

Alert

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Jury Finds Executive Acted As An Agent, Giving DOJ New Leverage To Pursue Foreign Nationals

On Friday, November 8, 2019, a jury convicted British citizen Lawrence Hoskins of one count of conspiracy to violate the Foreign Corrupt Practices Act (FCPA), six counts of violating the FCPA, one count of conspiracy to commit money laundering, and three counts of money laundering. Hoskins's conviction stems from his three years at Alstom SA, a French train maker. If upheld, Hoskins's conviction represents a novel way of prosecuting foreign executives of international companies for FCPA violations even if they are never present in the United States.

In 2013, the U.S. Department of Justice (DOJ) charged Hoskins in connection with a bribery scheme involving Indonesian officials and an attempt by Alstom's Connecticut-based subsidiary, Alstom Power Inc., to win a \$118 million energy contract. During his time at Alstom, Hoskins worked in Alstom SA's headquarters in Paris. Hoskins's situation is relatively unique in that he is a foreign citizen who never set foot in the United States during his time at Alstom.¹

Hoskins has long been fighting the DOJ's expansive view of the FCPA's reach. In 2018, Hoskins secured a victory when the Second Circuit held that an individual may not be prosecuted for conspiring or aiding and abetting a U.S. company in a violation of the FCPA if that individual is not otherwise subject to the statute.² Although the Second Circuit's decision presented a significant setback to the DOJ, the court left open the possibility that the government could continue to pursue Hoskins if they could prove that he acted as an "agent" of those that fall within the categories of persons enumerated in the statute.

On remand, the government claimed that Hoskins acted as an agent for Alstom Power when he approved two consultants to help the company win projects in Indonesia. Hoskins, however, contended that the corporate structure and the fact that he, in his role at Alstom SA, had final approval over the subsidiary's selection of consultants meant he was not an agent for Alstom Power.

During the trial and in their closing arguments, the DOJ maintained that email evidence reflecting the actual course of dealing showed that Hoskins was acting as an agent regardless of the corporate structure. Similarly, Edward Thiessen, a former colleague, testified that Alstom Power had final sign-off on the compensation for the consultants and that if Alstom Power did not agree, Hoskins would "go back and renegotiate." In response, Hoskins's attorney argued that Alstom Power did not have sufficient authority over Hoskins because it was a subsidiary, Alstom SA had final approval over the hiring of consultants, and Hoskins was in the company's upper echelons.

Ultimately, the jury agreed with the DOJ that Hoskins was acting as an agent for Alstom Power, clearing the way for his conviction on the various FCPA counts. Although the earlier Second Circuit victory appeared to narrow the FCPA's reach, the jury's finding presents a fairly low bar for proving that foreign nationals are acting as agents of their U.S. subsidiary companies. Given this outcome, we can expect to see the DOJ pursuing the agency theory when foreign nationals are involved. While Hoskins's conviction Friday represents a setback for those looking to limit the foreign reach of the FCPA, an appeal appears likely.



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If upheld, Hoskins's conviction could expose foreign executives to criminal liability under the FCPA and international companies should ensure that executives who sit in positions similar to Hoskins understand the potential implication of decisions they make in connection with international transactions. In the interim, a robust compliance program is essential to prevent and quickly detect potential violations of the FCPA.

¹ In 2014, Alstom SA pleaded guilty and agreed to pay \$772 million in fines to resolve foreign bribery probes by the DOJ and the Securities and Exchange Commission.

² Broadly, the FCPA applies to: (1) issuers of securities registered in the United States, an issuer's officers, directors, employees, agents, and stockholders acting on an issuer's behalf; (2) American companies and American persons; and (3) foreign persons or businesses present in the United States at the time of the conduct.