

CLIENT ALERT

Private Right of Action under the FCPA? Risks increase as litigants increasingly use foreign bribery allegations as predicate acts in U.S. civil tort cases.

Oct.29.2008

For at least the third time this year, a civil case has been brought in U.S. federal court alleging conduct that, if proven, would likely constitute a violation of the Foreign Corrupt Practices Act.

Last week, Supreme Fuels Trading FZE, a company incorporated and headquartered in the UAE, filed a lawsuit in federal district court in Miami against, among others, prominent political fundraiser Harry Sargeant III and his company, International Oil Trading Company (IOTC). The lawsuit alleges that Sargeant and others participated in a conspiracy to bribe Jordanian government officials to obtain necessary documents that would ensure the receipt of over \$1 billion in U.S. government contracts for the supply of fuels to the U.S. military in Iraq.

According to the Complaint, the U.S. military fuel contracts required eligible bidders to obtain a "Letter of Administration" or "LOA" from the Jordanian government permitting the transport of fuels across Jordan into Iraq. Supreme Fuels claims that it presented more favorable bids than Sargeant and his partners, but that the defendants paid tens of millions of dollars to ensure that they were the exclusive recipients of the required LOAs.

Supreme Fuels claims that the conspiracy netted IOTC more than \$210 million in profits, and Sargeant himself more than \$70 million. Supreme Fuels complains further that the scheme cost U.S. taxpayers more than \$180 million in overpayments.

There is no private right of action under the FCPA, but companies, and even foreign governments, have taken to U.S. courts seeking damages for the same conduct under the federal Racketeering Influenced and Corrupt Organizations Act ("RICO") as well as state and federal antitrust, consumer protection, and tort laws. With the added exposure of civil lawsuits, companies accused of foreign bribery not only face the prospect of multi-million dollar fines or settlements with the U.S. Department of Justice and Securities and Exchange Commission, but also treble damages under RICO and other civil remedies.

With U.S. and other governments continuing to expand their investigations of foreign bribery, companies are learning the hard way the importance of establishing and maintaining an effective global anti-corruption compliance and training program. With civil plaintiffs now joining the ranks of those "prosecuting" foreign bribery, the stakes have only gotten higher.

[Click for a PDF copy of the Supreme Fuels Complaint](#)

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Alan W. H. Gourley

Partner – Washington, D.C.

Phone: +1 202.624.2561

Email: agourley@crowell.com

Thomas A. Hanusik

Partner – Washington, D.C.

Phone: +1 202.624.2530

Email: thanusik@crowell.com

Aryeh S. Portnoy

Partner – Washington, D.C.

Phone: +1 202.624.2806

Email: aportnoy@crowell.com