

United States v. Frederic Pierucci (D. Conn. 2012)

United States v. Lawrence Hoskins and William Pomponi (third superseding indictment, filed April 2015)

United States v. David Rothschild (D. Conn. 2012)

Nature of the Business.

Alstom SA (identified in the pleadings only as a “French power and transportation company”) provides power generation and transportation-related services around the world. Its shares were listed on the NYSE until August 2004. Alstom has several subsidiaries, including subsidiaries in Connecticut, Switzerland, and Indonesia. Lawrence Hoskins was a Senior Vice-President for the Asia region at Alstom. William Pomponi was the Vice-President of regional sales at Alstom Connecticut. Frederic Pierucci held executive level positions at Alstom Connecticut and other Alstom related entities, including Vice-President of Global Sales. David Rothschild was formerly a vice-president of regional sales at Alstom Connecticut.

Influence to be Obtained.

Pierucci, Pomponi, Hoskins, and Rothschild allegedly paid bribes to Indonesian officials in exchange for their assistance in securing a contract for Alstom to provide power-related services for Indonesian citizens (called the Tarahan Project). One of the PLN officials was a high-ranking member of the evaluation committee for the Tarahan Project, and the other had broad decision making authority and influence over the award of contracts by PLN, including on the Tarahan Project. The Member of Parliament was also a “key legislator” and “Vice Chairman of the Parliament Commission dedicated for Power and Energy” who had “easy direct access personally to PLN Board.”

The defendants retained two consultants purportedly to provide legitimate consulting services, but actually to use them to pay bribes to Indonesian officials. Defendants were responsible for approving the selection of, and authorizing payments to the consultants, knowing that a portion of these payments was intended for the Indonesian officials.

The first consultant, retained in 2002, was to receive a commission (three percent of the Tarahan Project contract value) from which he was expected to pay bribes. The consultant allegedly received hundreds of thousands of dollars into his Maryland bank account to be used to bribe the Indonesian Member of Parliament and then transferred the bribe money to a bank account in Indonesia for the official’s benefit. In 2003, the consulting agreement was amended to restrict the consultant’s responsibilities to paying bribes only to the Indonesian Member of Parliament, and accordingly his commission rate was reduced to one percent. Between 2005 and 2009, Alstom Connecticut made four separate payments to the first consultant’s bank account in Maryland.

In April 2004, Alstom, its subsidiaries, and its Consortium Partner retained a second consultant in connection with the Tarahan Project. The charges also allege that Alstom deviated from its usual Terms of Payment (whereby it paid consultants on a pro-rata basis) to make a much larger up-front payment to the second consultant so that the consultant could “get the right influence.”

In May 2005, Alstom, its subsidiaries and its Consortium Partner secured the Tarahan Project.

Enforcement.

Lawrence Hoskins was charged as a co-defendant with William Pomponi in a second superseding indictment filed by the DOJ on July 30, 2013. On May 19, 2014, Hoskins pleaded not guilty to the charges.

Key Facts

Citation. *United States v. Pierucci*, No. 3:12-cr-00238 (D. Conn. 2012); *United States v. Hoskins & Pomponi*, No. 3:12-cr-00238 (D. Conn. 2013); *United States v. Rothschild*, No. 3:12-cr-00223 (D. Conn. 2012).

Date Filed. November 27, 2011 (Pierucci); November 2, 2012 (Rothschild); April 30, 2013 (Pomponi; Hoskins).

Date Unsealed. April 16, 2013 (Pierucci; Rothschild).

Country. Indonesia.

Date of Conduct. 2002 – 2009.

Amount of the Value. Approximately \$2.3 million.

Amount of Business Related to the Payment. \$118 million.

Intermediary. Two Indonesia Consultants.

Foreign Official. An Indonesian Member of Parliament; High-ranking members of Perusahaan Listrik Negara (“PLN”), the state-owned and state-controlled electricity company in Indonesia.

FCPA Statutory Provision.

- **Frederic Pierucci.** Conspiracy; Anti-Bribery.
- **William Pomponi.** Conspiracy.
- **Lawrence Hoskins.** Conspiracy (Anti-Bribery); Anti-Bribery.
- **David Rothschild.** Conspiracy.

Other Statutory Provision.

- **Lawrence Hoskins.** Conspiracy (Money Laundering); Money Laundering.

Disposition.

- **Frederic Pierucci.** Plea Agreement.
- **William Pomponi.** Plea Agreement.
- **Lawrence Hoskins.** Jury Conviction.

On July 17, 2014, Pomponi pleaded guilty to conspiracy to violate the FCPA. On May 24, 2016 Pomponi died before his sentencing, and the court granted the DOJ's movement to dismiss the case against him and filed the third superseding indictment against Hoskins on April 15, 2015. The indictment charged Hoskins with one count of conspiracy to violate the FCPA, six counts of substantive violations of the FCPA's anti-bribery provisions, one count of conspiracy to commit money laundering, and four counts of money laundering.

On August 13, 2015, the court for the District of Connecticut granted Hoskins' motion to dismiss the FCPA conspiracy count. In the third superseding indictment, the DOJ posited the theory that it could convict Hoskins under a conspiracy or accomplice theories of liability even if the trier of fact determined Hoskins was not an agent of a domestic concern and thus not within the FCPA's statutory jurisdiction. The court held that a non-resident foreign national cannot be subject to criminal liability under the FCPA under a theory of conspiracy or aiding and abetting a violation of the FCPA when he is not an agent of a domestic concern and does not commit acts while physically present in the territory of the U.S. That is – the DOJ cannot use conspiracy or accomplice liability where the defendant has been affirmatively excluded from liability as a principal under the statute by Congress. However, the court did not dismiss the charge entirely, finding that Hoskins could be held liable for conspiracy if the DOJ could prove he was an agent of a domestic concern – an issue for the trier of fact. The court also dismissed count one to the extent it alleged that Hoskins conspired as an agent with principals located in the territory of the U.S. because he never entered the U.S.

The DOJ filed an interlocutory appeal to challenge the court's ruling. On appeal, the Second Circuit affirmed in part and reversed in part. In an opinion issued on 2018, the Second Circuit held that the legislative history of the FCPA and the general presumption against extraterritorial jurisdiction prohibit the DOJ from using accomplice or conspiracy liability theories for FCPA violations against non-resident foreign nationals who never entered the U.S., and thus upheld the lower court. However, the Second Circuit reversed the district court, finding that Hoskins could violate the FCPA by acting as an agent of principal violators who were located in the U.S., even if he never entered the U.S. Notably, the Second Circuit assumed that Hoskins was not subject to U.S. territorial jurisdiction under the FCPA, even though he "repeatedly e-mailed and called . . . U.S.-based coconspirators" regarding the scheme "while they were in the United States." Therefore, the Second Circuit adds further weight against the viability of the DOJ's expansive theory of territorial jurisdiction under the FCPA solely through the use of email. The case was remanded.

On November 8, 2019, a jury convicted Hoskins of six counts of violating the FCPA, three counts of money laundering, and two counts of conspiracy. The focus at trial was whether Hoskins acted as an agent for Alstom's U.S. subsidiary, which the jury determined was the case. Immediately following the conclusion of the jury trial, Hoskins filed post-trial motions for acquittal and a new trial. He argued that the government failed to provide sufficient evidence to the jury to prove he acted as an agent of Alstom Power Inc. The government's agency theory rested on allegations that Hoskins acted subject to the company's control, but the defendant argued evidence at trial bore out the opposite conclusion: Alstom had no right to control his actions with respect to the project in question. The district court judge found the defendant's agency argument persuasive and, on February 26, 2020, the judge granted, in part, Hoskins' post-trial motions for acquittal and a new trial with respect to all six FCPA counts and the conspiracy to violate the FCPA count. He remains convicted of the money laundering and the conspiracy to commit money laundering counts and was sentenced to fifteen months imprisonment.

Pierucci, a French national, was arrested at the New York JFK International Airport on April 14, 2013 and was charged on April 30, 2014. On July 29, 2013, Pierucci pleaded guilty to one count of conspiring to violate the FCPA and one

- **David Rothschild.** Plea Agreement.

Defendant Jurisdictional Basis. Agent of Domestic Concern (Pierucci; Hoskins); Domestic Concern (Pomponi; Rothschild).

Defendant's Citizenship. United States (Pomponi; Rothschild); France (Pierucci); United Kingdom (Hoskins).

Total Sanction.

- **Frederic Pierucci.** 30-Months Imprisonment; 12-Months Supervised Release; \$20,000.
- **William Pomponi.** Died Pending Sentencing.
- **Lawrence Hoskins.** 15-Months Imprisonment.
- **David Rothschild.** Pending.

Related Enforcement Actions. *United States v. Alstom S.A.*; *United States v. Alstom NetworkSchweiz AG*; *United States v. Alstom Grid, Inc.*; *United States v. Alstom Power, Inc.*; *United States v. Marubeni.*

count of violating the FCPA. On October 6, 2017, Pierucci was sentenced to 30 months in prison, twelve months supervised release, and fined \$20,000.

David Rothschild pleaded guilty to a charge of conspiring to violate the FCPA on November 2, 2012, but the plea was unsealed on April 16, 2013. Sentencing is set for mid-2020.