

Doing Business Globally - And Getting Caught Doing It!

By S. Elizabeth Foster and John W. Brooks

REMEMBER those current events quizzes from back in high school days? Here's a topic that wasn't in the headlines then - but certainly is now. See how you can do today! Match the "Facts" in Column A with the "Companies" in Column B, and "How They Were Caught" in Column C? Time limit: three minutes.

Column A Facts	Column B Companies	Column C How They Were Caught
A. Bribery in Latin America, Asia and Africa; agreed to pay about \$92M, disgorge profits of \$45M, and accept a Compliance Monitor (CM). <i>HINT:</i> Telecoms Industry.	1. Pfizer and Upjohn	(i) Voluntary Self-Disclosure by Company and Agreement to Cooperate with Ongoing Investigation.
B. Bribery in Latin America, Asia and Africa; agreed to pay about \$92M, disgorge profits of \$45M, and accept a Compliance Monitor (CM). <i>HINT:</i> Telecoms Industry.	2. Mabey & Johnson	(ii) Whistleblower: the Company's Inside Auditor.
C. Bribery in Latin America, Asia and Africa; agreed to pay about \$92M, disgorge profits of \$45M, and accept a Compliance Monitor (CM). <i>HINT:</i> Telecoms Industry.	3. Alcatel-Lucent	(iii) Investigation by U.K Serious Fraud Office, followed by guilty plea in U.K Crown Court.
D. Bribery in Latin America, Asia and Africa; agreed to pay about \$92M, disgorge profits of \$45M, and accept a Compliance Monitor (CM). <i>HINT:</i> Telecoms Industry.	4. Daimler AG	(iv) U.S. Government (FBI) Sting Operation.
E. Bribery in Latin America, Asia and Africa; agreed to pay about \$92M, disgorge profits of \$45M, and accept a Compliance Monitor (CM). <i>HINT:</i> Telecoms Industry.	5. Pride International, Inc.	(v) Multiple Whistleblowers: the Company's inside sales managers, six of whom will receive a total of \$102M for their information.
F. Bribery in Latin America, Asia and Africa; agreed to pay about \$92M, disgorge profits of \$45M, and accept a Compliance Monitor (CM). <i>HINT:</i> Telecoms Industry.	6. Multiple gun dealers.	(vi) Initial investigation by Costa Rican authorities led to Voluntary Self-Disclosure by Company and Agreement to Cooperate with Ongoing U.S. DOJ and SEC Investigations.

WELL, did you **nailed** all the answers? (*You can see them on the next page.*) We think there's a pattern emerging that represents a shift **from** previous relatively anemic and sporadic investigations by U.S. authorities (the Department of Justice (DOJ) and the Securities and Exchange Commission) acting alone **to** vigorous and international enforcement actions, coordinated with foreign authorities, and augmented by whistleblowers, sting operations, and voluntary self-disclosures, netting in 2009 alone a hefty \$644M in criminal and civil fines and disgorgements, as well as some likely jail terms for senior officers and managers.

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And we think there are some other important elements of this emerging pattern, such as:

- At December 31, 2009, there were a **record 130 open FCPA investigations** underway at the DOJ, and the shift of enforcement focus from companies in general to **specific officers and senior managers** within those companies is expected to have a therapeutic deterrent effect on potential violators.
- On February 1, 2010, **56 new extradition and mutual legal assistance agreements** became effective between the U.S. and the member states of the European Union making it easier for the DOJ to investigate and prosecute **overseas** FCPA and commercial fraud violations by U.S. companies and individuals.
- Investigations will **focus on industry-wide sectors**, which are likely to include financial institutions, healthcare organizations, construction companies, and others that may have benefited from injections of U.S. government dollars during the economic downturn.
- **Multiple-theory investigations** are likely, with allegations of antitrust, export control, money laundering, tax, and related violations where commercial fraud and bribery cases are prosecuted.
- Well-advised companies will begin to review their **third party relationships** more closely - and perhaps eliminate some of them - because of the inherent difficulties involved in trying to assure strict ethical compliance by multiple overseas sales agents, suppliers, brokers, contractors, distributors, and the like.
- Companies with **robust and effective international compliance programs** that uncover and voluntarily disclose FCPA or commercial fraud violations **and** that cooperate with investigations will be eligible for significant discounts on the penalties otherwise called for by the DOJ Sentencing Guidelines.



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Quiz Answers					
A.3.(vi)	B.5.(i)	C.4.(ii)	D.2.(iii)	E.6.(iv)	F.1.(v)

For information about creating an effective FCPA Compliance Program for your company, please contact the authors of this e-Update at efoster@luce.com or jwbrooks@luce.com.