Formations: Minimal Ownership Information Is Collected and Available 13 (2006)*.

259. See https://delecorp.delaware.gov/tin/GINameSearch.jsp (type "American International Center" in "Entity Name"; follow "American International Center, Inc." hyperlink) (accessed July 3, 2010).

260. Comm. on Indian Affairs, 109th Cong., "Gimme Five," *supra* note 252, p. 12.

261. Ibid. p. 257.

262. Ibid.

263. Grosh told Senate investigators that, "Scanlon enticed Mann and [Grosh] to work for AIC by promising, among other things, that AIC would pay for both to go surfing at the island of St. Barts. Ibid. at 259. The Senate Report noted that between February and July 2001, "AIC had no office; AIC's business address was the beach house that [Grosh] and [yoga instructor Brian Mann] rented in Rehoboth Beach." Scanlon had a telephone installed that "he instructed Grosh never to answer." Ibid. at 258. Grosh and Mann told the Senate investigators that AIC had fewer than five meetings of its board, and that Scanlon "characterized these meetings as 'a paperwork formality.'" Ibid. at 260. They also testified before the Senate Committee to doing little to no work in their capacities as "directors," and that they were, to their knowledge, the only employees of AIC. Ibid. p. 261.

264. Ibid. p. 262.

265. Grosh and Mann told Senate investigators, "they had no idea what this meant." This is despite the fact that the AIC website stated that AIC was a "premiere international think tank" founded "under the high powered directorship of David A. Grosh and Brian Mann." Ibid. p. 264.

In actuality, AIC played three main roles in the Abramoff-Scanlon scheme: (a) as conduit for more than US$4 million in payments by Native American tribes to be passed to entities controlled by their one-time friend and business associate who performed grassroots lobbying work on behalf of the tribes but did not want to be associated publicly with the tribes;[266] (b) as a domestic entity cover, to receive payments from foreign government clients as a way to circumvent disclosure requirements under the Foreign Agents Registrations Act (FARA),[267] which would have had to be made to Congress regarding lobbying activities for foreign entities; and (c) as a means for Scanlon to funnel US$1.3 million in Native American tribe payments from AIC to his own company, Capitol Campaign Strategies, and then execute "shareholder draws" to use these funds for personal expenses, including the remodeling of his beach home.[268]

Role of Abramoff's Tax Advisor in Facilitating Misuse of a Foundation

The Senate Report also offered insights into the role played by Abramoff's tax advisor in the misuse of the Capital Athletic Foundation (CAF), the ostensibly private charitable foundation that Abramoff formed and managed. He and his wife were CAF's sole directors. CAF's stated mission was to promote "sportsmanship" among disadvantaged youth in the Washington, D.C. area, but the Senate Committee stated that "Abramoff treated CAF as his own personal slush fund, apparently using it to evade taxes, finance lobbying activities such as a golfing trip to Scotland, purchasing paramilitary equipment, and for other purposes inconsistent with CAF's tax exempt status and stated mission."[269]

For example, the third largest recipient of CAF funding in 2002 was "Kollel Ohel Tieferet, a purported educational institution in Israel; according to CAF's 2002 tax return, the grant was supposedly used for education, athletics, and security." Upon review, however, the Senate Committee found that "the Kollel Ohel Tieferet was nothing more than an entity established on paper to conceal the ultimate recipient of CAF grants: Shumel Ben Zvi," Abramoff's high-school friend, who had moved to Israel.[270] In fact, the Senate Report goes on to detail the role played by Gail Halpern, Abramoff's tax advisor, in helping to make the payments to Ben Zvifor a jeep and military equipment appear compatible with CAF's stated charitable mission.[271]

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266. Ibid. p. 270. The friend and business associate was Ralph Reed, the politically influential first executive director of the Christian Coalition. The Reed-controlled entities were Century Strategies and Capitol Media. Ibid. p. 290.
267. Ibid., pp. 266-267. From 2001 through 2003, AIC was Abramoff's largest lobbying client, paying him and Greenberg Traurig about US$1.7 million in lobbying fees. In 2002 alone, AIC paid Greenberg Traurig US$840,000, making it the firm's fifth largest client that year. Ibid. p. 255.
268. Ibid.
269. Ibid. p. 278.
270. Ibid. p. 308.
271. Halpern had "labeled the purchases for Ben Zvi as 'spy equipment.'" Ibid. p. 309.

On November 11, 2002, Halpern wrote specifically about the payments to Ben Zvi: "[W]e need to work this into the tax exempt purpose of the foundation."[272] In response, Abramoff wrote to Ben Zvi, "if possible, it would be easier for me to get you funds through a kollel over there or something like that."[273] Ben Zvi replied, "Anyone can have a Kollel here."[274] A month later, Ben Zvi e-mailed Abramoff with wiring information for the "KOLLEL OHEL TIFERET (for: Shmuel Ben Zvi)."[275] When Abramoff informed Halpern, she stated "at the end of the year, he'll need to write us a letter on Kollel stationary [*sic*] thanking the Foundation for the money to promote their educational purpose."[276]

Although Halpern is the only person whose photograph is not shown in the firm's profiles of its principals, it is not known what consequences, if any, she faced for her role in assisting Abramoff in his misuse of the CAF.

Investigation

In February 2004, the *Washington Post*, which had been tipped off by a whistleblower close to the Native American tribe client-victims, published a front-page story delving into Abramoff's lobbying activities on behalf of the Native American gaming tribes and his ties to influential policy makers.[277] Soon after, the U.S. Senate Committee on Indian Affairs commenced its investigation, exercising its subpoena power to interview witnesses and holding five public hearings in 2004 and 2005.[278] Once the investigation was launched, the committee did not appear to face significant investigatory hurdles. Although it had been seemingly easy for Abramoff and Scanlon to form the entities involved in their scheme—in their work, home, or nearby state—it appears that the Senate Committee with its full investigatory resources and compulsory powers was able to unravel the veil of control and ownership of those entities and their illicit activities.

Abramoff and Scanlon invoked their constitutional privilege against self-incrimination and declined to testify, but many other witnesses did appear and testify. They included AIC nominee directors David Grosh and Brian Mann and Abramoff's tax advisor Gail

272. She subsequently wrote to Abramoff, "[B]ut let's try to figure it out in a way where we don't screw up the foundation. we [*sic*] need to get the money to a 501c3 [*sic*] or an educational institution, not directly to him. can [*sic*] you ask him if he can work something out w/ the kollel so the money goes from the kollel to him?" Ibid. pp. 310–311.
273. Kollel is a gathering or institute for advanced study of the Talmud. Ibid.
274. Ben Zvi also added, "If I set up the account name in the name of a Kollel and send you papers with a Kollel stationary [*sic*] would that work?" Ibid.
275. Ibid. p. 311.
276. Ibid. p. 312.
277. Susan Schmidt, "A Jackpot from Indian Gaming Tribes," *Washington Post*, February 22, 2004. Schmidt and fellow journalists from the *Washington Post* would go on to win the Pulitzer Prize, the top journalism award in the United States, for their reporting of the scandal. Ibid. p. 6.
278. Comm. on Indian Affairs, 108th Cong., Oversight Hearing Regarding Tribal Lobbying Matters, et al (2006). Michael Scanlon was "invited, but did not appear before the Committee on this date." Comm. on Indian Affairs, 109th Cong., "Gimme Five," *supra* note 252, p. xii.

Halpern.[279] At the same time, the U.S. Department of Justice Public Integrity Section commenced their probe. A number of U.S. law enforcement agencies were involved in the investigation: the Federal Bureau of Investigation, the Internal Revenue Service's (IRS) Criminal Investigation Division, the General Services Administration's Office of Inspector General, and the Department of the Interior's Office of the Inspector General. With testimonial and documentary evidence of corruption and fraud mounting against the conspirators, Scanlon entered a guilty plea in November 2005. Abramoff followed suit in January 2006.

Asset Recovery

In September 2008, Jack Abramoff was ordered to pay US$23,134,695 in restitution to his victims.[280] The Restitution Order noted that an amount of US$15,673,232 was uncompensated loss as of the date of the Order.[281] Abramoff was required to make restitution payments upon his release from prison.[282] Less than a year later, the U.S. government filed a Motion for Immediate Modification of Restitution Order, the day after being advised by Abramoff's counsel that Abramoff and his wife had received a refund from the U.S. IRS totaling US$520,189 and in two weeks prior to giving notice to the government, paid a total of US$422,000 to 10 nonrestitution creditors.[283] The government motioned the court to order Abramoff and his family to cease spending the remains of the IRS refund, to provide a complete accounting of how the refund had been spent, and to order Abramoff to provide notice to court of any debt or assets in excess of US$2,500 incurred or acquired by him or his family members.[284] In October 2009, the court ordered Abramoff to pay US$16,500 toward restitution in the present case, with the rest of the remaining tax refund authorized mainly for personal expenses.[285]

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279. Comm. on Indian Affairs, 109th Cong., "Gimme Five," *supra* note 252, pp. xii–xiv.

280. United States v. Abramoff, No. 1:06-cr-0001-ESH (D.D.C. September 4, 2008) (order granting restitution Order). The order stated that when Scanlon was sentenced, that "both defendants will be jointly and severally liable" for the amount of losses incurred by the Indian tribes. Ibid. at 2. *See also* Press Release, U.S. Department of Justice, "Former Lobbyist Jack Abramoff Sentenced to 48 Months in Prison on Charges Involving Corruption, Fraud, Conspiracy and Tax Evasion" (September 4, 2008).

281. United States v. Abramoff, No. 1:06-cr-0001-ESH, 1 (D.D.C. September 4, 2008) (order granting restitution Order).

282. Abramoff was released from prison in June 2010. See "Jack Abramoff," New York Times, updated: June 24, 2010, available at http://topics.nytimes.com/top/reference/timestopics/people/a/jack_abramoff/index.html.

283. Motion for Immediate Modification of Restitution Order, United States v. Abramoff, No. 1:06-cr-0001-ESH (D.D.C. May 21, 2009). The non-restitution payments included payments for legal and accounting fees, back taxes owed to the State of Maryland, credit card debts and a US$87,000 loan from Abramoff's father. Ibid.

284. Ibid.

285. United States v. Abramoff, No. 1:06-cr-0001-ESH (order modifying restitution order) (D.D.C. October 19, 2009). The Order authorized Abramoff to pay up to US$35,000 for the repair of the roof of his house, US$16,500 to restitution creditors in his Florida case, and the remainder of the tax refund to cover his family's ordinary living expenses and professional services. The Court also ordered that "In the event that Mr. Abramoff receives, directly or indirectly, any sum or property valued in excess of $2,500 while incarcerated, Mr. Abramoff shall report the receipt of those funds or property" to the U.S. Department of

On February 17, 2011, Michael Scanlon was sentenced to a prison term of 20 months. He was ordered jointly and severally liable with his former coconspirator, Jack Abramoff, for the payment of US$20,191,537.31 in restitution to the Native American tribes that had been the victims of their fraud scheme.[286] A week later, Scanlon appealed his judgment to the U.S. Court of Appeals for the District of Columbia Circuit.[287]

Case Study 6: Joseph Estrada

Overview

Joseph Estrada was President of the Republic of the Philippines from June 1998 to January 2001. He stepped down during his Senate impeachment trial on charges of corruption and amid growing public protests against his presidency.[288] He was arrested in April 2001 and charged with violating the Anti-Plunder Law[289] for allegedly having amassed more thanUS$87 million in unlawful and unexplained wealth.[290]

Justice and the Court as soon as possible but not spend or distribute the funds or property before providing notice. He was precluded from spending or distributing the funds or property until the court issued an order authorizing such expenditure or distribution. Ibid.

286. United States v. Michael P.S. Scanlon, Case No. 05-cr-00411-ESH (D.D.C.), Restitution Order filed on February 11, 2011; Judgment in a Criminal Case filed on February 17, 2011; and Order Amending Judgment filed on March 7, 2011.

287. According to his February 23, 2011 Notice of Appeal, "Specifically, defendant Scanlon appeals the District Court's November 30, 2010 Memorandum Opinion and Order denying Defendant's Motion to Modify or Amend His Plea Agreement In Conformity With The Supreme Court's *Skilling* Decision." Notice of Appeal, United States v. Scanlon, Case No. 05-cr-411-ESH (D.D.C. February 23, 2011); Opinion, Skilling v. United States, No. 08-1394 (S.Ct. June 24, 2010).

288. People v. Estrada, No. 26558, at 14 (Sandiganbayan, Special Div., September 12, 2007) (decision for plunder) (Phil.)

289. Ibid. at 3–4. Anti-Plunder legislation was enacted "in the aftermath of the Marcos regime where charges of ill-gotten wealth were filed against former President Ferdinand Marcos and his cronies. Government prosecutors found no appropriate law to deal with he [*sic*] multitude and magnitude of the acts allegedly committed by the former President [Marcos] to acquire illegal wealth. They also found out that under the then existing laws such as the Anti-Graft and Corrupt Practices Act, the Revised Penal Code and other special laws, the acts involved different transactions, different time and different personalities. Every transaction constituted a separate crime and required a separate case and the over-all conspiracy had to be broken down into several criminal and graft charges. The preparation of multiple Informations was a legal nightmare but eventually, thirty-nine (39) separate and independent cases were filed against practically the same accused before the Sandiganbayan. R.A. No. 7080 or the Anti Plunder Law was enacted precisely to address this procedural problem." Ibid. at 293. For a conviction under the Anti-Plunder Law, all three of the following elements must be met: (a) the offender must be a public official who acting by himself or in conspiracy with others, (b) amassed or acquired ill-gotten wealth through a combination or series of criminal acts, and (c) the aggregate amount of the ill-gotten wealth is at least US$1,065,500 (PHP 50 million). Ibid. at 261. *See also* The Anti-Plunder Law, Rep. Act No. 7080 (July 12, 1991), http://www.oecd.org/dataoecd/37/19/46816908.pdf (accessed March 23, 2011).

290. People v. Estrada (decision for plunder), at 9-12. The total amount given in Pesos was 4,097,804,173.17. Ibid. Estrada had also been charged with Perjury for his allegedly false filings of his assets; he was tried and acquitted of this charge by a different Sandiganbayan court. People v. Estrada, No. 26905 (Sandiganbayan, Special Div., September 12, 2007) (decision for perjury).

On September 12, 2007, the *Sandiganbayan* (antigraft court) convicted Estrada of plunder,[291] holding that, from June 1998 to January 2001, Estrada had (a) conspired with Governor Luis Singson[292] and others, and had collected US$11.6 million in kickbacks from illegal *jueteng* gambling operators as protection money, of which US$4.26 million were found to have been concealed in the bank accounts of the Erap Muslim Youth Foundation, and (b) directed two government agencies to purchase shares in the Belle Corporation (Belle) and unjustly enriched himself by receiving US$4 million in commission for the sale which was held in a bank account under the fake name "Jose Velarde" of which he was the beneficial owner.[293]

As part of the plunder decision, the Sandiganbayan ordered the forfeiture of Estrada's illegally acquired assets from the *jueteng* collections and the commissions from the Belle Corporation shares.[294]

Two noteworthy issues in the Estrada case were the use of a foundation to conceal illicit proceeds and the involvement of a large number of individuals who acted in various capacities to help Estrada carry out his illicit schemes.

Misuse of Corporate Vehicles—Erap Muslim Youth Foundation

As part of its ruling in the plunder case, the Sandiganbayan held that the Erap Muslim Youth Foundation had been misused to conceal US$4.26 million of the illicit proceeds from the jueteng collection scheme.[295] The funds were deposited into the Foundation's accounts during April and May 2000.

"Erap" was Estrada's nickname, and also the acronym for Education, Research and Assistance Program.[296] President Estrada testified that he had asked his brother-in-law, Dr. Raul de Guzman, to form the Erap Muslim Youth Foundation to assist poor youth.[297] According to testimony at the plunder trial, the foundation did indeed carry out its

291. People v. Estrada (decision for plunder), p. 300.
292. Luis "Chavit" Crisologo Singson had been governor of the Ilocos Sur region, and Estrada's chief co-conspirator in the "jueteng" collections scheme. After a falling out, however, he publicly revealed the scheme and testified against Estrada at the Plunder trial. *Jueteng* is an illegal numbers game. Ibid. p. 22.
293. Estrada had also been charged with misappropriating, converting and misusing for his gain and benefit public funds in the amount of US$2.77 million (PF 130 million) from the PF 170 million tobacco excise tax share allocated for the Province of Ilocos Sur. The Court did not convict him of this charge, holding that "the paper trail in relation to the P130,000,000.00 diverted tobacco excise taxes began with Gov. Singson and ended with Atong Ang. This Court does not find the evidence sufficient to establish beyond reasonable doubt that Pres. Estrada or any member of his family had instigated and/or benefited from the diversion of said funds." Ibid. p. 193.
294. Ibid. p. 301.
295. Ibid. p. 158. Additional details on the bank paper trail for the sums deposited in the Foundation's account are provided in the Sandiganbayan decision. Ibid. p. 100–101.
296. Ibid. p. 121. "Erap" is also the Tagalog word "*Pare*" (friend) reversed.
297. Ibid. p. 122.

education mission.[298] The Sandiganbayan itself wrote that it was "not prepared to conclusively rule [that] Erap is not a legitimate foundation or [that it was] set up purely to hide [Estrada's] illegally amassed wealth."[299]

Estrada publicized the foundation's activities and solicited donations on its behalf,[300] but he had no legal ties to it. Among its incorporators was attorney Edward S. Serapio, a codefendant in the plunder trial who was acquitted,[301] but Estrada was not among them. Estrada was considered the foundation's chairman emeritus, but he did not serve on its board of directors and he was not a signatory on its bank accounts. Based on this, the defense for Estrada argued that it was "impossible" for him to use the foundation for money laundering because "he was not a signatory . . . [and] its treasurer was the Chairman of the bank who would not allow his name to be used in money laundering."[302] They further argued that when Estrada had learned from Serapio that Governor Singson had given US$4.26 million to the foundation, he ordered Serapio to return it to Singson because "his immediate reaction was that it was 'jueteng' money."[303]

Nonetheless, relying on the testimonial and documentary evidence of Singson, bank employees, and others, the Sandiganbayan held that the funds deposited in the foundation's account could be traced to the illegal *jueteng* collections, and ordered the money forfeited.[304] According to the court,

> [t]he paper trail of the [funds] deposited for the Erap Muslim Youth Foundation, Inc. incontrovertibly established that the said sum of money came from jueteng collections through the cashier's/managers checks purchased by [Estrada's auditor Yolanda] Ricaforte using the deposits in the accounts that she opened in the different branches of [the bank].[305]

Use of Front Men and Others

As detailed in the Sandiganbayan's decision in the plunder trial, many individuals played major and minor roles in Estrada's schemes.[306] Luis Singson, then-governor of

298. According to the testimony given at the Plunder trial, Danilo Dela Rosa Reyes, Member of the Board of Trustees of the Erap Muslim Youth Foundation, stated that the Erap Muslim Youth Foundation's predecessor, "Erap Para sa Mahirap" foundation was duly established in 1988 and had 14,000 recipients of scholarships as of the year 2000. Among the incorporators of the foundation was former President Estrada. The "Erap Para sa Mahirap" encountered financial constraints, however, and folded. The Erap Muslim Youth Foundation, Inc. came into existence in its place. Ibid. p. 135.
299. Ibid. p. 161.
300. Ibid. p. 122.
301. Ibid. p. 1. Other incorporators were prominent politicians, business people and academicians. Ibid.
302. Ibid. p. 124.
303. Ibid. p. 123.
304. Ibid. p. 301.
305. Ibid. p. 156.
306. It should be noted that Jinggoy Estrada, the former President's son who was a named co-defendant in the Plunder case, was acquitted of the charge by the Sandiganbayan which held that there was no evidence of his collecting or receiving the "*jueteng*" proceeds. Ibid. at 159. The Sandiganbayan also held that the

the Ilocos Sur region,[307] orchestrated the jueteng collection scheme for Estrada. He testified at the plunder trial to a long and close relationship with Estrada, and was even the baptismal godfather to Estrada's son. Estrada and Singson later had a falling out, and Singson publicly revealed the *jueteng* scheme and was a chief witness at Estrada's plunder trial. The Sandiganbayan wrote that Singson did not have the "purest motives in exposing the 'jueteng' collections," but nevertheless found him credible.[308] Singson, in turn, was aided by a number of his employees, including his assistant Emma Lim, Ma. Carmencita Itchon, and others.[309]

Charlie "Atong" Tiu Hay Sy Ang was also a key coconspirator in the scheme. Singson testified that Ang was the person who met with the *jueteng* operators and fixed the amount to be collected from each province.[310] In 2006, Ang was extradited from the United States, and in March 2007, he pleaded guilty to a lesser offense of Corruption of Public Officials.[311] Yolanda Ricaforte, mentioned earlier, was designated in April 1999 by Estrada as his auditor in the *jueteng* scheme.[312] She worked out of a building owned by Singson and testified that Estrada told him to pay her a monthly salary of US$1,705 (Philippine Peso ₱80,000),[313] and kept a detailed log of the twice-monthly collections (and expenses) in two sets of ledgers.[314] She opened numerous bank accounts and handled the transfers to and from the many accounts.[315]

The Belle Corporation shares sale scheme also involved Estrada friends and associates. Jaime Dichaves, a business associate of Estrada, was a director of Belle, a gaming company.[316] Estrada testified that Dichaves had spoken to him about the Belle shares, and he in turn mentioned it to Carlos A. Arellano, chairman of the Social Security System (SSS) and Federico Calimbas Pascual, president of the Government Service Insurance

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government had not proved beyond a reasonable doubt that attorney Edward Serapio, who had been appointed in April 1999 by Estrada as Presidential Assistant for Political Affairs, had engaged in money laundering; he was also acquitted. Ibid.

307. Ibid. p. 24.

308. Ibid. p. 152.

309. Ibid. p. 32. Additional names are provided in the Sandiganbayan decision. Ibid. pp. 298–299.

310. Ibid. p. 31.

311. Ibid. pp. 20–21. Ang ultimately received probation.

312. Ibid. p. 32. Estrada admitted that he knew Ricaforte, whom he had appointed as director of Campo Carne. Estrada had appointed her husband Orestes Ricaforte as Undersecretary of Tourism and given him a black Lexus. Ibid. pp. 70, 120. Singson testified that Estrada had introduced Ricaforte to him and had appointed her as auditor because Estrada was "strict with money." Ibid. p. 120.

313. Ibid. p. 33.

314. The ledgers covered periods November 1998 to July 1999, and August 1999 to August 2000.

315. Ibid. p. 120.

316. Governor Singson had also testified that Dichaves had been a "front" for Estrada in Fontaine Bleau, Inc. "which was a casino owned by Pres. Estrada and built with the use of jueteng protection money. . . . According to Gov. Singson, the shares in the company were distributed as follows: five percent (5%) to Butch Tenerio, the President of the casino; twenty-five (25%) for Gov. Singson; seventy percent (70%) for Pres. Estrada which were placed in the names of Jaime Dichaves and his classmate Susie Pineda." Ibid. at 75. The Sandiganbayan did not make a finding about the ownership of Fontaine Bleau, which was dissolved in August 2000. Ibid. p. 72.

System (GSIS). Both Arellano, a childhood friend of Estrada, and Pascual had been appointed to their posts by Estrada.[317] They testified that they were uncomfortable with the pressure they received from Estrada to have their agencies purchase 329,855,000 and 351,878,000 shares respectively in Belle, which was involved in jai alai sporting and gambling and had a "speculative flavor."[318] Nevertheless, the two agencies spent nearly US$39.4 million in Belle shares.[319] Ocier, an owner of Belle and a cousin of Dichaves, testified that the commission check was made payable in cash and given to Dichaves, who deposited it in his account and then later transferred the money to the Jose Velarde accounts.[320] Although Dichaves testified that the Jose Velarde account belonged to him, the Sandiganbayan rejected his testimony and held that Estrada was the beneficial owner.[321] The Sandiganbayan relied on testimonial and documentary evidence in making its ruling, including the fact that Estrada's secretary, Lucena Baby Ortaliza, handled the transactions for the Velarde account.[322]

Investigation

Although Estrada was convicted of plunder, the approximate US$18.6 million the Sandiganbayan was able to trace to Estrada's illegal activities fell far short of the US$87 million that the government had charged him of illegally accumulating. The Sandiganbayan held that the government failed to offer sufficient evidence of the sources of the numerous deposits in the Joseph Velarde accounts, except for the Belle share commission and jueteng collections.[323]

One investigative obstacle in the case, as mentioned earlier, was that Estrada did not have legal ties to the foundation, that is, his name did not appear on the incorporation documents. Although Estrada had no legal ties to the foundation, the Sandiganbayan held him to be the beneficial owner of the funds deposited in its bank account that the Court traced to the illicit proceeds from the jueteng collection scheme. Estrada also had no legal ties to the Boracay Mansion in which his mistress lived.[324] The Sandiganbayan held that the funds used to purchase it could be traced to the Jose Velarde account, of which Estrada was the beneficial owner.

The Estrada case was prosecuted by the Office of the Ombudsman. It was tried over the course of six years by the Sandiganbayan, which noted that it had encountered and dealt with a number of novel issues, including a challenge by Estrada against the constitutionality of the plunder law. The Philippines Supreme Court's November 2001 decision

317. Ibid. p. 25.
318. Ibid. pp. 193, 245.
319. Ibid.
320. Ibid. p. 222.
321. Ibid. p. 234.
322. Ibid. pp. 235, 256–257.
323. Ibid. p. 297.
324. Ibid. p. 239. Boracay Mansion was owned by the St. Peter Holdings Corp., to which Estrada had no legal ties.

upholding the constitutionality of the plunder law allowed the Estrada case to proceed.[325]

Asset Recovery

At the conclusion of the plunder trial, the Sandiganbayan ordered the forfeiture of the (a) US$11.62 million with interest and income earned, inclusive of US$4.26 million deposited in the name and account of the Erap Muslim Youth Foundation; (b) US$4.02 million inclusive of interests and income earned, deposited in the "Jose Velarde" account; and (c) the Boracay Mansion.[326]

On October 25, 2007, then-President Gloria Macapagal-Arroyo granted Estrada a pardon, restoring his civil rights but maintaining the Sandiganbayan's forfeiture order.[327]

Case Study 7: Saudi Arabian Fighter Deals and BAE Systems

Overview

Beginning in the mid-1980s, BAE Systems plc (BAE) began serving as contractor to the government of the United Kingdom.[328] Under an arrangement known as the KSA Fighter Deals, BAE sold to the United Kingdom, which then sold to Saudi Arabia, military aircrafts, hardware, training, and services. Additional equipment, parts, and services have continued to be sold to Saudi Arabia since then.[329] Included in the agreements were "support services" that BAE provided to an unnamed KSA public official (Saudi official), who was in a position of influence regarding the sale of fighter jets and other defense materials.[330] The benefits were conferred through various means, including through the use of intermediaries and shell entities to conceal payments to those who assisted with the deals.[331]

BAE admitted it failed to undertake adequate review or verification of these benefits provided to the Saudi official, including inadequate review or verification of more than US$5 million in invoices submitted by a BAE employee from May 2001 to early 2002 to determine whether the listed expenses were in compliance with previous statements made by BAE to the U.S. government regarding its anticorruption compliance

325. Estrada v. Sandiganbayan (Third Division) and People of Philippines, G.R. No. 148560 (S.C. November 19, 2001) (Phil.), http://www.chanrobles.com/scdecisions/jurisprudence2001/nov2001/148560.php.
326. Ibid. p. 301.
327. Pardon by the President of the Philippines for Joseph Ejercito Estrada, Philippines Office of the Press Secretary (October 25, 2007), http://www.ops.gov.ph/records/pardon.pdf.
328. Plea Agreement, p. 11, United States v. BAE Sys's PLC., No. 1:10-cr-0035-JDB (D.D.C. February 2, 2010).
329. Ibid.
330. Press Release, U.S. Department of Justice, "BAE Systems PLC Pleads Guilty and Ordered to Pay $400 Million Criminal Fine." (March 1, 2010), http://www.justice.gov/opa/pr/2010/March/10-crm-209.html.
331. Plea Agreement, p. 13.

procedures.[332] In connection with these same defense deals, BAE also agreed to transfer more than British Pounds (£) 10 million, plus more than US$9 million, to a bank account in Switzerland controlled by an intermediary, being aware of the high probability that the intermediary would transfer part of these payments to the same KSA official.[333]

On March 1, 2010, BAE pled guilty to conspiring to defraud the United States by impairing and impeding its lawful government functions, to making false statements about its Foreign Corrupt Practices Act (FCPA) compliance program, and to violating the Arms Export Control Act and the International Traffic in Arms Regulations.[334] As a result, BAE was ordered to pay a US$400 million criminal fine, one of the largest criminal fines in the history of U.S. Department of Justice's effort to combat overseas corruption in international business and enforce U.S. export control laws.[335]

The following discussion highlights two interesting aspects of the case: (a) BAE's use of shell companies to conceal the role of its intermediaries and (b) the passive yet critical role of the Saudi official in the scheme.

BAE's Use of Shell Companies to Conceal Intermediary Relationships

BAE regularly retained what it referred to as "marketing advisors"[336] and intermediaries to assist in the soliciting, promoting, and securing of the Saudi Arabian Fighter Deals.[337] BAE made payments to these advisors through offshore shell companies—despite the fact they failed to perform the requisite due diligence under the FCPA.[338] Various offshore shell entities beneficially owned by BAE were used to pay some of these market advisors.[339] BAE also encouraged these advisors to establish their own offshore shell entities to receive payments to disguise the origins and recipients of such payments.[340]

One such entity, used by BAE to conceal the marketing advisor relationships, was established in the British Virgin Islands (BVI).[341] Under the *BVI Business Companies Act 2004*, incorporation of a legal entity in BVI requires minimal information at the time of registration, namely, only a registered office[342] and a registered agent.[343] The physical location of the place of business, legal ownership information, management information, or beneficial ownership information are not required to be filed in the central

332. Press Release, U.S. Department of Justice, "BAE Systems PLC Pleads Guilty," supra note 330.
333. Ibid.
334. Plea Agreement, p. 1.
335. Press Release, U.S. Department of Justice, "BAE Systems PLC Pleads Guilty," supra note 330.
336. Plea Agreement, p. 7.
337. Ibid. p. 13.
338. Ibid. p. 7.
339. Ibid.
340. Ibid.
341. Ibid. p. 8.
342. British Virgin Islands Bus. Co's Act § (9)(1)(c) (2004).
343. British Virgin Islands Bus. Co's Act § (9)(1)(d) (2004).

registry at any time. Both the register of members[344] and the register of directors[345] are required to be kept with the registered agent; however they are available only for inspection by directors and members of the company.[346] Incorporating in the BVI not only offered anonymity to conceal the identity of the agents, the intermediary relationships, and the stream of payments, but also inhibited the ability of authorities to penetrate the arrangements.[347]

The Role of the KSA Official

Like many cases of grand corruption, this case is exemplary of the often "passive" role of the Politically Exposed Person (PEP). Underlying the formal understanding and related framework between BAE, the United Kingdom, and the KSA were certain operational written agreements for specific component provisions of the KSA Fighter Deals.[348] The written agreements were divided into numerous Letters of Offer and Acceptance (LOAs) that were added and revised over the years; these LOAs identified the principal types of expenditures, work to be undertaken, services to be provided, and prices and terms.[349]

At least one of the LOAs identified "support services" that BAE considered it was obliged to provide to a Saudi public official who, as mentioned earlier, was in a position of influence regarding the Saudi Arabian Fighter Deals.[350] BAE provided these benefits through various payment mechanisms both in the territorial jurisdiction of the United States and elsewhere.[351] Additionally, BAE provided some of these "support services" to the Saudi official through travel agents retained by a BAE employee, who was also a trusted confidant of the Saudi official. These benefits included the purchase of travel, accommodations, security services, real estate, automobiles, and personal items.[352]

The role of the Saudi official and the degree of separation he maintained from the administration of the scheme is interesting. He did not function as the facilitator or intermediary behind the scheme; this role was fulfilled by BAE's marketing advisors. Although the Saudi official received money from the shell companies, his name appeared nowhere on the incorporation papers. He did not devise the scheme, but was merely—to no lesser fault—opportunistic. His role was limited to receiving the bribe payments in exchange for exerting his influence behind the scenes. It is often the case in grand corruption that the PEPs attempt to minimize their chances of getting caught by maintaining a more passive role in the scheme. Such was the case with the KSA official.

344. British Virgin Islands Bus. Co's Act § (41)(1)(d)(iv) (2004).
345. British Virgin Islands Bus. Co's Act § (96)(1)(c) (2004).
346. British Virgin Islands Bus. Co's Act §§ (100)(1)-(100)(2) (2004).
347. Plea Agreement at 8, United States v. BAE Sys's, No. 1:10-cr-0035-JDB (D.D.C. February 2, 2010).
348. Ibid. p. 12.
349. Ibid.
350. Ibid.
351. Ibid.
352. Ibid.

Investigation and Asset Recovery

An investigatory obstacle specifically cited in the plea agreement was BAE's establishment of the offshore entity in the BVI.[353] Penetrating an arrangement involving an incorporated BVI entity can be difficult because of the lack of information recorded on companies during registration; this difficulty, of course, does not apply only to entities incorporated in the BVI, but unfortunately, to numerous jurisdictions.

Another obstacle to the investigation may have been the inadequate information BAE maintained on its intermediary advisors, namely, who they were and what work they were doing to advance BAE's business interests. According to the plea agreement, BAE avoided communicating with the intermediaries in writing, obfuscating and failing to record the key reasons for the suitability of the advisor or any relevant document pertaining to work performed.[354] Often, the contracts[355] with these advisors were maintained by secretive legal trusts in offshore locations. This conduct thus served to conceal the existence of certain payments through the BAE advisors.[356]

According to the U.S. Department of Justice's press release, the BAE case was investigated by the Federal Bureau of Investigation's Washington Field Office's FCPA squad and special agents of the U.S. Immigration and Customs Enforcement's Counter Proliferation Unit. Investigative assistance was provided by the Department of Defense's Criminal Investigative Services, the General Services Administration's Office of Inspector General, and the Department of Justice's Criminal Division's Office of International Affairs. The press release stated that "[t]he Department of Justice acknowledges and expresses its appreciation of the significant assistance provided by the U.K.'s Serious Fraud Office, and further expresses its gratitude to that office for its ongoing partnership in the fight against overseas corruption."[357]

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353. Ibid. p. 8.

354. Ibid. p. 8.

355. As described in detail in the sentencing memorandum, BAE has now replaced nearly all of its top leadership, including its Chief Executive Officer and Chairman of the Board. BAE also overhauled and expanded its Corporate Responsibility efforts. New positions include Chief Counsel, Compliance and Regulation (which carry global responsibility), and the Managing Director of Corporate Responsibility, who reports directly to the Chief Executive Officer. In addition, during the investigation, BAE imposed a moratorium on entering into new marketing advisor agreements or making payments under existing business marketing advisor agreements until a complete collection and review was undertaken of all such agreements. In 2007, BAE also initiated a review of all advisors with whom it had agreements, and terminated the majority of pre-existing agreements with advisors. In light of past problems, BAE enhanced its review procedures for marketing advisors and created an External Review Panel composed of U.S. and U.K. lawyers with experience in the FCPA and other anti-corruption laws. The new advisor review process requires any BAE employee who wishes to engage an advisor to formally propose the advisor to the Panel, which then examines corruption risk and potential reputational risk arising from hiring that advisor before making a recommendation to BAE's Group General Counsel. United States' Sentencing Memorandum at 11-12, United States v. BAE Sys's PLC, No. 1:10-cr-0035-JDB (D.D.C. February 22, 2010).

356. Plea Agreement p. 8.

357. Ibid.

Together, these agencies were able to overcome the various investigative obstacles. On March 1, 2010, BAE pleaded guilty in the U.S. District Court for the District of Columbia to conspiring to defraud the United States by impairing and impeding its lawful functions, to making false statements about its FCPA compliance program, and to violating the Arms Export Control Act (AECA) and International Traffic in Arms Regulations (ITAR). BAE was ordered to pay a $400 million fine for its criminal conduct—one of the largest criminal fines ever levied in the United States against a company for business-related violations.[358] As part of its guilty plea, BAE agreed to maintain a compliance program designed to detect and deter violations of the FCPA, other foreign bribery laws implementing the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention, and any applicable anticorruption laws designed to detect violations of U.S. export control laws, and to appoint a compliance monitor for three years.[359]

Case Study 8: Pavel Lazarenko

Overview

Pavel Lazarenko was prime minister of Ukraine from May 1996 to July 1997, when he left the position amid allegations of corruption.[360] He previously served as first vice prime minister of Ukraine and, before that, as governor and party official for the Dnepropetrovsk region. After being dismissed as prime minister, he formed and led the opposition Hromada Party.[361] As a Member of the Ukrainian Parliament, Lazarenko enjoyed immunity from prosecution. When the Ukrainian Parliament voted in February 1999 to lift his immunity, however, Lazarenko fled to the United States. He was arrested upon his arrival.

In 2000, the United States filed a 53-count indictment, accusing Lazarenko of involvement in five corruption schemes: (a) extortion of Peter Kiritchenko; (b) extortion of Alexei Alexandrovich Dityatkovsky and his company Dneproneft; (c) diversion of funds from accounts belonging to two state enterprises, Naukovy State Farm and Nikopolsky Metal Works factory; (d) receipt of US$97 million from Somolli, a company related to the United Energy Systems of Ukraine in exchange for official concessions; and (e) through GHP Corp. (a Panamanian company that Lazarenko and Kiritchenko allegedly controlled), sale of prefabricated homes to the Ukrainian Cabinet Ministers at an inflated price.[362]

358. Press Release, U.S. Department of Justice, "BAE Systems PLC Pleads Guilty," supra note 330.
359. Ibid.
360. United States v. Lazarenko, 564 F.3d 1026 (9th Cir. 2009).
361. Ibid.
362. United States v. Lazarenko, No. 00-cr-0284-01 CRB (N.D. Cal. February 4, 2010) (amended judgment in a criminal case).

Lazarenko was subsequently convicted of one count of conspiracy to commit money laundering and seven counts of money laundering.[363] He was sentenced to 97 months' imprisonment and fined US$9 million for his role in laundering $30 million in proceeds from extortion.[364] The U.S. conviction had been preceded by a 2000 conviction *in absentia* in Switzerland on charges of diverting US$72 million from a Ukrainian government contract, depositing US$43 million of it in Swiss accounts and then transferring them to accounts in Antigua and the Bahamas.[365] The Swiss court sentenced Lazarenko to an 18-month suspended prison term, and confiscated US$6.6 million from his Swiss accounts.

In a civil asset forfeiture claim filed in 2005, the U.S. alleged that Lazarenko misused his public office in amassing more than US$326 million in criminal proceeds that he laundered through a web of corporate vehicles and bank accounts all around the world.[366]

Two notable aspects of Lazarenko's money laundering scheme were the misuse of corporate vehicles (CVs) to shield his illicit assets and money laundering activities as well as the purchase and use of an offshore bank through which he further sought to conceal his assets. As described below, however, neither provided the bullet-proof protection from prosecution that Lazarenko may have sought.

Corporate Vehicle Misuse—Not a Bullet-Proof Shield

Although Lazarenko was convicted in the United States on only the eight counts related to the first scheme of extortion of Kiritchenko, his case still serves as proof that CVs are not a bullet-proof shield against prosecution.

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363. Ibid.

364. Ibid. *See also* Press Release, U.S. Department of Justice, "Former Ukrainian Prime Minister Sentenced to 97 Months in Prison/Fined $9m for Role in Laundering $30m of Extortion Proceeds" (November 19, 2009).

365. The Swiss Federal Tribunal case decisions were 125 II 356 and 125 II 238. See also, David Chaikin & J. C. Sharman, *Corruption and Money Laundering: A Symbiotic Relationship* 138 (Palgrave Macmillan, 2009), pp. 137-39.

366. First Amended Verified Complaint for Forfeiture at 21-22, United States v. All Assets Held at Bank Julius Baer & Co., Ltd., No. 1:04-cv-00798-PLF (D.D.C. June 30, 2005). The amounts and entities listed in the civil asset forfeiture claim are (a) in 1996, at least US$84 million from Somolli Enterprises; (b) in 1996, at least US$65 million from United Energy International Limited; (c) between 1996 and 1997, at least US$42 million from L.I.T.A.T. Offshore, Limited; (d) between 1994 and 1998, at least US$30 million from businesses established by Kiritchenko, such as Agrosnasbnyt/ASS and GHP Corporation; (e) between 1996 and 1997, at least US$30 million from DAV Riga; (f) in 1996, at least US$25 million from ITERA Corporation and its affiliates; (g) in 1997, at least US$15 million from SB Corp.; (h) between 1993 and 1994, at least US$14 million from Naukovy State Farm; (i) in 1997, at least US$13 million from United Energy Systems of Ukraine; (j) between 1993 and 1996, at least US$5,886,000 from Ditiakovsky and Dneproneft; (k) between 1995 and 1997, at least US$2 million from Internova Trading Corp., and (l) in 1994, at least US$375,000 from Nakosta Metal Products, a business owned by Alex Kurkaev. Lazarenko officially reported his income as US$6,000 per year for 1996 and 1997. Ibid.

For example, two of the counts that Lazarenko was charged with involved the California corporate entity Dugsbery, Inc. (Dugsbery), which was used to funnel Lazarenko funds to purchase a US$6.745 million estate in Novato, California, United States.[367] Dugsbery was formed in California in 1994, was registered to an individual with ties to Kiritchenko, and its business address was a building that Kiritchenko owned. In other words, Lazarenko's name was not attached to any of the incorporation documents.[368] Lazarenko had no legal ties to Dugsbery, which normally might have proved an effective shield against criminal liability. What ultimately brought down the scheme was the change of heart by Lazarenko's advisor and coconspirator turned state-witness, Peter Kiritchenko.

Kiritchenko's relationship with Lazarenko dates back to 1992, when the Ukrainian businessman met with Lazarenko, because according to Kiritchenko, "to do any kind of serious trade one needed [Lazarenko's] agreement."[369] Lazarenko informed Kiritchenko that he did business with everyone "50-50." In 1993, Kiritchenko transferred a 50 percent interest in his company, Agronadsbyt, to Ekaterina Karova, a relative of Lazarenko. Over the years, he gave Lazarenko US$30 million in profits from his businesses.

At the same time, Kiritchenko also served as advisor and main coconspirator in Lazarenko's money laundering schemes.[370] Kiritchenko, who had moved to San Francisco in the mid-1990s, was arrested soon after Lazarenko. Kiritchenko pleaded guilty to a charge of receipt of property that had crossed a state or U.S. boundary after being stolen,[371] and became a main government witness in Lazarenko's trial. This change of heart by Kiritchenko penetrated the anonymity provided by the incorporation structure of Dugsbery. In convicting Lazarenko, the U.S. court held that the funds received by Dugsbery could be traced to Lazarenko's bank account in the Bahamas. These funds in turn were traced to Lazarenko's CARPO-53 Swiss account, where he had deposited proceeds from his extortion of Kiritchenko.[372]

Correspondent Banking Accounts—European Federal Credit Bank

As defined by the U.S. federal court in the Lazarenko case, a "correspondent account" is "an account established by a domestic banking institution to receive deposits from,

367. United States v. Lazarenko, 564 F.3d 1026 (9th Cir. 2009).
368. See http://kepler.sos.ca.gov/cbs.aspx (follow "Corporation Name" option and select; type "Dugsbery"; follow "Dugsbery Inc." hyperlink) (accessed July 3, 2010).
369. United States v. Lazarenko, 564 F.3d, p. 1030.
370. According to Lazarenko's indictment, Kiritchenko had been named in 1995 and 1996 as advisor to Lazarenko by Directive No. 568 and Directive 596, respectively, by the Ukrainian Cabinet of Ministers. Indictment at 2, United States v. Lazarenko, No. 3:00-cr-00284-CRB (May 18, 2000). The U.S. Federal Bureau of Investigation, acting on an MLAT request from Ukraine in late 1997, had been investigating Kiritchenko's ties to Lazarenko when the latter came to the United States in 1999. See Jason Felch, "To Catch an Oligarch," *San Francisco Magazine* (October 4, 2004).
371. Press Release, supra note 364. *See also* First Amended Verified Complaint for Forfeiture, United States v. All Assets Held at Bank Julius Baer & Co., Ltd., No. 1:04-cv-00798-PLF (D.D.C. June 30, 2005).
372. United States v. Lazarenko, 564 F. 3d, p. 1037.

make payments on behalf of, or handle other financial transactions for a foreign financial institution."[373] A February 2001 report by the U.S. Senate noted that "[c]orrespondent accounts in U.S. banks give the owners and clients of poorly regulated, poorly managed, sometimes corrupt, foreign banks with weak or no anti-money laundering controls direct access to the U.S. financial system and the freedom to move money within the United States and around the world."[374] In October 2001, the U.S. enacted the USA PATRIOT Act, which prohibited U.S. banks from having correspondent accounts with offshore shell banks like European Federal Credit Bank (EuroFed).[375]

In 1997, Lazarenko and Kiritchenko learned that the EuroFed was for sale. In August 1997, Lazarenko and Kiritchenko purchased a 67 percent majority share in the Antigua-domiciled bank for US$1.1 million.[376] Soon thereafter, EuroFed opened correspondent accounts with U.S. banks and investment firms, as well as with banks in Lithuania, Liechtenstein, Switzerland, and elsewhere.[377] According to the 2005 U.S. civil asset forfeiture claim, approximately US$85.5 million is alleged to have been formerly on deposit in accounts held for Lazarenko's benefit at EuroFed,[378] and in all, almost US$100 million was alleged to have been cycled through the various Lazarenko- and Kiritchenko-controlled accounts at EuroFed to launder the illicit proceeds. In addition to an account in his name, Lazarenko is alleged to have controlled accounts held at EuroFed in the following names: Lady Lake Investments Corporation, Fairmont Group, Ltd., Guardian Investment Group, Ltd., Firstar Securities, Ltd., Nemuro Industrial Group, and Orby International, Ltd.[379]

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373. United States v. Lazarenko, 575 F. Supp. 2d 1139 (N.D. Cal, 2008).

374. Minority Staff of the Permanent Subcomm.on Investigations, "Report on Correspondent Banking: A Gateway for Money Laundering 1" (February 5, 2001). The report summarizes the problem as follows: "U.S. banks have too often failed to conduct careful due diligence reviews of their foreign bank clients, including obtaining information on the foreign bank's management, finances, reputation, regulatory environment, and anti-money laundering efforts. The frequency of U.S. correspondent relationships with high risk banks, as well as a host of troubling case histories uncovered by the Minority Staff investigation, belie banking industry assertions that existing policies and practices are sufficient to prevent money laundering in the correspondent banking field." Ibid. p. 2.

375. *See generally* U.S. Office of the Comptroller of the Currency, "Money Laundering: A Banker's Guide to Avoiding Problems" (December 2002).

376. United States v. Lazarenko, 564 F. 3d 1026. *See also* United States v. Lazarenko, 575 F. Supp. 2d, p. 1141.

377. Further information on these accounts is provided in the amended complaint for forfeiture. *See also* First Amended Verified Complaint for Forfeiture, United States v. All Assets Held at Bank Julius Baer & Co., Ltd., No. 1:04-cv-00798-PLF (D.D.C. June 30, 2005).

378. Ibid. In the fall of 1999, acting on a request by the Ukrainian authorities, the Government of Antigua and Barbuda began an investigation of EuroFed for alleged money laundering activities and froze its assets. In November 1999, EuroFed was put into receivership and liquidated. *Ukraine and Antigua and Barbuda talk in London*, Latest News: Issue No. 58 (October 2001), http://www.antigua-barbuda.com/news_archive/newsletter58.asp#s5 (accessed July 3, 2010).

379. First Amended Verified Complaint for Forfeiture at 6. No details are provided in the Amended Complaint about these entities, except their account numbers and transactions, therefore it is not certain whether they were corporate vehicles that were actually formed or existed in name only. It should be noted that these accounts are alleged to be only a part of the vast web of Lazarenko and Kiritchenko-controlled accounts in the names of other corporate entities, trusts and Stiftungs in several jurisdictions. Some of those other accounts allegedly include: (a) Accounts at Credit Suisse (Guernsey) Limited, in the name of

Investigation

Close cooperation and both formal and informal information sharing among motivated investigators in Antigua and Barbuda, Switzerland, Ukraine, the United States, and other jurisdictions resulted in two criminal convictions.

The Ukraine investigation was conducted by the prosecutor general's office. In the United States, the Federal Bureau of Investigation (FBI), the Department of Justice, and the Internal Revenue Service Criminal Investigation division were involved in the investigation and prosecution of the case.[380] The lead prosecutor Martha A. Boersch and the lead FBI investigator Bryan E. Earl were both fluent in Russian and both traveled to Kiev and other parts of the world to carry out their investigation. The Swiss investigation was led by Investigating Magistrate Laurent Kasper-Ansermet, who traveled to the United States under a mutual legal assistance agreement by the two countries to present the Swiss indictment to Lazarenko while he was in U.S. custody, thereby enabling the conviction in Switzerland to proceed. In the fall of 2009, the Government of Antigua and Barbuda began an investigation of EuroFed for alleged money laundering activities.[381] In October 2009, it froze the bank's assets and then put the bank in receivership and ordered its liquidation.

Asset Recovery

As part of the sentence in his U.S. criminal case, Lazarenko was ordered to pay a fine of US$9 million and forfeit US$22,851,000 and various specified assets resulting from his conviction.[382] He was ordered to pay restitution of US$19,473,309 to Peter Kiritchenko.[383] The U.S. Court of Appeals for the Ninth Circuit, however, reversed the lower court's ruling. The Court wrote "We hold that, in the absence of exceptional circumstances, a co-conspirator cannot recover restitution. Because no exceptional circumstances exist here, we reverse and vacate the order of restitution."[384]

In a civil asset forfeiture claim filed in 2005, the U.S. alleged that Lazarenko misused his public office in amassing more than US$326 million in criminal proceeds, which he laundered through a web of CVs and bank accounts around the world.[385] The United

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Samante Limited as Trustee of the Balford Trust, valued at US$147,919,401.13; (b) Accounts at Credit Suisse (Geneva), Banque SCS Alliance S.A. (Geneva), and Vilniaus Bankas (Lithuania) in the name of European Federal Credit Bank Limited, totaling over US$34 million; and (c) Accounts formerly held in Liechtenstein in accounts in the names of Orilles Stiftung, Gruztam Stiftung, Lesja Stiftung, NRKTO 7541, which were valued at approximately US$7 million and were being held at banks in Liechtenstein in accounts in the name of Beranco Engineering Establishment, Ylorex Establishment, Tanas AG, and NRKTO 7541 or in the name of Pavlo Lazarenko. Ibid.

380. "To Catch an Oligarch," *supra* note 370.

381. United States v. Lazarenko, 575 F. Supp. 2d 1139, 1142 (N.D. Cal, 2008).

382. United States v. Lazarenko, No. CR00-cr-0284-01-CRB (N.D. Cal. February 4, 2009).

383. Ibid.

384. Decision, US (Plaintiff-Appellee) and Kiritchenko (Intervenor) v. Lazarenko, No. 08–10185 (9th cir. Nov 3, 2010).

385. First Amended Verified Complaint for Forfeiture, United States v. All Assets Held at Bank Julius Baer & Co., Ltd., et al., No. 1:04-cv-00798-PLF (D.D.C. June 30, 2005).

States is seeking to forfeit more than $250 million in property traceable to a series of corrupt acts and money laundering by Lazarenko and located in bank accounts in Antigua and Barbuda, Guernsey, Liechtenstein, Lithuania, and Switzerland.[386] At the time of writing, the case is ongoing.[387]

Case Study 9: Piarco International Airport Scandal

Overview

From 1996 through 2000, the government of Trinidad and Tobago conducted what was intended to be a competitive process to award and pay for various contracts in conjunction with the construction of the Piarco International Airport in Trinidad.[388] Birk Hillman Consultants, Inc. (BHC), a construction firm co-owned by Eduardo Hillman-Waller, was hired as designer, consultant, and project manager to oversee the airport construction project.[389] BHC and others, such as businessmen Raul Gutierrez and Armando Paz, were able to rig the bidding and selection process so that overpriced bids submitted by the companies they controlled, such as the Florida corporation Calmaquip Engineering Corp. (Calmaquip),[390] would be chosen to perform the contracts.[391] According to the civil complaint filed by Trinidad and Tobago against the conspirators, the influence of political appointees, which included chairman of the National Gas Company Steve Ferguson,[392] Minister of Finance Brian Kuei Tung,[393] and chairman of Tourism and Industrial Development Company of Trinidad and Tobago Ishwar Galbaransingh,[394] allowed BHC and the other conspirators to guarantee government approval for the projects.[395]

386. As part of his 2000 conviction, Switzerland seized US$6.6 million from Lazarenko-controlled accounts. David Chaikin & J.C. Sharman, *supra* note 365. *See also* "The Case against Pavlo Lazarenko," BBC News (August 25, 2006), http://news.bbc.co.uk/2/hi/europe/4780743.stm.

387. In 2008, the U.S. judge in the case denied Lazarenko's motion to dismiss for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted. Ibid.

388. Indictment pp. 2, 4.United States v. Gutierrez, No. 05-20859 CR-HUCK (S.D. Fla. November 17, 2005), (entered in the U.S. District Court for the Southern District of Florida as Case 1:05-cr-20859-PCH).

389. Ibid. United States v. Hillman-Waller, No. 05-20859-CR-HUCK (judgment in a criminal case) (S.D. Fla. January 29, 2007).

390. Florida Department of State Division of Corporations, Details by Entity Name: Calmaquip Eng'g Corp., http://www.sunbiz.org/scripts/cordet.exe?action=DETFIL&inq_doc_number=228605&inq_came_from=NAMFWD&cor_web_names_seq_number=0001&names_name_ind=N&names_cor_number=&names_name_seq=&names_name_ind=&names_comp_name=CALMAQUIP&names_filing_type= (accessed July 3, 2010).

391. Indictment, p. 5. United States v. Gutierrez, No. 05-20859 CR-HUCK (S.D. Fla. November 17, 2005). *See also* United States v. Gutierrez, No. 05-20859-CR-HUCK (amended judgment in a criminal case) (S.D. Fla. March 19, 2007). *See also* United States v. Paz, No. 05-20859-CR-HUCK (judgment in a criminal case) (S.D. Fla. January 29, 2007). *See also* United States v. Calmaquip Eng'g Corp., No. 05-20859-CR-HUCK (judgment in a criminal case) (S.D. Fla. January 18, 2007).

392. Complaint at 7, Trinidad & Tobago v. Birk Hillman Consultants, No. 04-11813 CA 30 (11th Fla. Cir. Ct. April 13, 2007).

393. Ibid. p. 11.

394. Ibid. p. 24.

395. Ibid.

A contract designated CP-9 was approved for the building enclosure and interior construction of the airport.[396] Despite the fact that eight companies had prequalified to submit bids, only one company from Trinidad and Tobago, Northern Construction Limited (Northern), submitted a bid.[397] According to the indictment, Northern was owned by Galbaransingh. Despite the fact that Northern's bid was approximately US$10 million above the cost estimate, Northern was awarded the contract for CP-9.

The contract designated CP-13 was awarded to Calmaquip for miscellaneous specialty equipment, such as jetways, elevators, escalators, and x-ray machines. Despite the fact that 10 companies had been prequalified to invite bids for CP-13, only Calmaquip and SDC, an international construction firm, submitted bids. Neither Calmaquip nor SDC disclosed that SDC's subsidiary, SDCC, shared corporate officers, directors, and a business location with Calmaquip. Calmaqup won the bid, despite its bid being US$15 million higher than the estimated cost of CP-13. The proceeds of these fraudulently obtained contacts were then secreted into various offshore bank accounts connected to different shell companies.[398]

The misuse of corporate vehicles (CVs) was essential in this case. As will be discussed below, they were used not only to provide additional layers to the scheme, but also to give the scheme the appearance of legitimacy.

Misuse of CVs to Give Appearance of Legitimacy

CVs are often used to protect the anonymity of a Politically Exposed Person (PEP) in corruption schemes; they are further used to hide the names of those involved in the scheme altogether. Another reason CVs are used is to give a fraudulent scheme the appearance of legitimacy. Because of the large-scale nature of the Piarco airport construction project, the prominent role the government played in awarding the contracts, and the high-level PEPs allegedly involved, it would have been nearly impossible for those PEPs to remain completely anonymous throughout the duration of the scheme. In other words, the primary motivation for using CVs was probably not the protection of the anonymity of the PEPs. Instead, the conspirators likely employed CVs to convince the public that the bidding and the awarding of contracts was being performed legitimately.

According to the civil complaint, despite the fact that BHC had been pre-assured of the position of project manager before the bidding process even began, BHC was still asked to give a presentation to the selection committee.[399] This was to give the appearance that a legitimate competitive process was being carried out. Furthermore, the selection committee invited Scott and Associates, a company from Toronto,

396. Indictment p. 3, United States v. Gutierrez.
397. Ibid. pp. 2–4.
398. Ibid.
399. Complaint p. 27, Trinidad & Tobago v. Birk Hillman Consultants, No. 04-11813 CA 30 (11th Fla. Cir. Ct. April 13, 2007).

Canada, to make a presentation to purportedly compete with BHC for the project manager contract.[400] BHC's role as project manager was essential to the securing of future subcontracts, so providing a façade of legitimacy was critical to the scheme's success.

The fact that payments from Trinidad and Tobago for the CP-9 and CP-13 contracts were transferred to Northern and Calmaquip also gave the appearance of legitimacy. It seemed logical that those CVs would receive the payments, because those companies actually bid on and performed the work.[401] It is now clear that the companies were vastly overpaid for their work, but at the time, this fact was obscured by the rigged bidding process, which appeared legitimate to the public eye.

Layering of Corporate Vehicles

The Airports Authority of Trinidad and Tobago (AATT) was the government agency assigned overall responsibility for the construction of the airport.[402] From April to November 2000, AATT paid funds into Calmaquip's bank accounts at Dresdner Bank Lateinamerika, AG (Dresdner) in Miami, Florida, United States, for Calmaquip's work on CP-13.[403] Forty-five payments were made, ranging from US$20,461.95 to US$5,500,663.75, and amounting to more than US$29,095,477.[404]

After the money was deposited into Calmaquip's Dresdner account, the conspirators used a system of layering to create levels of separation. On May 11, 2000, Raul Gutierrez, president and director of Calmaquip,[405] wire transferred US$2,000,000 from Dresdner Bank to Bank Leu Ltd. on behalf of the company, AMA Investment Group (AMA).[406] According to the indictment, that same day, AMA wire transferred US$1,500,000 from its Bank Leu account to the Bank Leu account of Argentum International Marketing Services, S.A. (Argentum). Over the course of the next month, Steve Ferguson, on behalf of Argentum, allegedly wire transferred from Argentum's Bank Leu account to other bank accounts held in the name of various other CVs, such as Bocora Holding, Inc. (Bocora) and Maritime Securities Holdings Ltd. In August and September 2000, Gutierrez and Armando Paz, both directors for Calmaquip, also made numerous transfers on behalf of Calmaquip to the Banco Bilbao Vizcaya Argentaria accounts of Empresas Sudamericana S.A. (Empresas). Later, Empresas allegedly would wire transfer money from this account to Argentum's Bank Leu account. After sufficient layers had been created, the payouts were made into the bank accounts of the conspirators.[407]

400. Ibid.
401. Indictment, pp. 3–4, United States v. Gutierrez.
402. Ibid. p. 2.
403. Ibid. p. 8.
404. Ibid. p. 9.
405. Ibid. p. 1.
406. Ibid. pp. 9–12.
407. Ibid.

This tactic of moving money from the bank account of one CV to the next, known as layering, is often used to disguise the trail of money. Layering separates the illegally obtained funds from the crime by obscuring the trail of money through a complex web of financial transactions. Rather than having the money transfer directly to one of the conspirators, it is being diverted to a company, thus giving it the appearance of legitimacy. In this case, securing disassociation from the rigged bidding process through this process of layering was a key step for the conspirators before they could enjoy their payday.

Investigation and Asset Recovery

This case presented various investigative obstacles. As discussed, the tactic of layering can obscure the trail of funds. The fact that the layered CVs were created in different jurisdictions also created an additional obstacle. According to the civil complaint, CVs from a wide variety of jurisdictions including—but not limited to—the Bahamas; Florida, the United States; Panama; Portugal; and Trinidad and Tobago were employed in the scheme.[408] For a criminal, such a structure of international layering can be convenient for hiding the trail of money—but from the perspective of an investigator, it creates a number of other investigative issues. For one, layering makes an investigation exponentially more costly—as was the case here.[409] In addition, when investigations become international, one jurisdiction's law enforcement must rely on another jurisdiction's law enforcement, and must make mutual legal assistance requests.

A number of CVs involved or allegedly involved in the scheme were from Panama. The aforementioned CVs, Argentum,[410] Bocora,[411] and Empresas,[412] for example, were all incorporated in Panama. Like a number of other jurisdictions, the Panamanian company registry does not collect legal ownership information (or beneficial ownership information); for *sociedad anónimas*/corporations, legal ownership information does not need to be disclosed upon incorporation.[413] Furthermore, in Panama, updating requirements are not set forth in the legislation for the information that must be submitted

408. Complaint pp. 6–8, 17, 72, Trinidad & Tobago v. Birk Hillman Consultants, No. 04-11813 CA 30 (11th Fla. Cir. Ct. April 13, 2007).

409. According to an experienced investigator from the British Virgin Islands, the most effective way to resolve the cost issue from layering is by striking early against exposed assets and liquidating them to add to available resources.

410. See https://www.registro-publico.gob.pa/scripts/nwwisapi.dll/conweb/prinpage (follow "Mercentil"; then follow "Sociedad Anónimas"; then follow "Alfabéticamente"; then type "Argentum International Marketing Services" in "Indique Nombre de Sociedad"; follow "Argentum International Marketing" hyperlink) (accessed July 3, 2010).

411. See https://www.registro-publico.gob.pa/scripts/nwwisapi.dll/conweb/prinpage (follow "Mercentil"; then follow "Sociedad Anónimas" then follow "Alfabéticamente"; then type "Bocora Holdings" in "Indique Nombre de Sociedad"; follow "Bocora Holdings, Inc." hyperlink) (accessed July 3, 2010).

412. See https://www.registro-publico.gob.pa/scripts/nwwisapi.dll/conweb/prinpage (follow "Mercentil"; then follow "SociedadAnónimas"; then follow "Alfabéticamente"; then type "Empresas Sudamericana" in "Indique Nombre de Sociedad"; follow "Empresas Sudamericana, S.A." hyperlink) (accessed July 3, 2010).

413. Panama Corp. Law, Law 32, (1927) (Art. 2).

at incorporation.[414] In essence, no public source exists for this information; the only place to obtain this information from Panama is from the company.

In spite of these obstacles, successful asset recovery was effected, and as of the date of this writing, efforts to recover further assets are ongoing. On November 17, 2005, the United States brought a criminal suit against Raul Gutierrez, Rene Diaz de Villegas, Eduardo Hillman-Waller, Steve Ferguson, Armando Paz, Ishwar Galbaransingh, Richard Lacle, Leonardo Mora, Northern, and Calmaquip in the Southern District of Florida for their involvement in the scheme.[415] From that list, Gutierrez,[416] Diaz,[417] Hillman-Waller,[418] Paz,[419] Lacle,[420] Mora,[421] and Calmaquip[422] have all pleaded guilty. In total, the defendants were ordered to pay more than US$25 million in restitution for their admitted guilt in the CP-13 contract.

A civil suit was brought by the RTT against many of the same defendants in the Eleventh Judicial Circuit Court for Miami-Dade County, Florida. In addition to the aforementioned defendants, Ronald Birk, Brian Kui Tung, and various other CVs were

414. Ibid.

415. Indictment pp. 2, 4. United States v. Gutierrez, No. 05-20859-CR-HUCK (S.D. Fla. November 17, 2005).

416. On March 19, 2007, Gutierrez pleaded guilty to conspiracy to commit wire fraud and to transfer money obtained by fraud and bank fraud in the Southern District of Florida in a suit brought by the United States. Gutierrez was ordered to pay US$22,556,100 in restitution. United States v. Gutierrez, No. 05-20859-CR-HUCK (amended judgment in a criminal case) (S.D. Fla. March 19, 2007).

417. On December 17, 2007, Diaz pleaded guilty to conspiracy to commit wire fraud and to transfer money obtained by fraud in the Southern District of Florida in a suit brought by the United States. He was ordered to pay a fine of US$50,000. United States v. Diaz de Villegas, No. 05-20859-CR-HUCK (amended judgment in a criminal case) (S.D. Fla. December 17, 2007).

418. On December 17, 2007, Hillman Waller pleaded guilty to conspiracy to commit wire fraud and to transfer money obtained by fraud and bank fraud in the Southern District of Florida in a suit brought by the United States. Hillman Waller was ordered to pay US$2 million in restitution. United States v. Hillman-Waller, No. 05-20859-CR-HUCK (judgment in a criminal case) (S.D. Fla. January 29, 2007).

419. On January 29, 2007, Paz pleaded guilty to bank fraud in the Southern District of Florida in a suit brought by the United States. Paz was ordered to pay restitution of US$489,618.06. United States v. Paz, No. 05-20859-CR-HUCK (judgment in a criminal case) (S.D. Fla. January 29, 2007).

420. On January 17, 2007, Lacle pleaded guilty to conspiracy to structure financial transactions in the Southern District of Florida in a suit brought by the United States. Lacle was ordered to pay a fine of US$15,000. United States v. Lacle, No. 05-20859-CR-HUCK (judgment in a criminal case) (S.D. Fla. January 17, 2007).

421. On January 17, 2007, Mora pleaded guilty to conspiracy to commit offense against the United States, that is, transportation of money obtained by fraud in the Southern District of Florida in a suit brought by the United States. United States v. Mora-Rodriguez, No. 05-20859-CR-HUCK (judgment in a criminal case) (S.D. Fla. January 17, 2007). On April 27, 2007, Mora was ordered to pay restitution in the amount of US$80,000. United States v. Mora-Rodriguez, No. 05-20859-CR-HUCK (ordering setting restitution amount) (S.D. Fla. April 27, 2007).

422. On January 18, 2007, Calmaquip pleaded guilty to conspiracy to commit wire fraud and to transfer money obtained by fraud and bank fraud in the Southern District of Florida in a suit brought by the United States. It is unclear how much Calmaquip was ordered to pay in restitution. United States v. Calmaquip Eng'g Corp., No. 05-20859-CR-HUCK (judgment in a criminal case) (S.D. Fla. January 18, 2007).

sued.[423] The complaint alleged improper dealings with the contracts CP-3, CP-5, and CP-9.[424] According to various news outlets, Ronald Birk, another coowner of BHC, signed a plea deal with the RTT to give evidence against his alleged coconspirators.[425] At the time of writing, this suit was ongoing.

Case Study 10: Telecommunications D'Haiti

Overview

Between 2001 and 2005,[426] government officials at Haiti's state-owned national telecommunications company, Telecommunications D'Haiti (Haiti Teleco), accepted bribes and laundered funds through corporate vehicles (CVs). As the sole provider of local telephone service in Haiti, Haiti Teleco contracted with international telecommunications companies to allow customers of those companies to make calls to Haiti.[427] Representatives of three such telecommunications companies, based in the United States, paid bribes to Haiti Teleco officials in exchange for commercial advantages that included preferential and reduced telecommunications rates and credits toward amounts owed, thereby defrauding Haiti Teleco of revenue.[428]

The bribes originating from the U.S. telecommunications companies were funneled systematically and incrementally through wire transfers and check payments[429] to intermediary shell companies.[430] These payments were made to appear as being for consulting services, commissions,[431] and vendor payments, although no such services were ever rendered.[432] The funds were dispersed from the intermediary accounts for the benefit of Haiti Teleco officials and their relatives, including Haiti Teleco's Director of International Affairs, a position held by Robert Antoine and subsequently by Jean Rene Duperval during the period of the scheme.[433] In dispersing the funds, false notations,

423. Complaint at 7, Trinidad & Tobago v. Birk Hillman Consultants, No. 04-11813 CA 30 (11th Fla. Cir. Ct. April 13, 2007).
424. Ibid. p. 99.
425. Darren Bahaw, "Birk Signs Plea Deal with State," *Trinidad & Tobago Express* (March 5, 2010), http://www.trinidadexpress.com/index.pl/article_news?id=161603723 (accessed July 3, 2010).
426. Factual Agreement, United States v. Antoine, No. 09-cr-21010-JEM (S.D. Fla. March 12, 2010).
427. Information p. 2, United States v. Diaz, No. 09-cr-20346-MARTINEZ/BROWN (S.D. Fla. April 22, 2009).
428. Indictment p. 8, United States v. Esquenazi, No. 09-cr-21010 (S.D. Fla. December 4, 2009).
429. Information p. 6, United States v. Diaz.
430. Indictment p. 10, United States v. Esquenazi.
431. Ibid. p. 8.
432. Information p. 6, United States v. Diaz. *See also* Indictment p. 9, United States v. Esquenazi. Diaz admitted that he never provided, and never intended to provide, any legitimate goods or services from JD Locator. Press Release, U.S. Department of Justice, "Two Florida Businessmen Plead Guilty to Participating in a Conspiracy to Bribe Foreign Government Officials and Money Laundering" (May 15, 2009), http://www.usdog.gov/usao/fls.
433. Factual Agreement, United States v. Robert Antoine. It had been mentioned that bribes were also paid to the director general of Haiti Teleco, and on July 13, 2011, the U.S. handed down an indictment against former Haiti Teleco Director General Patrick Joseph. See note 467. Information p. 6, United States v. Diaz.

such as inscribing fabricated invoice reference numbers on the memo portions of the checks, routinely would be made to conceal the true nature of the payments.[434]

Two intriguing aspects of this case were (a) the system of corruption at Haiti Teleco that allowed for the corruption to take place, and (b) the use of family members to administer parts of the scheme.

A System of Corruption

This case exhibits a system of corruption that remained in place even after Jean Rene Duperval succeeded Robert Antoine as Haiti Teleco's director of international relations. While Antoine was the director, he received US$1,150,000 in bribes from three U.S. telecommunications companies through intermediary shell companies,[435] including the Florida-based JD Locator Services (JD Locator),[436] which was formed by a codefendant Juan Diaz.[437] As described earlier, the bribes were made to appear as payments for consulting services, through the writing of false memo notations on checks, and through deposits into and withdrawals from accounts of intermediary shell companies.[438] At Antoine's direction, funds would be disbursed from the JD Locator bank account by sending wire transfers to Antoine's bank account, issuing checks payable to Antoine, which then were deposited into that same account, withdrawing currency that was given to Antoine, and sending funds to Antoine's family members and others at his direction.[439] Incremental disbursements were also paid to another intermediary company, Fourcand Enterprises, Inc. (Fourcand Enterprises), which was a Florida-based company established by Jean Fourcand, who served as its president and director.[440] Funds that accumulated in the Fourcand Enterprises account were collectively used to purchase real property, which was subsequently sold, the proceeds of which were transferred to Antoine via Fourcand's personal bank account.[441]

Once Antoine completed his tenure as director at Haiti Teleco, he was employed by two of the three U.S. companies that had paid him bribes. From this position, he facilitated the same corruption scheme, as bribes continued to be paid from the telecommunications companies to Duperval, who had succeeded him as director. Funds would be

434. Ibid. p. 7.
435. Factual Agreement, United States v. Antoine.
436. At least two other Florida-based corporate vehicles were misused in the corruption scheme in a manner similar to JD Locator. Indictment at 10, United States v. Esquenazi, No. 09-21010 (S.D. Fla. December 4, 2009).
437. Diaz would cash checks typically in amounts no greater than US$10,000, thereby obviating his obligation to file Currency Transaction Reports pursuant to relevant banking regulations and U.S. law. Information p. 7, United States v. Diaz.
438. Factual Agreement, United States v. Antoine.
439. Indictment p. 9, United States v. Esquenazi.
440. Press Release, U.S. Department of Justice, "Florida Businessman Pleads Guilty to Money Laundering in Foreign Bribery Scheme" (February 19, 2010).
441. Indictment pp. 23–24, United States v. Esquenazi. *See also* Press Release, U.S. Department of Justice, "Florida Businessman Pleads Guilty to Money Laundering in Foreign Bribery Scheme" (February 19, 2010).

paid to intermediary shell companies, including Process Consulting, which was Antoine's company, and to Telecom Consulting Services Corp. (Telecom Consulting), a company set up by the president and director of one of the U.S. telecommunications companies, Joel Esquenazi, another codefendant.[442] Similar to the disbursements from JD Locator, funds from Telecom Consulting were disbursed at Duperval's direction by the issuing of checks payable to Duperval and his family members, cash withdrawals, and purchases with such funds for Duperval's benefit.[443] It is alleged that more than US$1 million was received in the accounts of JD Locator[444] in 29 separate transactions and disbursed in 22 separate transactions[445] for the benefit of Antoine, and that US$75,000 was received in the account of Telecom Consulting in seven separate transactions, more than half of which was disbursed in 12 separate transactions for the benefit of Duperval.[446]

The two schemes mirrored each other in many regards: Both schemes were administered from the same director position within the government, and both schemes utilized an intermediary shell company to receive wire transfers. Another common aspect of the two schemes was the use of family members.

Involvement of Family Members

The misuse of CVs in this case was carried out to a substantial extent by and through the use of family members of Antoine and Duperval. Whether knowingly or inadvertently, these family members helped to conceal the connection of Antoine and Duperval to the bribes.

Duperval made his sister, Marguerite Grandison, the sole officer and director of intermediary shell company Telecom Consulting.[447] Grandison opened a bank account in the name of Telecom Consulting for which she was the sole signatory, which received more than US$70,000 in bribe payments via wire transfers and intrabank transfers from a U.S. telecommunications company.[448] At her brother's direction, she disbursed the funds from the account by issuing checks from Telecom Consulting payable to her brother and to his relatives, by withdrawing currency for him from the account, and by making purchases with the funds for her brother's benefit.[449] By having a family member conduct the money transfers, Duperval and coconspirator Esquenazi were able to enhance their anonymity in connection with the bribery; that is, Duperval was the true

442. Jean Rene Duperval's sister, Marguerite Grandison, served as the president and sole officer of Telecom Consulting, as described below. Indictment p. 10, United States v. Esquenazi.
443. Ibid. p. 11.
444. Information p. 6, United States v. Diaz, No. 09-20346-CR-MARTINEZ/BROWN (S.D. Fla. April 22, 2009).
445. Ibid. pp. 7–10.
446. Indictment pp. 15–16, United States v. Esquenazi. *See also* Factual Agreement, United States v. Antoine, No. 09-21010-cr-JEM (S.D. Fla. March 12, 2010).
447. Indictment p. 10, United States v. Esquenazi.
448. Ibid.
449. Ibid. p. 11.

beneficial owner of Telecom Consulting, and Ezquenazi, who served as the president and director of one of the bribe-paying U.S. telecommunications companies, had been involved in establishing Telecom Consulting[450] for use in the scheme. The names of either Duperval or Esquenazi, however, did not appear on any official documents of Telecom Consulting (such as its articles of incorporation,[451] or documentation of money transfers into or out of Telecom Consulting's bank account).[452] The only name that appears on the articles of incorporation is Grandison's, and that of the general counsel of the U.S. telecommunications company, who was listed as the registered agent.[453] Similarly, it is only Grandison's name that appears on banking documentation for Telecom Consulting.

Family members were used to accept bribery payments intended for Antoine and Duperval. When funds were disbursed from the intermediary shell companies, in certain instances, they were distributed to relatives of Antoine[454] and Duperval.[455] Again, the use of family members added a layer of separation between the bribe-payers and the bribe-takers, thereby helping to conceal the connection of Antoine and Duperval to the bribery.

Investigation

The systematic way in which the CVs were misused presented obstacles to the investigation. On the face of it, and according to the records kept at both the U.S. telecommunications companies as well as the intermediary companies, the bribe payments appeared to be made for legitimate services rendered. Furthermore, because the amounts of the checks cashed by JD Locator were each typically at or under US$10,000, Currency Transaction Reports would not have been filed with the banks in connection with the transactions.[456] In addition, the use of shell companies as intermediaries superficially dissociated the individual bribe-givers from the bribe-takers, by preventing their names from appearing as direct counterparties in any transactions transferring bribe money.

The investigation was able to proceed successfully, at least in part because of effective cooperation between United States and Haitian authorities. U.S. authorities obtained

450. Ibid. p. 10.
451. Ibid. Telecom Consulting Servs Corp., Articles of Incorporation (October 16, 2003).
452. The laws of Florida, where Telecom Consulting was incorporated, impose no obligation for the identity of the legal or beneficial owners of the company to be disclosed to a public authority, whether upon incorporation or on any on-going basis. Fla. Stat. § 607.1622 (2009), http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0607/SEC1622.HTM&Title=->2009->Ch0607->Section%201622#0607.1622 (accessed July 3, 2010).
453. Telecom Consulting Servs. Corp., Articles of Incorporation (October 16, 2003). See also Indictment p. 10, United States v. Esquenazi.
454. Information p. 6, United States v. Perez, No. 09-20347-CR-MARTINEZ/BROWN (S.D. Fla. April 22, 2009). *See also* Information p. 6, United States v. Diaz, No. 09-20346-CR-MARTINEZ/BROWN (S.D. Fla. April 22, 2009). See also Indictment p. 9, United States v. Esquenazi.
455. Indictment p. 11, United States v. Esquenazi.
456. Information p. 7, United States v. Diaz.

evidence supporting the charges through formal requests made under the Inter-American Convention Against Corruption. Once the indictment was issued, Duperval, a non-U.S. citizen, was arrested by agents of Haiti's *Bureau des Affaires Financières et Economiques* on the basis of a U.S. arrest warrant and then expelled to the United States to face charges.[457]

Asset Recovery

In 2009 and 2010, the U.S. Department of Justice initiated criminal cases against eight individuals involved in the bribery scheme. Informations were issued against Juan Diaz, Jean Fourcand, and Antonio Perez, who had served as controller of a U.S. telecommunications company. An indictment was also issued against Joel Esquenazi, Robert Antoine, Jean Rene Duperval, Marguerite Grandison, and Carlos Rodriguez, who was executive vice president of a U.S. telecommunications company.[458] According to the indictment, if convicted, these five defendants collectively would be required to forfeit to the United States US$963,818 representing proceeds of the conspiracy and offenses, in addition to all money properties, and commissions paid in connection with, or used to facilitate, the offenses.[459] In addition to forfeiture provisions, the various criminal charges carry maximum penalties of between 5and 20 years in prison, as well as maximum fines of between US$100,000 and US$500,000, or twice the value of the property or the proceeds in question, whichever is greater.[460]

Antoine pleaded guilty to money laundering conspiracy in connection with US$800,000 in bribes.[461] He was sentenced to four years in prison[462] and was ordered to pay US$1,852,209 in restitution and to forfeit US$1,580,771.[463] Perez pleaded guilty to conspiring to commit Foreign Corrupt Practices Act (FCPA) violations and money laundering,[464] involving approximately US$674,193 in bribes to an official at Haiti

457. Press Release, U.S. Department of State, "Haiti Arrests and Expels Former Haiti Telecommunications Official for US Corruption-Related Charges" (December 8, 2009), http://haiti.usembassy.gov/press_releases/haiti-arrests-and-expels-former-haiti-telecommunications-official-for-u.s.-corruption-related-charges-8-december-2009.

458. Although the FCPA does not provide for prosecution of non-U.S. officials who accept bribes, the U.S. Department of Justice charged the Haitian officials for money laundering offenses under other (non-FCPA) legal provisions. Esquenazi and Rodriguez were U.S. citizens, and Grandison was a permanent U.S. resident. Indictment, United States v. Esquenazi.

459. Ibid. pp. 27–28.

460. Press Release, U.S. Department of Justice, "Florida Businessman Pleads Guilty to Money Laundering in Foreign Bribery Scheme" (February 19, 2010).

461. Press Release, U.S. Department of Justice, "Former Haitian Government Official Pleads Guilty to Conspiracy to Commit Money Laundering in Foreign Bribery Scheme" (March 12, 2010).

462. He was also sentenced to three years of supervised release following the time in prison.

463. United States v. Antoine, No. 09-cr-21010-MARTINEZ (S.D. Fla. June 1, 2010) (order of forfeiture). *See also* Press Release, U.S. Department of Justice, "Former Haitian Government Official Sentenced to Prison for His Role in Money Laundering Conspiracy Related to Foreign Bribery Scheme" (June 2, 2010). *See also* Plea Agreement pp. 8-9, United States v. Antoine, No. 09-cr-21010 (S.D. Fla. February 19, 2010).

464. Press Release, U.S. Department of Justice, "Former Haitian Government Official Pleads Guilty to Conspiracy to Commit Money Laundering in Foreign Bribery Scheme" (March 12, 2010).

Teleco. He was sentenced to 24 months in prison and ordered to forfeit US$36,375.[465] Diaz pleaded guilty in connection with concealing US$1,028,851 in bribes while serving as an intermediary for three private telecommunications companies, and was sentenced to 57 months' imprisonment and ordered to pay US$73,824 in restitution and to forfeit US$1,028,851.[466] Fourcand entered into a plea agreement pursuant to which he agreed to forfeit US$18,500 to the United States[467] and was sentenced to six months in prison.[468]

As of end of July 2011, Esquenzi and Rodriguez's trial was ongoing.[469] Duperval and Grandison's trial was scheduled to commence on August 1, 2011.[470] On July 13, 2011, the United States also handed down a superseding indictment against new defendants, including former director general of Haiti Teleco Patrick Joseph and other companies and individuals, as well as additional charges against Duperval and Grandison.[471] At the time of writing, trial has not yet been set for the newly added defendants.[472]

465. Press Release, U.S. Department of Justice, "Former Comptroller of a Miami-Dade Telecommunications Company Sentenced to 24 Months in Prison for His Role in Foreign Bribery Scheme" (January 21, 2011).
466. Plea Agreement at 2, United States v. Diaz, No. 09-20346-Cr-JEM (April 21, 2010). Press Release, U.S. Department of Justice, "Florida Businessman Sentenced to 57 Months in Prison for Role in Foreign Bribery Scheme" (July 30, 2010).
467. Plea Agreement p. 8, United States v. Fourcand, No. 10-20062-cr-JEM (S.D. Fla. February 19, 2010).
468. Press Release, U.S. Department of Justice, "Former Haitian Government Official Sentenced to Prison for His Role in Money Laundering Conspiracy Related to Foreign Bribery Scheme" (June 2, 2010).
469. Court Docket Report as of July 27, 2011, U.S. v. Esquenazi, et al, No. 1:09-cr-21010-JEM-4 (S.D. Fla.)
470. Order Regarding the Sequence of Trials, U.S. v. Esquenazi, et al, No. 1:09-cr-21010-JEM-4 (S.D. Fla. May 27, 2011)
471. Superseding Indictment, U.S. v. Vaconez Cruz, et al., No. 1:09-cr-21010-JEM-4 (S.D. Fla. July 13, 2011).
472. Docket Report as of July 27, 2011, U.S. v. Esquenazi, et al, No. 1:09-cr-21010-JEM-4 (S.D. Fla.).