



Government & Internal Investigations ADVISORY ■

MARCH 2, 2015

Where the Rubber Meets the Road: Goodyear Tire Agrees to Pay \$16 Million to Settle FCPA Claims

On February 24, 2015, the Securities and Exchange Commission (SEC) [announced](#) that it had entered into a settlement with Goodyear Tire & Rubber Co. to resolve a charge that Goodyear violated the Foreign Corrupt Practices Act (FCPA) when its subsidiaries paid bribes to garner business in Kenya and Angola. Goodyear has agreed to pay a fine of over \$16 million—\$14 million in disgorgement and \$2 million in prejudgment interest—for violating the FCPA's books and records provision. No parallel criminal charges were brought by the Department of Justice.

Goodyear and the Subsidiaries

Treadsetters Tyres Ltd. and Trentyre Angola Lda. are retail tire distributors located in Kenya and Angola, respectively. Goodyear acquired a minority ownership interest in Treadsetters in 2002. By 2006, Goodyear's stake in Treadsetters grew into a majority share. Despite Goodyear's majority ownership, the day-to-day operations of Treadsetters continued to be run by Treadsetters's founders and the local general manager. During the four-year period in question, Treadsetters had annual revenues of approximately \$20 million.

Trentyre is a wholly owned subsidiary of Goodyear. During the relevant time period, Trentyre had annual revenues between \$6 million and \$20 million.

Summary of Alleged Misconduct

According to the findings set forth in the administrative order, from 2007 through 2011, Treadsetters and Trentyre routinely paid bribes to employees of government-owned entities and private companies to induce them to buy tires. The bribes were paid in cash, not in-kind items, to the employees of government-owned entities and private companies as well as to police, tax and other local authorities. Treadsetters paid over \$1.5 million in bribes, and Trentyres over \$1.6 million. The improper payments were falsely recorded as legitimate expenses—vendor payments for freight and clearing costs and payments for phony promotional products—in the books and records of these subsidiaries, which were then incorporated into Goodyear's books and records.

This advisory is published by Alston & Bird LLP to provide a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered attorney advertising under court rules of certain jurisdictions.

Based on the conduct of its subsidiaries, the SEC found that Goodyear violated the books and records and internal control provisions of the Securities Exchange Act of 1934, Sections 13(b)(2)(A) and 13(b)(2)(B).¹ While the SEC alleged that Goodyear failed to ensure that both subsidiaries were FCPA-compliant, the SEC couched its accusations with regards to Treadsetters and Trentyre in different terms. The SEC stated that Treadsetters's practice of bribing employees of customers to obtain business was in place prior to Goodyear's 2006 acquisition and continued through 2011, after Goodyear became majority owner. Therefore, the SEC concluded that Goodyear failed to detect or prevent the improper payments because it failed to conduct adequate due diligence when it acquired Treadsetters and failed to implement adequate FCPA compliance training and controls after the acquisition. At Trentyre, the SEC found that Goodyear did not prevent or detect the improper payments because it failed to implement adequate FCPA compliance training and controls.

Cooperation and Remedial Efforts

The SEC indicated it took into consideration Goodyear's prompt remedial actions and "significant" cooperation with the SEC's investigation in determining the appropriate resolution of this matter:

- After learning of the bribes via an anonymous tip to its confidential ethics hotline, Goodyear promptly halted the improper payments and reported the matter to the SEC.
- Goodyear voluntarily produced documents and reports and other information from the company's internal investigations and promptly responded to the SEC's requests for information and documents. The SEC emphasized the importance of this cooperation, noting that it "assisted the Commission in efficiently collecting evidence including information that may not have been otherwise available to the staff."
- Goodyear has taken steps to distance itself from the subsidiaries. Goodyear divested its ownership interest in Treadsetters and ceased all business dealings with the company. In Angola, after Goodyear halted the improper payments, Trentyre lost its largest customer. Goodyear is currently in the process of divesting itself of Trentyre as well.
- Goodyear undertook disciplinary action against some of its employees, including executives of its Europe, Middle East and Africa regions who were charged with ensuring that adequate FCPA compliance training and controls were in place at the subsidiaries.
- Goodyear also implemented improvements to its compliance programs both in Sub-Saharan Africa and globally. The improvements included expanding anticorruption training for subsidiary management, sales and finance personnel, creating a new senior position of vice president of compliance and ethics, establishing a new "integrity hotline web portal" for anonymous complaints and implementing a new third-party due diligence software tool.
- As part of the settlement agreement, Goodyear is required to report the status of its FCPA remediation and implementation of compliance measures to the SEC for a three-year period.

¹ Although there were allegations that implicated both Treadsetters and Trentyre in the administrative order, the SEC only named Goodyear in the administrative enforcement action.

Key Case Takeaways

First, this case is procedurally notable in that the SEC brought this enforcement action as an administrative proceeding rather than through a complaint in federal district court. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 expanded the SEC's authority to seek a civil penalty in an administrative proceeding against any person or company. From the SEC's perspective, proceeding through administrative process has a number of procedural advantages, including most significantly no judicial scrutiny and approval of the settlement agreement. It seems likely that the SEC's initiation of administrative proceedings against Goodyear is a sign that the SEC may engage in enforcement via administrative proceedings more frequently in the future.

Second, the enforcement action against Goodyear demonstrates that there are two critical components for preventing FCPA liability in connection with an acquisition: vigorous pre-acquisition due diligence and prompt post-acquisition integration into the acquirer's FCPA compliance program. While acquisitions provide a great opportunity to grow a company's brand, they can also be fraught with risk if the proper due diligence is not conducted pre-acquisition and as a company transitions from minority to majority ownership. The negative publicity and penalties that could arise from failure to conduct sufficient due diligence has the potential to outweigh the benefits that might be gained from an acquisition. Furthermore, once an acquisition takes place, companies, especially multinational companies, should ensure that they promptly bring the subsidiary into the fold of their FCPA compliance program and ensure that the employees and officers of the acquisitions receive sufficient anticorruption training.

Third, if an FCPA violation does occur, the Goodyear case underscores that self-reporting, cooperation and prompt remedial action may help to mitigate the eventual penalty but often will not allow a company to avoid a penalty entirely. The SEC lauded Goodyear's cooperation and remedial efforts in the same order it offered public criticism of Goodyear's FCPA oversight of its subsidiaries. Thus, while prompt self-reporting of an FCPA issue may help to reduce the resulting penalty for a violation, the goal should be to undertake the proper due diligence and engage in proper oversight so that FCPA issues do not arise in the first place.

The final and broader point is that even the smallest subsidiaries can cause major problems for multinational companies. Both Treadsetter and Trentyre reported annual revenues of less than \$20 million during the relevant time period. Goodyear, on the other hand, achieved \$20 billion in annual revenue during the same time. Nevertheless, these "small" subsidiaries of Goodyear brought to light some possible failings in Goodyear's due-diligence and oversight process for its overseas subsidiaries—resulting in a "big" impact to Goodyear. This is an important reminder that, as companies grow and expand their brand, they must remain cognizant of the FCPA and the need to extend an anticorruption culture to all segments of their business. No new acquisition, no matter how small, should be overlooked from an FCPA compliance perspective.

If you would like to receive future *Government & Internal Investigations Advisories* electronically, please forward your contact information to government.reporter@alston.com. Be sure to put “**subscribe**” in the subject line.

If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

Craig Carpenito
Co-Chair
212.210.9582
craig.carpenito@alston.com

Michael L. Brown
Co-Chair
404.881.7589
mike.brown@alston.com

George Abney
404.881.7980
george.abney@alston.com

Rodney J. Ganske
404.881.4996
rod.ganske@alston.com

John L. Latham
404.881.7915
john.latham@alston.com

Theodore J. Sawicki
404.881.7639
tod.sawicki@alston.com

Randall L. Allen
404.881.7196
randall.allen@alston.com

Mary C. Gill
404.881.7276
mary.gill@alston.com

Dawnmarie R. Matlock
404.881.4253
dawnmarie.matlock@alston.com

Brian Stimson
404.881.4972
brian.stimson@alston.com

Jeffrey A. Belkin
404.881.7388
jeff.belkin@alston.com

James A. Harvey
404.881.7328
jim.harvey@alston.com

Kimyatta E. McClary
404.881.7982
kimyatta.mcclary@alston.com

Jason M. Waite
202.239.3455
jason.waite@alston.com

Donna P. Bergeson
404.881.7278
donna.bergeson@alston.com

Katherine E. Hertel
213.576.2600
kate.hertel@alston.com

Wade Pearson Miller
404.881.4971
wade.miller@alston.com

Kyle G.A. Wallace
404.881.7808
kyle.wallace@alston.com

Cathy L. Burgess
202.239.3648
cathy.burgess@alston.com

H. Douglas Hinson
404.881.7590
doug.hinson@alston.com

William R. Mitchelson
404.881.7661
mitch.mitchelson@alston.com

Kenneth G. Weigel
202.239.3431
ken.weigel@alston.com

Mark T. Calloway
704.444.1089
mark.calloway@alston.com

J. Andrew Howard
213.576.1057
andy.howard@alston.com

Bruce Pasfield
202.239.3585
bruce.pasfield@alston.com

R. Neal Batson
404.881.7267
neal.batson@alston.com

Marianne Roach Casserly
202.239.3379
marianne.casserly@alston.com

Brett D. Jaffe
212.210.9547
brett.jaffe@alston.com

Kimberly K. Peretti
202.239.3720
kimberly.peretti@alston.com

Angela T. Burnette
404.881.7665
angie.burnette@alston.com

Steven M. Collins
404.881.7149
steve.collins@alston.com

William H. Jordan
404.881.7850
bill.jordan@alston.com

Jason Popp
404.881.4753
jason.popp@alston.com

Brian J. Fields
212.210.9585
brian.fields@alston.com

Thomas E. Crocker
202.239.3318
thomas.crocker@alston.com

Edward T. Kang
202.239.3728
edward.kang@alston.com

T.C. Spencer Pryor
404.881.7978
spence.pryor@alston.com

Eileen M.G. Scofield
404.881.7375
eileen.scofield@alston.com

Christina Hull Eikhoff
404.881.4496
christy.eikhoff@alston.com

Louis A. Karasik
213.576.1148
lou.karasik@alston.com

ALSTON & BIRD

WWW.ALSTON.COM

© ALSTON & BIRD LLP 2015

ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777
BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719
CHARLOTTE: Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111
DALLAS: 2828 North Harwood Street ■ 18th Floor ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899
LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213.576.1100
NEW YORK: 90 Park Avenue ■ 15th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444
RESEARCH TRIANGLE: 4721 Emperor Blvd. ■ Suite 400 ■ Durham, North Carolina, USA, 27703-85802 ■ 919.862.2200 ■ Fax: 919.862.2260
SILICON VALLEY: 1950 University Avenue ■ 5th Floor ■ East Palo Alto, California, USA, 94303-2282 ■ 650.838.2000 ■ Fax: 650.838.2001
WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.756.3300 ■ Fax: 202.756.3333