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Chiquita SECRETS Revealed "We can only fire him (Renaldo Escobar) with cause because of his involvement in the Colombian problem if we file a criminal charge against him with Colombian authorities. Clearly we would not want to do that because we would be implicating ourselves" - David Hills, Chiquita lawyer, discussing how to deal with a subsidiary company lawyer involved in a Colombian bribe scheme
Bribe scheme covered up
The Cincinnati Enquirer subsequently published an apology in connection with this story. The apology appeared June 28, 1998. The text of the apology appears below.

BYLINE: MIKE GALLAGHER AND CAMERON MCWHIRTER

SOURCE: THE CINCINNATI ENQUIRER

BODY:

An Enquirer investigation has found that Chiquita made business decisions in Latin America to cover up a bribery scheme involving company and subsidiary employees, helped foreign growers try to evade taxes, and ran into tax problems.

Corrupt activities committed by U.S. companies abroad may fall under the U. S. Foreign Corrupt Practices Act (FCPA).

The act, passed in 1977, followed a series of international scandals in which American companies operating overseas were caught bribing foreign officials, paying kickbacks for contracts and committing other acts that would be illegal in the United States. The act prohibits United States companies or their employees from offering a bribe to influence a foreign government official's acts or decisions. The act also requires that U.S. companies maintain accurate records of their foreign operations.

Bribery

The bribery incident involved paying government officials in Turbo, Colombia, to help the company's Colombian subsidiary Banadex obtain use of a large government storage facility. Company records and high-level sources within the company described how, after learning of the scheme, company officials took action to hide it.

U.S. Securities and Exchange Commission (SEC) investigators have issued subpoenas to Chiquita seeking documents reflecting how Chiquita obtained access to the Colombian government-owned storage space.

Chiquita, through its lawyers stated, "Chiquita's policy is not to make illegal payments to any government officials."

Sources told the Enquirer that two Chiquita executives have been forced to resign: Douglas Walker, vice president for operations, and Renaldo Escobar, a company lawyer in Colombia.

Jorge Forton, a Chiquita executive in Medellin, Colombia, who is now in the United States, also is being forced to resign, but company officials, including Chiquita President and Chief Operating Officer Steven G. Warshaw, have allowed him to stay on temporarily while he seeks other employment in the U.S.

High-level Chiquita sources said Mr. Escobar and Mr. Walker were given generous severance packages and have signed confidentiality agreements preventing them from discussing any company business, including the Colombian incident.

After leaving Chiquita, Mr. Walker was hired by Corporex Companies, Inc. in Northern Kentucky. As part of Mr. Escobar's severance package, he has been hired as an outside lawyer in Colombia for Chiquita, company records revealed.

One high-level Chiquita executive provided the Enquirer with recorded, internal company voice-mail messages to back up his information. Citing fear of losing his job and company retaliation, the executive requested confidentiality.

Prior to leaving the company, Mr. Escobar, in a Dec. 13, 1997 voice-mail message to Chiquita lawyer Manuel Rodriguez, described how and why Banadex - Chiquita's Colombian subsidiary - became involved in the incident that included payments to Colombian customs agents. He also explained Chiquita's need to obtain the Colombian-owned storage facility. Mr. Escobar's message was spoken in Spanish and translated for the Enquirer.

The customs area Chiquita was allowed to use after paying Colombian customs agents is both an enclosed and open area "in which the imported cargoes we bring in (to Colombia) are stored," Mr. Escobar said. "While the nationalization process takes place, we bring fertilizers, fungicides, etc., in pretty big amounts."

The "nationalization process" is when cargo arriving in Colombia from other countries is kept stored at an indoor - outdoor facility controlled by Colombian customs officials. The cargo remains in the customs area until it is inventoried, recorded and all taxes are paid to the Colombian government. The customs agents then release the cargo so the company that owns it can deliver it to its operations in that country.

"If we didn't have the customs (storage) area, we would have to ask a third party to give us the service of having this cargo in storage while the nationalization process happens," Mr. Escobar said. It would cost Banadex more than $ 1 million a year to obtain a similar storage facility for imported cargo during the nationalization process, he said.

Responding to suggestions by Chiquita officials in Cincinnati that they may want to "shut down" the Colombian government storage operation due to concerns that the way that the use of the property was obtained would surface, Mr. Escobar, in his voice-mail message responded:

"I'm afraid there's an excess of prevention in this, almost paranoia. I personally don't find it logical to shut down ours (storage operation) so a third party will give the service. It is better to leave it as is, or let it die by itself, but not using it, frankly, makes no sense to me."

Discussing how payment was made to Colombian customs agents to secure the storage area, Mr. Escobar said: "What happened, remember Manuel, was that the company, for security reasons, delivered what had to be delivered to the customs agents, who gave it to a third party and this party to its final destination, which means a lot of time without being traced.

"I see no risk, maybe one in a thousand, that this thing could mean that we are in trouble," Mr. Escobar said. "If whomever found about this inside the company decides to make a scandal out of it, that's another thing that you will be able to analyze better than me."

In a Nov. 17, 1997 voice-mail message from Mr. Walker to Robert Olson, Chiquita's general counsel in Cincinnati, Mr. Walker confirmed the bribery issue as the reason he was leaving the company. In the message, Mr. Walker also expressed concern that other Chiquita employees were learning of it after promises the matter would be kept confidential. He said one of his best friends, a Chiquita finance executive, had asked him about gossip that he (Walker) was fired for being involved in a Colombian bribery scheme.

Mr. Walker, Chiquita's vice president of operations, in his voice-mail message, said his friend had heard that "Jorge Forton and myself had been fired for bribing a Colombian official for a warehouse facility in Turbo. So he has it pretty close to accurate if not completely accurate."

Noting that he had signed a confidentiality agreement with Chiquita prohibiting him from discussing the matter with anyone, Mr. Walker said in his voice-mail message:

"So here I am by contract totally precluded from being able to address with my closest friends information they're hearing in the most mundane fashion through the office and obviously it's extremely disturbing to me, extremely frustrating to me, and I don't know what at this point you guys can do about it, but I hope you're able to do something."

Mr. Walker did not return repeated telephone calls from the Enquirer.

In a Dec. 10, 1997 voice-mail message to Mr. Olson and Chiquita President Warshaw, Chiquita lawyer David Hills described a conversation he had with outside lawyers in Colombia regarding Renaldo Escobar and the ways in which his employment could be severed due to the Colombian incident.

Mr. Hills advised against firing Mr. Escobar because the only way to legally do that would alert Colombian authorities to the fact the bribery occurred. Additionally, he added, notifying Colombian authorities would publicly tie Chiquita to the bribe.

Mr. Hills' message, in part, said, "We can only fire him (Escobar) with cause because of his involvement in the Colombian problem if we file a criminal charge against him with Colombian authorities. Clearly we would not want to do that because we would be implicating ourselves. So basically, the only thing we can ask Renaldo to do is to basically have a, we're basically asking him to resign, which doesn't put us in the best legal position."

Chiquita, in a written response through its lawyers to the Enquirer, declined to discuss the Colombian incident, the resignations of the employees, or whether the company violated the U.S. Foreign Corrupt Practices Act.

"Chiquita's 'Code of Conduct for Associates' requires employees to comply at all times with the laws that affect the company's business," the response said. "It is Chiquita's policy and consistent practice to take appropriate disciplinary action where employees fail to abide by this standard of conduct. Employment information, however, is strictly confidential.

"Chiquita respects the privacy and personal interests of its employees. As a result, it is Chiquita's policy and practice not to discuss with the media - or anyone else - its relationships with particular employees or the circumstances in which a person may then leave the company's employment."

Tax schemes

Other internal documents indicate that Chiquita may have helped foreign brokers and banana growers evade or avoid taxes in their respective countries.

For example, an Oct. 17, 1991, internal report marked "Confidential" from Marco A. Garcia, a former Chiquita financial analyst, to Mr. Hills, explained how Chiquita maintained financial records in Miami for the purpose of helping Ecuadoran growers, with whom it had contracts, evade taxes.

The report detailed the growers' financial transactions with a Chiquita subsidiary called Agricola Del Guayas.

Under a section called, "Purpose of Offshore Books - Miami account," it reads: "Competitive pressures. Growers want dollars offshore to evade taxes and to avoid converting to Sucres (Ecuadoran currency) at the official rate which is 5% to 8% less than the free market rate."

In another case, a series of tape-recorded voice-mail messages among Chiquita lawyers, company executives and employees reveals Chiquita's plan to help a broker avoid paying taxes on an anticipated commission payment from the company.

According to Chiquita records, a company called Corporacion Midori S.A. in San Jose, Costa Rica, was hired in 1996 to help sell some of Chiquita's Honduran and Colombian companies, land and equipment.

Prior to agreeing to broker the sales deals, representatives of Midori and a Chiquita subsidiary called Chiquita Brands Inc., of Delaware, signed a contract to allow Midori to search for potential buyers and negotiate possible deals, according to Chiquita records.

Midori then signed a similar contract with one of Chiquita's Colombian subsidiaries, the records show.

Eugene Rodriguez, a Chiquita executive coordinating the Midori deal, told Chiquita officials in Cincinnati in an Oct. 11, 1997 voice-mail message that the company had agreed to pay Midori its commission "offshore" in "a deal where they don't have to pay taxes."

In his voice-mail message to Mr. Hills, Mr. Rodriguez said: "Actually we asked the guys to provide a deal for us, an offshore deal. A deal where they don't have to pay taxes...They (Midori) didn't want to pay taxes. And we always said that they would have the payment offshore."

A high-level source within Chiquita who was involved in the Midori payment scheme confirmed how the deal was arranged. An offshore account would be used to pay Midori so the Colombian government would not have access to any paperwork, such as invoices, etc., to prove how much, if anything, Midori would be paid for its commission, he said.

But in early October, a problem arose after Midori negotiated the sale of a Chiquita banana operation in Colombia called Shangri-La.

When Midori asked about its commission, experts in Chiquita's tax department in Cincinnati questioned whether Chiquita was legally obligated to withhold 35 percent in taxes from the commission per Colombian tax laws, according to several internal Chiquita voice-mail messages.

To avoid jeopardizing the sale, Chiquita officials devised a plan to pay Midori its commission without withholding the Colombia-required tax.

Midori had complicated the commission payment problem by signing a broker's agreement to sell Chiquita's Colombian property with both Chiquita Brands Inc. and its Colombian subsidiary, according to company records. That problem had to be overcome if Midori's commission was to be paid without withholding the Colombian tax, according to Mr. Hills in an Oct. 11 voice-mail message to John Ordman, Chiquita's senior vice president of finance, and others.

To solve the legal dilemma, Chiquita officials came up with a plan to pay Midori its commission without taking out taxes. The plan was described in an Oct. 20, 1997 voice-mail message from Mr. Hills to Mr. Ordman. Chiquita would obtain every copy of Midori's contract with Chiquita's Colombian subsidiary. All copies of the contract would be sent to Cincinnati headquarters where officials would "annul it, kill it, mutually terminate it," said Mr. Hills.

Chiquita wanted to hide the fact that Midori's commission was going to be paid offshore, according to an Oct. 20, 1997 voice-mail message to Mr. Hills from Scott Wittman, a Chiquita tax specialist.

"We have consulted with counsel (and) gotten their input on this transaction. They feel that we have a position that we can take. It says because this agreement is between CBI (Chiquita Brands Inc.) and Midori that the withholding tax would not apply.

"The one thing they caution us on is definitely do not include in the (land sale) agreement anything related to the brokerage commission and the fact that it is getting paid offshore. We obviously don't want to highlight that," Mr.

Wittman said. Company records did not reveal the amount of the proposed land deal or the proposed broker's fee.

At the last minute, Midori's deal to sell the Shangri-La property apparently fell through, according to a March 23 voice-mail message from John Ordman to Mr. Hills. Mr. Ordman said that more than five months after the Midori commission tax issue surfaced, Chiquita still owned and controlled the Shangri-La property.

"It's not a perfect secret," Mr. Ordman said. "There are people who know that Chiquita owns Shangri-La. But it is not generally known in Colombia, and it's particularly not generally known among the popular groups, if you will, in Colombia. There is probably no place that I can think of that this company has more exposure to an easy $ 10 million loss than Shangri-La. If Shangri-La were to be invaded by squatters, or as you know, it is in a bit of a guerrilla-active area, it could really become extremely difficult to protect. We've had some near misses there in the past. It's one of the things that really keeps me awake at night."

In a Chiquita response to Enquirer questions issued through its attorneys, the company stated that information provided to the Enquirer was false and that "any implication of wrongdoing on the part of Chiquita in connection with these alleged transactions is false."

Chiquita further stated that "Chiquita has not sold the property referred to by the Enquirer and has not terminated any contract with Midori."

Honduran tax problem

Chiquita's main subsidiary in Honduras also has run into a tax problem there.

In early 1997, the Honduran tax department completed an investigation of the Tela Railroad Co. to pay hundreds of thousands of dollars in asset taxes from at least 1992, according to Chiquita re-cords and Honduran officials.

After unsuccessful attempts to get the company to pay, Honduran tax officials took their case against Chiquita's subsidiary to court, according to several voice-mail messages of Chiquita tax specialist David Hochwalt to Mr. Hills, Mr. Ordman and others. That action was confirmed for the Enquirer by Jorge Ramirez Mendoza, a Honduran tax department spokesman.

In November, Chiquita "threw in the towel" and agreed it had, indeed, failed to pay asset taxes of 8.7 million lempiras (about $ 700,000 U.S.), since 1991, according to Mr. Hochwalt, in a Nov. 14, 1997 voice-mail message to Mr. Olson, Chiquita's general counsel and senior vice president.

The company paid its disputed taxes in late November.

To keep from paying an additional hundreds of thousands of dollars in penalties and interest on the unpaid taxes, Chiquita lawyers asked Honduran officials to eliminate those charges under a Honduran tax amnesty plan, according to Mr. Hochwalt

In a statement issued through its attorneys, Chiquita said that the company's subsidiary and the Honduran government had "divergent views" on the taxes owed and the company was challenging the amount in court. The subsidiary eventually "elected to participate in a national tax amnesty program by paying the tax in dispute (about $ 700,000). Participation in the program eliminated the risk of interest or penalties that might have resulted if the (legal) challenges had not succeeded."

"If whomever found about this inside the company decides

to make a scandal of it, that's another thing that you will be able

to analyze better than me." - Renaldo Escobar, a Chiquita lawyer,

discussing the possible fallout from the Colombian bribery scheme

Chiquita's problems with brokered land deal in Colombia

Chiquita officials in Cincinnati approved hiring a San Jose, Costa Rica company to find buyers for the banana giant's non-core assets in Colombia and Honduras. Problems arose when the Costa Rican company - Midori - found a buyer for Chiquita's Shangri-La plantation in Colombia, but insisted its commission be paid off-shore as a way to avoid paying taxes. The land sale apparently fell through.

Key Chiquita players

Chiquita Brands International is the world's largest banana company, employing more than 36,000 workers and selling its fruit in 40 countries.

The company deals in fruit juices, ready-to-eat salads, margarine, shortening, vegetable oils and canned food. But its signature product has always been the bright yellow banana that it bills as a "perfect" food.

Carl Lindner, 79, self-made multi-millionaire , is Chairman and CEO of Chiquita Brands International. He took control of the company in 1984 .

Keith Lindner, 38, made president and chief operating officer of the company in 1991. Later moved to the position of vice-chairman.

Steven G. Warshaw, 43, president and chief operating officer of Chiquita Brands International Inc.

Text of apology to Chiquita

Starting on May 3, 1998, the Enquirer published a series of articles regarding Chiquita Brands International. Many of the conclusions in these articles were based upon the contents of voice mail messages of employees of Chiquita. At the time, the Enquirer believed that the series' accusations against Chiquita were based upon what was thought to be factual information obtained in an ethical and lawful manner. Specifically, the Enquirer asserted that the voice mails were provided by "a high ranking Chiquita executive with authority over the Chiquita voice mail system."

The Enquirer has now become convinced that the above representations, accusations and conclusions are untrue and created a false and misleading impression of Chiquita's business practices. We have withdrawn the articles from continued display on the Enquirer's Internet web site and renounce the series of articles.

Information provided to the Enquirer makes it clear that not only was there never a person at Chiquita with authority to provide privileged, confidential and proprietary information, but the facts now indicate that an Enquirer employee was involved in the theft of this information in violation of the law.

The employee involved, lead reporter Mike Gallagher, has retained counsel and will not comment on his news gathering techniques. Despite his assurances to his editors prior to publication that he obtained his information in an ethical and lawful manner, we can no longer trust his word and have taken disciplinary action against him for violations of Enquirer standards. The Enquirer will continue to investigate whether others involved in the Chiquita articles also engaged in similar misconduct.

We want to send a strong message that deception and unlawful conduct has no place in legitimate news reporting at the Enquirer.

We apologize to Chiquita and its employees for this unethical and unlawful conduct and for the untrue conclusions in the Chiquita series of articles.

THE CINCINNATI ENQUIRER

Harry M. Whipple, publisher

Lawrence K. Beaupre, editor

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