

# Penalties in FCPA Case Questioned

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**L**OS ANGELES — When U.S. business executives pay foreign officials for favors, it's rare that federal investigators going after companies will weigh the resulting benefit to the local economy.

That is partly why a federal judge's ruling in the closely watched case of two convicted film producers has Hollywood-focused attorneys scratching their heads to predict how future probes into such foreign bribery charges will impact the industry.

Last week, U.S. District Court Judge George Wu sentenced Gerald and Patricia Green, husband and wife producers to six months in prison for bribing a Thai official in exchange for lucrative film festival contracts — a disappointment to prosecutors who were seeking 10-year sentences for the violations of the Foreign Corrupt Practices Act.

Observers had expected the case, the first to use the statute against entertainment industry figures, to set off a wave of FCPA investigations into Hollywood, which has a reputation for doling out questionable payments to local officials while doing business abroad.

The Greens were convicted of scoring \$14 million in contracts to run a Bangkok film festival between 2003 and 2006 by paying \$1.8 million in kickbacks to a Thai tourism official, in violation of the FCPA.

The act, signed into law in 1977 but practically dormant until the past decade, forbids businesses and individuals largely based in the U.S. from paying bribes to foreign government officials to secure unfair business advantages.

The couple also was found guilty of six money-laundering charges, and Patricia Green faced an additional three-year sentence for filing a false tax return for 2004.

While future FCPA investigations into entertainment companies may still follow, lawyers said that the outcome in the Greens case was more of a shot across Hollywood's bow than a direct assault on industry practices. The facts surrounding the case and its outcome made it more of an anomaly than a bellwether case, observers said.

The Greens claimed they should be given one year of home detention because Gerald, 78, had emphysema and Patricia, 53, was his primary caretaker. They also argued in pleadings that their sentences should be mitigated because the festival generated about \$140 million in revenue for Thailand.

Wu made it clear during the sentencing hearing last week that he took the defendants' revenue argument into account

when ruling on a punishment. The ruling surprised lawyers who specialize in FCPA cases, in which judges usually do not take the economic benefit of bribes into account during sentencing.

Wu said that before the Greens took over the Bangkok International Film Festival, "it was not a particularly successful festival."

He said that the Greens' estimate of a \$140 million profit to Thailand was a stretch, "but the evidence does show there was a profit when all was said and done."

"It did not cause any monetary loss for the country," Wu said, also later adding that Gerald's health was a factor as well.

Mark Mermelstein, a white-collar defense partner with Orrick, Herrington & Sutcliffe in Los Angeles, said that other judges in FCPA cases tended to be far stricter.

"This case does stand out as an anomaly," Mermelstein said. "There is a trend among judges to give individuals who pay bribes in violation of the FCPA significant sentences. Maybe health, maybe other factors played a role in it. But this case stands out a bit."

**S**ky Moore, a film finance partner at Stroock & Stroock & Lavan in Los Angeles, said that the circumstances in the Green case didn't include the typical sorts of payments entertainment companies make when shooting films abroad.

"It didn't hit the heart of the real problem," Moore said. "You have to wait and see a conviction for a normal course of business, such as paying someone to get a filming permit. This case has no relevance over other FCPA cases."

Prosecutors called the defendants' argument that the couple be shown leniency because of the money generated for Thailand "absurd," and also stated that Gerald would be given adequate health care while in prison.

On top of the six months in prison followed by six months of home confinement, Wu ordered the couple to pay \$250,000 in restitution, but said he would reduce that to \$3,000 if the government was able to regain the \$1.8 million paid in kickbacks.

The Greens, who are free on bail, each have until the end of November to surrender into custody.

Assistant U.S. Attorney Bruce Searby, one of the prosecutors on the case, declined to comment on the sentence.

The relatively lenient punishment could highlight possible challenges facing federal prosecutors to prove bribery charges against the entertainment industry, in which "greasing the palms" of local handlers is a common practice and is viewed as less harmful than

bribes to knock out competitors.

Michael Perlis, Moore's partner at Stroock who specializes in the FCPA, said that he still expects the government to take a closer look at Hollywood's overseas conduct, which often walks a thin line between compliance and violation. "People in the entertainment industry are less cognizant of the requirements of the FCPA," Perlis said.

He said that paying a customs agent \$500 to unload perishable good from a ship a day early would be permissible, but paying someone \$500 to look the other way to shoot a film in a nature preserve is a clear violation of the FCPA.

Perlis said that it's in those types of gray areas that the government might be able to find future violations, even if studios and production companies take steps to ensure compliance.

"Bigger companies tend to get what the law is," Perlis said. "Whether or not people on the ground do is another question."

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