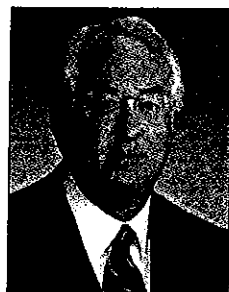
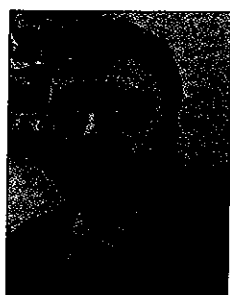


Overseas Clients and Copyright Confusion

EDITOR'S NOTE: THE FOLLOWING ARE HYPOTHETICAL CASE STUDIES, WITH FICTIONAL MANAGERS AND FICTIONAL BUSINESSES, WHICH PROVIDE A WAY FOR EXECUTIVES TO LEARN MORE ABOUT SOME OF THE SITUATIONS THEY OR THEIR COMPANIES MAY FACE. *EXECUTIVE LEGAL ADVISER* RESEARCH EDITOR JEANNE GRAHAM WROTE THE HYPOTHETICALS, AND ATTORNEYS FAMILIAR WITH THE KINDS OF PROBLEMS DESCRIBED OFFERED SUGGESTIONS TO REMEDY THE SITUATIONS. THEIR OPINIONS ARE NOT INTENDED TO BE LEGAL ADVICE. TO SUBMIT SUGGESTED HYPOTHETICALS FOR "CASE IN POINT," GO TO WWW.EXECUTIVELEGALADVISER.COM.



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■ AVOIDING EXPORT VIOLATIONS

Shawn Clarence is feeling cautious about a potential deal brought to him by George Bulletin, his VP of sales. Clarence is CEO of a Houston-based company that designs and manufactures tools. An executive with a German company recently approached Bulletin and asked that the Texas company custom-design and manufacture a tool that the German company could use in its oil drilling process. If successful, the deal could generate \$500,000 to \$1.5 million for Clarence's company over the next 18 months. The deal would also be Clarence's company's first contract with an overseas client. Clarence is vaguely familiar with the German company — it was recently highlighted in a weekly business magazine. If Clarence remembers correctly, the German company owns several Middle East subsidiaries, including an oil operation in Iran. What information regarding U.S. international trade regulations or laws does Clarence need before deciding whether to proceed with designing a prototype for the German company?

BY DOUGLAS C. MCNABB
AND C.M. CHOATE

Few things are as exciting for a manufacturer as an overseas client. But designing and manufacturing goods for an overseas client can be fraught with criminal implications.

Putting aside the potential civil liability he might face if the tools malfunction, Clarence needs to be aware of certain international trade regulations and laws that carry criminal penalties for their violation. Because Clarence's tools will be used in the petroleum industry, he needs to make sure that he is in compliance with the Export Administration Regulations (EAR) promulgated by the Bureau of Industry and Security (BIS). Under the EAR, an export is an actual shipment or transmission of items subject to the EAR out of the United States. An item is subject to the EAR if it is, among other things, an item in the United States, or a U.S. origin part, component, material or other commodity that is then integrated abroad into a foreign-made product. The BIS can assist Clarence in determining whether his tools require a license generally.

If a license is required, and Clarence knowingly exports his tools without one, he faces stiff

criminal penalties: five times the value of the exports or \$50,000, whichever is greater; imprisonment for up to five years; or both.

Clarence's concerns do not end simply when or if he finds himself in compliance with the EAR and general licensing regulations. He must also ensure that he does not run afoul of the regulations of the U.S. Department of Treasury's Office of Foreign Asset Control (OFAC). Unless Clarence receives a license from OFAC, goods and technology may not be exported, sold or supplied, directly or indirectly, from the United States to Iran. Furthermore, Clarence is subject to the general prohibition on exporting from the United States any goods or technology that he knows, or has reason to know, are intended specifically for supply or transshipment to Iran. This general prohibition extends to items that Clarence knows, or has reason to know, are intended for use in the production of goods or technology to be directly or indirectly supplied or transshipped to Iran. Finally, Clarence may not supply goods or technology that may benefit the Iranian oil industry.

If Clarence violates OFAC's regulations regarding Iran, he faces serious criminal penalties. A willful violation of OFAC's regulations can result in a criminal fine for Clarence's company of five times the value of the exports or \$1 mil-

lion, whichever is greater. Individually, Clarence could potentially face a fine of \$250,000, imprisonment for up to 10 years, or both. Additionally, civil penalties are available, as is the revocation of Clarence's ability to legally export goods or technology. In a real-world example, according to a Feb. 2, 2002, announcement by the BIS, Texas-based BS&B Process Systems Inc. agreed to pay \$86,000 in civil penalties, \$414,000 in criminal fines and had its export

privileges denied for three years for allegedly violating BIS regulations because it exported oil field processing equipment to Iran.

It is important for executives of domestic corporations to refrain from letting the thrill of success lead to the agony of financial hardship. By taking the time to talk to an expert familiar with federal regulations and federal criminal penalties, an executive can potentially avoid the pitfalls of other individuals.