Former Alstom Executive Convicted of Foreign Corrupt Practices Act Charges on Agency Theory

by Beth Forsythe and Caitlin L.D. Hull

Lawrence Hoskins, a British citizen and former employee of French conglomerate Alstom SA, has been found guilty by a federal jury in Connecticut of 11 of 12 criminal charges, including six counts of violating the United States Foreign Corrupt Practices Act ("FCPA"), one count of conspiring to do so, and money laundering charges. The jury found Hoskins acted as an agent of Alstom's U.S. subsidiary, Connecticut-based Alstom Power, Inc., by authorizing and arranging for Alstom Power's hiring of "consultants" to bribe Indonesian officials from 2004 to 2009, in a scheme designed to secure a $118 million government energy contract. While the facts of the bribery were hardly in dispute, the case is an important development in FCPA jurisdiction, particularly regarding who may be considered an "agent" under the law.

Hoskins, Alstom SA, three Alstom subsidiaries, and three of Hoskins's former colleagues were indicted in 2013. As part of a larger bribery scheme within Alstom and its subsidiaries, the government alleged that Hoskins worked for Alstom SA in France but authorized and coordinated U.S.-based Alstom Power's hiring of third parties to bribe Indonesian government officials—including a member of parliament—to secure a contract with Indonesia's state-owned power company. Alstom pleaded guilty in 2014, agreeing to pay $772 million to resolve its cases with the DOJ and SEC. Three other former Alstom executives likewise pleaded guilty.

However, Hoskins's trial—and the years leading up to his trial—focused very little on the facts of the underlying bribery. Instead, the case hinged on whether the government could establish jurisdiction over Hoskins—a British national and former employee of France-based Alstom—when it was undisputed that Hoskins provided support to Alstom's U.S. subsidiary but never set foot in the U.S. in connection with his Alstom work.

The FCPA prohibits bribery or attempted bribery of foreign government officials by: (1) U.S. individuals and companies, (2) companies listed on U.S. stock exchanges, and (3) foreign nationals whose violative activity bears territorial nexus to the U.S. (*e.g.*, bribing a

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foreign official while physically in the U.S. or sending a bribe through a U.S. bank). *See* 15 U.S.C. §§ 78dd-1(a), 78dd-2(a), 78dd-2(i), 78dd-3. A person or entity that does not fall into one of these categories is outside the FCPA's jurisdictional reach.

Seizing on the jurisdictional limitations of the FCPA, Hoskins moved to dismiss the FCPA conspiracy charge, which alleged Hoskins conspired "together with" U.S.-based Alstom Power (a U.S. entity), even if Hoskins was outside the FCPA's jurisdictional reach. *United States v. Hoskins*, 123 F. Supp. 3d 316, 318 (D. Conn. 2015). The district court judge agreed, dismissing the FCPA conspiracy charge against Hoskins and holding that the FCPA did not extend "accomplice liability [to] non-resident foreign nationals who were not subject to direct liability" under the FCPA. *Id.* at 327. The Second Circuit affirmed in part, but also held that a foreign national like Hoskins could be charged with conspiracy and substantive violations of the FCPA if the government could show the foreign national acted as an agent of a U.S. company. *See United States v. Hoskins*, 902 F.3d 69 (2d Cir. 2018).

At trial, the primary issue remained whether the government could prove Hoskins acted as an agent of U.S.-based Alstom Power in coordinating the bribes. The government offered evidence that Hoskins identified and negotiated with the Indonesian consultants on behalf of Alstom Power, as well as evidence that Hoskins regularly communicated with Alstom Power co-conspirators in the U.S. via email and phone. Hoskins argued he could not have been an agent of Alstom Power because the subsidiary did not exert control over him. If anything, Hoskins posited, he controlled Alstom Power given senior leadership role with Alstom Power's parent company. In response, government witnesses testified that Alstom Power—not Hoskins—had ultimate approval authority over payment to the consultants, and that Hoskins acted as an agent of Alstom Power in identifying and coordinating the third party payments.

Ultimately, the jury rejected Hoskins's technical jurisdiction arguments, finding that he acted as an agent of Alstom Power for his role in the bribery scheme. After two weeks of testimony, the jury deliberated just one day, convicting Hoskins on 11 of the 12 counts brought against him. Sentencing is scheduled for January 31, 2020.

Hoskins's case marks a notably rare prosecution and even more rare trial of an individual under the FCPA. In addition, Hoskins's conviction suggests a fairly low hurdle for the government to clear when pursuing FCPA claims against foreign nationals under an agency theory. Employees of international companies who interact with U.S. subsidiaries should note this important jurisdictional development.