

Client Alert.

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Regulators Listen to Senate Critics: Eight Ex-Siemens Execs Charged for FCPA Violations

By Paul T. Friedman and Ruti Smithline

The Siemens case is undoubtedly the biggest case in FCPA enforcement history: the “pattern of bribery” involved was “unprecedented in scale and geographic reach.”¹ The \$1.6 billion combined settlement with U.S. and German authorities remains the record-breaking anti-corruption penalty of all time. But what was missing from the Siemens case was the “cornerstone” of the Department of Justice’s “enforcement strategy”²—not a single individual had been held accountable for the conduct at Siemens. That is, until yesterday.

THE CHARGES

Almost exactly three years to the day since Siemens AG and three of its subsidiaries, including Siemens Argentina, settled the massive FCPA case, the DOJ announced yesterday charges against eight Siemens former executives and agents. The indictment alleges that the eight individuals were involved in a conspiracy to funnel \$100 million to Argentine officials to land a \$1 billion contract to make national identification cards. The defendants were charged with conspiracy to violate the FCPA, conspiracy to commit wire fraud, substantive wire fraud, and conspiracy to commit money laundering. In a parallel action, the Securities and Exchange Commission charged seven individuals.

According to U.S. Attorney for the Southern District of New York, Preet Bharara:

As alleged, the defendants in this case bribed Argentine government officials in two successive administrations and paid off countless others in a successful effort to secure a billion dollar contract. When the project was terminated, they even sought to recover the profits they would have reaped from a contract that was awarded to them illegitimately in the first place.³

The indictment alleges that during the bidding and implementation phases of the project, the defendants caused Siemens to pay nearly \$100 million in bribes to sitting Argentine government officials and members of the opposition party who were likely to come to power during the execution phase of the contract. According to the indictment, the defendants concealed the illicit payments in various ways, including transporting millions of dollars in cash across international borders and using at least 17 offshore shell companies.

¹ DOJ Release No. 08-1105, Siemens AG and Three Subsidiaries Plead Guilty to Foreign Corrupt Practices Act Violations and Agree to Pay \$450 Million in Combined Criminal Fines (Dec. 15, 2008), available at <http://www.justice.gov/opa/pr/2008/December/08-crm-1105.html>.

² See DOJ, Lanny A. Breuer, *Prepared Address to the 22nd National Forum on the Foreign Corrupt Practices Act* (Nov. 17, 2009), available at <http://www.justice.gov/criminal/pr/speeches-testimony/documents/11-17-09aaqbreyer-remarks-fcpa.pdf>.

³ DOJ Release No. 11-1626, Eight Former Senior Executives and Agents of Siemens Charged in Alleged \$100 Million Foreign Bribe Scheme (Dec. 13, 2011), available at <http://www.justice.gov/opa/pr/2011/December/11-atj-1626.html>.

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The indictment also alleges that when the project was terminated, members of the conspiracy sought to recover the anticipated proceeds from the project by filing a fraudulent arbitration claim against the Republic of Argentina in Washington, D.C. DOJ alleges that defendants “allegedly caused Siemens to actively hide from the tribunal the fact that the contract for the [] project had been secured by means of bribery and corruption, including tampered witness statements and pleadings that falsely denied the existence of corruption.”⁴ As an aside, the company’s systemic corruption was not uncovered during the proceedings in Washington, and the tribunal found for Siemens. The company was awarded nearly \$220 million in damages. But once the global corruption scheme unraveled, Siemens’ new management declined to claim the award money.

The eight individuals charged by DOJ are all foreign nationals from Germany, Switzerland, and Argentina. None of the defendants have yet been arrested or extradited. Assistant Attorney General Lanny Breuer pointed out that the charges against Uriel Sharef, the most senior executive charged and a former Siemens managing board member, are the first under the FCPA against a board member of a Fortune Global 50 company.

The SEC also announced yesterday that one defendant, Bernd Regendantz, has already settled the SEC charges. Without admitting or denying the allegations, Regendantz consented to the entry of final judgment and a civil penalty of \$40,000, “deemed satisfied by Regendantz’ payment of a €30,000 administrative fine ordered by the Public Prosecutor General in Munich, Germany.”⁵ The settlement with Regendantz and the fact he was not indicted by DOJ suggests that he is cooperating with the government’s prosecution.

FOCUS ON INDIVIDUALS CONTINUES

Although the Siemens case was admittedly a big win for DOJ and SEC, the regulators had faced criticism for failing to bring charges against any individuals. For example, during last year’s Senate hearings into FCPA enforcement, former Senator Arlen Specter questioned why no one had gone to jail for the biggest case of overseas bribery. During the hearing, Senator Specter stated: “Criminal fines are added to the costs of doing business,” but “going to jail is what works to deter crimes.”⁶

Yesterday’s charges against the eight individuals show that the regulators were listening to Senator Specter. Prosecuting and holding individuals accountable continues to be a central focus of the regulators’ enforcement strategy.⁷ As Mr. Breuer noted, “[c]ompanies, of course, operate through the actions of individuals and when we have evidence we believe shows those individuals violated the law, we will prosecute them.”

⁴ *Id.*

⁵ SEC Release No. 22190, SEC Charges Seven Former Siemens Executives with Bribing Leaders in Argentina (Dec. 13, 2011), available at <http://www.sec.gov/litigation/litreleases/2011/lr22190.htm>.

⁶ See “Is DOJ Doing Too Much, or Not Enough, to Combat Bribery?” (Nov. 30, 2010), available at <http://blogs.wsj.com/law/2010/11/30/is-doj-doing-too-much-or-not-enough-to-combat-foreign-bribery>.

⁷ Please refer to our Client Alerts: [Telecom Exec Sentenced to Record Breaking FCPA Prison Term: 15 Years](#) (October 28, 2011), [Another Successful FCPA Prosecution Against Individuals—More Terra Telecom Execs Appear Headed for Prison for Haiti Bribes](#) (August 29, 2011), and [2010: Another Record-Breaking Year for FCPA Enforcement, Confirming “New Era”](#) (January 12, 2011).

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