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CLIENT ALERT

Tis the Season to Give Gifts or Is It?

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Just in time for the holidays, on December 21, 2007, DOJ and the SEC respectively announced settlements with Lucent Technologies Inc. – now a subsidiary of Alcatel-Lucent – of allegations that Lucent had violated the Foreign Corrupt Practices Act by providing officials of Chinese government owned or controlled customers with excessive travel and entertainment in the United States. These settlements – a non-prosecution agreement with DOJ and a civil settlement with the SEC – apparently close an investigation first publicly announced some years back with the April 2004 dismissal of four of Lucent's senior executives in China.

According to the DOJ press release and SEC complaint, Lucent spent millions of dollars on approximately 315 trips for Chinese customers between 2000 and 2003. The trips, characterized as either "pre-sale" or "post-sale," were approved by Lucent China executives and arranged by personnel in the United States. While the visitors on the "pre-sale" visits may have attended some training seminars or visited Lucent facilities, all the excursions involved significant sightseeing and entertainment and leisure activities. A number of the "post-sale" trips were typically characterized as "factory inspections" even though, by 2001, Lucent had outsourced most of its manufacturing and had no factories to inspect. These trips were primarily, if not exclusively, sightseeing trips to Disneyland, Universal Studios, the Grand Canyon and such tourist destination cities as Las Vegas. In the non-prosecution agreement, Lucent admitted to the conduct outlined and agreed to pay $1 million and to maintain a rigorous anti-corruption compliance program. Lucent paid another $1.5 million in civil penalties to the SEC for both bribery and books and records violations.

The case is a useful reminder that the affirmative defense for "reasonable and bona fide expenditures, such as travel and lodging" incurred in connection with product promotion and demonstration has limits. Some companies maintain a strict, prophylactic "no business gratuities" policy. For everyone else, this case underscores the need to have a strong policy and procedure for evaluating proposals for company sponsored trips or seminars and the rationale used to select recipients. It certainly did not help Lucent 's case that the recipients of its largesse were variously described as "decision makers or influencers" or that the justification – even on some of the "post-sales" visits -- emphasized upcoming telecommunication projects within these officials' purview.

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