

Alert | White Collar Defense & Special Investigations



March 2020

Federal Court Tosses Hoskins' FCPA Counts but Sustains Money Laundering Conviction

A federal judge in Connecticut has thrown out the conviction of Alstom S.A. executive Lawrence Hoskins for violations of the Foreign Corrupt Practices Act (FCPA), on the ground that prosecutors failed to prove Hoskins was an agent of the company's U.S. subsidiary and thus was subject to the FCPA.

This is just the latest twist in a closely-watched case that has tested the extra-territorial reach of U.S. foreign bribery laws. Hoskins, a British national who worked for a French company and had never set foot in the United States, was not among the class of persons ordinarily subject to the FCPA. He was nonetheless charged with aiding and abetting FCPA violations, as well as with money laundering and money laundering conspiracy, in connection with bribes allegedly paid to Indonesian officials on behalf of a U.S. affiliate of Alstom.

On interlocutory appeal, the Second Circuit held that that Hoskins could not be prosecuted for aiding and abetting FCPA violations that he could not have committed as a principal. The Second Circuit nonetheless left open the possibility that Hoskins could be convicted if he acted as an agent of a U.S. domestic concern subject to the FCPA. On remand, the district court adopted jury instructions on the question of agency relationship that were arguably favorable more to the government than the defendant, and in December 2019, Hoskins was convicted on multiple FCPA and money laundering counts.

On Feb. 26, 2020, the district court granted the defendant's motion for acquittal on the FCPA charges, finding there was insufficient evidence for the jury to conclude that Hoskins was an agent of a domestic

concern. In particular, the court found insufficient proof that Hoskins agreed to act, and did act, under the control of Alstom's U.S. affiliate. Interestingly, the district court upheld Hoskins' conviction on money laundering offenses, including charges that Hoskins laundered money into the United States to promote a violation of the FCPA.

It remains to be seen how DOJ, and in particular the Fraud Section, responds to this loss. The loss comes on the heels of a defeat at trial in the *Boustani* matter in the Eastern District of New York, which outside observers have linked to a concern about the extra-territorial scope of U.S. bribery laws. It is possible that DOJ will now be more circumspect in charging non-U.S. persons and entities with foreign bribery. But given that the money laundering charges against Hoskins were sustained, it is also possible that the district court's disposition encourages DOJ, going forward, to view foreign corruption through the lens of money laundering – a path that it was arguably already on before this latest twist. Notably, the money laundering statutes expressly provide for extra-territorial jurisdiction under certain circumstances; and they also specifically extend to financial transactions that involve the proceeds of foreign predicate offenses, including foreign bribery offenses, so long as the financial transactions occurred in whole *or in part* in the United States.

About Greenberg Traurig's White Collar Defense & Special Investigations Practice:

Greenberg Traurig's **White Collar Defense & Special Investigations Practice** protects companies and individuals under government scrutiny. GT's creative defense lawyers in the US, Europe, Latin America, and Asia Pacific are at the forefront of white collar defense, with wide-ranging experience in structuring internal investigations, developing guidelines, implementing compliance programs, and addressing issues of voluntary disclosure. Their representations involve alleged securities and commodities fraud, Foreign Corrupt Practices Act (FCPA) violations, health care/pharmaceutical fraud, environmental crimes, money laundering, financial services fraud, public corruption/campaign finance, tax corruption, defense contracting, and bankruptcy fraud. In addition, the majority of GT's litigation shareholders and counsel have first-chair trial experience.

Author

This GT Alert was prepared by **Kyle R. Freeny**[‡]. Questions about this information can be directed to:

- **Kyle R. Freeny**[‡] | +1 202.331.3118 | freenyk@gtlaw.com
- Or your **Greenberg Traurig attorney**

[‡]Admitted in California. Practice in the District of Columbia limited to matters and proceedings before Federal courts and Agencies.

Albany. Amsterdam. Atlanta. Austin. Boca Raton. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany.[†] Houston. Las Vegas. London.^{*} Los Angeles. Mexico City.⁺ Miami. Milan.[»] Minneapolis. Nashville. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. San Francisco. Seoul.[∞] Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv.[^] Tokyo.[‡] Warsaw.⁻ Washington, D.C.. West Palm Beach. Westchester County.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. †Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. *Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg*

Traurig, P.A., Florida, USA. #Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2020 Greenberg Traurig, LLP. All rights reserved.