

# The ACR Brief

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## The Corruption Risks of Local Litigation

In our most recent issue, I wrote about [Quad/Graphics](#)' bribery settlement with the SEC. For many, the most notable aspects of the case were that the company was able to [avoid criminal prosecution](#) by [self-reporting](#), in accordance with the DOJ's FCPA [Corporate Enforcement Policy](#), and that the settlement included allegations that the company's Peruvian subsidiary violated [sanctions](#) against Cuba.

However, there was another, less-publicized element of the case that I found interesting. Quad's [Peruvian subsidiary](#) participated in a judicial bribery scheme, facilitated by its local counsel. The Peruvian tax authority had imposed more than \$12 million in VAT, interest, penalties and fines on Quad Peru for failing to pay VAT on book sales to the Ministry of Education. Quad Peru filed a complaint, resulting in a multi-year litigation battle with the local tax authority. Quad's local counsel's strategy for winning the case was to bribe judges for positive outcomes. Quad paid its lawyers tens of thousands of dollars – sometimes in the form of cash-filled bags – that were passed on to corrupt judges.

“Companies should recognize that litigation often involves corruption risk because of the key roles played by officials like judges, prosecutors and court clerks and the fact that the results can have a significant impact on the business,” James Tillen, a member of Miller & Chevalier, told me.

Companies should be wary of promises of a quick resolution. “Whenever a local law firm indicates that litigation can be easily resolved, then the company's legal officer needs to understand how that can happen and obtain that advice in writing from the law firm,” Tara Giunta, a partner at Paul Hastings, cautioned. “If there is any question, then they should obtain a second opinion.” To mitigate risk associated with engaging in local litigation, companies should treat local law firms as they would any [third party](#) and “conduct [background checks](#),” she suggested.

Close oversight of [local counsel](#) is also critical. “Perhaps the single most important step a company can take to protect itself and mitigate the risks associated with engaging local counsel

in a foreign jurisdiction is to involve external U.S. counsel in every step of the decision-making process, beginning with local counsel selection,” Colleen Conry, a partner at Ropes & Gray, told me. Once engaged, U.S. counsel should stay involved and monitor the legal proceedings.

Is local litigation on your list of corruption risks? We would love to hear what steps you or your clients take to make sure that litigation abroad is won in the right way.

With warm regards,

Megan Zwiebel  
Senior Editor