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# Calif. May Pick Up The Slack On Foreign Bribery Enforcement

By **Winston Chan, Patrick Stokes and Oleh Vretsona** (April 15, 2025, 2:38 PM EDT)


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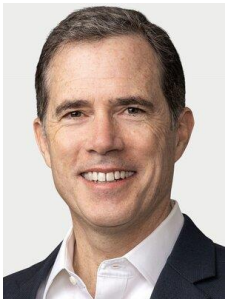
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In a press release and legal alert issued on April 2, California Attorney General Rob Bonta reminded businesses operating in California that making payments to foreign officials to obtain or retain business remains illegal.

While many questions arising from President Donald Trump's Executive Order No. 14209, pausing enforcement of the Foreign Corrupt Practices Act, remain unanswered, Bonta sought to remove any doubt that "[v]iolations of the FCPA remain actionable under California's Unfair Competition Law (UCL)" — and that California may step up corruption-related enforcement if federal authorities' priorities shift to other areas.

In the February executive order, Trump announced a 180-day suspension of the initiation of FCPA investigations while the U.S. Department of Justice reviews current and past cases and revises its FCPA enforcement guidelines.

The suspension followed memoranda issued by Attorney General Pam Bondi that, among other things, directed the DOJ's FCPA Unit to prioritize investigations concerning cartels and transnational criminal organizations over other cases.

These developments collectively signaled a shift from the long-held, bipartisan view that international anti-corruption efforts generally benefit U.S. businesses, and raised questions about FCPA enforcement going forward.

Bonta's alert adopts this long-standing view by reiterating that "[i]llegal activity is still illegal," and that "[b]ribery erodes consumer confidence in the market and rewards corruption instead of competition."

Specifically, the alert cautioned that FCPA violations might invite legal action not only under California's UCL, but also under other applicable state or federal tax and securities laws.

Broadly speaking, the UCL prohibits "unlawful, unfair or fraudulent" behavior across nearly all business practices.[1]

As articulated by the California Supreme Court in its 2003 Korea Supply Co. v. Lockheed Martin Corp. decision, for purposes of unlawful conduct, the UCL "'borrows' violations from other laws," including

federal laws such as the FCPA, and treats them as "independently actionable as unfair competitive practices."[2]

But under the UCL, even foreign bribery that does not meet all the elements of an FCPA violation may be actionable if it constitutes an unfair or fraudulent business act and has the requisite connection to California.

Both the California attorney general and private parties are authorized to pursue claims. According to the statute, the attorney general may bring a suit under California's UCL "in the name of the people of the State of California upon their own complaint or upon the complaint of a board, officer, person, corporation, or association."[3]

Although civil penalties, restitution, disgorgement and injunctive relief are permissible forms of relief following a UCL violation, compensatory damages generally are not.[4]

According to the statutory language, private plaintiffs also have standing to sue if they have "suffered injury in fact" and "lost money or property as a result of" the business practice they challenge as unlawful or unfair.[5] But given these limited remedies under the UCL, it is uncertain whether private plaintiffs will be interested in bringing FCPA cases under the UCL.

There is some limited precedent for pursuing cases under the UCL that are based on a violation of the FCPA. In Korea Supply Co. v. Lockheed Martin, the California Supreme Court accepted the Second Appellate District's determination, without deciding conclusively, that a claim under the UCL may be predicated on an FCPA violation.[6]

In that case, the plaintiff company claimed that an agent of the defendant allegedly bribed Korean officials to obtain a contract from the Republic of Korea in violation of the FCPA.[7]

Although the California Supreme Court reversed the judgment and rejected the UCL claim on the grounds of the monetary relief sought,[8] it affirmed the plaintiff's separate cause of action based on the tort of interference with prospective economic advantage.[9] This suggests that avenues outside the UCL may be available to private plaintiffs under California law for FCPA-type misconduct, depending on the circumstances of their claim.

One practical limitation to California-based anti-corruption enforcement may lie in the requirement of injury in California, as the UCL does not apply extraterritorially.[10] California courts have held that valid UCL claims must involve an injury in California, either to in-state plaintiffs or by in-state conduct.

For instance, in Yu v. Signet Bank/Virginia, a California-based plaintiff sued a Virginia bank, Signet Bank, under the UCL for unfair business practices that allegedly occurred in Virginia. In 1999, the First Appellate District concluded that "a defendant who is subject to jurisdiction in California and who engages in out-of-state conduct that injures a California resident may be held liable for such conduct in a California court."[11]

In 2016, in Aghaji v. Bank of America NA, the Second Appellate District once again maintained that out-of-state plaintiffs must "allege facts to show that the alleged violations occurred within California, because California's unfair competition law does not apply extraterritorially."[12]

Although it is well-established that the UCL extends to out-of-state conduct affecting in-state residents,

California courts have been less clear about the degree to which these effects must be direct ones. The courts appear to have largely sidestepped this question, instead emphasizing the need to show injury in California, rather than the directness of the effect.[13]

While California is the first state to express an interest in state-level enforcement of FCPA-type misconduct under state laws, it may not be the last. To take one hypothetical example, there is a risk that a similar enforcement theory may be pursued under several provisions of New York's consumer protection statute that protects consumers from deceptive and fraudulent practices.

New York General Business Law Section 349(a), for example, prohibits "[d]eceptive acts or practices in the conduct of any business, trade or commerce in the furnishing of any service in [the] state."

As the New York Court of Appeals observed in its 1999 decision in Karlin v. IVF America Inc., this statute was intended to provide the "authority to cope with the numerous, ever-changing types of false and deceptive business practices" that affect New York consumers.[14]

And, as the Court of Appeals indicated three years later in Goshen v. Mutual Life Insurance Co. of New York, it "seeks to secure an 'honest market place' where 'trust,' and not deception, prevails."[15]

Much like its Californian counterpart, as the New York Court of Appeals observed in the same decision, General Business Law Section 349 "is intentionally broad, applying 'to virtually all economic activity,'"[16] but to qualify as a prohibited act under Section 349, the deception of a consumer must occur in New York.[17]

As another example, at least one private plaintiff has pursued claims under Virginia's antitrust laws arising from alleged kickbacks paid to Iraqi and Indonesian officials where "the alleged conduct demonstrate[d] a consistent course of business transactions ... in Virginia," as explained by the U.S. District Court for the Eastern District of Virginia in its 2011 order in NewMarket Corp. v. Innospec Inc.[18]

The enforcement theory advanced by Bonta may raise legal questions and practical challenges, but proving a predicate offense — such as a violation of the FCPA — is likely not one of them. The UCL reaches broadly to prohibit "any lawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising."[19]

The California Supreme Court made clear in its 2013 decision in Zhang v. Superior Court that "a practice may violate the UCL even if it is not prohibited by another statute."[20] Analogous competition laws of other jurisdictions — such as New York and Washington, D.C. — also reach trade practices that do not violate any statutes.[21]

While California and potentially other states consider pursuing a competition-oriented approach, certain European regulators and enforcement authorities have recently sought to reiterate their continued focus on enforcement and collaboration specific to anti-corruption.

On March 20, France's Parquet national financier, Switzerland's Office of the Attorney General, and the U.K.'s Serious Fraud Office **announced** the formation of an International Anti-Corruption Prosecutorial Taskforce that will focus on increasing operational exchanges and sharing best practices among the three agencies, with the potential to invite other like-minded international bodies to join.

Taken together, these developments underscore the continued importance for companies to maintain effective compliance programs that address risks relating to corruption; mitigate the corresponding liability that may arise under the FCPA, unfair competition laws or other statutes; and require appropriate internal accounting controls.

In the face of uncertainty, companies would be well served by reviewing their compliance programs and calibrating their compliance-related risk assessments to mitigate against changing risk calculi and enforcement realities.

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[1] Cal Bus. & Prof. Code § 17200; Cel-Tech Communications Inc. v. Los Angeles Cellular Telephone Co., 20 Cal. 4th 163, 180, 83 Cal. Rptr. 2d 548, 973 P.2d 527 (1999) (citing Cal. Bus. & Prof. Code § 17200).

[2] Korea Supply Co. v. Lockheed Martin Corp., 29 Cal. 4th 1134, 1143-44, 63 P.3d 937, 943 (2003).

[3] Cal. Bus. & Prof. Code § 17204.

[4] Bank of the West v. Superior Court, 2 Cal. 4th 1254, 1266, 10 Cal. Rptr. 2d 538, 833 P.2d 545 (1992).

[5] Cal. Bus. & Prof. Code § 17204.

[6] Korea Supply, 29 Cal. 4th at 1144, n.5.

[7] Id. at 1159.

[8] Id. at 1140, 1166.

[9] Specifically, the Court found KSC sufficiently alleged that defendants' unlawful acts to obtain the contract with the Korean government interfered with KSC's business expectancy and satisfied the independent wrongfulness requirement for tortious interference, which allowed for monetary damages. Id. at 1159.

[10] See Sullivan v. Oracle Corp., 51 Cal. 4th 1191, 1207, 254 P.3d 237, 248 (2011).

[11] Yu v. Signet Bank/Virginia, 69 Cal. App. 4th 1377, 1391, 82 Cal. Rptr. 2d 304, 313 (1999).

[12] Aghaji v. Bank of Am., N.A., 247 Cal. App. 4th 1110, 1119, 202 Cal. Rptr. 3d 619, 627 (2016).

[13] Speyer v. Avis Rent a Car Sys. Inc., 415 F. Supp. 2d 1090, 1099 (S.D. Cal. 2005), aff'd, 242 F. App'x 474 (9th Cir. 2007).

[14] Karlin v. IVF Am. Inc., 93 N.Y.2d 282, 291, 712 N.E.2d 662, 665 (1999).

[15] Goshen v. Mut. Life Ins. Co. of New York, 98 N.Y.2d 314, 324, 774 N.E.2d 1190, 1195 (2002).

[16] Id. (quotation marks omitted); see City of New York v. Smokes-Spirits.Com Inc., 12 N.Y.3d 616, 911 N.E.2d 834 (2009).

[17] Goshen, 98 N.Y.2d 314, 325 (2002).

[18] NewMarket Corp. v. Innospec Inc., No. 3:10CV503-HEH, 2011 WL 1988073 (E.D. Va. May 20, 2011) (denying defendants' motion to dismiss).

[19] Cal. Bus. & Prof. Code § 17200.

[20] Zhang v. Superior Ct., 57 Cal. 4th 364, 370, 304 P.3d 163, 167 (2013).

[21] See N.Y. Gen. Bus. Law § 349(g); Columbia Dist. Cablevision Ltd. P'ship v. Bassin, 828 A.2d 714 (D.C. 2003).