

Emily Westridge Black in Corporate Counsel: 2nd Circuit's Decision Could Be 'Tip of the Iceberg' for FCPA Challenges

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PRACTICES Litigation, Foreign Corrupt Practices Act FCPA

Corporate Counsel quoted Haynes Boone Partner Emily Westridge Black in an article about a Second Circuit ruling that it's not necessary to meet the heightened standard of proving that a bribe was paid in exchange for an "official act" in Foreign Corrupt Practices Act cases.

Here is an excerpt:

The decision in *U.S. v. Ng Lap Seng* is a clear win for the Justice Department and marks the first time that a circuit court has applied the official act rule, which the U.S. Supreme Court established in *McDonnell v. U.S.*, to the FCPA.

"People on the defense side of FCPA cases have long felt that the agencies have taken a tremendously extensive view of their jurisdiction to prosecute FCPA and types of conduct that are violative of the FCPA—and this does nothing to rein that in," said Emily Westridge Black, a partner at Haynes Boone in Austin, Texas, and Dallas, who specializes in FCPA litigation.

She added, "We can expect that this will not curb and will likely increase enforcement action."

Black also saw the decision as a signal of things to come, describing it as the "tip of the iceberg in terms of people testing the FCPA." Since the Justice Department launched the FCPA pilot program in 2016, prosecutors have focused more on individual accountability. And whereas companies tend to settle FCPA cases because they have so much to lose, individuals are more inclined to take their chances at trial, which has led to more challenges to the scope of the FCPA.

"On the one hand, we're seeing extensive prosecutions, but we'll also see people making these interesting defense arguments that have been percolating in the defense community for a while," Black said. "Looking forward, we'll have a much better sense of the true scope of the FCPA five to 10 years from now."

To read the full article, click [here](#).