

# Key developments in international investigations impacting executives

Lauren Briggerman

*Miller & Chevalier, Washington DC*

**lbriggerman@milchev.com**

Kirby Behre

*Miller & Chevalier, Washington DC*

**kbehre@milchev.com**

Dawn Murphy-Johnson

*Miller & Chevalier, Washington DC*

**dmurphyjohnson@milchev.com**

The first half of 2018 saw several significant developments that impact corporate executives involved in global investigations. This article summarises these key events, including charges by the Department of Justice (DOJ) against Volkswagen AG's former Chief Executive Officer (CEO) in the global emissions scandal; post-trial activity in the Fédération Internationale de Football Association (FIFA) corruption cases; and charges and guilty pleas in Foreign Corrupt Practices Act (FCPA) and export control investigations. It also discusses important new legislation and policy initiatives affecting global investigations, including passage of the *Clarifying Lawful Overseas Use of Data Act* (the 'CLOUD Act') affirming the government's ability to subpoena data stored abroad.

## *Noteworthy investigations impacting executives*

### *Volkswagen investigation*

#### **FORMER VOLKSWAGEN AG CEO CHARGED WITH CONSPIRACY AND WIRE FRAUD IN CONNECTION WITH EMISSIONS SCANDAL**

On 3 May 2018, a superseding indictment was unsealed in the Eastern District of Michigan, accusing Martin Winterkorn, the former CEO of Volkswagen AG and a German citizen and resident, of conspiracy and wire fraud. The indictment alleges that Winterkorn knew about Volkswagen's diesel emissions cheating as early as May 2014 and that he, and others, attended a meeting in July 2015 regarding Volkswagen's deception of United States regulators. The meeting included a discussion of what information had and had not been disclosed and the potential consequences if Volkswagen were caught. Meeting participants are alleged to have agreed to continue deceiving US customers and regulators. Winterkorn is the ninth individual – and the highest-ranking company official – who has been charged in connection with the diesel emissions scandal. It is reported that Winterkorn remains in Germany.

## **GERMAN POLICE TARGET PORSCHE AG EXECUTIVES IN EMISSIONS SCANDAL; SENIOR PORSCHE EXECUTIVE ARRESTED**

In April, more than 30 German prosecutors and 160 police officers raided the offices of Porsche AG, a Volkswagen brand, as part of Germany's investigation into the diesel emissions scandal. The Stuttgart Public Prosecutor's Office released a statement that their search targeted three suspects, including a member of Porsche's executive board, a member of Porsche's senior management and a former Porsche employee. After the raid, German police arrested senior Porsche AG executive, Jörg Körner, the company's head of engine development. Press reports indicate that the unnamed Porsche executive board member is Michael Steiner, who leads research and development at Porsche. Porsche confirmed that investigators 'inspected and secured documents' at their offices and that the company is cooperating fully with the investigation.

### ***FIFA investigation***

#### **FORMER FIFA EXECUTIVE ORDERED TO FORFEIT \$6.7M; CONVICTED FIFA EXECUTIVES SEEK NEW TRIAL**

In January, the Eastern District of New York ordered Jeffrey Webb, a former FIFA vice-president who pled guilty in November 2015 to racketeering conspiracy and other charges, to forfeit \$6.7m. According to the forfeiture order, the funds represent monies Webb received as a result of his participation in FIFA-related bribery, fraud, embezzlement and money laundering schemes, as well as monies he received in compensation and bonuses while serving as president of the Confederation of North, Central American and Caribbean Association Football and as vice president of FIFA.

In a letter to the court in January, the DOJ announced that it 'does not intend to dismiss the remaining open counts' against Manuel Burga, a former Peruvian soccer federation president, who was acquitted of one racketeering conspiracy charge in December 2017. In addition to that charge, Burga faced allegations of wire fraud and money laundering conspiracy but was extradited from Peru only on the racketeering charge, so that is the only charge he faced at trial. The government has not explained its decision to keep the remaining counts open.

Also in January, Juan Ángel Napout, the former president of the South American soccer confederation, Confederación Sudamericana de Fútbol (CONMEBOL), and José Maria Marin, a former Brazilian soccer federation president, asked for new trials in the Eastern District of New York. Both men were convicted of conspiracy charges in December 2017 following a five-week trial.

### ***Actions against executives***

#### ***Foreign Corrupt Practices Act charges***

#### **MEDIA EXECUTIVE PLEADS GUILTY TO FCPA CHARGES**

In April, Julia Vivi Wang, a Chinese-born naturalised US citizen, pled guilty in Manhattan federal court to charges of violating the FCPA and filing false tax returns in connection with a scheme to bribe former United Nations General Assembly President, John Ashe, who had previously served as the UN representative from Antigua and Barbuda. According to the superseding indictment, Wang, the former vice president of South-South News, a United Nations-focused media company, wired \$500,000 to Ashe in exchange for a diplomatic post for her or her husband with the Antiguan government, which Wang saw as a 'business opportunity' that would benefit Chinese businesses operating in the Caribbean. Wang's

guilty plea is part of a larger corruption investigation into bribes paid to UN officials by Macau billionaire, Ng Lap Seng, who was convicted of paying \$1m in bribes to Ashe and Francis Lorenzo, a former deputy UN ambassador from the Dominican Republic. Lorenzo himself pled guilty to bribery and money laundering charges in April and is awaiting sentencing. Wang's sentencing is scheduled for 5 September.

#### **TRANSPORTATION EXECUTIVE INDICTED FOR BRIBING RUSSIAN ATOMIC ENERGY OFFICIAL**

In January, former Transportation Logistics International (TLI) executive, Mark Lambert, was indicted on 11 FCPA-related charges stemming from his alleged role in a scheme to bribe an official of a subsidiary of the state-owned Russian Atomic Energy Corporation (ROSATOM). TLI reached its own FCPA-related deferred prosecution agreement with the DOJ and agreed to pay a \$2m penalty in March 2018.

According to Lambert's indictment, Lambert conspired with others at TLI, including his co-president, Daren Condrey, to make a series of corrupt payments to Vadim Mikerin, a director of JSC Techsnabexport (TENEX), a ROSATOM subsidiary. Mikerin was also the president of TENAM Corporation, a wholly owned subsidiary and official US representative of TENEX. Lambert and his co-conspirators allegedly agreed to make payments to offshore bank accounts belonging to shell companies associated with Mikerin in exchange for Mikerin's assistance in awarding TENEX uranium contracts to TLI. To conceal the bribery scheme, Lambert allegedly orchestrated the creation of fraudulent invoices describing services that were never actually provided to TENEX.

The DOJ previously secured guilty pleas from Condrey, Mikerin, and Boris Rubizhevsky, an intermediary who facilitated the payments.

#### **'SIEMENS-8' EXECUTIVE PLEADS GUILTY**

In March, German national and former Siemens AG executive, Eberhard Reichert, pled guilty in Manhattan federal court to conspiracy to violate the FCPA and to wire fraud charges related to his role in the worldwide corruption scheme that led to a \$1.3bn global settlement between Siemens, the US government and German authorities. Reichert is one of the 'Siemens-8,' a group of eight former Siemens executives who were indicted in 2011 for their role in an alleged corrupt payment scheme in Argentina, regarding a billion-dollar contract to modernise the country's national identity cards.

The indictment against Reichert alleged that he served as technical manager at a Siemens subsidiary that played a crucial role in winning the identity card project and that he later approved a sham contract that funnelled \$27m to Argentine officials.

After his arrest in Croatia last year, Reichert agreed to be extradited to the US and initially pled not guilty in December 2017. He now awaits sentencing. Reichert is the second of the 'Siemens-8' to appear in federal court. Andreas Truppel, the former Chief Financial Officer of Siemens's Argentine subsidiary, pled guilty in September 2015 for his role in the conspiracy.

### ***Cartel***

#### **ANTITRUST DIVISION ANNOUNCES FIRST NO-POACH ENFORCEMENT ACTIONS**

In April, the DOJ's Antitrust Division (the 'Division') announced proposed settlements with two rail equipment suppliers, Knorr-Bremse AG and Westinghouse Air Brake Technologies Corporate (Wabtec), to resolve civil allegations that the companies entered into unlawful agreements not to compete for each other's employees, known as 'no-poach' agreements. The terms of the proposed settlements have not

been publicly disclosed. The settlements signal the Division's intent to prioritise actions against no-poach agreements. In October 2016, the Division issued guidance to companies of its intent to pursue criminal charges against companies and individuals for engaging in so-called 'naked wage-fixing' and no-poach agreements. While the Division has yet to announce any criminal charges related to no-poach agreements, Antitrust Division Assistant Attorney General, Makan Delrahim, indicated in remarks made in January that such charges would be forthcoming. The Division did not charge Knorr-Bremse or Wabtec criminally because the no-poach agreements were discovered and terminated before the October 2016 guidance.

## ***Export Controls***

### **IRANIAN BANK EXECUTIVE INDICTED AND ARRESTED FOR EVADING SANCTIONS**

In March, Ali Sadr Hashemi Nejad (Sadr), chairman of a Maltese Bank, was arrested and charged with bank fraud and conspiracy to evade sanctions against Iran, commit money laundering and commit bank fraud in connection with receiving \$115m in payments through US banks for a Venezuelan housing project. The indictment alleges that Sadr evaded US sanctions on Iran by using a United Arab Emirates address to incorporate two entities which would receive payments from a \$475m deal with a Venezuelan state-owned energy company to build housing units. The two entities were allegedly owned and controlled by Sadr and his family in Iran. The indictment further alleges that Sadr opened US bank accounts for each company, through which they received \$115m.

## ***Extraterritoriality issues impacting executives***

### **CLOUD ACT AFFIRMS GOVERNMENT'S POWER TO SUBPOENA OVERSEAS DATA, MOOTING MICROSOFT CASE**

In March, Congress amended the Stored Communications Act of 1986 (SCA) to allow federal authorities to subpoena electronic data stored overseas. Congress did so through the CLOUD Act, which also permits the US Attorney General to enter into bilateral 'executive agreements' governing data-sharing with foreign governments, thereby giving US and foreign law enforcement agencies reciprocal access to data stored in each other's countries. The Act includes a formal process through which companies can challenge a search warrant if disclosure would violate the laws of the country in which the data is located. Congress passed the CLOUD Act as part of an omnibus spending bill, at least in part to address a circuit split over whether the SCA had extraterritorial reach. That split led the Supreme Court to grant *certiorari* in *United States v Microsoft* in October 2017. In April, the Supreme Court declared Microsoft moot in light of the CLOUD Act's passage.