Dallas Airmotive Settles DOJ FCPA Probe – Significant Penalty Reduction Despite Admitted Involvement of U.S.-Based Parent Company Personnel in Multi-Country Bribery Scheme

By Charles S. Leeper and Emily T. Broach

On December 10, 2014, the Department of Justice (DOJ) announced that Dallas Airmotive Inc. ("Dallas Airmotive"), which provides aircraft engine maintenance, repair, and overhaul services in the United States and abroad, had admitted to violations of the Foreign Corrupt Practices Act (FCPA) and agreed to pay a $14 million penalty. The Criminal Information, filed in the Northern District of Texas as part of the Deferred Prosecution Agreement (DPA), charges Dallas Airmotive with one count of conspiracy to violate the FCPA and one count of violating the FCPA’s anti-bribery provisions.

The charges stem from allegations that between 2008 and 2012, employees of Dallas Airmotive and its subsidiary, Dallas Airmotive de Brasil, bribed officials in Brazil, Peru, and Argentina by paying “commissions” or “consulting fees” and providing vacations to foreign officials in order to secure business for Dallas Airmotive and Dallas Airmotive de Brasil. In order to conceal these payments, the DOJ alleged, employees of Dallas Airmotive and Dallas Airmotive de Brasil entered agreements with front companies affiliated with foreign officials and made payments to third parties with the understanding that those payments would be passed on to foreign officials.

Unlike a number of other recent FCPA dispositions where the DOJ attributed acts of a subsidiary to its parent company on what was essentially a vicarious liability theory, the Criminal Information and DPA contain specific descriptions of documentary evidence showing complicity of Dallas Airmotive officials in the actions of its Brazilian subsidiary. The detailed recitation of this evidence signals that follow-on prosecutions of individuals may soon come.

According to the DPA, the Sentencing Guidelines called for a fine range of $17.5 million to $35 million given the value of the business benefit realized by Dallas Airmotive. The DOJ, however, agreed to a monetary penalty of $14 million (a 20 percent reduction, approximately, from the low end of the recommended fine range) on account of Dallas Airmotive’s cooperation with the DOJ’s investigation. The DPA does not make any reference to a voluntary disclosure, and the amount of the penalty discount suggests that the government initiated the investigation.

The DPA recites that Dallas Airmotive “substantially cooperated” with the DOJ by: (i) conducting an internal investigation; (ii) making U.S. and foreign employees available for interviews; (iii) “collecting, analyzing, and organizing voluminous evidence and information;” and (iv) agreeing to continue to cooperate with the DOJ in any ongoing investigation. Dallas Airmotive also represented that it had improved its compliance program and internal controls and agreed to implement new compliance standards. The DPA does not require that Dallas Airmotive engage an Independent Monitor, but instead requires annual compliance reporting to the DOJ during the three-year term of the DPA.

The reduced monetary penalty agreed to by the DOJ despite the strong evidence of wrongdoing underscores the benefits of cooperating with the DOJ once an investigation ensues. Also, the additional compliance standards agreed to by Dallas Airmotive provide guidance for companies looking to institute adequate compliance programs to help guard against violations of the FCPA or other anti-corruption laws.