

## Insights

# JUDGE OVERTURNS FCPA CONVICTION ON LACK OF EVIDENCE OF AGENCY

Feb 27, 2020

In a closely followed case, on February 26, 2020, a District Court Judge in Connecticut granted Lawrence Hoskins' motion for acquittal on the seven FCPA counts on which the jury convicted him.<sup>1</sup> Hoskins was a UK citizen who worked for a UK subsidiary of Alstom. He was indicted in the US and charged with violating the FCPA as an agent of a US subsidiary of Alstom and by conspiring with and aiding abetting the US subsidiary's FCPA violation. In a decision that limited the scope of the FCPA, the Second Circuit held that "the FCPA clearly dictates that foreign nationals may only violate the statute outside the United States if they are agents, employees, officers, directors, or shareholders of an American issuer or domestic concern." Thus, the government went to trial on the theory that Hoskins served as an agent of the US subsidiary.

The jury convicted Hoskins on the FCPA counts. In reconsidering the evidence presented, the Court found that although the government presented evidence that the subsidiary "1) controlled the hiring of consultants for the Tarahan Project, and 2) gave Mr. Hoskins instructions, which he followed," the government failed to prove that the subsidiary "had a right of interim control over Mr. Hoskins's actions to procure consultants according to [the subsidiary]'s specifications." Citing agency case law principles, the Court found this lack of control over Hoskins' actions key in ruling in Hoskins' favor:

Thus, the Court sees no evidence upon which a rational jury could conclude that Mr. Hoskins agreed or understood that API would control his actions on the Tarahan Project, as would be required to create an agency relationship. Nor does the Court see any evidence upon which a rational jury could conclude that API actually had the authority or ability to control Mr. Hoskins's actions.

This opinion reaffirms that the jurisdictional reach of the FCPA is not always what the Department of Justice says it is. Companies and individuals must look past agreed-to DOJ and SEC resolutions in FCPA cases as to the actual scope of the statute. Only courts can decide the jurisdictional reach of the FCPA. In appropriate cases, potential defendants must assert their rights and take the issue to a court to resolve.

1. We note that although Hoskins won on the FCPA counts, the Court rejected his motion as to the four counts of conviction for money-laundering violations in relation to the bribes paid in Indonesia.

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