



FCPA Investigations in Brazil are Expanding into Healthcare and Other Industries

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In the last few weeks, additional investigations by U.S. criminal and civil authorities into potential FCPA violations by multi-national companies in Brazil have come to light. These investigations, which focus on medical equipment sales to Brazilian public health companies in exchange for illegal payoffs to public employees, involve such household names as GE, Johnson & Johnson, Phillips, and Siemens. Brazilian federal prosecutor, Marisa Ferrari told *Reuters* that the evidence points to widespread bribery and price gouging by companies looking to tap into Brazil's public healthcare system, characterizing the "scheme" as "truly massive," and this first investigation as "just a tiny sliver of what is to come."¹

The largest previous anti-corruption investigation in Brazil's history, Operation "Car Wash," which began with allegations of money laundering, and expanded to encompass alleged corruption at Brazil's state-owned oil company, Petrobras, has embroiled 16 different companies and resulted in almost 100 convictions in Brazil, the United States, and ten other countries. Testimony obtained in connection with guilty pleas in the Car Wash investigations has, according to news reports, led authorities to other possible FCPA and corruption violations by companies operating in Brazil.² This illustrates two persistent aspects of U.S. government investigations: cross-border cooperation and follow-up of leads developed in earlier investigations.

Brazilian and U.S. authorities have, over the past five years, developed a very close, cooperative working relationship in pursuing companies and individuals involved in Car Wash. They have facilitated information and document sharing, shared tips and leads, and assisted one another in obtaining convictions and plea deals from persons and entities subjected to investigation. This latest round of investigations indicates that this close cooperation appears to be ongoing.

Increasingly, as the DOJ and SEC have developed information that a particular industry in a particular country or region has experienced significant bribery activity, they have used this information actively to direct new investigations, uncover new targets, and expand into new industries or areas of investigation. For example, in 2010, the DOJ and SEC announced that Panalpina World Transport (Holding) Ltd., a Swiss global freight forwarding and logistics services firm and its US-based subsidiary had engaged in a scheme to pay thousands of bribes to foreign officials on behalf of oil and gas industry customers.³ Five of Panalpina's customers, oil and gas

¹ See, e.g., Brad Brooks, Exclusive: FBI Targets Johnson & Johnson, Siemens, GE, Philips in Brazil Graft Case, *REUTERS*, May 17, 2019, <https://www.reuters.com/article/us-brazil-corruption-healthcare-exclusiv/exclusive-fbi-targets-johnson-johnson-siemens-ge-philips-in-brazil-graft-case-sources-idUSKCN1SN0ZZ>.

² *Id.*

³ Press Release, U.S. Department of Justice, Oil Services Companies and a Freight Forwarding Company Agree to Resolve Foreign Bribery Investigations and to Pay More Than \$156 Million in Criminal Penalties (Nov. 4, 2010), <https://www.justice.gov/opa/pr/oil-services-companies-and-freight-forwarding-company-agree-resolve-foreign-bribery>; Litigation Release, U.S. Securities and Exchange Commission, SEC Charges Panalpina with Violating the Foreign Corrupt Practices Act (Nov. 4, 2010), <https://www.sec.gov/litigation/litreleases/2010/lr21727.htm>; Litigation Release, U.S. Securities and Exchange Commission, SEC Charges Noble with FCPA Violations (Nov. 4, 2010), <https://www.sec.gov/litigation/litreleases/2010/lr21728.htm>; Litigation Release, U.S. Securities and Exchange Commission (Nov. 4, 2010), <https://www.sec.gov/litigation/litreleases/2010/lr21729.htm>; Litigation Release, U.S. Securities and Exchange Commission, SEC Charges Pride International with Violating the Foreign Corrupt Practices Act (Nov. 4, 2010), <https://www.sec.gov/litigation/litreleases/2010/lr21726.htm>; Litigation Release, U.S. Securities and Exchange Commission, SEC Charges Transocean for Bribery Scheme in Nigeria—Transocean to Pay Disgorgement and Civil Penalties of \$7,265,080 (Nov. 4, 2010), <https://www.sec.gov/litigation/litreleases/2010/lr21725.htm>; Litigation Release, U.S. Securities and Exchange Commission, SEC Charges GlalSantaFe Corp. with Bribery and Other FCPA Violations (Nov. 4, 2010), <https://www.sec.gov/litigation/litreleases/2010/lr21724.htm>.

services companies, also admitted approving the payment of bribes on their behalf in Nigeria and falsely recording these payments as legitimate business expenses in their corporate books and records.⁴ All of these cases resulted from an initial disclosure from an industry player followed by multi-national investigations that uncovered additional instances of illegal bribery activity involving other governments, companies, and individuals. This pattern has repeated itself over the years, and neither the DOJ nor the SEC has made any secret of their interest in pursuing “industry sweeps” to uncover wrongdoing pervasive in an industry and/or region.⁵ Such a “sweep” appears to be gathering steam in Brazil’s public health sector.

We can predict that additional companies, government officials, and individual executives will be subjected to intensive scrutiny by U.S. and Brazilian authorities in the next several years. In addition to medical equipment, hospitals and medical organizations purchase software, IT services, and cloud services to store data, run diagnostics, and perform record-keeping functions. The health sector also requires hospitals and facilities and finances large-scale construction projects. Government officials in a position to contract for medical equipment are often also well-positioned to contract for additional services. Investigators will surely be exploring these other sources of potential bribes and kick-backs for indications of illegal activity. Companies, executives, and board members must be alert to the potential expansion of the ongoing investigations and take action to ensure that their enterprises are not exposed to potential liability in this fraught area.

⁴ *Id.*

⁵ See, e.g., Andrew Ceresney, Director, Division of Enforcement, U.S. Securities and Exchange Commission, Keynote Speech, ACI’s 33rd International Conference on the FCPA (Nov. 30, 2016), <https://www.sec.gov/news/speech/speech-ceresney-113016.html> (“The JPMorgan case was the first case to be brought resulting from the Enforcement Division’s Asia Referral Hiring Sweep, which began in 2013 with our investigation of JPMorgan. As part of this sweep, Enforcement began looking at hiring practices in the Asia-Pacific region for investment banks based on what we perceived, in part through our investigation of JPMorgan, could be an industry-wide problem. Enforcement’s work on the sweep is ongoing.”).

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