



Andrew Stafford KC and Evelyn Sheehan Ask “Who Owns a Bribe?” in Expert Analysis Chapter for ICLG

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A typical instance of bribery occurs when an officer of a company bribes an official or politician. But who is the victim here – the company, whose assets were misappropriated, or the state, whose official abused his power? In English common law jurisdictions, the answer decides who receives any recovered assets, as Kobre & Kim’s Andrew Stafford KC and Evelyn Sheehan wrote in an analysis for *International Comparative Legal Guides*’ “Business Crime 2021.”

Unlike jurisdictions such as the U.S., English common law focuses on who originally owned the money paid in a bribe when figuring out who deserves to be paid back. For victim-states, though they had not directly lost anything, they did indirectly lose the full value of, say, the contractual concession that was granted. Indirect profits made by a fiduciary, the official in this case, are therefore owed to the principal, including gains from investment. Still, victim-states may not want to claim ownership to avoid splitting the assets with creditors.

Victim-companies can claim ownership too. Victim-companies that credibly claim to have not authorized the officer to pay the bribe can act early and intervene in U.S. forfeiture proceedings, for example. If the briber used company money, victim-companies can also claim breach of fiduciary duty to claim ownership, as well as to disavow the acts of their fiduciaries. If a victim-state and victim-company competes over the same claim, victim-companies may therefore have the upper hand.

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