

Emily Westridge Black in Law360: UN Bribery Ruling Further Defines the Limits of McDonnell

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PRACTICES Litigation, Foreign Corrupt Practices Act FCPA

Law360 quoted Haynes Boone Partner Emily Westridge Black in an article about *U.S. v. Ng Lap Seng*, a recent Second Circuit decision holding that the “official act” standard for domestic bribery cases does not apply to Foreign Corrupt Practices Act (“FCPA”) cases.

Here is an excerpt:

The ruling on Friday upheld the conviction of Ng Lap Seng, a wealthy Chinese developer convicted on FCPA and other charges over a scheme to bribe United Nations officials. Ng had argued extensively during his trial and on appeal that the FCPA charges in his case should be subject to the *McDonnell v. U.S.* ruling, [where the Supreme Court] justices found that an “official act” provided in exchange for bribes can’t be defined so broadly as to include merely setting up a meeting or phone call.

The Second Circuit rejected Ng’s argument and declined to extend the McDonnell standard to FCPA cases.

While McDonnell may not help defendants in foreign bribery cases, Emily Westridge Black, a partner at Haynes Boone LLP, said the fact that the argument was made at all serves to highlight the increasing number of people being charged with FCPA violations and taking their cases to trial.

Black noted that until somewhat recently, individual FCPA prosecutions were “almost unheard of.” Now, with the U.S. Department of Justice’s emphasis on charging individuals in FCPA cases and requirements that corporations hand over information on culpable individuals in order to receive cooperation credit, Black expects to see more rulings that shape the law.

“As individual prosecutions increase, we can expect more challenges to the scope of the FCPA and to what types of conduct potentially violate it,” Black said. “There are a lot of potential defenses to FCPA conduct that haven’t been fully explored.”

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