

Lindsey FCPA Verdicts Prompt Hard Look At Trial Risks

By **Hilary Russ**

Law360, New York (May 11, 2011) -- A federal jury's resounding guilty verdict Monday against Lindsey Manufacturing Co., two executives and an intermediary in a Foreign Corrupt Practices Act case sent a strong warning signal, but it's still too early to tell whether the convictions will have a deeper impact, experts say.

The verdict — which jurors reached after less than a day of deliberation in California federal court — marked the first conviction against a corporate entity after a trial for FCPA violations, according to prosecutors, and one of the first decisions by any jury since the government began more aggressively targeting individuals in the last two years.

The outcome — all defendants guilty on all counts — is a warning to individuals and companies alike to take a hard look at the possible consequences of battling out allegations in court, defense attorneys say.

"The message is clear, that when a corporation is charged with an FCPA [violation], a finding of guilt by a jury is a real, distinct possibility," said Paul E. Pelletier of Mintz Levin Cohn Ferris Glovsky & Popeo PC who recently retired from a senior position at the fraud section of the U.S. Department of Justice's Criminal Division.

"Corporations are going to have to consider that in deciding what they want to do and how they want to go forward," he said.

The jury convicted the company, President Keith Lindsey and Chief Financial Officer Steve Lee of paying intermediary Angela Aguilar to lavish gifts and money on high-level executives of Comision Federal de Electricidad in order to win lucrative contracts with the state-owned Mexican electrical utility.

Lindsey and Lee were charged in the eight-count indictment with FCPA violations and conspiracy. Aguilar, a director of sales representative Grupo Internacional de Asesores SA, was charged with money laundering and conspiracy to launder money. On Monday, the judge threw out the substantive money laundering count against Aguilar, saying the government had not met its burden on the knowledge element of the charge.

Assistant Attorney General Lanny A. Breuer touted the convictions as an important milestone in the government's FCPA enforcement efforts.

"Lindsey Manufacturing is the first company to be tried and convicted on FCPA violations, but it will not be the last," he said.

Breuer wasn't just gloating, according to some observers, who believe that this win will prompt the government to bring more of these type of claims.

"Whenever they get these victories in court it just emboldens them," said John G. Calender, a shareholder at Baker Donelson Bearman Caldwell & Berkowitz PC.

The verdict is going to make companies — which almost universally reach nonprosecution and deferred-prosecution agreements to settle FCPA charges without risking a trial — even more hesitant to face a jury, he says.

"It shows that you can get in trouble and face serious jail time if you engage an intermediary and ignore the red flags," Calender said.

But others doubt that the verdict will have a significant impact — at least not yet. In part, that's because some facts in the case, including a signed \$297,000 check for a 2005 Ferrari Spyder, seemed to doom the defendants from the outset.

"I don't see the verdict itself having much of a macro impact," said Michael Koehler, who teaches business law at Butler University.

"All cases are decided on the facts, and the Lindsey matter was a rather unique situation of the company itself being indicted along with its CEO and CFO in the aftermath of the ABB resolution," he said, referring to an FCPA investigation that led to a \$58.3 million settlement by ABB Inc. in September.

Still, the Lindsey verdict could have at least one direct impact on another pending case that emerged from the investigation into ABB, Koehler noted.

That case, which is proceeding in Texas against John Joseph O'Shea, ABB's former general manager, shares a lead prosecutor and a key government witness with the Lindsey case and is scheduled to get under way within seven days, according to a scheduling order.

Even if the Lindsey verdict doesn't send immediate shock waves through the defense bar, attorneys are still watching the case for the outcome of several issues that the judge has yet to decide or that are up for appeal.

They are watching for any appellate court ruling on the defendants' challenge to how prosecutors define a "foreign official" under the FCPA, as well as the fate of defense motions for acquittal.

"If the Ninth Circuit were to reject the government's version of 'foreign official,' it would have a huge impact," said Foley & Lardner LLP partner David W. Simon.

Such a reversal of the district court's decision on the matter would make defense attorneys hard pressed to plead a client guilty, even with just that one appellate court ruling against the government, he said.

Attorneys will also tune in to find out what sentences are handed down, paying particular attention to the sentence given the company and whether it will be more or less stringent than the sentence the company would have received if it had pled guilty or negotiated a resolution with the government, according to Simon.

Sentencing is scheduled for Sept. 16.

A record number of FCPA trials are scheduled for this year — a result of the government's push to hold more individuals, rather than just companies, accountable.

The so-called shot-show case is the government's biggest, following the arrest of 22 executives in the military and law enforcement equipment industry. Trials are proceeding in four phases, the first of which is scheduled to begin Friday.

That makes the Lindsey verdict just one block on which both defense attorneys and prosecutors will build their approach to foreign corruption cases as the year unfolds, experts say.

"Each and every time that a jury returns a verdict, it does send an important message," Pelletier said.

Lindsey and Lindsey Manufacturing are represented by Jan Handzlik of Greenberg Traurig LLP. Lee is represented by Janet Levine of Crowell & Moring LLP. Aguilar is represented by Stephen Larson of Girardi Keese.

The case is United States v. Noriega et al., case number 2:10-cr-01031, in the U.S. District Court for the Central District of California.

--Additional reporting by Zach Winnick. Editing by Andrew Park.

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