

Emily Westridge Black in Law360: Trial-Heavy Fall Will Test FCPA Unit, Shape Law

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PRACTICES Litigation, Foreign Corrupt Practices Act FCPA

Law360 quoted Haynes Boone Partner Emily Westridge Black in an article about six upcoming prosecutions by the U.S. Department of Justice's (DOJ) Foreign Corrupt Practices Act (FCPA) unit.

Here is an excerpt:

In the past, the FCPA unit has focused much of its energy on corporate settlements. Judges play a minimal role in those deals, leaving it largely up to prosecutors and defense attorneys to decide what constitutes a violation of the law. That essentially means settlements and DOJ guidance stand in for legal precedent.

While most companies can't risk the consequences of trial and potential conviction, individual defendants have different incentives and are putting the government to the proof and testing legal theories. Emily Westridge Black of Haynes Boone sees this as a good thing.

"From the defense side, the hope and expectation is that we will be able to establish some enforceable limits to liability, and then also that there will be additional clarity about what the statute actually means," Black said.

In the most highly anticipated of the six trials, former Alstom SA executive Lawrence Hoskins will confront charges in Connecticut federal court that he set up a scheme to bribe Indonesian officials. The British executive's case led to an important ruling by the Second Circuit that said prosecutors can't charge a person with conspiring to violate the FCPA if the individual couldn't be charged with violating the law itself.

The effect is that prosecutors at Hoskins' trial will have to prove that the Alstom executive was an "agent" of the company's subsidiary.

The trial itself will test what that term means in practice. Black pointed out that the DOJ's 2012 FCPA Resource Guide states that "the fundamental characteristic of agency is control" — something one doesn't expect to be exercised from the bottom up.

"From a practitioner's standpoint, it will be fascinating to see what evidence they will have to show that an officer of a parent functioned as the agent of a subsidiary," Black said. ...

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