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## INDIVIDUAL PROSECUTIONS

# Sentencing in Micronesian Bribery Case Highlights DOJ's Commitment to Individual Prosecutions

By Lori Tripoli, *Anti-Corruption Report*

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The DOJ's May 14, 2019, [announcement](#) that Frank James Lyon, the owner of an engineering and consulting company in Hawaii, was sentenced to 30 months in prison for conspiracy to violate the FCPA may indicate that U.S. enforcement authorities will continue to seek individual accountability even when the monetary value of the bribes involved is not particularly substantial.

Lyon, a U.S. citizen, was accused of paying \$200,000 in bribes to Micronesian officials and \$240,000 to Hawaiian state officials in an effort to obtain airport improvement and project management contracts for his company. Lyon acknowledged in his [plea agreement](#) that he and co-conspirators paid the bribes, pleading guilty to a one-count information charging him with conspiracy to violate the anti-bribery provisions of the FCPA and to commit federal program fraud. Master Halbert, a Micronesian official who sought and accepted some of those bribe payments, pleaded guilty on April 2 after being charged with conspiring to launder monetary instruments. He is scheduled to be sentenced on July 29, 2019.

“Despite the fact that FCPA enforcement has been on the rise for a number of years and the message about compliance should be well

known, there are still individuals who engage in widespread and blatant bribery schemes to obtain business for their companies,” observed Martin Bloor, a member at Cozen O'Connor. Indeed, “in a world in which corruption and bribery is becoming increasingly significant, the defendants in this case seemingly made no attempt to be discrete about their activities,” said Brian Frey, a partner at Alston & Bird.

But what may seem at first glance to be a run-of-the-mill corruption case may actually be more nuanced, commentators said.

See “[DOJ's Rosenstein and Benczkowski Discuss Individual Accountability, Transparency, Proportionality and the Corporate Enforcement Policy](#)” (Mar. 20, 2019).

## A Money for Contracts Arrangement

The government of Micronesia awarded roughly \$7.8 million in contracts to Lyon's engineering company, identified by the press in Hawaii as Honolulu-based Lyon Associates, Inc., over a 10-year period ending in 2016, according to the [information](#) filed against Lyon in the U.S. District Court for the District of

Hawaii. The airport improvement contracts were funded in large measure by the U.S. Federal Aviation Administration.

It seems from the papers filed against him that Lyon thought that bribes were necessary to obtain business. The U.S. government alleged that he wrote in an email that a side trip to Las Vegas being provided to a Micronesian official would be costly but worth the expenditure. “This is a huge (and very very very critical to get renewed) contract so I am not trying to save money – or god forbid – insult [Micronesian Official 1];” he wrote, according to the information. Another co-conspirator approved the billing for the trip allowing Lyon’s engineering company employees to charge the trip to the contract.

In essence, Lyon apparently paid bribes to a handful of people to get and keep contracts awarded to his company. In addition to the Las Vegas side trip, bribes were made in the form of financial payments and, at least once, a vehicle. Lyon would actually shop for potential trucks to send to Halbert. Complaining about Halbert’s request to check out a Ford truck, Lyon allegedly acknowledged in an email that providing a vehicle in exchange for more business “is illegal” and noted that he could “only do these things when people don’t know what I am doing,” according to the information filed against him. Lyon acknowledged in his plea agreement that he purchased a vehicle for a Micronesian official’s personal use, but the make and model were not specified.

Lyon was not just focusing his efforts on Micronesian contracts, though. He also made bribe payments to a Hawaiian state official so the official would use his influence to award a state contract to Lyon’s company, according to the plea agreement.

## U.S. Pursuit of the Bribe Receiver

Halbert, the recipient of Lyon’s bribes, was also undone, in part, by emails documenting the alleged crime. Halbert communicated quite specifically about the vehicle he wanted Lyon to purchase for him according to the DOJ’s [complaint](#). In an email regarding a “2014 Chevy Silverado,” Halbert wrote, “Please get this truck. It is my cash so when I need to pay back anyone, I can sell it or this will be my ride forever. If you can, lift it 6 in and put on black rims.”

In discussing plans to respond to concerns raised by an auditor from Micronesia, Halbert emailed Lyon and another co-conspirator saying, “I know I should protect myself and [not] put this in writing or discuss this in e-mail or any form of communication that can provide as a concrete evident [sic] and come back and used against me . . . .”

A number of emails from Halbert to Lyon request money in relatively small amounts, \$1,000 or \$1,500, as detailed in the complaint filed against Halbert. In some emails, Halbert threatened to shut down Lyon’s operations if he was not compensated.

“The facts of this case highlight the sometimes aggressive nature of foreign government officials in using their position and leverage over companies to demand bribe payments in order to continue business with a company,” Bloor said. The matter also demonstrates “the sometimes difficult positions company executives sometimes find themselves in,” he continued.

See [“Significant Sentences May Signal Continuing Commitment to Individual FCPA Enforcement”](#) (Sep. 20, 2017).

## **Pursued by the U.S. Government Over a Vacation and a Truck**

Interestingly, the U.S. government filed a criminal complaint against Halbert, a citizen of Micronesia, even after he apparently was pursued by his own government, albeit just for misrepresenting his educational background. In December 2015, Halbert and the government of Micronesia entered into a deferred prosecution agreement. Halbert was required to pay restitution to the government for falsifying his educational credentials. As a result of the falsification, he earned a higher salary from the Micronesian government than he otherwise would have. Halbert then apparently asked to be placed on Lyon’s payroll so that Halbert would have sufficient money to repay the Micronesian government.

That Halbert “continued to engage in the criminal conduct after entering his DPA” with the Micronesian government “weighed in favor of prosecuting him in the U.S.,” Jessica Ortiz, a partner at MoloLamken, said.

Yet, is a bribery case involving truck shopping, a vacation and some pocket money really worthy of a U.S. DOJ effort? “The Lyons plea agreement highlights a crucial fact from the U.S. government’s perspective,” Frey noted. “Lyons was bribing Halbert to get him to direct contracts that included airport improvements that *were being funded by the U.S. FAA*,” he said. “The U.S. government is aggressive when

pursuing cases involving abuse or misuse of U.S. funding,” Frey said.

By pursuing foreign officials in the context of FCPA cases, “the U.S. Government has sent the message that when foreign officials take bribes from U.S. companies, the U.S. Government has an interest in pursuing those individuals for that specific conduct to ensure that other foreign officials are deterred from engaging in similar conduct,” Ortiz said. Moreover, the U.S. government “is often not persuaded to avoid charging foreign government officials when the charges brought by their own government do not cover the specific corruption conduct investigated by the U.S. Government,” she added. Indeed, fibbing a bit on a résumé is not quite the same as okaying government contracts in exchange for a Ford truck or a Chevrolet Silverado.

At least as indicated in the papers filed in the District of Hawaii, Halbert did seem to pressure Lyon to pay bribes. “The frequency of Halbert’s requests for bribe payments as well as the nature of the payments (cash payments, vehicles purchased in the U.S. and shipped to Micronesia, tuition payments for relatives, gifts, entertainment, etc.), the seemingly threatening manner in which Halbert demanded the payments as well as the fact that Halbert was demanding payments in order to assist him in payment of the restitution order in connection with his DPA in Micronesia all make this the type of case” that seems appropriate to pursue against a foreign government official, Bloor said.

See [“Use of GTE Tools to Streamline Operations and Generate Compliance Metrics”](#) (May 1, 2019).

## A Throwback to Old-School Corruption

As tempting as it may be to dismiss this matter as a run-of-the-mill corruption case, its old-school nature (bribes for contract awards) perhaps should be noted for that very reason. “Blatant, documented evidence of bribery of this sort is becoming less common,” Frey noted.

“I would not call it ‘garden-variety,’” Bloor said of the Lyon-Halbert matter. “First, the nature and frequency of the bribes are not something you often see in the more recent FCPA cases (i.e., vehicles, trips to Las Vegas),” he explained. “Second, the scheme here involved not only bribery of foreign government officials” but also Hawaii state officials, Bloor continued. “Again, not something you often see in connection with a FCPA case,” he noted.

Moreover, in this matter, both the bribe payer and the bribe recipient have been pursued. “Throughout 2018 and 2019, we have seen the DOJ be more aggressive in their enforcement efforts against foreign government officials who are paid bribes,” Bloor said. “The OECD Anti-Bribery Convention and the UN Convention Against Corruption have encouraged states to address both sides of the equation in legislation,” he explained.

“While the FCPA does not cover foreign government officials, by utilizing other U.S. laws, the DOJ is beginning to address both sides of the equation, which may act as a global deterrent to corruption or at least encourage foreign governments to start to bring domestic charges against their domestic officials implicated in a global corruption scheme,” Bloor said.

Frey sounded a similar note. “The message is clear that foreign officials who violate U.S. laws are not immune from prosecution, particularly when their misconduct results in the diversion of U.S. funds,” he said.

See [“The Pipe Is Always Full: FCPA Enforcement Officials Predict Business As Usual”](#) (May 1, 2019).

## Who Deserves More Prison Time?

Lyon received a sentence of 30 months, even though his plea agreement with the federal government indicated that his total offense level was likely to be 25 with a corresponding prison sentence of 57 to 71 months pursuant to the U.S. Sentencing Guidelines. From a base offense level of 12, enhancements were added because the offense involved a received benefit amounting to more than \$550,000 and because the offense involved more than one bribe.

“Given the widespread bribery scheme that included not only bribes paid to foreign government officials but also to U.S. [state] government officials, it would appear that the sentence is on the light side,” Bloor noted. “However, Lyon cooperated with the government and presumably was of assistance in at least bringing charges against Halbert,” he continued. “Thus, in light of his cooperation, the sentence was probably reasonable,” Bloor said.

In contrast, the U.S. government and Halbert agreed to a total offense level of 16, up from an initial base offense level of eight because the value of laundered funds exceeded \$95,000. Because Halbert pleaded guilty to conspiracy to commit money laundering and his involvement

was only in the portion of the allegations involving Micronesia, “he will likely be sentenced to substantially less time than Lyon,” Bloor surmised.

Frey also anticipates that Halbert’s sentence will be lighter than Lyon’s. “This is a function of the guidelines calculations (guidelines range for Halbert is expected to be 18-24 months), which largely results from a lower base-level offense for money laundering and the lower amount of the benefit received by Halbert,” Frey explained.

See [“How the ‘First Step Act’ and Other Sentencing Reforms Will Impact White Collar Defendants”](#) (Feb. 6, 2019).

## Not Over Yet

While the U.S. government has dealt with Lyon and Halbert, so far, it has not announced any action against officials in the Aloha State. “Additional charges against Hawaii state officials seem quite likely,” Frey said. Possible charges that the government could consider “are under the federal bribery statute, money laundering and wire fraud or mail fraud,” Frey said.

“There is certainly the potential that other government officials – in Hawaii or elsewhere – who accepted bribes from Lyon are at risk of charges by the U.S. government or state prosecutors,” Ortiz said. “There are a number of federal and state laws that can be used to bring corruption-related charges including payments of bribes and gratuities, solicitation of bribes and gratuities, extortion and conspiracy to commit extortion as we saw in the recent case against New York State Governor’s aide Joseph Percoco,” she continued, referring to the 2018 conviction and

sentencing of N.Y. Governor Andrew Cuomo’s executive deputy secretary for conspiracy to commit honest services fraud and solicit bribes in what came to be referred to as “Operation Ziti Replenishment” because “ziti” was used as a code word for bribes.

One cannot help but wonder if collateral figures in the Lyon-Halbert matter are discreetly lawyering up. “It is not uncommon for individuals who think they might have exposure to seek legal advice to determine whether they do in fact have exposure and make any strategic decisions about how to proceed or whether to affirmatively approach the government before charges are filed against the individual,” Ortiz said.

“By the time the U.S. government unveils FCPA charges against an individual, virtually everyone associated with the matter is likely to have retained counsel to represent them,” Frey said. “Those few that have not done so prior to the charges being announced almost always immediately retain counsel,” he added. Of course, “just because a person retains counsel, he or so does not necessarily have to cooperate with the U.S. government and may avoid capture by simply declining to travel to the U.S.,” Frey noted.

Indeed, “simply seeking legal advice does not necessarily mean that the person immediately runs to the government,” Bloor said. “In some circumstances the person may wait to see what happens,” he noted.

See [“A Bribe by Any Other Name: 101 Ways People Refer To Corruption”](#) (Sep. 6, 2017).