Notable Case Updates

July 9, 2025

1. SCOTUS Expands Criminal Wire Fraud Liability to Claims with No Economic Loss

On May 22, 2025, the Supreme Court issued a decision in *Kousisis v. United States*. The defendants, an industrial painting company and its project manager, had been convicted of wire fraud and conspiracy to commit wire fraud, in violation of 18 U.S.C. §§ 1343 and 1349.

The government alleged that the defendants obtained two projects from the Pennsylvania Department of Transportation (PennDOT) under a scheme that required a portion of each project to be subcontracted to a disadvantaged business. The defendants allegedly falsely represented to PennDOT that they were in compliance with the disadvantaged business scheme, but used the prequalified disadvantaged business as a "pass-through" entity to do business with their actual suppliers. The defendants appealed their convictions, arguing that they did not intend to cause PennDOT any economic loss and that PennDOT had not suffered any economic loss, as they had provided something of value to the agency.

The Supreme Court affirmed the convictions, and held that economic loss was not an element of a federal wire fraud offense, stating that "[u]nder the fraudulent-inducement theory, a defendant commits federal fraud whenever he uses a material misstatement to trick a victim into a contract that requires handing over her money or property—regardless of whether he seeks to cause the victim net pecuniary loss." The Court also held that under common law, "deception-induced deprivation of property" was sufficient to establish injury even without accompanying economic loss.

The Court noted that its decision was consistent with its prior holding in *Ciminelli v. United States*, 598 U.S. 306 (2023), in which it held that the right to control economic interests could not serve as the basis for a wire fraud conviction. In *Ciminelli*, the Court rejected the lower court's finding that, under the right to control theory, false statements or misstatements made during contracting that led to a deprivation of economic information to make fully informed economic decisions but no economic loss could be considered property interests under the federal wire fraud statute. Unlike *Ciminelli*, the Court characterized the fraud in *Kousisis* as one that sought to deprive PennDOT of money, not just the information necessary for PennDOT to make an informed economic decision.

The *Kousisis* decision could have far-reaching effects on federal prosecutorial power. In addition to wire fraud, other federal fraud statutes, such as healthcare fraud, make no mention of economic loss and are key enforcement priorities for the second Trump administration. This could encourage federal prosecutors to more aggressively bring federal

fraud charges, including in connection with False Claims Act enforcement. It remains to be seen, however, how litigants and lower courts are able to utilize the fraudulent inducement theory established in *Kousisis* without implicating the right to control theory rejected in *Ciminelli* in cases involving no economic loss.

2. DOJ Changes Course and Settles with Boeing in 737 MAX Case

On May 23, 2025, DOJ announced that it had reached an agreement in principle with Boeing regarding the terms of a non-prosecution agreement (NPA) to resolve its criminal prosecution of Boeing for breaching the terms of a 2021 deferred prosecution agreement (DPA) relating to two fatal Boeing 737 MAX airplane crashes in 2018 and 2019. As part of the NPA, Boeing must admit to "conspiracy to obstruct and impede the lawful operation of the Federal Aviation Administration Aircraft Evaluation Group." Boeing also agreed to pay $1.1 billion, of which over $445 million would be specifically allocated to victims' families.

The NPA follows U.S. District Court Judge Reed O'Connor's December 2024 rejection of a July 2024 plea agreement for Boeing's failure to comply with the 2021 DPA. The terms of the proposed plea agreement required the appointment of an independent compliance monitor. First, the court found that the requirement that this monitor be selected in accordance with the DOJ's then-stated commitment to diversity and inclusion was discriminatory and against public policy. Second, the court found the plea agreement's proposal that the monitor be selected by and report to the DOJ inappropriately marginalized the court and was against public policy. While the May 2025 NPA does not require the appointment of an independent compliance monitor to oversee Boeing, it does require Boeing to engage an independent compliance consultant to oversee agreed upon remediation and enhancements to its compliance program.

On May 29, 2025, the DOJ filed its motion to dismiss the case without prejudice, stating that the parties had finalized the NPA. In response, victims' families filed an objection, asking the court to reject the NPA and appoint a special prosecutor. The motion to dismiss remains pending.

3. DOJ Announces Two Declinations Under National Security Division Enforcement Policy for Business Organizations

On April 30, 2025, the DOJ declined prosecution of Universities Space Research Association (USRA) after it self-disclosed violations of U.S. export controls laws pursuant to the DOJ's National Security Division (NSD) Enforcement Policy for Business Organizations (Enforcement Policy), marking only the second declination under the Enforcement Policy since it was updated in March 2024. Shortly thereafter, on June 16, 2025, the DOJ declined prosecution of White Deer Management LLC (White Deer) pursuant to the DOJ's NSD Mergers and Acquisitions Safe Harbor Policy (M&A Safe Harbor Policy). This is the first declination under the NSD M&A Safe Harbor Policy, which was announced in October 2023. Although Attorney General Pam Bondi announced the disbanding of the NSD's Corporate Enforcement Unit in February 2025, these declinations indicate that the DOJ continues to investigate corporate misconduct that threatens U.S. national security concerns and values full and thorough cooperation from companies.

The NSD Enforcement Policy provides that absent aggravating circumstances, a company that "(1) voluntarily self-discloses to NSD potentially criminal violations arising out of or relating to the enforcement of export control or

sanctions laws (2) fully cooperates, and (3) timely and appropriately remediates," will presumptively receive a non-prosecution agreement, with no fine. The NSD Enforcement Policy also permits the NSD to issue a declination at its discretion. Under the NSD M&A Safe Harbor Policy, a company that "undertakes a lawful, bona fide acquisition of another company and, through due diligence conducted either shortly before or shortly after the transaction, becomes aware of potential criminal violations of export control, sanctions, or other laws affecting U.S. national security by the acquired company" may presumptively receive a declination if it voluntarily and timely self-discloses to the DOJ, fully cooperates with any investigation, and timely and appropriately remediates the misconduct.

In the USRA matter, USRA discovered that an employee had been selling and exporting NASA's flight control and optimization software to a Chinese university. As the university, Beijing University of Aeronautics and Astronautics, a/k/a Beihang University, was listed on the Department of Commerce's Entity List, any sales required an export license under the Export Administration Regulations. The USRA employee later admitted that he willfully exported software on four occasions without the requisite licenses. The employee also admitted to embezzling $161,000 in funds from software license sales. Within days of the employee's admission of wrongdoing to outside counsel, USRA self-disclosed to the NSD. USRA terminated the employee and disciplined the supervising employee. USRA also voluntarily re-paid the agencies impacted by the employee's embezzlement. The NSD determined that USRA had exceptionally and proactively cooperated with the investigation, which "materially assisted" the prosecution of the employee. For these reasons, the NSD granted USRA a declination and determined that USRA was not required to pay any further disgorgement, forfeiture, or restitution.

In the White Deer matter, shortly after the private equity firm White Deer acquired a company, it discovered that the co-founder and former CEO of the acquired company had directed the company to complete sales to customers in Iran, Syria, Venezuela, and Cuba. White Deer also discovered that the company had falsified financial records, export documents, and invoices. Both White Deer and the acquired company self-disclosed the misconduct to the DOJ, the Department of the Treasury's Office of Foreign Assets Control, and the Commerce Department's Bureau of Industry and Security. The DOJ determined that the acquisition was lawful and bona fide, White Deer had no pre-existing disclosure obligation, the self-disclosure was timely, White Deer provided exceptional and proactive cooperation, and White Deer timely and appropriately remediated the misconduct. As a result, the DOJ declined to prosecute White Deer for the misconduct. The DOJ also entered into a non-prosecution agreement with the acquired company and required the acquired company to disgorge over $3 million in its profits from the misconduct. The acquired company separately reached settlements with the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) and the Bureau of Industry and Security (BIS). The White Deer declination provides useful guidance to companies involved in or considering merger and acquisition transactions on mitigating the risk of any pre-acquisition criminal violations of national security laws.

These matters demonstrate that companies and corporate officers should weigh the risk of disclosure against the potential benefit of receiving a declination under the NSD Enforcement Policy or NSD M&A Safe Harbor Policy.

4. Gilead Settles False Claims Act Case with the DOJ

On April 29, 2025, pharmaceutical manufacturer Gilead Sciences, Inc. ("Gilead") settled a civil lawsuit with the U.S. Attorney's Office for the Southern District of New York for violations of the False Claims Act (FCA) and Anti-Kickback Statute (AKS). Gilead develops, manufactures, and sells drugs treating HIV/AIDS, which are frequently reimbursed through Medicare and Medicaid. The settlement resolves claims that through its "HIV Speaker Programs," Gilead offered and paid kickbacks to healthcare practitioners in the form of honoraria payments, lavish meals and travel expenses to induce them to prescribe Gilead HIV Drugs. According to the government, these kickbacks violated the AKS and caused false claims for Gilead HIV Drugs to be submitted to and paid by federal healthcare programs in violation of the FCA. The settlement also resolves allegations that Gilead's compliance program failed to prevent kickbacks despite having readily available data evidencing the scheme.

As part of the settlement, Gilead admitted to using speaker programs to funnel millions of dollars in kickbacks to doctors who prescribed its HIV drugs in an effort to drive up sales from 2011 to 2017. Gilead also agreed to pay a total of $202 million, of which over $176 million will be paid to the United States government and the remainder to various states.

5. Three FCPA Cases Against Individuals Move Forward

After the Justice Department's review mandated by President Trump's February 10 executive order pausing FCPA enforcement, the DOJ filed notices of authorization to proceed in three cases in early April: (i) *United States v. Bautista, Pinate, Vasquez, and Moreno*, in which three executives of a voting machine company (a Venezuelan citizen, a U.S. citizen, and a dual Venezuelan-Israeli citizen) and a Philippine foreign official are charged in connection with an alleged bribery and money laundering scheme associated with a bid to win business in the Philippines; (ii) *United States v. Hobson*, in which Charles Hobson, a former coal company executive, is accused of bribing Egyptian officials to obtain state contracts; and (iii) *United States v. Zaglin, Marchena, and Centeno*, in which a Georgia businessman, a former Honduran government official, and a former Florida resident are charged with participating in a scheme to pay and conceal bribes to Honduran government officials to secure contracts to provide uniforms and other goods to the Honduran National Police. Each of the notices of authorization to proceed contained nearly identical language stating that the government had completed a "detailed review" of the case as contemplated by the executive order and now intends to proceed to trial.

The decision to move forward with these prosecutions came during the FCPA enforcement pause, during which all pending FCPA cases were reviewed and only continued with Attorney General Pam Bondi's authorization. Although the FCPA pause has now ended, the DOJ's decision to prioritize and proceed with these cases concerning allegations

of foreign bribery tied to government contracts aligns with federal enforcement priorities, specifically to target conduct tied to individual misconduct with corrupt intent.

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If you have any questions, please feel free to contact any of the following Cadwalader attorneys.

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