

Federal Jury Finds *Lindsey Manufacturing* Defendants Guilty on All Counts for FCPA Violations

In the closely watched trial of *U.S. v. Lindsey Manufacturing Co.*, a federal jury has found the defendants guilty on all counts of violations of the Foreign Corrupt Practices Act (“FCPA”). The verdict came on May 11 after just one day of deliberations in a five week trial conducted in the Central District of California. Lindsey Manufacturing, its CEO Keith Lindsey, and its CFO Steve Lee were each convicted of one count of conspiracy to violate the FCPA, as well as five other FCPA violations. The wife of Lindsey Manufacturing’s Mexican sales representative, Angela Aguilar, was also convicted of one count of conspiracy to launder money. Notably, the case marks the first time a company has been tried and convicted of FCPA violations.

In the Lindsey Manufacturing prosecution, the Government’s case focused on Lindsey Manufacturing’s retention of Grupo Internacional de Asesores S.A. Grupo served as Lindsey Manufacturing’s sales representatives in Mexico in order to obtain contracts from the Mexican state-owned utilities company Comisión Federal de Electricidad (“CFE”). Prosecutors alleged that a portion of Grupo’s commission was used to bribe CFE officials in exchange for awarding contracts to Lindsey Manufacturing.

Experts believe the guilty verdict will be an important milestone in the Government’s FCPA enforcement efforts. “Lindsey Manufacturing is the first company to be tried and convicted on FCPA violations, but it will not be the last,” said Assistant Attorney General Lanny Breuer of the Justice Department.

The verdict comes one day after counsel for Lindsey and Lee filed a motion alleging prosecutorial misconduct. The motion contends that FBI Special Agent Susan Guernsey’s grand jury testimony was “riddled with material misrepresentations and falsehoods,” including misrepresentations about the percentage of Grupo Internacional funds which came from Lindsey Manufacturing, and the number of competitors Lindsey Manufacturing faced in bidding for CFE contracts. It is not clear whether the defendants will pursue this motion following the jury verdict.

Sentencing for Lindsey Manufacturing, Keith Lindsey, and Steve Lee is scheduled for September 16. Keith Lindsey and Steve Lee each face a maximum sentence of 30 years in prison – five years and a fine of at least \$250,000 for the FCPA conspiracy charge, and five years and a fine of at least \$100,000 for each of the five other FCPA violations.

Aguilar is scheduled for sentencing on August 12 on one count of conspiracy to launder money. She faces a maximum sentence of 20 years in prison and a fine of at least \$500,000. Judge A. Howard Matz acquitted Aguilar on a second money laundering charge before jury deliberations began. Aguilar’s husband, Enrique Aguilar Noriega, is the president of Grupo Internacional. He has also been charged but further details remain unclear.

Prior to trial, the defendants mounted an unsuccessful challenge to the Government's contention that employees of state-owned or state-controlled enterprises are "foreign officials" under the FCPA. In ruling for the Government, the Court held that CFE's role as a "decentralized public entity" and its performance of an essential government service made it an instrumentality of the government under the FCPA. The anti-bribery provision of the FCPA prohibits certain payments to "any officer or employee of a foreign government or any department, agency, or instrumentality thereof... or any person acting in an official capacity for or on behalf of any such government, department, agency, or instrumentality."

If you would like to learn more about recent FCPA developments, please contact your Ropes & Gray advisor.