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U.S. V. Sigelman: Another FCPA Enforcement Setback For The DOJ

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On Monday, June 15, 2015, the criminal trial of Joseph Sigelman, a former co-chief executive of PetroTiger Ltd. came to an abrupt end when he pleaded guilty to a single count of conspiracy and, the following day, received a sentence of probation. Mr. Sigelman had faced a potential 20-year sentence for charges including alleged violations of the Foreign Corrupt Practices Act (FCPA). All charges except the guilty plea to a single count of conspiracy to violate the FCPA were dropped as a result of the plea. While the sudden conclusion to the *Sigelman* trial appears to have been brought on by a witness's surprise change in testimony, it certainly appears to be the latest in a series of setbacks for the DOJ in its efforts to enforce the FCPA against individual defendants in the courtroom. Joseph Sigelman, a former Goldman Sachs banker, was the co-CEO of PetroTiger Ltd., a company he founded in Colombia to provide oil producers with outsourced services. Mr. Sigelman had previously founded Office Tiger, a successful company based in India that provided outsourced administrative and document services. In Mr. Sigelman's indictment, the government alleged that he had been involved in a scheme to take kickbacks and pay bribes to secure approval of a $45 million oil services contract in Colombia, and that he used a bank account in the Phillipines (where he had a home) to help conceal the payments. Mr. Sigelman maintained throughout that his understanding had been that PetroTiger was making legitimate payments to a consultant—not paying bribes to government officials. However, Gregory Weisman and Kurt Hammarskjöld, two former colleagues at PetroTiger, had pleaded guilty prior to Mr. Sigelman's trial and, in exchange for more lenient sentences, had agreed to testify against him. The *Sigelman* trial was a high-profile federal criminal trial for a number of reasons. Few FCPA cases ever make it to the filing of criminal charges against individuals, much less a trial. Indeed, including the *Sigelman* case, there have been only four (4) times since September 2011 in which the DOJ has been put to its burden of proof; all have resulted in dismissals of or acquittals on substantive FCPA charges. The case is also significant because it involves a prosecution of an individual that occurred after a company voluntarily disclosed a potential FCPA violation. Indeed, the government's press release announcing the indictment stated that the case had come to the DOJ through a voluntary disclosure by PetroTiger. The government's trial team in *Sigelman* was led by Patrick Stokes, the Chief of the DOJ's FCPA unit, who has repeatedly reiterated that the DOJ is making it a priority to pursue individual defendants. The Government's primary evidence against Mr. Sigelman was the testimony of

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the two former colleagues, Weisman and Hammarskjöld, who had previously pleaded guilty. The indictment charged Mr. Sigelman with six counts, including substantive violations of the FCPA, and conspiracy to violate the FCPA and commit money laundering. The trial opened with the Government arguing that Mr. Sigelman was motivated by greed. Mr. Stokes said in his opening statement that Mr. Sigelman had been caught on video trying to get Mr. Weisman to change his story, and that Mr. Sigelman had even asked Mr. Weisman to lift up his shirt to see if he was wearing a wire, "something an innocent man does not do." Mr. Sigelman's attorneys asserted that the charges stemmed from retaliation and Mr. Sigelman was not only unaware of any bribes (or that consultants were "public officials" under the FCPA) but was staunchly anti-corruption. After two weeks of trial, the government's case fell apart when, under cross-examination, Mr. Weisman admitted that he had given false testimony about the terms of his cooperation agreement. This, coupled with testimony from an FBI agent that a key player in the investigation had been allowed to leave the United States for Colombia without arrest, led to a mid-trial plea agreement on June 15. After these testimonial reversals in the government's case, Mr. Sigelman pleaded guilty to one count of conspiracy to violate the FCPA. On June 16, he was sentenced to probation, restitution and a fine totaling approximately $333,000. In his sentencing opinion, Judge Joseph Irenas chastised the Government for taking the position that anything other than a one-year prison sentence would be inappropriate. The government also announced that it would not be bringing an enforcement action against PetroTiger. In its release, the DOJ has attempted to spin the Sigelman plea as a victory. But it seems impossible to characterize a $333,000 individual fine and probation as a "victory" when the Government sought a conviction on violations that could have amounted to a 20-year sentence. In fact, coverage of the *Sigelman* case has been exceedingly critical. Bloomberg noted that "the trial result reflects a troubling setback for the Justice Department's stepped up enforcement of the FCPA," and noted the stark difference between the Government's negotiation of major corporate FCPA settlements and its unsuccessful efforts at trial. Mr. Weisman and Mr. Hammarskjöld have yet to be sentenced—but one imagines they are second-guessing their decisions to plead guilty in the first place. Will the DOJ continue to aggressively pursue FCPA charges against individuals in the wake of *Sigelman* and its less-than-stellar trial track record? The DOJ's position on charging individuals is predicated, at least in part, on the deterrent effect of individual prosecutions – an assumption that appears belied by recent experience. Additionally, as evidenced by the *Stein* case, "leaning on" corporations to serve up their employees as sacrificial lambs is a problematic and potentially dangerous undertaking – not to mention one that seems contrary to public policy. One might wonder if the interests of the DOJ (and taxpayers) in bringing charges under the FCPA would be better served through a continued focus on corporate settlements rather than individual prosecutions, given the monetary windfalls (and compliance improvements) that result from those settlements.