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DOJ Continues to Expand Scope of FCPA

The Foreign Corrupt Practices Act (FCPA) prohibits individuals or companies from bribing foreign government officials to obtain or retain business. Frederic A. Bourke Jr., co-founder of the famous Dooney & Bourke brand of handbags and accessories, was recently found guilty of conspiracy to violate the FCPA and the Travel Act, and of making false statements to the FBI. The case centers around a scheme to bribe senior government officials in Azerbaijan in order to purchase the state-owned oil company of Azerbaijan. Bourke faces a possible 10 years in prison.

Bourke invested approximately \$8 million in Oily Rock Ltd. on behalf of himself, friends and family. Oily Rock Ltd. was a company controlled by Czech investor Viktor Kozeny (the “Pirate of Prague”), Bourke’s friend and neighbor in Aspen, Colorado. Bourke was found guilty of conspiring with Kozeny to pay several hundred million dollars in shares of stock, cash and other gifts to Azeri officials in exchange for them privatizing the State Oil Company of the Azerbaijan Republic (SOCAR) and rigging the auction so that only Bourke, Kozeny and members of the investment consortium could win—which would have made them a massive profit. Ultimately, Kozeny was never able to purchase SOCAR because the officials changed their minds and decided not to privatize it.

The scheme involved the purchase of vouchers and options that could be used to bid for shares in SOCAR. The vouchers and options were intended to be exercised by Oily Rock. In 1997, Kozeny agreed to transfer to corrupt Azeri officials two-thirds of the vouchers and options Oily Rock purchased, and to give the officials two-thirds of all profits arising from the investment consortium’s participation in SOCAR’s privatization. According to the defense, Bourke knew about the Azeri officials’ involvement in the project, but allegedly believed they had paid for their stake. In 2002, Bourke falsely stated to the FBI that he was not aware that Kozeny had made the alleged payments to the Azeri officials.

This case reflects a significant broadening in DOJ cases because Bourke did not himself, or through a company he owned, make any bribes. Instead, prosecutors showed that Bourke was guilty because he invested in an offshore venture—Oily Rock Ltd.—that he allegedly knew was paying bribes. This case reflects the expansive theories of liability that the DOJ is now using to prove FCPA violations.

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