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Foreign Corrupt Practices Act Alert

Goodyear Agrees to Pay More Than \$16 Million to Settle SEC Charges of FCPA Violations Relating to Bribes Paid in Kenya and Angola

SUMMARY

The U.S. Securities & Exchange Commission (SEC) announced today that Goodyear Tire & Rubber Company (Goodyear) has agreed to pay more than \$16 million in disgorgement and prejudgment interest to settle charges that the company violated the books and records and internal control provisions of the Foreign Corrupt Practices Act (FCPA). According to the SEC, Goodyear subsidiaries in Kenya and Angola unlawfully paid more than \$3.2 million to obtain sales of tires between 2007 and 2011, resulting in profits of \$14,122,525. The SEC alleged that Goodyear failed to detect these payments as a result of the company's failure to institute adequate FCPA compliance controls at the two subsidiaries and Goodyear's failure to conduct adequate due diligence at the time of the acquisition of its interest in one of the subsidiaries.

BACKGROUND AND DISCUSSION

Between 2007 and 2011, Treadsetters and Trentyre, two Goodyear subsidiaries and retail tire distributors in Kenya and Angola, respectively, paid more than \$3.2 million in bribes to government-owned entities, local authorities, and private companies to obtain sales of tires.

Goodyear acquired a minority interest in Treadsetters in 2002 and became the majority owner in 2006; but the subsidiary's day-to-day operations continued to be run by the subsidiary's founders and local general manager, who directed the Kenyan payments at issue. The SEC noted that the improper payments appeared to have been a routine practice prior to Goodyear's acquisition of Treadsetters.

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According to the SEC, Trentyre, which is wholly owned by Goodyear, carried out a separate bribery scheme in Angola through its general manager, who directed the payments and the forgery of invoices to conceal them.

The SEC charged that Goodyear failed to detect these payments as a result of Goodyear's failure to implement accounting controls sufficient to prevent and detect the bribes, which were inaccurately recorded in the subsidiaries' books and records and consolidated into Goodyear's books and records. The SEC also charged that Goodyear failed to conduct adequate due diligence at the time of its acquisition of Treadsetters.

Goodyear became aware of the violations in Kenya in June 2011 after receiving an anonymous tip through the company's ethics hotline about potential improper payments, and received an employee report of similar violations in Angola in July 2011. The company launched an internal investigation into the conduct and voluntarily disclosed the findings of the investigation to the SEC and the U.S. Department of Justice (DOJ).

In deciding not to impose a civil penalty to accompany disgorgement of profits and prejudgment interest, the SEC cited Goodyear's prompt reporting of the violations, its cooperation with the SEC's investigation, and Goodyear's remedial efforts, which included divestiture of its ownership in the subsidiaries, disciplinary action against Goodyear employees with oversight of the region in which the payments were made, and improvements to Goodyear's compliance controls worldwide. Those improvements included the expansion of the company's anti-corruption training program, the expansion of the company's financial-reporting annual certification requirement, and the creation of new compliance, accounting, and audit positions. Goodyear is required to provide the SEC with periodic status reports of its remediation efforts for a three-year period. The DOJ notified Goodyear in January 2015 that it had closed its parallel investigation and did not plan to pursue criminal charges against the company.

The resolution of the Goodyear action again underscores the need for companies to conduct adequate corruption-related due diligence in connection with new acquisitions and to implement robust FCPA controls at all controlled subsidiaries, especially in regions with a history of compliance challenges. The settlement is also noteworthy because the SEC's charges are based, in part, on the improper recording of payments to employees of private companies, in addition to employees of government-owned or affiliated entities. Although the SEC's cease and desist order repeatedly refers to "private companies," the SEC does not provide any detail about those companies or their role in the conduct at issue. The SEC's decision not to impose any civil penalty, however, demonstrates that in certain circumstances the SEC will reward the timely investigation of potential FCPA violations and cooperation in the regulators' investigations, as well as the implementation of robust, meaningful remedial measures.

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