

IBM / Banco de la Nacion Officials (Alfredo Adaco, Mario Dadone, Genaro Contartese, Hugo Gaggero)

Case ID:

ARW-82

Jurisdiction of Origin of Public Official or Entity Allegedly Involved:

Argentina

Position of Public Official(s) (yrs in office):

Officials of State Owned Enterprise

Jurisdiction of Asset Recovery:

United States

Jurisdiction of Asset Recovery ? Description:

Location of Recovery Effort, Asset Location / Alleged Asset Location

Asset Recovery End:

1997

UNCAC Offenses Implicated:

Art.16

Art.23

Money laundering Implicated:

Yes

Legal Basis for Asset Recovery:

Other

Intl.Cooperation: MLAT/Letter of Request?:

No

Basis for Intl Cooperation:

NA

Contributing Factors in Asset Recovery:

Unspecified (Commercial settlement)

Status of Asset Recovery :

Completed

Agreement for Returned Assets:

No

Agreement for Returned Assets - Description:

NA

Case Summary:

This case concerns the bribery paid in 1994 by IBM's Argentine subsidiary to Banco de la Nacion officials to secure a contract with the bank. After litigation, IBM agreed to reimburse Banco de la Nacion \$34 million in losses. (Source: "Argentina: IBM to Reimburse U.S. \$34 mil to Banco Nacion," South American Business Information, November 10, 1997, cited in Wilmer, Cutler and Pickering, "Foreign Corrupt Practices Act Updates IBM Consents to Civil Penalty and SEC Cease and Desist Order Based on Argentine Bribe Scandal," January 12, 2001.) According to an Argentine attorney knowledgeable about the case, this is the first case in Argentina of a plea agreement in a criminal action involving public officials and corruption. In 2009, the officials agreed to the plea deal, but once it was approved by the court, they appealed it as their final sentence, on statute of limitations grounds. As of November 17,

2010, nearly 16 years after the bribery, the case was on appeal in the Argentine Supreme Court.

Disposition of Criminal Case(s):

According to an Argentine attorney familiar with the case of Banco de la Nacion officials, as of November 2010, their appeal was pending before the Argentine Supreme Court. (Source: StAR researcher phone interview, November 2010). For information on IBM's U.S. cases, please see Shearman & Sterling law firm's Foreign Corruption Practices Act database at <http://fcpa.shearman.com/index.php>.

Jurisdiction of Origin: Investigative Agency:

Unspecified (Commercial settlement)

Jurisdiction of Origin: Prosecuting Authority/Civil Attorney(s):

Ministerio Publico Procuracion General de la Nacion

Jurisdiction of Origin: Courts Involved:

Cámara de Casación penal.

Jurisdiction of Asset Recovery: Investigative Agency:

U.S. Department of Justice, Securities and Exchange Commission

Jurisdiction of Asset Recovery: Prosecuting Authority/Civil Attorney(s):

U.S. Department of Justice, Securities and Exchange Commission

Jurisdiction of Asset Recovery: Courts Involved:

U.S. District Court for the District of Columbia

Documents:

IBM_US_SEC_Admin_34-43761.pdf

IBM_US_Shearman_Digest.pdf

IBM_US_Wilmer_2001.pdf

Documents Links:

http://www1.worldbank.org/finance/star_site/documents/arw/IBM_US_SEC_Adm...

http://www1.worldbank.org/finance/star_site/documents/arw/IBM_US_Shearma...

http://www1.worldbank.org/finance/star_site/documents/arw/IBM_US_Wilmer_...

Other Sources:

Securities and Exchange Commission v. International Business Machines Corp., 1:00-cv-030400 (D.D.C. Dec. 21, 2000), Case Digest at Shearman and Sterling FCPA Website, at <http://fcpa.shearman.com/?mode=form&id=132>;

In the Matter of International Business Machines Corp., Administrative Proceeding File No. 3-13097, Rel. No. 34-43761 (Dec. 21, 2000), posted at <http://www.sec.gov/litigation/admin/34-43761.htm>;

Wilmer, Cutler & Pickering, "Foreign Corrupt Practices Act Updates IBM Consents to Civil Penalty and SEC Cease and Desist Order Based on Argentine Bribe Scandal," January 12, 2001, accessed at <http://www.wilmerhale.com/files/Publication/506aff4a-d418-4046-9dad-18c6...>

Researcher phone interview with Argentine attorney (November 2010).