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Cracks in the Foundation: Sargeant Marine Inc. Pleads Guilty and Agrees to Pay \$16mm for Bribery Schemes

On September 22, 2020, Sargeant Marine Inc. (“SMI”), an asphalt company incorporated and based in Boca Raton, Florida, pled guilty to conspiracy to violate the Foreign Corrupt Practices Act (“FCPA”) in Brazil, Venezuela, and Ecuador.¹ Specifically, between 2010 and 2018, SMI agreed to offer, offered, and paid bribes to two *Petróleo Brasileiro S.A.* (“Petrobras”) officials, two Brazilian politicians, four *Petróleos de Venezuela, S.A.* (“PDVSA”) officials, and one *Empresa Pública de Hidrocarburos del Ecuador* (“Petroecuador”) official, through employees and third-party intermediaries, in order to secure improper advantages and retain business from those state-owned entities. SMI and its affiliates earned profits in excess of \$38 million USD through this scheme.² In addition to SMI’s guilty plea, the company agreed to pay a \$16.6 million criminal fine to resolve these charges. Six individuals,³ including Daniel Sargeant (U.S. executive and part owner of SMI), Jose Tomas Meneses (SMI trader), and related intermediaries pled guilty to FCPA and money laundering charges in connection with the SMI bribery scheme.⁴

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Below, we discuss SMI’s underlying misconduct in connection with bribery schemes in Brazil, Venezuela, and Ecuador, respectively.

Brazil. Between 2010 and 2015, SMI and its co-conspirators created fake consulting agreements and invoices to effect payments from the United States to offshore bank accounts controlled by two intermediaries. In turn, those intermediaries utilized the offshore accounts to make corrupt payments to two Petrobras officials and two Brazilian politicians in exchange for obtaining and retaining business with Petrobras, and win millions of dollars in contracts from the same. SMI made improper payments to Brazilian government officials in cash or via shell company bank accounts controlled by the officials and their relatives. The intermediaries involved used a portion of their consulting agreement commissions to pay bribes to government officials on SMI’s behalf. Negotiations for SMI’s corrupt payments between intermediaries and Brazilian government officials took place during in-person dinners and through U.S.-based email accounts. As a result of the Brazil bribery scheme, SMI and its affiliates earned approximately \$26.5 million USD in profits.

Venezuela. Before 2012, PDVSA refused to sell asphalt to SMI and its affiliates, leading SMI to circumvent the prohibition by having a Swiss asphalt company purchase the asphalt from PDVSA on its behalf. To obtain these contracts, the Swiss asphalt company agreed to offer and pay bribes to PDVSA officials on SMI’s behalf through sham consulting agreements. Later, in 2015, SMI and its co-conspirators agreed to offer and paid bribes to four PDVSA officials in exchange for PDVSA non-public information that would give SMI a competitive advantage in securing and retaining business with the state-owned company. Discussions between SMI employees, intermediaries, and PDVSA officials regarding the corrupt payments took place via U.S.-based email accounts and text messaging platforms. SMI entities received approximately \$8.2 million USD in profits arising from the Venezuela bribery scheme.

¹ Press Release, U.S. Dep’t of Just., Sargeant Marine Inc. Pleads Guilty and Agrees to Pay \$16.6 Million to Resolve Charges Related to Foreign Bribery Schemes in Brazil, Venezuela, and Ecuador (Sept. 22, 2020), <https://www.justice.gov/opa/pr/sargeant-marine-inc-pleads-guilty-and-agrees-pay-166-million-resolve-charges-related-foreign>.

² Criminal Information. *United States v. Sargeant Marine Inc.* (2020) (No. 20-CR-363), <https://www.justice.gov/usao-edny/press-release/file/1319226/download>.

³ Other than Sargeant, the other five individuals are foreign nationals, which the U.S. Department of Justice provided Venezuela and Brazil as their countries of origin.

⁴ One of the six individuals, Roberto Finochi (SMI trader) pled guilty back in November 2017 for his role in the Brazil scheme.

Ecuador. Similar to the Brazil and Venezuela bribery schemes, through its employees and agents, SMI offered and paid bribes to Ecuadorian government officials in order to secure an improper advantage to retain business and win lucrative contracts with Petroecuador by utilizing fake consulting contracts and invoices. SMI caused these improper payments from U.S. bank accounts through offshore accounts controlled by an intermediary and a close relative of that same intermediary. SMI employees and intermediaries involved in the Ecuador scheme also used in person meetings with government officials, as well as U.S.-based email accounts to engage in conversations regarding the scheme. SMI profited approximately \$3.2 million USD due to the corrupt conduct in Ecuador.

Takeaways. To conduct day-to-day operations, multinational companies often rely on the services of local third parties and agents, especially where the multinational company does not have a physical presence, such as an office or employees. However, the utilization of intermediaries, especially in high-risk jurisdictions (*i.e.*, Latin America), presents heightened risk that these third parties may engage in misconduct, either on their own, or in concert with the multinational itself, as was the case for SMI.

Multinational companies that aim to develop business abroad through the proper use of intermediaries may mitigate the baseline corruption risk in several ways:

- implement effective compliance programs that incorporate due diligence of prospective intermediaries, as well as ongoing risk-based monitoring of the same;
- remain alert to relevant red flags associated with intermediaries, such as excessive commissions, unreasonably large discounts, consulting agreements with vaguely described services, close relationships with government officials, and connections to shell companies and offshore accounts;⁵ and
- incorporate anti-corruption and anti-bribery clauses in third-party contracts, as well as an ethics certification that the intermediary will abide by the company's compliance policies, especially with regard to interactions with foreign government officials.

⁵ See US Dep't of Justice and US Sec. and Exch. Comm'n, *Resource Guide to the U.S. Foreign Corrupt Practices Act* (2nd. ed. 2012) at 23, <https://www.justice.gov/criminal-fraud/file/1292051/download>.