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Memorandum

Foreign Corrupt Practices Act - Recent Developments That Affect Corporations: Recent FCPA Indictments

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This memorandum of law examines (1) recent FCPA indictments; (2) the Statute of Limitations applicable to the FCPA; (3) the FCPA's intent requirements; (4) use of intermediaries; and (5) affirmative defenses recognized by the FCPA.

I. RECENT FCPA INDICTMENTS

In its 2010 *Report on the Application of the Convention on Combating Bribery of Foreign Officials* the Organization for Economic Cooperation and Development ("OECD") commended the United States for its leading role in prosecuting bribery and noted:

> The United States has investigated and prosecuted the most foreign bribery cases among the Parties to the Anti-Bribery Convention. From 1998 to 16 September 2010, 50 individuals and 28 companies have been criminally convicted of foreign bribery, while 69 individuals and companies have been held civilly liable for foreign bribery.
>
> In addition, 26 companies have been sanctioned (without being convicted) for foreign bribery under non-prosecution agreements (NPAs) and deferred prosecution agreements (DPAs). Sanctions have also been imposed for accounting

> misconduct and money laundering related to foreign bribery.[1]

The OECD recites that as of 2010 there were 150 criminal cases in the pipeline and that in 2008 the FBI instituted a specialist unit solely to investigate such crimes.[2] Actual prosecutions increased from 4.6 per year from 2001 to 2005, to 18.75 per year in the period 2006 to 2009.

It is not only corporate entities that are the target of prosecutions. Recent cases demonstrate that the DOJ will indict individual CEOs, and other officers and executives for violations of the FCPA. Legal commentators have noted the remarkable uptick in actions against individuals:

> 2009 was called "The Year of the Individual" by FCPA experts, and 2010 seems to be on track to rival it.
>
> Examples are numerous:
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> • Frederic A. Bourke, Jr.: In July 2009, this investor was convicted of bribing Azerbaijan officials in a scheme to persuade the officials to privatize the State Oil Company in a rigged auction that only Bourke, investment organizer Viktor Kozeny, and their investment consortium would win.
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> • Bobby J. Elkin, Jr., Baxter J. Myers, Thomas G. Reynolds, and Tommy L. Williams: In April 2010, these former employees of Dimon, Inc. (now Alliance One International, Inc.) settled FCPA charges stemming from bribes paid by Dimon's subsidiary to Kyrgyzstan government officials to be able to buy Kyrgyz tobacco.

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1 OECD Report published October 15, 2010, available at www.oecd.org/dataoecd/10/49/46213841.pdf .

2 "In 2008, the FBI created the International Corruption Unit (ICU) to oversee the increasing number of corruption and fraud investigations emanating overseas. Within the ICU, the FBI further created a national FCPA squad in its Washington, D.C. Field Office to investigate or to support other FBI units investigating FCPA cases. The squad has 1 Supervisory Special Agent, 12 Special Agents, 1 Investigative Analyst, and 1 administrative support officer." Id. at ¶ 28.

• Gerald and Patricia Green: The Los Angeles-area entertainment executives were convicted in September 2009 of conspiring with others to bribe the former governor of the Tourism Authority of Thailand to get lucrative film festival contracts, and in August 2010, they were each sentenced to six months in jail, followed by six months of home confinement.

• Charles Paul Edward Jumet: The Virginia resident pleaded guilty to making payments to Panamanian officials to secure contracts for Ports Engineering Consultants Corporation in violation of the FCPA, and was sentenced on April 19, 2010 to eighty-seven months in jail. This is the longest prison term ever imposed for an FCPA violation.

• Joseph Lukas, Nam Nguyen, Kim Nguyen, and An Nguyen: These executives and employees of Nexus Technologies, a Philadelphia-based export company, were indicted on September 4, 2008, for violating the FCPA by bribing Vietnamese officials in exchange for contracts to supply equipment and technology to government agencies there.

• Christian Sapsizian: The former Alcatel executive and French citizen was sentenced on September 23, 2008 to thirty months in prison for violating the FCPA in connection with illegal payments to Costa Rican officials in return for a telecommunications contract with a government-owned entity.

• Albert "Jack" Stanley: The former head of Halliburton Company's erstwhile subsidiary KBR, pleaded guilty on September 3, 2008 to conspiring to violate the FCPA in connection with payments made to Nigerian government officials to obtain engineering, procurement, and construction contracts. He faces a fine of up to $10.8 million in restitution and seven years in prison.

• Jeffrey Tessler and Wojciech Chodan: A former salesperson and a consultant of a U.K. subsidiary of KBR were indicted in February 2009 on FCPA charges related to their participation in the Nigerian scheme.

• James Tillery, Jim Bob Brown, and Jason Edward Steph: The former executives and consultants of Houston-based Willbros Group Inc. were charged in May 2008 with making illegal payments to Nigerian officials in connection

> with a natural gas pipeline system in the Niger Delta.206 Jim Bob Brown and Jason Edward Steph were sentenced on January 28, 2010 to twelve and fifteen months in prison, respectively.207 James Tillery, the former president of Willbros, was seized by the FBI in Lagos in August of 2010 but U.S. efforts to extradite Tillery, now a Nigerian citizen, have been complicated.
>
> • Twenty-two executives and employees of U.S., U.K., and Israeli companies: The January 2010 "Catch-22" sting at a Las Vegas shooting, hunting, and outdoor trade show resulted in the numerous arrests.
>
> The charging of individuals, in addition to or even instead of companies, is a trend that is likely to continue. Practitioners have predicted that the government will be "ratcheting up" enforcement actions against individuals who violate the FCPA, and seeking more severe penalties for those individuals. Others have pointed out that, in almost all of the ongoing investigations, individuals are being scrutinized to determine whether they might be prosecuted for the corrupt payments that were made. With the number of cases in the pipeline, this will represent a significant shift in the enforcement of the FCPA.

Westbrook, Amy D., Enthusiastic Enforcement, 45 Ga. L. Rev. 489, 526-530 (Winter 2011).

i. Sample case 1- The Africa Sting/ "shot show" Indictments (attached at **Exhibit A**)

On November 19, 2009 a series of indictments were returned in the United States District Court for the District of Columbia charging more than twenty defendants with crimes pursuant to the FCPA, money laundering, and conspiracy. A superseding Indictment was filed on April 16, 2010. See United States v. Goncalves, 09-Cr. 335. The second of four trials is ongoing now, after severances as to various defendants and a mistrial as to others. One publicly traded corporation, named Company A in the Indictment, is arms manufacturer Smith & Wesson. Others are also arms manufacturers.

The defendants are the CEOs, directors, presidents, vice presidents, chairmen, managing directors of the various U.S., U.K. and Israeli entities involved in the alleged scheme. FBI

informers pretended to be "self employed sales agents" with direct connections to Gabon's Minister of Defense, bribes they received would be shared with Gabon's Minister of Defense and these would enable deals to be struck.

The "Shot Show" cases were heralded by the DOJ in bellicose language:

> This ongoing investigation is the first large-scale use of undercover law enforcement techniques to uncover FCPA violations and the largest action ever undertaken by the Justice Department against individuals for FCPA violations, said Assistant Attorney General Lanny A. Breuer.
>
> The fight to erase foreign bribery from the corporate playbook will not be won overnight, but these actions are a turning point. From now on, would-be FCPA violators should stop and ponder whether the person they are trying to bribe might really be a federal agent. [3]

Massive resources were poured into the investigation and eventual sting operation. AUSA Laura Perkins described the scheme in her opening:

> "This is a case about international bribery and the savvy business people who seek to profit from it. Normally, corrupt deals are struck in secret. The money if funneled quietly, and sham paperwork covers the illegal nature of the deal. The result is that most corrupt deals are never discovered by law enforcement. But this time, someone was watching, listening and recording the bribe payers: The FBI.
>
> The evidence will show that in May 2009 these defendants agreed to be part of a $15 million business deal involving the sale of weapons and other military products to a small country in Africa called Gabon. But unlike an honest business deal, the defendants didn't get this business by offering the lowest prices or the best products. Instead, they got this business, they got this deal by agreeing to pay a bribe. Specifically, to get the pay-to-play business deal,

[3] http://www.fbi.gov/washingtondc/press-releases/2010/wfo011910.htm

> the defendants and the other suppliers agreed to pay money amounting to $1.5 million to Ali Bongo, the Minister of Defense of Gabon.
>
> Ali Bongo was the head of Gabon's military, and most importantly, he was the person who would choose which companies would get the contracts. So where was the $1.5 million for Ali Bongo going to come from? The defendants weren't going to take it out of their own pockets. Instead, they were going to take it from the people of Gabon and put it in the bank account of the minister. To do that, the defendants and their partners agreed to add $3 million to the price tag for the weapons and the military products they were selling. . . .
>
> It worked like this. Gabon would pay the suppliers $15 million, but it was $15 million for only $12 million worth of weapons and products. The defendants and their partners would send the extra $3 million to Pascal LaTour, a middle man. Pascal LaTour would then funnel half of that, $1.5 million, right back to Ali Bongo for his own personal use. And what would the people of Gabon get in return for paying this extra $3 million? Nothing."

ii. *Sample Case 2 - United States v. Carson et al (*attached at **Exhibit B**)

In United States v. Carson et al, 09-cr-00077 six defendants will be tried in the Central District of California, Southern Division commencing June 5, 2012. The defendants (CEOs, directors and employees of an engineering corporation designing and manufacturing control valves for use in the power generation sector) are alleged to have bribed employees at state-owned companies in Korea, China, the UAE, and Malaysia to secure deals.

The scheme is alleged to have devised a "friend-in-camp" (FIC) sales model whereby its employees cultivated employees of state owned entities and then bribed them. The defendants also retained intermediary private entities as "consultants" to "pass through" bribes to government officials. Cash bribes were made. In addition, numerous extravagant gifts, junkets and free vacations were provided. College tuition payments were provided for the children of

certain customers. Some defendants are alleged to have attempted to obstruct an internal audit, utilizing false invoices and other gambits.

The Indictment's 59 alleged Overt Acts include, inter alia, and by way of example only:

- Meetings at which defendants planned strategy for finding FICs at targeted foreign state owned entities
- Direct payments to "consultants" who were in fact employees of state owned foreign entities; wires of funds to Swiss banks earmarked for payments to same;
- Emails between defendants and executives detailing corrupt payments and exhorting them to make strong efforts to find FICs and that large payments would be available to grease the wheels to assure orders;
- Emails detailing knowledge of the legal and criminal risks entailed in the scheme; creation of false invoices;

II. STATUTE OF LIMITATIONS

There is no statute of limitations particular to the FCPA. The general statute of limitations on SEC actions and on federal criminal prosecutions will apply. Civil and criminal actions under the FCPA, whether prosecuted by the SEC or the DOJ, must be brought within five years.

18 U.S.C. § 3282 provides, "Except as otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any offense, not capital, unless the indictment is found or the information is instituted within five years next after such offense shall have been committed."

28 U.S.C. § 2462 provides, "Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon."

Pursuant to 18 U.S.C. § 3292, *Suspension of limitations to permit United States to obtain foreign evidence*, the limitations period may be tolled:

> (a) (1) Upon application of the United States, filed before return of an indictment, indicating that evidence of an offense is in a foreign country, the district court before which a grand jury is impaneled to investigate the offense shall suspend the running of the statute of limitations for the offense if the court finds by a preponderance of the evidence that an official request has been made for such evidence and that it reasonably appears, or reasonably appeared at the time the request was made, that such evidence is, or was, in such foreign country.
>
> * * *
>
> (b) Except as provided in subsection (c) of this section, a period of suspension under this section shall begin on the date on which the official request is made and end on the date on which the foreign court or authority takes final action on the request.
>
> (c) The total of all periods of suspension under this section with respect to an offense-
>
> (1) shall not exceed three years; and
>
> (2) shall not extend a period within which a criminal case must be initiated for more than six months if all foreign authorities take final action before such period would expire without regard to this section.

i. United States v. Kozeny et al

The issue of the SOL arose in United States v. Kozeny, 493 F.Supp.2d 693 (S.D.N.Y. 2007) (Scheindlin, J.), where the court dismissed certain FCPA counts[4] in an indictment as outside the statute of limitations. Kozeny and his co-defendants, Bourke and Pinkerton, had been indicted on May 12, 2005 for participating in a scheme to bribe senior government officials in Azerbaijan

[4] Other counts were found timely and in 2009 a guilty verdict was returned as to defendant Bourke.

in order to ensure the privatization of the nationalized oil company and to profit therefrom. On October 6, 2005 the indictment was unsealed.

The indictment alleged that between 1997 and 1999 the defendants paid cash and made other gifts to Azeri government officials to ensure the defendants' entities were favorably treated and would profit from the privatization. Bourke arranged for Azeri officials to receive medical treatment in New York. Pinkerton, (head of the Global Investment Corporation which was a unit that managed billions of dollars of American International Group Inc.'s funds), caused AIG to invest $15 million on his understanding that Kozeny had paid and would continue to pay bribes to the Azeris.

In October 29 of 2002 the DOJ requested through official channels documents from Swiss and Dutch banks evidencing the wire transfers utilized by the defendants during the scheme and moved pursuant to section 3292, supra, to toll the statute of limitations on that date. Yet, the alleged crimes had occurred more than 5 years before that date. The court found that the statute of limitations had still to be in effect before an application to toll could take effect, as the Second Circuit explained in affirming:

> The government had previously applied for, and had been granted, a suspension of the applicable statute of limitations pursuant to 18 U.S.C. § 3292. The district court held that this suspension was invalid because the government's application was filed after the limitations period for the crimes under investigation had expired. The court concluded that although the statutory text was ambiguous, the legislative history of section 3292, the structure of the provision, the policy rationale behind statutes of limitations, and the doctrine of constitutional avoidance all pointed toward an interpretation of section 3292 that does not permit the government to apply to suspend a statute of limitations after the limitations period has expired.

United States v. Kozeny, 541 F.3d 166, 168 (2d Cir. 2008).

There is a split in the federal courts. Two earlier courts held that an order issued pursuant to section 3292 is permissible after the statute of limitations has tolled, United States v. Bischel, 61 F.3d 1429 (9th Cir. 1995), and United States v. Neill, 940 F.Supp. 332 (D.D.C. 1996). The district court in Kozeny explained why it disagreed:

> [A] careful review of both decisions reveals that those courts did not engage in any meaningful analysis of the statute, nor did they engage in any review of the legislative history. Their analyses began and ended with a recitation of section 3292(b)'s decree that the period of suspension "shall begin on the date on which the official request is made." ... [T]hat is not the subsection at issue here.
>
> This Court is well aware that the statute provides for the tolling period to begin on the date of the request to the foreign government. But this is quite different from a finding that the official request itself suspends the statute of limitations. These decisions either conflated sections 3292(a)(1) and 3292(b) or ignored section 3292(a)(1) altogether in order to reach their result. Either approach violates the well-established principle of statutory construction that a statute must be "considered in all its parts when construing any one of them."
>
> Moreover, that reading would permit a legislative enactment to be used to revive time-barred offenses, which raises significant Ex Post Facto concerns. Thus, after careful consideration, I disagree with the result reached by the Ninth Circuit and the District of Columbia.

Kozeny, 493 F.Supp. at 709.[5]

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[5] United States v. Brody, 621 F. Supp. 2d 1196, 1202 (D. Utah 2009) ("the court agrees with Kozeny that requiring an application to be made before the running of the statute of limitations is consistent with the object and policy of § 3292."); accord United States v. Swartzendruber, 3:06-CR-136, 2009 WL 485144 (D.N.D. Feb. 25, 2009) ("A district court can toll the statute of limitations under 18 U.S .C. § 3292 only if the limitations period has not yet expired. United States v. Kozeny, 541 F.3d 166, 172 (2d Cir.2008)."). The United States District Court of the District of Columbia has followed the reasoning of Kozeny in the Speedy Trial context. United States v. Fahnbulleh, 674 F. Supp. 2d 214, 218 (D.D.C. 2009).

III. INTENT

The FCPA criminalizes the use of interstate commerce corruptly to further "an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to ... any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official" to influence that official's acts in order to assist in obtaining or retaining business. 18 U.S.C. § 78dd-2(a) (1988) (emphasis supplied). In addition, "[w]hen knowledge of the existence of a particular circumstance is required for an offense, such knowledge is established if a person is aware of a high probability of the existence of such circumstance, unless the person actually believes that such circumstance does not exist." 18 U.S.C. § 78dd-2(h)(3)(B) (1988).

The legislative history to the FCPA clarifies that actual knowledge and deliberate intent are not required to prove an FCPA violation and that a defendant's "conscious disregard" of the is sufficient:

> The Conferees intend that the requisite "state of mind" for this category of offense include a "conscious purpose to avoid learning the truth." Thus, the "knowing" standard adopted covers both prohibited actions that are taken with "actual knowledge" of intended results, as well as other actions that, while falling short of what the law terms "positive knowledge," nevertheless evidence a conscious disregard or deliberate ignorance of known circumstances that should reasonably alert one to the high probability of violations of the Act ....
>
> [T]he Conferees also agreed that the so-called "head-in-the-sand" problem-variously described in the pertinent authorities as "conscious disregard," "willful blindness" or "deliberate ignorance"-should be covered so that management officials could not take refuge from the Act's prohibitions by their unwarranted obliviousness to any

> action (or inaction), language or other "signaling device" that should reasonably alert them of the "high probability" of an FCPA violation ....
>
> As such, it covers any instance where "any reasonable person would have realized" the existence of the circumstances or result and the defendant has "consciously chose[n] not to ask about what he had 'reason to believe' he would discover."

H.R. Conf. Rep. No. 576, 100th Cong., 2d Sess. 919-21 (1988), reprinted in 1988 U.S.C.C.A.N. 1547, 1953-54 (citations omitted); see also United States v. King, 351 F.3d 859, 866-67 (8th Cir. 2003) (upholding "deliberate ignorance" instruction in FCPA prosecution that "allow[ed] the jury to impute knowledge to [the defendant] of what should [have been] obvious to him, if it [found], beyond a reasonable doubt, a conscious purpose to avoid enlightenment") (internal quotation marks and citations omitted).

The government's Jury Instructions in United States v. Jefferson, 07-CR-209 (E.D. Va. 2009) included the following Ostrich instruction:

> Willful Blindness - Foreign Corrupt Practices Act
>
> The element of knowledge may be satisfied by inferences you may draw if you find that Defendant Jefferson deliberately closed his eyes to what otherwise would have been obvious to him. When knowledge of the existence of a particular fact is an element of the offense, such knowledge may be established if a person is aware of a high probability of its existence and then fails to take action to determine whether it is true or not.
>
> If the evidence shows you that Defendant Jefferson actually believed the transaction was legal, he cannot be convicted. Nor can he be convicted of being stupid or negligent or mistaken; more is required than that. But a defendant's knowledge of a fact may be inferred from willful blindness to the knowledge or information indicating that there was a high probability that there was something forbidden or illegal about the contemplated transaction and payment. It

> is the jury's function to determine whether or not Defendant Jefferson deliberately closed his eyes to the inferences and the conclusions to be drawn from the evidence here.
>
> (Mead, Cr. No. 98-240-01-AET; see also Eleventh Circuit Pattern Jury Instructions for Criminal Cases, Special Instruction No. 8.)

United States v. Jefferson, GOVERNMENT'S PROPOSED JURY INSTRUCTION NO. 47.

(Exhibit C)

The FCPA does not define the term "willful" and the case law to date is sparse. In Kozeny, supra, the court found:

> The term "willfully" appears in the provision of the FCPA dealing with criminal penalties, as opposed to the section defining the prohibited conduct in which "corruptly" appears. The statute does not define willfully, nor has the Second Circuit defined the term as it is used in the FCPA.
>
> The Second Circuit, however, has defined the term in the analogous securities context, where in order to establish a criminal violation, as opposed to civil violation, of the securities laws, the government "must show that the defendant acted willfully. In that context, the court "defined willfulness as a realization on the defendant's part that he was doing a wrongful act under the securities laws in a situation where the knowingly wrongful act involved a significant risk of effecting the violation that has occurred." Moreover, the Supreme Court has stated with regard to other criminal statutes, that "in order to establish a 'willful' violation of a statute, 'the Government must prove that the defendant acted with knowledge that his conduct was unlawful.'" Bryan, 524 U.S. at 191-92, 118 S.Ct. 1939 (quoting Ratzlaf v. United States, 510 U.S. 135, 137, 114 S.Ct. 655, 126 L.Ed.2d 615 (1994)).
>
> The Court also held that to establish "willful" violation of a statute did not require that the defendant know which statute he was violating, but rather only that the conduct was unlawful. In so holding, the Court distinguished the statute at issue, which dealt with the sale of firearms without a license, from the Court's interpretation of

> "willfully" in two other contexts: cases involving willful violations of the tax laws and willful violations in the context of structuring cash transactions to avoid a reporting requirement, where the Court required the jury to find that the "defendant was aware of the specific provision ... that he was charged with violating." Id. at 194, 118 S.Ct. 1939. Both contexts, the Court explained, involve "highly technical statutes that presented the danger of ensnaring individuals engaged in apparently innocent conduct." **No such concern exists here, and thus, like the sale of firearms without a license, there is no need to read into the FCPA an "exception to the traditional rule that ignorance of the law is no excuse.**"

Id.

On appeal, in United States v. Kay[6], Murphy, 513 F.3d 432, 440 (5th Cir. 2007), the trial court had not instructed as to the meaning of "willfully," and during deliberations the jury asked if "lack of knowledge of the FCPA" could be "considered an accident or mistake." In response "the court referred the jury to its definition of the term 'knowingly.'" Id.

The Fifth Circuit held that there was no requirement for the government to prove the defendants knew that the FCPA prohibited their specific conduct, and referenced the Second Circuit in Stichting v. Schreiber, 327 F.3d 173, 181 (2d Cir. 2003): "Knowledge by a defendant that it is violating the FCPA — that it is committing all the elements of an FCPA violation — is not itself an element of the FCPA crime. Federal statutes in which the defendant's knowledge that he or she is violating the statute is an element of the violation are rare; the FCPA is plainly not such a statute." In Stichting v. Schreiber, shareholder plaintiffs sued a corporation and its legal counsel after the corporation's guilty plea to FCPA violations.

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[6] Vice president of marketing for ARI, David Kay was responsible for supervising sales and marketing in Haiti. Kay was charged with twelve counts of violating the FCPA. Douglas Murphy, as president of ARI, was also charged with twelve counts of violating the FCPA. Defendants were alleged to have paid Haitian border officials to understate taxes and custom duties on imported rice. Found guilty, Kay was sentenced to 37 months incarceration, Murphy was sentenced to 63 months incarceration.

IV. INTERMEDIARIES

The FCPA criminalizes payments to intermediaries. Specifically, the Act prohibits payments to "any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office," for purposes of influencing the decisions or actions of such persons.[7]

In In re Schering-Plough Corp., Schering-Plough Corp., Exchange Act Release No. 49838 (June 9, 2004) knowledge was alleged although the payments were made without the actual knowledge or approval of any of the company's employees in the United States. The payments were made to a charity by a Schering-Plough subsidiary in Poland. The charity was

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[7] § 78dd-2. *Prohibited foreign trade practices by domestic concerns*,

> (a) Prohibition
> It shall be unlawful for any domestic concern, other than an issuer which is subject to section 78dd-1 of this title, or for any officer, director, employee, or agent of such domestic concern or any stockholder thereof acting on behalf of such domestic concern, to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to--
> . . . . (3) any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office, for purposes of--
> (A) (i) influencing any act or decision of such foreign official, political party, party official, or candidate in his or its official capacity, (ii) inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate, or (iii) securing any improper advantage; or
> (B) inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality,
> in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person.

headed by a government official and it was alleged the payments were made to influence a deal involving his region's health program which was favorable to Schering-Plough.

In United States v. Alcatel-Lucent, S.A., No. 10-cr-20907 (S.D. Fla. 2010), payments are alleged to have been made directly to government employees but also to consultants who were paid for no actual work in the knowledge that the money would flow to government officials. Through these illicit payments and gifts, Alcatel was able to reap more than $28,873,300 in profits from contracts secured. Under a three-year deferred prosecution agreement, signed on December 20, 2010, Alcatel-Lucent agreed to pay a $92 million penalty.

Jorge Granados was the founder, CEO, and chairman of the board of Latin Node, Inc., ("Latin Node") a telecommunications company. Manuel Caceres was the company's vice president of business development in United States v. Jorge Granados and Manuel Caceres., No. 1:10-cr-20881 (S.D. Fla. 2010). Latin Node, a U.S. corporation, was acquired in 2007 by eLandia International Inc. ("eLandia"), a U.S. corporation. Defendants were alleged to have made approximately $500,000 in payments to a third party intermediary consultant who funneled the funds to officials of the state owned telecoms company, Hondutel.

In contemplation of Latin Node's anticipated acquisition by eLandia, the defendants allegedly discussed the need to create sham consulting agreements to disguise the bribes. In September 2007, eLandia disclosed that, after it acquired Latin Node, it discovered improper payments in the course of reviewing Latin Node's internal controls and procedures. eLandia conducted an internal investigation, terminated the improperly-obtained agreements, and voluntarily disclosed the unlawful conduct to the DOJ and the SEC. eLandia has written off its investment and sued Granados and Latin Node's parent company for misrepresentation. A

federal grand jury returned a 19-count indictment against Granados and Caceres. The charges include conspiracy, money laundering, and numerous violations of the FCPA. Granados and Caceres were arrested on December 20, 2010 in Miami. On May 19, 2011 Granados entered a plea of guilty and on September 7, 2011 was sentenced to 46 months incarceration. On May 20, 2011 Caceras entered a plea of guilty and as of the date of this memo has yet to be sentenced.

In United States v. Bobby J. Elkin, Jr, No. 4:10-cr-00015 (W.D. Va. 2010), Elkin paid more than $3 million to government officials in Kyrgyzstan to obtain export licenses, gain access to processing facilities, win contracts to purchase tobacco from local growers, and avoid tax penalties. Payments were facilitated by an agent. Elkin pleaded guilty to conspiracy to violate the FCPA. On October 21, 2010, he was sentenced to three years of probation and a $5,000 fine. The DOJ requested a 30 month sentence. According to media reports, in sentencing Elkin to probation, the court noted his cooperation with authorities and pressure put on Elkin by Dimon, his employer, to make the bribes.

United States v. Bistrong, No. 1:10-cr-0021 (D.D.C. 2010), the defendant admitted that he used agents and consultants to make corrupt payments to foreign officials to obtain business for a protective body armor and military equipment company and then concealed those payments by falsifying invoices. His employer was Armor Holdings, later bought by BAe. Bistrong made payments through an agent to a U.N. procurement official to obtain non-public information about other bids submitted for a contract to supply U.N. peacekeeping forces with body armor. Bistrong also used a third-party intermediary to make payments based on an invoice for marketing services to a Dutch procurement officer who used his influence to have the National

Police Services Agency of the Netherlands issue a tender that could be satisfied only by pepper spray manufactured by Bistrong's employer.

Bistrong is believed to be the individual who facilitated introductions between undercover U.S. government agents and the 22 members of the military and law enforcement products industry charged in the "Shot Show" cases, supra, with offering bribes to the Minister of Defense of Gabon. Jonathan Spiller, former CEO of Armor Holdings, was one of the 22 executives and employees indicted in the "Shot Show" cases. On September 16, 2010, Bistrong pleaded guilty to one count of conspiracy to violate the FCPA. Bistrong has not yet been sentenced.

The above sample of cases demonstrate that relationships between a target of a FCPA investigation and its "friends in camp", consultants, agents, subsidiaries are likely to be explored. In addition, entities discovering wrong doing when conducting internal investigations will report individual employees in order to preserve the corporation.

V. AFFIRMATIVE DEFENSES

The FCPA provides:

> It shall be an affirmative defense to actions under subsection (a) or (i) of this section that--
>
> (1) the payment, gift, offer, or promise of anything of value that was made, was lawful under the written laws and regulations of the foreign official's, political parties, party official's, or candidate's country; or
>
> (2) the payment, gift, offer, or promise of anything of value that was made, was a reasonable and bona fide expenditure, such as travel and lodging expenses, incurred by or on behalf of a foreign official, party, party official, or candidate and was directly related to--

> (A) the promotion, demonstration, or explanation of products or services; or
>
> (B) the execution or performance of a contract with a foreign government or agency thereof.

On October 21, 2008 the court in United States v. Kozeny et al, supra, issued an order denying defendant Bourke's motion seeking a jury instruction on the FCPA affirmative defense of lawfulness under written law. Bourke argued that the alleged payments were legal under the written law of Azerbaijan, which provided that a "person who has given a bribe shall be free from criminal responsibility" if the bribe was the product of extortion or was subsequently disclosed. Bourke also argued that he was extorted and that he disclosed the payment to the President of Azerbaijan.

The court held that for purposes of the FCPA affirmative defense, the payment must be legal under the written law. The court read the Azeri provision to relieve the bribe payer of criminal responsibility in certain circumstances but that the payment itself remained illegal. The court wrote that "[a]n individual may be prosecuted under the FCPA for a payment that violates foreign law even if the individual is relieved of criminal responsibility for his actions by a provision of foreign law." The court explained that the payment did not become lawful despite the payor being relieved of criminal liability.

The court also appears to have rejected an argument that economic extortion could be a defense to the statute. Instead, it stated that it would agree to give the jury an instruction on extortion only if the defendant laid a sufficient evidentiary foundation of "true extortion." In doing so, the district court distinguished between "true extortion" involving threats of injury, death or destruction versus mere demands made in exchange for business from which the defendant could have "walked away."

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term
Grand Jury Sworn in on November 16, 2009

UNITED STATES OF AMERICA,	:	**CRIMINAL NO. _____**
	:	
Plaintiff,	:	
	:	
v.	:	**VIOLATIONS:**
	:	
AMARO GONCALVES,	:	**18 U.S.C. § 371 (Count 1);**
JOHN M. MUSHRIQUI,	:	**Conspiracy to Violate the Foreign**
JEANA MUSHRIQUI,	:	**Corrupt Practices Act**
JONATHAN M. SPILLER,	:	
DAVID PAINTER,	:	**15 U.S.C. §§ 78dd-1, 78dd-2 and 78dd-3**
LEE WARES,	:	**(Counts 2-43);**
PANKESH PATEL,	:	**Foreign Corrupt Practices Act Violations**
OFER PAZ,	:	
ISRAEL WEISLER,	:	**18 U.S.C. § 1956(h) (Count 44);**
a/k/a WAYNE WEISLER,	:	**Conspiracy to Commit Money Laundering**
MICHAEL SACKS,	:	
JOHN BENSON WIER III,	:	**18 U.S.C. § 2;**
HAIM GERI,	:	**Aiding and Abetting and**
YOCHANAN R. COHEN,	:	**Causing an Act to be Done**
a/k/a YOCHI COHEN,	:	
SAUL MISHKIN,	:	**18 U.S.C. § 982;**
R. PATRICK CALDWELL,	:	**Forfeiture**
STEPHEN GERARD GIORDANELLA,	:	
ANDREW BIGELOW,	:	
HELMIE ASHIBLIE,	:	
DANIEL ALVIREZ,	:	
LEE ALLEN TOLLESON,	:	
JOHN GREGORY GODSEY,	:	
a/k/a GREG GODSEY, and	:	
MARK FREDERICK MORALES,	:	
	:	
Defendants.	:	
	:	

INDICTMENT

The Grand Jury charges that at all times material to this Indictment:

INTRODUCTION

1. The Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, *et seq.* ("FCPA"), prohibited certain classes of persons and entities from making payments to foreign government officials to assist in obtaining or retaining business. Specifically, the FCPA prohibited the willful use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of money or anything of value to any person, while knowing that all or a portion of such money or thing of value would be offered, given or promised, directly or indirectly, to a foreign official for the purpose of assisting in the obtaining or retaining of business.

2. AMARO GONCALVES ("GONCALVES") was a citizen of the United States and, as such, was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1). GONCALVES was the Vice President of Sales for Company A, a United States company headquartered in Springfield, Massachusetts. Company A was a world-wide leader in the design and manufacture of firearms, firearm safety/security products, rifles, firearms systems, and accessories. The shares of Company A were publicly traded on the NASDAQ stock exchange. Company A was an "issuer," as that term is used in the FCPA, because its shares were registered pursuant to 15 U.S.C. § 78l and because Company A was required to file periodic reports pursuant to 15 U.S.C. § 78o(d). 15 U.S.C. § 78dd-1(a).

3. JOHN M. MUSHRIQUI was a citizen of the United States and, as such, was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1). JOHN M.

MUSHRIQUI was the owner and Director of International Development for Company B, a Pennsylvania company that was in the business of manufacturing and exporting bulletproof vests and other law enforcement and military equipment. Company B's business was located in Upper Darby, Pennsylvania. As a company that maintained its principal place of business in the United States, and that was organized under the laws of a state of the United States, Company B was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1).

4. JEANA MUSHRIQUI was a citizen of the United States and, as such, was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1). JEANA MUSHRIQUI was the General Counsel and United States manager of Company B and the sister of JOHN M. MUSHRIQUI.

5. JONATHAN M. SPILLER ("SPILLER") was a resident of the United States and, as such, was a "domestic concern" as that term is defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1). SPILLER was the owner and President of Company C-1, a Florida company that was in the business of providing consulting services for companies in the law enforcement and military equipment industries. SPILLER was also the owner and Manager of Company C-2, a Florida company that was in the business of marketing and selling law enforcement and military equipment. Companies C-1 and C-2 were both located in Ponte Vedra Beach, Florida. As companies that maintained their principal places of business in the United States, and that were organized under the laws of a state of the United States, Companies C-1 and C-2 were each a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1).

6. DAVID PAINTER ("PAINTER") was a citizen of the United Kingdom and, as such, was a "person" other than an issuer or a domestic concern as that term was defined in the

FCPA. 15 U.S.C. § 78dd-3(f)(1). PAINTER was the Chairman of Subsidiary A, a subsidiary of a company based in Cincinnati, Ohio (Company D). Subsidiary A was in the business of marketing armored vehicles. As a company that maintained its place of business in the United Kingdom, Subsidiary A was a "person" other than an issuer or domestic concern as that term was defined in the FCPA. 15 U.S.C. § 78dd-3(f)(1).

7. LEE WARES ("WARES") was a citizen of the United Kingdom and, as such, was a "person" other than an issuer or a domestic concern as that term was defined in the FCPA. 15 U.S.C. § 78dd-3(f)(1). WARES was the Director of Subsidiary A.

8. PANKESH PATEL ("PATEL") was a citizen of the United Kingdom and, as such, was a "person" other than an issuer or a domestic concern as that term was defined in the FCPA. 15 U.S.C. § 78dd-3(f)(1). PATEL was the Managing Director of Company E, a United Kingdom company that acted as a sales agent for companies in the law enforcement and military products industries. As a company that maintained its place of business in the United Kingdom, Company E was a "person" other than an issuer or domestic concern as that term was defined in the FCPA. 15 U.S.C. § 78dd-3(f)(1).

9. OFER PAZ ("PAZ") was a citizen of the State of Israel and, as such, was a "person" other than an issuer or a domestic concern as that term was defined in the FCPA. 15 U.S.C. § 78dd-3(f)(1). PAZ was the President and Chief Executive Officer of Company F, an Israel-based company that acted as a sales agent for companies in the law enforcement and military products industries. As a company that maintained its place of business in Israel, Company F was a "person" other than an issuer or domestic concern as that term was defined in the FCPA. 15 U.S.C. § 78dd-3(f)(1).

10. ISRAEL WEISLER, a/k/a WAYNE WEISLER ("WEISLER"), was a citizen of the United States and, as such, was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1). WEISLER was an owner and Chief Executive Officer of Company G, a Kentucky company that was in the business of designing, manufacturing, and selling armor products, including body armor. Company G's business was located in Stearns, Kentucky. As a company that maintained its principal place of business in the United States, and that was organized under the laws of a state of the United States, Company G was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1).

11. MICHAEL SACKS ("SACKS") was a citizen of the United Kingdom and, as such, was a "person" other than an issuer or a domestic concern as that term was defined in the FCPA. 15 U.S.C. §§ 78dd-3(f)(1). SACKS was a co-owner and co-Chief Executive Officer of Company G.

12. JOHN BENSON WIER III ("WIER") was a citizen of the United States and, as such, was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1). WIER was the President of Company H, a Florida company headquartered in St. Petersburg, Florida, that sold tactical and ballistic equipment. As a company that maintained its principal place of business in the United States, and that was organized under the laws of a state of the United States, Company H was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1).

13. HAIM GERI ("GERI") was a citizen of the United States and, as such, was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1). GERI was the President of Company I, a company based in North Miami Beach, Florida, that served as a

sales agent for companies in the law enforcement and military products industries. As a company that maintained its principal place of business in the United States, and that was organized under the laws of a state of the United States, Company I was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1).

14. YOCHANAN COHEN, a/k/a YOCHI COHEN ("COHEN"), was a resident of the United States and, as such, was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1). COHEN was the Chief Executive Officer of Company J, a company based in San Francisco, California, that was in the business of manufacturing security equipment, including body armor and hard armor ballistic plates. As a company that maintained its principal place of business in the United States, and that was organized under the laws of a state of the United States, Company J was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1).

15. SAUL MISHKIN ("MISHKIN") was a resident of the United States and, as such, was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1). MISHKIN was the owner and Chief Executive Officer of Company K, a Florida company headquartered in Aventura, Florida, that sold law enforcement and military equipment. As a company that maintained its principal place of business in the United States, and that was organized under the laws of a state of the United States, Company K was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1).

16. R. PATRICK CALDWELL ("CALDWELL") was a citizen of the United States and, as such, was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1). From in or about May 2009, through in or about September 2009,

CALDWELL was the Senior Vice President of Sales and Marketing for Company L, a Florida corporation headquartered in Sunrise, Florida, that designed and manufactured concealable and tactical body armor. In or about September 2009, CALDWELL was named Chief Executive Officer of Company L. As a company that maintained its principal place of business in the United States, and that was organized under the laws of a state of the United States, Company L was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1).

17. STEPHEN GERARD GIORDANELLA ("GIORDANELLA") was a citizen of the United States and, as such, was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1). GIORDANELLA was the Chief Executive Officer of Company L until his resignation on or about March 18, 2009. From on or about March 18, 2009, through at least December 2, 2009, GIORDANELLA was a "consultant" to Company L.

18. ANDREW BIGELOW ("BIGELOW") was a citizen of the United States and, as such, was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1). BIGELOW was the Managing Partner and Director of Government Programs for Company M, a company that was based in Sarasota, Florida, and was in the business of selling machine guns, grenade launchers, and other small arms and accessories. As a company that maintained its principal place of business in the United States, and that was organized under the laws of a state of the United States, Company M was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1).

19. HELMIE ASHIBLIE ("ASHIBLIE") was a citizen of the United States and, as such, was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1). ASHIBLIE was Vice President and Founder of Company N, a company that was based

in Woodbridge, Virginia, and was in the business of supplying tactical bags and other security-related articles for law enforcement agencies and governments worldwide. As a company that maintained its principal place of business in the United States, and that was organized under the laws of a state of the United States, Company N was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1).

20. DANIEL ALVIREZ ("ALVIREZ") was a citizen of the United States and, as such, was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1). ALVIREZ was the President of Company O, an Arkansas company based in Bull Shoals, Arkansas, that manufactured and sold law enforcement and military equipment. As a company that maintained its principal place of business in the United States, and that was organized under the laws of a state of the United States, Company O was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1).

21. LEE ALLEN TOLLESON ("TOLLESON") was a citizen of the United States and, as such, was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1). TOLLESON was the Director of Acquisitions and Logistics for Company O.

22. JOHN GREGORY GODSEY, a/k/a GREG GODSEY ("GODSEY"), was a citizen of the United States and, as such, was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1). GODSEY was the owner of Company P, a Georgia company based in Decatur, Georgia, that was in the business of selling ammunition and other law enforcement and military equipment. As a company that maintained its principal place of business in the United States, and that was organized under the laws of a state of the United

States, Company P was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1).

23. MARK FREDERICK MORALES ("MORALES") was a citizen of the United States and, as such, was a "domestic concern" as that term was defined in the FCPA. 15 U.S.C. § 78dd-2(h)(1). MORALES was a business associate of GODSEY and worked with him on deals involving Company P.

24. Individual 1 was the former Vice President of International Sales for a company that manufactured and supplied law enforcement and military equipment to law enforcement and military customers around the world and was a business associate of GONCALVES, JOHN M. MUSHRIQUI, JEANA MUSHRIQUI, PAINTER, WARES, PATEL, PAZ, WEISLER, SACKS, WIER, GERI, COHEN, MISHKIN, CALDWELL, GIORDANELLA, BIGELOW, ASHIBLIE, ALVIREZ, TOLLESON, GODSEY, MORALES, and SPILLER.

25. "Pascal Latour" ("Latour") was an undercover Special Agent with the Federal Bureau of Investigation ("FBI") posing as a representative of the Minister of Defense of a country in Africa ("Country A").

26. "Jean-Pierre Mahmadou" ("Mahmadou") was an undercover Special Agent with the FBI posing as a procurement officer for Country A's Ministry of Defense who purportedly reported directly to the Minister of Defense.

COUNT 1
(Conspiracy to Violate the Foreign Corrupt Practices Act)

27. Paragraphs 1 through 26 of the Indictment are realleged and incorporated by reference as if fully set forth herein.

28. From in or about May 2009, through in or about January 2010, in the District of Columbia, and elsewhere, the defendants,

AMARO GONCALVES, JOHN M. MUSHRIQUI, JEANA MUSHRIQUI, DAVID PAINTER, LEE WARES, PANKESH PATEL, OFER PAZ, WAYNE WEISLER, MICHAEL SACKS, JOHN WIER, HAIM GERI, YOCHI COHEN, SAUL MISHKIN, R. PATRICK CALDWELL, STEPHEN GIORDANELLA, ANDREW BIGELOW, HELMIE ASHIBLIE, DANIEL ALVIREZ, LEE TOLLESON, GREG GODSEY, MARK MORALES, and JONATHAN SPILLER,

and others known and unknown to the Grand Jury, did unlawfully, willfully, and knowingly conspire, confederate and agree together and with each other and others to commit offenses against the United States, that is, to willfully use the mails and means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and the authorization of the payment of any money, and offer, give, promise to give, and authorizing of the giving of anything of value to any foreign official and any person, while knowing that a portion of such money or thing of value will be offered, given, promised, directly or indirectly, to any foreign official for purposes of: (i) influencing the acts and decisions of such foreign official in his official capacity; (ii) inducing such foreign official to do and omit to do acts in violation of the lawful duties of such official; (iii) securing an improper advantage; and (iv) inducing such foreign official to use his influence with a foreign government and instrumentalities thereof to affect and influence acts and decisions of such government and instrumentalities thereof, in order

to assist themselves, their associated companies, and their conspirators in obtaining and retaining business, in violation of the FCPA, Title 15, United States Code, Sections 78dd-1(a), 78dd-2(a), and 78dd-3(a).

Object of the Conspiracy

29. The object of the conspiracy was for the defendants to unlawfully enrich themselves, their associated companies, and their conspirators by making corrupt payments and attempting to make corrupt payments to foreign officials for the purpose of obtaining and retaining business opportunities.

Manner and Means of the Conspiracy

30. The manner and means by which the defendants and their conspirators accomplished the object of the conspiracy included, but were not limited to, the following:

a. Individual 1 would discuss with ALVIREZ the names of companies and individuals that would participate in a $15 million deal to outfit Country A's Presidential Guard with various types of military-related products (the "Country A Deal"). Individual 1 and ALVIREZ would agree that Individual 1 would split with ALVIREZ the commissions Individual 1 would receive in connection with the Country A Deal.

b. The defendants would participate in meetings and have discussions in which Individual 1 or Latour explained that Latour was a self-employed sales agent tasked by Country A's Minister of Defense with obtaining approximately $15 million of various defense articles from various suppliers for the purpose of outfitting Country A's Presidential Guard and that Individual 1 was brokering the deal.

c. The defendants would agree to pay Latour a 20% "commission" - - totaling $3 million - - in connection with the $15 million Country A Deal, believing that half of the "commission" would be paid as a bribe to the Minister of Defense of Country A and the other half would be split between Individual 1 and Latour as a fee for their corrupt services.

d. The defendants would agree that the Country A Deal would proceed in two phases. The first phase would involve the sale of a small quantity of products to the Ministry of Defense of Country A ("Phase One") to demonstrate the quality of the products and to show that the "commission" would in fact be paid to the Minister of Defense. The second phase would involve a second, larger contract to supply additional products to the Ministry of Defense of Country A ("Phase Two").

e. The defendants would agree that the products they would supply in connection with Phase One would be consolidated for shipment to Country A.

f. The defendants would agree to inflate by 20% the price of the products they would sell in the Country A Deal for the purpose of obtaining money to fund the corrupt payments.

g. The defendants would agree to create two price quotations, with one quotation representing the true price of the products and the second, inflated quotation representing the true price of the products plus the 20% "commission."

h. The defendants would pay a "commission" into Latour's bank account in the United States in connection with Phase One, believing that half of the "commission" was intended to be paid outside the United States as a bribe to the Minister of Defense of Country A, for the purposes of obtaining the Phase One and Phase Two contracts.

i. The defendants would agree to pay a "commission" to Latour in the United States in connection with the Phase Two contract, believing that approximately half of the "commission" was intended to be paid outside the United States as a bribe to the Minister of Defense of Country A, for the purpose of obtaining the Phase Two contract.

j. PAINTER and WARES would agree to sell armored vehicles in Phase Two through SPILLER's company (Company C-1), rather than directly from Subsidiary A, so that PAINTER and WARES could make more money on Phase Two.

k. GODSEY, MORALES and ALVIREZ would agree that GODSEY and MORALES would purchase the ammunition they agreed to sell to Country A from ALVIREZ's company (Company O) so that GODSEY, MORALES, and Company O could make more money on the Country A Deal.

l. PAINTER, WARES, PATEL, PAZ, WEISLER, SACKS, WIER, GERI, COHEN, MISHKIN, CALDWELL, BIGELOW, ASHIBLIE, ALVIREZ, TOLLESON, GODSEY, and MORALES would attend a cocktail reception at Clyde's, a restaurant in Washington, D.C., to celebrate the completion of Phase One and to meet with Mahmadou to discuss Phase Two. At that reception, Individual 1 delivered a speech discussing the Country A Deal and introduced Mahmadou as the Deputy Procurement Official for the Ministry of Defense of Country A. Mahmadou also delivered a speech and, among other statements, thanked the attendees for "these products which you have all brought to the military of [Country A], in support of our equipment enhancement program and for the Republican Guard."

m. PAINTER, WARES, PATEL, PAZ, WEISLER, SACKS, WIER, GERI, COHEN, MISHKIN, CALDWELL, BIGELOW, ASHIBLIE, ALVIREZ, TOLLESON, GODSEY, and MORALES would meet in small groups with Individual 1 and Mahmadou during the cocktail reception at Clyde's, at which time they were thanked for the "commission" they had paid to the Minister of Defense in connection with Phase One, and they would be provided with copies of the purchase agreement for the corrupt Phase Two deal.

n. JOHN M. MUSHRIQUI, JEANA MUSHRIQUI, GONCALVES, and SPILLER would meet with or have conversations with Individual 1 and Mahmadou during which Mahmadou would thank them for the "commission" they had paid to the Minister of Defense in connection with Phase One, and would be provided, at that meeting or shortly thereafter, with copies of the purchase agreement for the corrupt Phase Two deal.

o. GONCALVES, JOHN M. MUSHRIQUI, JEANA MUSHRIQUI, PAINTER, WARES, PATEL, PAZ, WEISLER, SACKS, WIER, GERI, COHEN, MISHKIN, CALDWELL, BIGELOW, ASHIBLIE, ALVIREZ, TOLLESON, GODSEY, MORALES, and SPILLER would travel to Las Vegas, Nevada, for the purpose of attending a meeting between the suppliers in the Country A Deal and the new Minister of Defense of Country A, at which time the suppliers expected to receive payment amounting to 60% of the inflated sales price of the products to be sold in Phase Two.

Overt Acts

31. Within the District of Columbia, and elsewhere, in furtherance of the above described conspiracy and in order to carry out the object thereof, the defendants and others known and unknown to the Grand Jury, committed the following overt acts, among others:

a. As set forth below, the defendants met and/or spoke with Individual 1 and Latour about the Country A Deal:

Overt Act	Defendant(s)	On or About Date	Location
(1)	GONCALVES	May 21, 2009	Washington, D.C.
(2)	JOHN M. MUSHRIQUI and JEANA MUSHRIQUI	May 22, 2009	Meeting in Washington, D.C. JOHN M. MUSHRIQUI participated by telephone.
(3)	WARES	May 20, 2009	Washington, D.C.
(4)	PAINTER and WARES	May 26, 2009	Telephone call
(5)	PATEL	May 13, 2009	Miami, Florida
(6)	PAZ	May 21, 2009	Washington, D.C.
(7)	WEISLER and SACKS	May 21, 2009	Meeting in Washington, D.C. SACKS participated by Skype.
(8)	WIER	May 14, 2009	Miami, Florida
(9)	GERI	May 14, 2009	Miami, Florida
(10)	COHEN	May 22, 2009	Washington, D.C.
(11)	MISHKIN	May 15, 2009	Telephone call
(12)	CALDWELL and GIORDANELLA	May 14, 2009	Miami, Florida
(13)	BIGELOW	May 14, 2009	Miami, Florida
(14)	ASHIBLIE	August 25, 2009	Washington, D.C.
(15)	ALVIREZ and TOLLESON	May 13, 2009	Miami, Florida
(16)	GODSEY and MORALES	May 13, 2009	Miami, Florida
(17)	SPILLER	May 13, 2009	Miami, Florida

b. As set forth below, the defendants caused emails to be sent to Individual 1 and Latour attaching true and/or inflated price quotations in connection with the Country A Deal:

Overt Act	Defendant(s)	On or About Date	Product	Quotation
(1)	GONCALVES	May 26, 2009	Pistols	Phases One and Two True Prices
(2)	GONCALVES	May 28, 2009	Pistols	Phase One Inflated Price
(3)	GONCALVES	September 14, 2009	Pistols	Phase Two Inflated Price
(4)	JOHN M. MUSHRIQUI and JEANA MUSHRIQUI	June 1, 2009	Bulletproof Vests	Phases One True and Inflated Prices
(5)	JOHN M. MUSHRIQUI and JEANA MUSHRIQUI	September 16, 2009	Bulletproof Vests	Phase Two Inflated Price
(6)	PAINTER and WARES	June 4, 2009	Night Vision Goggles	Phase One True and Inflated Prices
(7)	PAINTER and WARES	September 3, 2009	Armored Vehicles	Phase Two True and Inflated Prices
(8)	PATEL	May 28, 2009	Uniforms	Phase One Inflated Price
(9)	PATEL	June 23, 2009	Uniforms	Phase One True Price
(10)	PATEL	September 22, 2009	Uniforms	Phase Two True and Inflated Prices
(11)	PAZ	May 25, 2009	Explosives Detection Kits	Phase One True and Inflated Prices
(12)	PAZ	September 14, 2009	Explosives Detection Kits	Phase Two True and Inflated Prices
(13)	WEISLER and SACKS	May 27, 2009	Body Armor	Phases One and Two True and Inflated Prices
(14)	WIER	May 15, 2009	Laser Grips	Phase Two Inflated Price
(15)	WIER	May 18, 2009	Laser Grips	Phase One Inflated Price
(16)	WIER	May 18, 2009	Laser Grips	Phase One True Price
(17)	WIER	May 18, 2009	Laser Grips	Phase Two True Price
(18)	GERI	May 15, 2009	Corner Shot	Phase One Inflated Price
(19)	GERI	May 15, 2009	Corner Shot	Phase Two Inflated Price
(20)	GERI	May 16, 2009	Corner Shot	Phases One and Two True Prices

Overt Act	Defendant(s)	On or About Date	Product	Quotation
(21)	COHEN	June 2, 2009	Ballistic Plates	Phases One and Two True and Inflated Prices
(22)	MISHKIN	May 21, 2009	Riot Control Suits	Phase One Inflated Price
(23)	MISHKIN	June 24, 2009	Riot Control Suits	Phase One True Price
(24)	MISHKIN	July 7, 2009	Riot Control Suits	Phase One True Price
(25)	MISHKIN	September 9, 2009	Meals, Ready to Eat	Phase Two True Price
(26)	MISHKIN	September 10, 2009	Meals, Ready to Eat	Phase Two Inflated Price
(27)	MISHKIN	September 12, 2009	Riot Control Suits	Phase Two True Price
(28)	CALDWELL and GIORDANELLA	May 18, 2009	Body Armor Plates	Phase One Inflated Price
(29)	CALDWELL and GIORDANELLA	May 18, 2009	Body Armor Plates	Phases One and Two True Prices
(30)	CALDWELL	September 17, 2009	Body Armor Plates	Phase Two Inflated Price
(31)	BIGELOW	May 18, 2009	M4 Rifles	Phases One and Two True and Inflated Prices
(32)	ASHIBLIE	August 27, 2009	Tactical Bags	Phases One and Two True and Inflated Prices
(33)	ALVIREZ and TOLLESON	May 13, 2009	Grenade Launchers	Phase One True Price
(34)	ALVIREZ and TOLLESON	May 13, 2009	Grenades	Phase Two True Price
(35)	ALVIREZ and TOLLESON	May 18, 2009	Grenade Launchers	Phase One Inflated Price
(36)	ALVIREZ and TOLLESON	September 11, 2009	Grenades	Phase Two Inflated Price
(37)	GODSEY and MORALES	May 20, 2009	Ammunition	Phase One Inflated Price
(38)	GODSEY and MORALES	May 26, 2009	Ammunition	Phases One and Two True Prices
(39)	GODSEY and MORALES	September 21, 2009	Ammunition	Phase Two Inflated Price
(40)	SPILLER	May 18, 2009	Rifle-Mounted Cameras	Phase One True and Inflated Prices
(41)	SPILLER	September 3, 2009	Tactical Vehicles	Phase Two True and Inflated Prices

c. As set forth below, the defendants caused to be notified Individual 1 and Latour that the products sold in connection with Phase One had been shipped:

Overt Act	Defendant(s)	On or About Date	Communication
(1)	GONCALVES	August 21, 2009	Email
(2)	JOHN M. MUSHRIQUI and JEANA MUSHRIQUI	July 13, 2009	Email
(3)	PAINTER and WARES	August 31, 2009	Email
(4)	PATEL	August 13, 2009	Email
(5)	PAZ	June 25, 2009	Email
(6)	WEISLER and SACKS	July 2, 2009	Email
(7)	WIER	June 30, 2009	Email
(8)	GERI	July 29, 2009	Email
(9)	COHEN	August 10, 2009	Email
(10)	MISHKIN	August 11, 2009	Email
(11)	CALDWELL	July 16, 2009	Email
(12)	BIGELOW	August 25, 2009	Email
(13)	ASHIBLIE	September 21, 2009	Email
(14)	ALVIREZ and TOLLESON	August 21, 2009	Telephone call
(15)	GODSEY and MORALES	August 17, 2009	Email
(16)	SPILLER	July 2, 2009	Meeting

d. As set forth below, on or about June 17, 2009, the defendants caused to be sent wire transfers from a bank account purported to be controlled by Country A:

Overt Act	Defendant(s)	Approximate Payment for Phase One
(1)	GONCALVES	$12,495.34
(2)	JOHN M. MUSHRIQUI and JEANA MUSHRIQUI	$13,450.00
(3)	PAINTER and WARES	$12,183.60
(4)	PATEL	$7,245.50
(5)	PAZ	$9,650.00

Overt Act	Defendant(s)	Approximate Payment for Phase One
(6)	WEISLER and SACKS	$10,500.00
(7)	WIER	$7,289.00
(8)	GERI	$12,190.00
(9)	COHEN	$9,000.00
(10)	MISHKIN	$11,945.34
(11)	CALDWELL and GIORDANELLA	$18,000.00
(12)	BIGELOW	$17,004.00
(13)	ASHIBLIE	$2,261.00
(14)	ALVIREZ and TOLLESON	$16,231.50
(15)	GODSEY and MORALES	$14,400.00
(16)	SPILLER	$12,792.38

e. As set forth below, the defendants caused to be sent wire transfers of the 20% "commission" to Latour's bank account:

Overt Act	Defendant(s)	On or about Date	"Commission" Amount
(1)	GONCALVES	August 27, 2009	$2,280.00
(2)	JOHN M. MUSHRIQUI and JEANA MUSHRIQUI	June 25, 2009	$2,200.00
(3)	PAINTER and WARES	August 28, 2009	$2,030.60
(4)	PATEL	August 12, 2009	$1,000.00
(5)	PAZ	July 9, 2009	$1,513.00
(6)	WEISLER and SACKS	June 18, 2009	$1,750.00
(7)	WIER	June 30, 2009	$1,200.00
(8)	GERI	June 26, 2009	$2,000.00
(9)	COHEN	July 10, 2009	$1,500.00
(10)	CALDWELL	August 11, 2009	$3,000.00
(11)	BIGELOW	September 3, 2009	$2,834.00
(12)	ASHIBLIE	September 3, 2009	$351.00

Overt Act	Defendant(s)	On or about Date	"Commission" Amount
(13)	ALVIREZ and TOLLESON	June 19, 2009	$2,705.50
(14)	GODSEY and MORALES	August 17, 2009	$2,400.00
(15)	SPILLER	July 2, 2009	$2,131.99

f. As set forth below, the defendants met with Individual 1, Mahmadou and other participants in the Country A Deal at a celebratory reception for the participants in the Country A Deal at Clyde's, a restaurant in Washington, D.C.:

Overt Act	Defendant(s)	On or About Date	Location
(1)	PAINTER and WARES	October 5, 2009	Clyde's, Washington, D.C.
(2)	PATEL	October 5, 2009	Clyde's, Washington, D.C.
(3)	PAZ	October 5, 2009	Clyde's, Washington, D.C.
(4)	WEISLER and SACKS	October 5, 2009	Clyde's, Washington, D.C.
(5)	WIER	October 5, 2009	Clyde's, Washington, D.C.
(6)	GERI	October 5, 2009	Clyde's, Washington, D.C.
(7)	COHEN	October 5, 2009	Clyde's, Washington, D.C.
(8)	MISHKIN	October 5, 2009	Clyde's, Washington, D.C.
(9)	CALDWELL	October 5, 2009	Clyde's, Washington, D.C.
(10)	BIGELOW	October 5, 2009	Clyde's, Washington, D.C.
(11)	ASHIBLIE	October 5, 2009	Clyde's, Washington, D.C.
(12)	ALVIREZ and TOLLESON	October 5, 2009	Clyde's, Washington, D.C.
(13)	GODSEY and MORALES	October 5, 2009	Clyde's, Washington, D.C.

g. On or about October 5, 2009, SPILLER had a telephone conversation with Individual 1 and Mahmadou, who were both located in Washington, D.C., about the Country A Deal.

h. On or about October 6, 2009, GONCALVES met with Individual 1 and Mahmadou at Degrees Bar & Lounge in Washington, D.C. and discussed the Country A Deal.

i. On or about October 6, 2009, JEANA MUSHRIQUI met with Individual 1 and Mahmadou at the Ritz-Carlton Hotel in Washington, D.C., with JOHN M. MUSHRIQUI participating by telephone, and discussed the Country A Deal.

j. As set forth below, the defendants caused to be sent by interstate carrier original, executed copies of the purchase agreement for the corrupt Phase Two deal:

Overt Act	Defendant(s)	On or About Date	From	To
(1)	GONCALVES	October 13, 2009	Springfield, Massachusetts	Washington, D.C.
(2)	JOHN M. MUSHRIQUI and JEANA MUSHRIQUI	November 2, 2009	Upper Darby, Pennsylvania	Washington, D.C.
(3)	PAINTER and WARES	October 30, 2009	Ponte Vedra Beach, Florida	Washington, D.C.
(4)	PATEL	October 13, 2009	United Kingdom	Washington, D.C.
(5)	PAZ	October 20, 2009	Kfar Saba, Israel	Washington, D.C.
(5)	WEISLER and SACKS	October 12, 2009	Radcliff, Kentucky	Washington, D.C.
(6)	WIER	October 9, 2009	St. Petersburg, Florida	Washington, D.C.
(7)	GERI	October 13, 2009	North Miami Beach, Florida	Washington, D.C.
(8)	COHEN	October 12, 2009	San Francisco, California	Washington, D.C.
(9)	CALDWELL	October 9, 2009	Sunrise, Florida	Washington, D.C.
(10)	BIGELOW	October 8, 2009	Sarasota, Florida	Washington, D.C.
(11)	ASHIBLIE	October 28, 2009	Woodbridge, Virginia	Washington, D.C.
(12)	ALVIREZ and TOLLESON	October 23, 2009	Bull Shoals, Arkansas	Washington, D.C.
(13)	GODSEY and MORALES	October 22, 2009	Atlanta, Georgia	Washington, D.C.
(14)	SPILLER	October 30, 2009	Ponte Vedra Beach, Florida	Washington, D.C.

k. On or about October 6, 2009, in Washington, D.C., MISHKIN hand delivered to Individual 1 one original executed copy of the purchase agreement for the Meals, Ready to Eat that MISHKIN was selling in connection with the corrupt Phase Two deal.

l. On or around December 2, 2009, GIORDANELLA had a telephone conversation with Individual 1 during which GIORDANELLA and Individual 1 discussed the possibility of GIORDANELLA traveling to Las Vegas, Nevada in connection with the Country A Deal.

m. On or about January 17, 2010, GONCALVES, JEANA MUSHRIQUI, JOHN M. MUSHRIQUI, PAINTER, WARES, PATEL, PAZ, WEISLER, SACKS, WIER, GERI, COHEN, MISHKIN, CALDWELL, BIGELOW, ASHIBLIE, ALVIREZ, TOLLESON, GODSEY, MORALES, and SPILLER traveled to Las Vegas, Nevada in connection with the Country A Deal.

(Conspiracy to Violate the Foreign Corrupt Practices Act, in violation of Title 18, United States Code, Section 371)

COUNTS 2 - 43
(Foreign Corrupt Practices Act Violations)

32. Paragraphs 1 through 26 and 29 through 31 of the Indictment are realleged and incorporated by reference as if set out in full herein.

33. On or about the dates set forth below, in the District of Columbia, and elsewhere, the defendants,

AMARO GONCALVES, JEANA MUSHRIQUI, JOHN M. MUSHRIQUI, DAVID PAINTER, LEE WARES, PANKESH PATEL, OFER PAZ, WAYNE WEISLER, MICHAEL SACKS, JOHN WIER, HAIM GERI, YOCHI COHEN, SAUL MISHKIN, R. PATRICK CALDWELL, STEPHEN GIORDANELLA, ANDREW BIGELOW, HELMIE ASHIBLIE, DANIEL ALVIREZ, LEE TOLLESON, GREG GODSEY, MARK MORALES, and JONATHAN SPILLER,

and others known and unknown to the Grand Jury, willfully made use of, and aided, abetted, and caused others to make use of, the mails and means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and the authorization of the payment of any money, and offer, gift, promise to give, and authorization of the giving of anything of value to a foreign official or to any person, while knowing that all or a portion of such money or thing of value would be offered, given or promised, directly or indirectly, to a foreign official for the purposes of: (i) influencing the acts and decisions of such foreign official in his official capacity; (ii) inducing such foreign official to do and omit to do acts in violation of the lawful duties of such official; (iii) securing an improper advantage; and (iv) inducing such foreign official to use his influence with a foreign government and instrumentalities thereof to affect and influence acts and decisions of such government and instrumentalities thereof, in order

to assist themselves, their associated companies, and their conspirators in obtaining and retaining business in violation of the FCPA as follows:

Count	Defendant(s)	On or About Date	Means and Instrumentalities of Interstate Commerce
2	GONCALVES	May 21, 2009	Travel from outside Washington, D.C., to Washington, D.C., for the purpose of meeting with Individual 1 and Latour at the Ritz-Carlton hotel to discuss the corrupt Country A Deal
3	GONCALVES	October 6, 2009	Travel from outside Washington, D.C., to Washington, D.C., for the purpose of meeting with Individual 1 and Mahmadou at Degrees Bar & Lounge to discuss the corrupt Country A Deal
4	GONCALVES	October 13, 2009	Federal Express from Springfield, Massachusetts, to Washington, D.C., containing one original copy of the corrupt purchase agreement for Phase Two
5	JOHN M. MUSHRIQUI JEANA MUSHRIQUI	May 22, 2009	Travel from outside Washington, D.C., to Washington, D.C., for the purpose of meeting with Individual 1 and Latour at the Ritz-Carlton hotel to discuss the corrupt Country A Deal
6	JOHN M. MUSHRIQUI JEANA MUSHRIQUI	May 22, 2009	Phone call from Washington, D.C., to outside of Washington, D.C., for the purpose of discussing the corrupt Country A Deal
7	JOHN M. MUSHRIQUI JEANA MUSHRIQUI	October 6, 2009	Travel from outside Washington, D.C., to Washington, D.C., for the purpose of meeting with Individual 1 and Mahmadou at the Ritz-Carlton Hotel to discuss the corrupt Country A Deal
8	JOHN M. MUSHRIQUI JEANA MUSHRIQUI	October 6, 2009	Phone call from outside Washington, D.C., to Washington, D.C., for the purpose of discussing the corrupt Country A Deal
9	JOHN M. MUSHRIQUI JEANA MUSHRIQUI	November 2, 2009	Federal Express from Upper Darby, Pennsylvania, to Washington, D.C., containing one original copy of the purchase agreement for the corrupt Phase Two deal
10	PAINTER WARES	May 20, 2009	Travel from outside Washington, D.C., to Washington, D.C., for the purpose of meeting with Individual 1 and Latour at the Ritz-Carlton hotel to discuss the corrupt Country A Deal
11	PAINTER WARES	October 5, 2009	Travel from outside Washington, D.C., to Washington, D.C., for the purpose of meeting with Individual 1 and Mahmadou at the Ritz-Carlton hotel to discuss the corrupt Country A Deal

Count	Defendant(s)	On or About Date	Means and Instrumentalities of Interstate Commerce
12	PAINTER WARES	October 30, 2009	Federal Express from Ponte Vedra Beach, Florida, to Washington, D.C., containing one original copy of the purchase agreement for the corrupt Phase Two deal
13	PATEL	October 5, 2009	Travel from outside Washington, D.C., to Washington, D.C., for the purpose of meeting with Individual 1 and Mahmadou at Clyde's to discuss the corrupt Country A Deal
14	PATEL	October 13, 2009	DHL from the United Kingdom to Washington, D.C., containing one original copy of the purchase agreement for the corrupt Phase Two deal
15	PAZ	May 21, 2009	Travel from outside Washington, D.C., to Washington, D.C., for the purpose of meeting with Individual 1 and Mahmadou at the Ritz-Carlton hotel to discuss the corrupt Country A Deal
16	PAZ	October 5, 2009	Travel from outside Washington, D.C., to Washington, D.C., for the purpose of meeting with Individual 1 and Mahmadou at Clyde's to discuss the corrupt Country A Deal
17	PAZ	October 20, 2009	Federal Express from Kfar Saba, Israel, to Washington, D.C., containing one original copy of the purchase agreement for the corrupt Phase Two deal
18	WEISLER SACKS	May 21, 2009	Travel from outside Washington, D.C., to Washington, D.C., for the purpose of meeting with Individual 1 and Latour at the Ritz-Carlton hotel to discuss the corrupt Country A Deal
19	WEISLER SACKS	May 21, 2009	Skype call from Washington, D.C., to outside of Washington, D.C., for the purpose of discussing the corrupt Country A Deal
20	WEISLER SACKS	October 5, 2009	Travel from outside Washington, D.C., to Washington, D.C., for the purpose of meeting with Individual 1 and Mahmadou at Clyde's to discuss the corrupt Country A Deal
21	WEISLER SACKS	October 12, 2009	Federal Express from Radcliff, Kentucky, to Washington, D.C., containing one original copy of the purchase agreement for the corrupt Phase Two deal
22	WIER	October 5, 2009	Travel from outside Washington, D.C., to Washington, D.C., for the purpose of meeting with Individual 1 and Mahmadou at Clyde's to discuss the corrupt Country A Deal

Count	Defendant(s)	On or About Date	Means and Instrumentalities of Interstate Commerce
23	WIER	October 9, 2009	UPS from St. Petersburg, Florida, to Washington, D.C., containing one original copy of the purchase agreement for the corrupt Phase Two deal
24	GERI	October 5, 2009	Travel from outside Washington, D.C., to Washington, D.C., for the purpose of meeting with Individual 1 and Mahmadou at Clyde's to discuss the corrupt Country A Deal
25	GERI	October 13, 2009	Federal Express from North Miami Beach, Florida, to Washington, D.C., containing one original copy of the purchase agreement for the corrupt Phase Two deal
26	COHEN	May 22, 2009	Travel from outside Washington, D.C., to Washington, D.C., for the purpose of meeting with Individual 1 and Mahmadou at the Ritz-Carlton hotel to discuss the corrupt Country A Deal
27	COHEN	October 5, 2009	Travel from outside Washington, D.C., to Washington, D.C., for the purpose of meeting with Individual 1 and Mahmadou at Clyde's to discuss the corrupt Country A Deal
28	COHEN	October 12, 2009	Federal Express from San Francisco, California, to Washington, D.C., containing one original copy of the purchase agreement for the corrupt Phase Two deal
29	MISHKIN	October 5, 2009	Travel from outside Washington, D.C., to Washington, D.C., for the purpose of meeting with Individual 1 and Mahmadou at Clyde's to discuss the corrupt Country A Deal
30	CALDWELL	October 5, 2009	Travel from outside Washington, D.C., to Washington, D.C., for the purpose of meeting with Individual 1 and Mahmadou at Clyde's to discuss the corrupt Country A Deal
31	CALDWELL	October 9, 2009	Federal Express from Sunrise, Florida, to Washington, D.C., containing one original copy of the purchase agreement for the corrupt Phase Two deal
32	BIGELOW	October 5, 2009	Travel from outside Washington, D.C., to Washington, D.C., for the purpose of meeting with Individual 1 and Mahmadou at Clyde's to discuss the corrupt Country A Deal
33	BIGELOW	October 8, 2009	U.S. Postal Service Priority Mail from Sarasota, Florida, to Washington, D.C., containing one original copy of the purchase agreement for the corrupt Phase Two deal

Count	Defendant(s)	On or About Date	Means and Instrumentalities of Interstate Commerce
34	ASHIBLIE	August 25, 2009	Travel from outside Washington, D.C., to Washington, D.C., for the purpose of meeting with Individual 1 at Zaytinya restaurant to discuss the corrupt Country A Deal
35	ASHIBLIE	October 5, 2009	Travel from outside Washington, D.C., to Washington, D.C., for the purpose of meeting with Individual 1 and Mahmadou at Clyde's to discuss the corrupt Country A Deal
36	ASHIBLIE	October 28, 2009	U.S. Postal Service Priority Mail from Woodbridge, Virginia, to Washington, D.C., containing one original copy of the purchase agreement for the corrupt Phase Two deal
37	ASHIBLIE	November 4, 2009	Federal Express from Woodbridge, Virginia, to Washington, D.C., containing thirteen tactical bags
38	ALVIREZ TOLLESON	October 5, 2009	Travel from outside Washington, D.C., to Washington, D.C., for the purpose of meeting with Individual 1 and Mahmadou at Clyde's to discuss the corrupt Country A Deal
39	ALVIREZ TOLLESON	October 23, 2009	U.S. mail from Bull Shoals, Arkansas, to Washington, D.C., containing two original copies of the purchase agreement for the corrupt Phase Two deal
40	GODSEY MORALES	October 5, 2009	Travel from outside Washington, D.C., to Washington, D.C., for the purpose of meeting with Individual 1 and Mahmadou at Clyde's to discuss the corrupt Country A Deal
41	GODSEY MORALES	October 22, 2009	U.S. mail from Atlanta, Georgia, to Washington, D.C., containing two original copies of the purchase agreement for the corrupt Phase Two deal
42	SPILLER	October 5, 2009	Phone call from outside of Washington, D.C., to Washington, D.C., for the purpose of discussing the corrupt Country A Deal
43	SPILLER	October 30, 2009	Federal Express from Ponte Vedra Beach, Florida, to Washington, D.C., containing one original copy of the purchase agreement for the corrupt Phase Two deal

(Foreign Corrupt Practices Act Violations and Aiding and Abetting and Causing an Act to be Done, in violation of Title 15, United States Code, Sections 78dd-1(a), 78dd-2(a), 78dd-3(a) and Title 18, United States Code, Section 2)

COUNT 44
(Conspiracy to Commit Money Laundering)

34. Paragraphs 1 through 26 and 29 through 31 the Indictment are realleged and incorporated by reference as if set out in full herein.

35. From in or about May 2009, through in or about January 2010, in the District of Columbia, and elsewhere, defendants,

AMARO GONCALVES, JEANA MUSHRIQUI, JOHN M. MUSHRIQUI, DAVID PAINTER, LEE WARES, PANKESH PATEL, OFER PAZ, WAYNE WEISLER, MICHAEL SACKS, JOHN WIER, HAIM GERI, YOCHI COHEN, SAUL MISHKIN, R. PATRICK CALDWELL, STEPHEN GIORDANELLA, ANDREW BIGELOW, HELMIE ASHIBLIE, DANIEL ALVIREZ, LEE TOLLESON, GREG GODSEY, MARK MORALES, and JONATHAN SPILLER,

and others known and unknown to the Grand Jury, did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, and agree with each other and with other persons, known and unknown to the Grand Jury, to commit offenses against the United States in violation of Title 18 United States Code, Sections 1956 and 1957 as follows:

a. to transport, transmit, and transfer a monetary instrument and funds from a place in the United States to and through a place outside the United States, with the intent to promote the carrying on of specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(2)(A);

b. to conduct and attempt to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, with the intent to promote the carrying on of specified unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(3)(A); and

c. to knowingly engage in a monetary transaction by, through and to a financial institution, affecting interstate and foreign commerce, in criminally derived property of a value greater than $10,000, such property having been derived from specified unlawful activity, in violation of Title 18, United States Code, Section 1957.

It is further alleged that the specified unlawful activity referred to above is a violation of the FCPA, Title 15, United States Code, Sections 78dd-1(a), 78dd-2(a), and 78dd-3(a).

(Conspiracy to Commit Money Laundering, in violation of Title 18, United States Code, Section 1956(h))

FORFEITURE

36. The violations alleged in Counts 1-43 of this Indictment are realleged and incorporated by reference herein for the purpose of alleging forfeiture to the United States of America pursuant to Title 18, United States Code, Sections 981 and 982(a)(1), and Title 28, United States Code, Section 2461(c).

37. As a result of the conspiracy and substantive FCPA offenses alleged in Counts 1-43 of this Indictment (the "FCPA offenses"), the defendants,

AMARO GONCALVES, JEANA MUSHRIQUI, JOHN M. MUSHRIQUI, DAVID PAINTER, LEE WARES, PANKESH PATEL, OFER PAZ, WAYNE WEISLER, MICHAEL SACKS, JOHN WIER, HAIM GERI, YOCHI COHEN, SAUL MISHKIN, R. PATRICK CALDWELL, STEPHEN GIORDANELLA, ANDREW BIGELOW, HELMIE ASHIBLIE, DANIEL ALVIREZ, LEE TOLLESON, GREG GODSEY, MARK MORALES, and JONATHAN SPILLER,

shall, upon conviction of such offenses, forfeit to the United States all property, real and personal, which constitutes or is derived from proceeds traceable to the FCPA offenses, wherever located, and in whatever name held, including, but not limited to a sum of money equal to the amount of proceeds obtained as a result of the FCPA offenses, in violation of Title 15, United States Code, Sections 78dd-1(a) and 78dd-2(a) and Title 18, United States Code, Section 371. By virtue of the offenses charged in Counts 1-43 of the Indictment, any and all interest that the defendants have in the property constituting, or derived from, proceeds obtained directly or indirectly, as a result of such offenses is vested in the United States and hereby forfeited to the United States pursuant to Title 18, United States Code, Section 981, in conjunction with Title 28, United States Code, Section 2461(c).

38. As a result of the money laundering offense alleged in Count 44 of this Indictment, the defendants,

AMARO GONCALVES, JEANA MUSHRIQUI, JOHN M. MUSHRIQUI, DAVID PAINTER, LEE WARES, PANKESH PATEL, OFER PAZ, WAYNE WEISLER, MICHAEL SACKS, JOHN WIER, HAIM GERI, YOCHI COHEN, SAUL MISHKIN, R. PATRICK CALDWELL, STEPHEN GIORDANELLA, ANDREW BIGELOW, HELMIE ASHIBLIE, DANIEL ALVIREZ, LEE TOLLESON, GREG GODSEY, MARK MORALES, and JONATHAN SPILLER,

shall forfeit to the United States any property, real or personal, involved in, or traceable to such property involved in money laundering, in violation of Title 18, United States Code, Sections 1956 and 1957, including but not limited to the sum of money equal to the total amount of property involved in, or traceable to property involved in those violations. By virtue of the commission of the felony offense charged in Count 44 of this Indictment, any and all interest that the defendants have in the property involved in, or traceable to property involved in money laundering is vested in the United States and hereby forfeited to the United States pursuant to Title 18, United States Code, Section 982(a)(1).

39. In the event that any property described above as being subject to forfeiture, as a result of any act or omission by the defendants:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to or deposited with a third person;

(c) has been placed beyond the jurisdiction of the Court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 982, to seek

forfeiture of any other property of the defendants, up to the value of the above described property in paragraph 39(a)-(e).

(Forfeiture, Title 18, United States Code, Sections 981 and 982(a)(1), and Title 28, United States Code, Section 2461(c))

A TRUE BILL

_____

FOREPERSON

DENIS J. MCINERNEY
Chief
Fraud Section, Criminal Division

By: HANK BOND WALTHER
Acting Deputy Chief
LAURA N. PERKINS
Trial Attorney
JOEY LIPTON
Trial Attorney

RONALD C. MACHEN JR.
United States Attorney
In and For the District of Columbia

By: MATTHEW C. SOLOMON
Assistant United States Attorney

Exhibit B

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

October 2008 Grand Jury

SACR09-0077

UNITED STATES OF AMERICA, Plaintiff, v. STUART CARSON, HONG CARSON, a/k/a "Rose Carson," PAUL COSGROVE, DAVID EDMONDS, FLAVIO RICOTTI, and HAN YONG KIM, Defendants.	SA CR No. _____ I N D I C T M E N T [18 U.S.C. § 371: Conspiracy; 15 U.S.C. § 78dd-2: Foreign Corrupt Practices Act; 18 U.S.C. § 1952: Travel Act; 18 U.S.C. § 1519: Destruction of Records; 18 U.S.C. § 2: Aiding and Abetting and Causing an Act To Be Done]

The Grand Jury charges:

INTRODUCTION

At all times relevant to this Indictment:

1. The Foreign Corrupt Practices Act of 1977 ("FCPA"), as amended, Title 15, United States Code, Sections 78dd-1, *et seq.*, was enacted by Congress for the purpose of making it unlawful,

among other things, for certain United States persons and business entities to act corruptly in furtherance of an offer, promise, authorization, or payment of money or anything of value to a foreign government official (or to any person, while knowing that the money or thing of value will be offered, given or promised to a foreign official), for the purpose of securing any improper advantage, or of assisting in obtaining or retaining business for and with, or directing business to, any person.

2. The Travel Act, Title 18, United States Code, Section 1952, makes it unlawful to travel in interstate or foreign commerce or use the mail or any facility in interstate or foreign commerce, with intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of certain unlawful activity, including commercial bribery in violation of the laws of the state of California.

Relevant Individuals and Entities

3. Company A was a Delaware corporation headquartered in Rancho Santa Margarita ("RSM"), California, that designed and manufactured control valves for use in the nuclear, oil and gas, and power generation industries worldwide. Company A sold its products to both state-owned and private companies in over thirty countries around the world. Because Company A was organized under the laws of a State of the United States and had its principal place of business in the United States, it was a "domestic concern" as that term is defined in the FCPA.

4. Defendant STUART CARSON ("S. CARSON") was the Chief Executive Officer ("CEO") of Company A from in or around 1989 through in or around 2005. Defendant S. CARSON was the prime

architect of Company A's friend-in-camp ("FIC") sales model, in which Company A employees and agents cultivated special relationships with employees of its state-owned and private customers. In many instances, Company A employees and agents made corrupt payments to the FICs for the purpose of obtaining and retaining business for Company A. Company A personnel sometimes referred to these corrupt payments as "flowers." From in or around January 2003 through in or around August 2005, defendant S. CARSON caused Company A employees and agents to make corrupt payments totaling approximately $4.3 million to officers and employees of state-owned companies, and corrupt payments totaling approximately $1.8 million to officers and employees of private companies. Defendant S. CARSON was a citizen of the United States and thus was a "domestic concern" and an officer, director, employee and agent of a "domestic concern" as those terms are defined and used in the FCPA.

5. Defendant HONG CARSON, also known as "Rose Carson" ("R. CARSON"), was Company A's Manager of Sales for China and Taiwan from in or around 1995 through in or around 2000 and then served as the Director of Sales for China and Taiwan from in or around 2000 through in or around 2007. Defendant R. CARSON was the wife of defendant S. CARSON. From in or around 2003 through in or around 2007, defendant R. CARSON caused Company A employees and agents to make corrupt payments totaling approximately $1 million to officers and employees of state-owned companies, and corrupt payments totaling approximately $43,000 to officers and employees of private companies. Additionally, on or about August 17, 2007, after learning that Company A had hired counsel to conduct an

internal investigation into Company A's corrupt payments, and just prior to her interview with Company A's counsel, defendant R. CARSON intentionally destroyed documents by flushing the documents down a toilet in the Company A ladies' room. Defendant R. CARSON was a citizen of the United States and thus was a "domestic concern" and an employee and agent of a "domestic concern" as those terms are defined and used in the FCPA.

6. Defendant PAUL COSGROVE ("COSGROVE") was Executive Vice President of Company A from in or around 2002 through in or around 2007 and served as the Head of Company A's Worldwide Sales Department from in or around 1992 through in or around 2007. Defendant COSGROVE was the second highest ranking executive at Company A and was responsible for approving many of the corrupt payments made by employees and agents of Company A to officers and employees of state-owned and private companies. From in or around 2003 through in or around 2007, defendant COSGROVE caused Company A employees and agents to make corrupt payments totaling approximately $1.9 million to officers and employees of state-owned companies, and corrupt payments totaling approximately $300,000 to officers and employees of private companies. Defendant COSGROVE was a citizen of the United States and thus was a "domestic concern" and an officer, director, employee and agent of a "domestic concern" as those terms are defined and used in the FCPA.

7. Defendant DAVID EDMONDS ("EDMONDS") was the Vice-President of Worldwide Customer Service at Company A from in or around 2000 through in or around 2007. In this capacity, defendant EDMONDS oversaw Company A's replacement parts sales and

the servicing of existing valves. From in or around 2003 through in or around 2007, defendant EDMONDS caused Company A employees and agents to make corrupt payments totaling approximately $430,000 to officers and employees of state-owned companies, and corrupt payments totaling approximately $220,000 to officers and employees of private companies. Defendant EDMONDS was a citizen of the United States and thus was a "domestic concern" and an employee and agent of a "domestic concern" as those terms are defined and used in the FCPA.

8. Defendant FLAVIO RICOTTI ("RICOTTI") was Company A's Vice-President and Head of Sales for Europe, Africa, and the Middle East ("EAME") from in or around 2001 through in or around 2007. From in or around 2003 through in or around 2007, defendant RICOTTI caused Company A employees and agents to make corrupt payments totaling approximately $750,000 to officers and employees of state-owned companies, and corrupt payments totaling approximately $380,000 to officers and employees of private companies. Defendant RICOTTI was a citizen of Italy and served as an agent of Company A and thus was an agent of a "domestic concern" as that term is defined and used in the FCPA.

9. Defendant HAN YONG KIM ("KIM") was the President of Company A's Korean office from in or around 1997 through in or around 2005. From in or around 2005 through in or around 2007, defendant KIM served as a consultant to Company A's Korean office. From in or around 2003 through in or around 2007, defendant KIM caused Company A employees and agents to make corrupt payments totaling approximately $200,000 to officers and employees of state-owned companies, and corrupt payments totaling

approximately $350,000 to officers and employees of private companies. Defendant KIM was a citizen of Korea and served as an agent of Company A and thus was an agent of a "domestic concern" as that term is defined and used in the FCPA.

10. Richard Morlok ("Morlok") was Company A's Finance Director from in or around 2002 through in or around 2007. From in or around 2003 through in or around 2006, Morlok caused Company A employees and agents to make corrupt payments totaling approximately $628,000 to officers and employees of state-owned companies. Morlok was a citizen of the United States and thus was a "domestic concern" and an employee and agent of a "domestic concern" as those terms are defined and used in the FCPA.

11. Mario Covino ("Covino") was Company A's Director of Worldwide Factory Sales from in or around March 2003 through in or around 2007. In this capacity, he was responsible for overseeing Company A's new construction projects and the replacement of existing valves made by other companies and installed at Company A's customer's plants. From in or around 2003 through in or around 2007, Covino caused Company A employees and agents to make corrupt payments totaling approximately $1 million to officers and employees of state-owned companies. Covino was a resident of the United States and thus was a "domestic concern" and an employee and agent of a "domestic concern" as those terms are defined and used in the FCPA.

12. Company A's state-owned customers included, but were not limited to, Jiangsu Nuclear Power Corporation ("JNPC") (China), Guohua Electric Power (China), China Petroleum Materials and Equipment Corporation ("CPMEC"), PetroChina, Dongfang

Electric Corporation (China), China National Offshore Oil Corporation ("CNOOC"), Korea Hydro and Nuclear Power ("KHNP"), Petronas (Malaysia), and National Petroleum Construction Company ("NPCC") (United Arab Emirates). Each of these state-owned entities was a department, agency, and instrumentality of a foreign government, within the meaning of the FCPA. The officers and employees of these entities, including the Vice-Presidents, Engineering Managers, General Managers, Procurement Managers, and Purchasing Officers, were "foreign officials" within the meaning of the FCPA.

13. Company A's private company customers included, but were not limited to, Company 1, Company 2, Company 3, Company 4, and Company 5.

Overview of the Corrupt Payments

14. Beginning in or around 1998 and continuing through in or around August 2007, defendants S. CARSON, R. CARSON, COSGROVE, EDMONDS, RICOTTI, and KIM, as well as Morlok, Covino, Company A and others known and unknown to the Grand Jury, made and caused Company A employees and agents to make corrupt payments to officers and employees of numerous state-owned and privately-owned customers around the world for the purpose of assisting in obtaining or retaining business for Company A. Between in or around 2003 and in or around 2007, these corrupt payments to officers and employees of state-owned customers totaled $4.9 million, and the corrupt payments to officers and employees of privately-owned customers totaled approximately $1.95 million. Thus, approximately $6.85 million in total improper payments were made in approximately 236 payments in over thirty countries and

resulted in net profits to Company A of approximately $46.5 million from the sales related to those corrupt payments.

COUNT ONE

[18 U.S.C. § 371]

15. Paragraphs 1 through 14 are realleged and incorporated by reference as though set forth herein.

OBJECTS OF THE CONSPIRACY

16. Beginning in or around 1998, and continuing through in or around 2007, in the Central District of California, and elsewhere, defendants S. CARSON, R. CARSON, COSGROVE, EDMONDS, RICOTTI, and KIM, as well as Morlok, Covino, Company A and others known and unknown to the Grand Jury, did unlawfully, willfully and knowingly combine, conspire, confederate and agree to commit offenses against the United States, that is,

(A) being a domestic concern and an agent of a domestic concern, to willfully make use of the mails and the means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, offer, gift, promise to give, and authorization of the giving of anything of value to any foreign official, and to any person, while knowing that the money or thing of value will be offered, given, or promised to a foreign official, for purposes of: (i) influencing acts and decisions of such foreign official in his official capacity; (ii) inducing such foreign official to do and omit to do acts in violation of the lawful duty of such official; (iii) securing an improper advantage; and (iv) inducing such foreign official to use his influence with a foreign government and instrumentalities thereof to affect and influence acts and decisions of such government and instrumentalities, in order to assist defendants S. CARSON, R.

CARSON, COSGROVE, EDMONDS, RICOTTI, and KIM, as well as Morlok, Covino, Company A and others known and unknown to the Grand Jury in obtaining and retaining business for and with, and directing business to, Company A and others, in violation of Title 15, United States Code, Section 78dd-2(a); and

(B) to travel and cause travel in interstate and foreign commerce and use the mail and any facility in interstate and foreign commerce, with the intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of an unlawful activity, that is, commercial bribery in violation of California Penal Code Section 641.3, and thereafter to perform and attempt to perform and cause the performance of an act to promote, manage, establish and carry on, and to facilitate the promotion, management, establishment and carrying on of such unlawful activity, in violation of Title 18, United States Code, Section 1952(a)(3).

PURPOSE OF THE CONSPIRACY

17. The purpose of the conspiracy was to make corrupt payments to officers and employees of state-owned and private companies in order to secure and maintain business for Company A.

THE MANNERS AND MEANS OF THE CONSPIRACY

18. Defendants S. CARSON, R. CARSON, COSGROVE, EDMONDS, RICOTTI, and KIM, as well as Morlok, Covino, Company A and others known and unknown to the Grand Jury employed various manners and means to carry out the conspiracy, including but not limited to the following:

a. Defendants S. CARSON, R. CARSON, COSGROVE, EDMONDS, RICOTTI, and KIM, as well as Morlok, Covino, Company A

and others known and unknown to the Grand Jury would and did follow a sales model that encouraged Company A salespeople to cultivate FICs, who were typically officers and employees of Company A's state-owned and private customers and who had the authority either to award contracts to Company A or to influence the technical specifications of an order in a manner that would favor Company A.

b. As part of the cultivation of FICs at Company A's customers, defendants S. CARSON, R. CARSON, COSGROVE, EDMONDS, RICOTTI, and KIM, as well as Morlok, Covino, Company A and others known and unknown to the Grand Jury would and did cause corrupt payments to be made to the FICs in order to secure business.

c. Defendants S. CARSON, R. CARSON, COSGROVE, EDMONDS, RICOTTI, and KIM, as well as Morlok, Covino, Company A and others known and unknown to the Grand Jury would and did cause the Company A Finance Department to arrange for direct payments to the FICs, payments to the FICs through Company A's representatives and salespeople, and payments to the FICs through Company A's "consultants" who were retained for the purpose of acting as pass-through entities for the improper payments.

d. Defendants S. CARSON, R. CARSON, COSGROVE, EDMONDS, RICOTTI, and KIM, as well as Morlok, Covino, Company A and others known and unknown to the Grand Jury would and did cause Company A to make corrupt payments to FICs at numerous state-owned entities including, but not limited to, JNPC (China), Guohua Electric Power (China), CPMEC, PetroChina, Dongfang Electric Corporation (China), CNOOC, KHNP, Petronas (Malaysia), and NPCC (United Arab Emirates).

e. Defendants S. CARSON, R. CARSON, COSGROVE, EDMONDS, RICOTTI, and KIM, as well as Morlok, Covino, Company A and others known and unknown to the Grand Jury would and did cause Company A to make corrupt payments to FICs at numerous private companies including, but not limited to, Company 1, Company 2, Company 3, Company 4, and Company 5.

19. Defendants S. CARSON, R. CARSON, COSGROVE, EDMONDS, and RICOTTI, as well as Covino, Company A and others known and unknown to the Grand Jury would and did participate in and arrange for overseas holidays to places such as Disneyland and Las Vegas for officers and employees of state-owned and private customers under the guise of training and inspection trips. The actual purposes of the trips were to reward the customers' officers and employees for causing their employers to purchase Company A products, retain current business for Company A, and obtain new business for Company A.

20. Defendants S. CARSON and R. CARSON would and did arrange for the purchase of numerous extravagant vacations they took with executives of both state-owned and private customers for the purpose of securing business and charge all expenses, including those of the customers, to Company A. Such expenses included first-class airfare to destinations such as Hawaii, five-star hotel accommodations, charter boat trips, and similar luxuries.

21. Defendants S. CARSON, R. CARSON, and COSGROVE would and did cause Company A to pay the college tuition of the children of at least two executives at Company A's state-owned customers for the purpose of securing business.

22. Defendants S. CARSON, R. CARSON, COSGROVE, EDMONDS, and RICOTTI, as well as Covino, Company A and others known and unknown to the Grand Jury would and did host and attend lavish sales events to entertain current and potential state-owned and private customers for the purpose of securing business. Company A paid for a large portion of the costs associated with these events, including hotel costs, meals, greens fees for golf, and travel expenses.

23. Defendants S. CARSON, R. CARSON, COSGROVE, and EDMONDS and others known and unknown to the Grand Jury would and did give expensive gifts to officers and employees of state-owned and private customers for the purpose of assisting in securing business.

24. Defendant S. CARSON would and did attempt to halt a 2004 internal audit of commission payments conducted by Company A's parent company.

25. Defendants R. CARSON, EDMONDS, and KIM, as well as Morlok, Covino, Company A and others known and unknown to the Grand Jury would and did provide false information to internal auditors in connection with Company A's parent company's audit of commission payments, falsely deny that improper payments had occurred, and provide false and misleading responses to the auditors.

26. Defendant EDMONDS would and did cause the creation of false invoices in an attempt to mislead the internal auditors and to convince the auditors that certain commission payments made to Company A's customers were actually legitimate payments, when defendant EDMONDS knew that the payments were actually improper.

27. Following the internal audit, defendants S. CARSON, COSGROVE, EDMONDS, and RICOTTI, as well as Morlok, Covino and others known and unknown to the Grand Jury would and did continue to encourage and approve improper payments to officers and employees of state-owned and private customers, but would and did instruct Company A employees not to use terms such as "FIC," "flowers," or "special arrangement" in emails.

28. Defendant EDMONDS would and did cause the preparation of a spreadsheet for the purpose of making it appear that several FIC payments in Korea were legitimate, when defendant EDMONDS knew that the payments were actually improper.

29. Defendants R. CARSON, COSGROVE, EDMONDS, and RICOTTI, as well as Covino and others known and unknown to the Grand Jury would and did provide false and misleading information to Company A's attorneys in connection with an August 2007 internal investigation into Company A's commission payments, and would and did falsely deny that improper payments had been made.

30. Defendant R. CARSON would and did destroy documents in connection with Company A's August 2007 internal investigation into Company A's commission payments by, among other things, taking such documents to the Company A ladies' room, tearing up the documents, and flushing them down a toilet. Defendant R. CARSON would and did continue to flush documents down the toilet even after a representative of the Company A Human Resources Department instructed her to stop doing so.

OVERT ACTS

31. In furtherance of the conspiracy and to achieve its purpose and objects, defendants S. CARSON, R. CARSON, COSGROVE, EDMONDS, RICOTTI, and KIM, as well as Morlok, Covino, Company A and others known and unknown to the Grand Jury committed various overt acts in the Central District of California, and elsewhere, including, but not limited to, the following:

Corrupt Dealings with JNPC Official

Overt Act No. 1: In or around February 1999, defendants S. CARSON and R. CARSON held a strategy meeting with other Company A employees concerning the Tianwan Nuclear Power Plant project in China, which was owned by JNPC, a state-owned entity, at which meeting defendants S. CARSON and R. CARSON stated that Company A must cultivate FICs at the customer and mentioned the names of possible FICs.

Overt Act No. 2: In or around August 1999, defendant R. CARSON arranged for a 2.2% commission to be paid to a purported Chinese "consultant," who was actually an employee of JNPC who had influence in awarding the JNPC contract to Company A.

Overt Act No. 3: On or about June 9, 2000, defendants S. CARSON and R. CARSON caused Company A to wire approximately $50,000 from its Wells Fargo bank account in California to an account at UBS in Switzerland for the purpose of making a corrupt payment to a JNPC official with regard to the Tianwan Nuclear Power Plant project.

Overt Act No. 4: On or about July 3, 2000, defendants S. CARSON and R. CARSON caused Company A to wire approximately $50,000 from its Wells Fargo bank account in California to an

account at UBS in Switzerland for the purpose of making a corrupt payment to a JNPC official with regard to the Tianwan Nuclear Power Plant project.

Overt Act No. 5: On or about July 14, 2000, defendant R. CARSON sent a "confidential" email to other Company A executives stating that "we have already paid them $100,000 so that rest of $100,000 will be pay to them when they stay here."

Corrupt Dealings with KHNP Officials

Overt Act No. 6: On or about November 1, 2003, defendant S. CARSON sent an email to defendant KIM stating "Please try very hard to find a Friend in Camp for us on Shin Kori/Wolsong. Use your contacts, [President of Company A's representative in Korea's, CCI employee's], anybodies, but get us a FIC who can help us win this order. I'm will to pay big money for a FIC/Consultant."

Overt Act No. 7: On or about November 4, 2003, defendant KIM wrote a return email to defendant S. CARSON stating "The biggest problem is not the volume of flower or how close we are with those guys. The problem is the overall climate of KHNP and Korean society. The former president of KHNP, Mr. [foreign official] who is a good friends of Company A, was fired because he helped some vendors. Everybody is talking that he must go to jail. . . . We need a strong guy who can take the risk but there is no one nowadays. . . . The possibility is not so high but [President of Company A's representative in Korea] and I am still trying very hard to get the consultant."

Overt Act No. 8: On or about February 12, 2004, Covino sent an email to defendant COSGROVE stating "Paul, I need your

approval on the commission for the Condense Stem Dump valves for Wolsong 3 & 4 valued at $1.8MM (GM: 55%). Besides what Hanyong is asking, the real situation is as follows: (1) 5% for [Company A's representative in Korea]; (2) 5% for Mr. [foreign official] (KHNP Vice-President) - [Company A's representative in Korea] has already committed; (3) 2% for other three people at site."

Overt Act No. 9: On or about February 5, 2004, defendant KIM sent an email to a Company A employee indicating that, with regard to the KHNP Wolsong 3 & 4 project, a 5% commission to Company A's representative in Korea was appropriate and that he needed "another 2% for site people."

Overt Act No. 10: On or about February 12, 2004, defendant COSGROVE approved the payment of a 12% commission on the Wolsong 3 & 4 project, with 5% going to a KHNP Vice President and 2% going to three other employees of KHNP for the purpose of securing KHNP's business with regard to the Wolsong 3 & 4 project in Korea.

Overt Act No. 11: On or about March 30, 2004, defendant KIM wrote to a Company A salesperson that "[President of Company A's representative in Korea] promised 5% to FIC. So FIC made a budget and approved it very quickly."

Overt Act No. 12: On or about September 21, 2004, defendants S. CARSON, COSGROVE and KIM caused Company A to wire a commission payment of approximately $250,200 from its Wells Fargo bank account in California to an account at Citibank in New York for the purpose of making corrupt payments to KHNP officials with regard to the Wolsong 3 & 4 project.

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Additional Corrupt Dealings with KHNP Officials

Overt Act No. 13: On or about April 21, 2004, defendants EDMONDS and KIM, as well as Morlok caused Company A to wire a commission payment of approximately $57,658 from its Wells Fargo bank account in California to an account at Industrial Bank in Korea for the purpose of making a corrupt payment to a KHNP official related to the Wolsong and YGN projects in Korea.

Overt Act No. 14: On or about April 29, 2004, defendants EDMONDS and KIM, as well as Morlok caused Company A to wire a payment of approximately $17,479 from its Wells Fargo bank account in California to an account at Industrial Bank in Korea for the purpose of concealing the corrupt payment to the KHNP official related to the Wolsong and YGN projects in Korea.

Overt Act No. 15: In or around August 2004, defendant EDMONDS caused the creation of a false invoice that was purportedly from "Power Engineering Company" in the amount of $29,426 to cover up the corrupt payment to the KHNP official related to the Wolsong project in Korea.

Overt Act No. 16: In or around August 2004, defendant EDMONDS caused the creation of a false invoice that was purportedly from "Namkwang Company" in the amount of $27,747 to cover up the corrupt payment to the KHNP official related to the YGN project in Korea.

Corrupt Dealings with PetroChina Official

Overt Act No. 17: On or about March 18, 2004, defendant R. CARSON approved the payment of approximately $15,000 to an official of PetroChina, a Chinese state-owned oil and gas company, for the purpose of securing PetroChina's business with

regard to the Sichuan Natural Gas project in China.

Overt Act No. 18: On or about April 6, 2004, defendant COSGROVE approved the release of a payment of approximately $15,000 from Company A to an official of PetroChina for the purpose of securing PetroChina's business with regard to the Sichuan Natural Gas project in China.

Overt Act No. 19: On or about April 13, 2004, defendants R. CARSON and COSGROVE caused Company A to wire a commission payment of approximately $15,000 from its Wells Fargo bank account in California to an account at the Bank of China for the purpose of making a corrupt payment to a PetroChina official with regard to the Sichuan Natural Gas project in China.

Corrupt Dealings with CPMEC Officials

Overt Act No. 20: On or about November 10, 2003, a Company A salesperson sent an email to defendant R. CARSON stating, with respect to the sale of a valve on the Kela-2 project to CPMEC, a Chinese state-owned company, that Company A's price was $520,040 and that "the customer marked the price to USD749,040 and required USD229,000 feeded back as consultant fee."

Overt Act No. 21: On or about November 25, 2003, at defendant R. CARSON'S request, defendant COSGROVE approved the payment of approximately $229,000 from Company A to officials of CPMEC for the purpose of securing CPMEC's business with regard to the Kela-2 project in China.

Overt Act No. 22: On or about April 20, 2004, defendants R. CARSON and COSGROVE caused Company A to make a cash payment of approximately $2,000 at Los Angeles International Airport to officials of CPMEC for the purpose of securing CPMEC's business

with regard to the Kela-2 project in China.

Overt Act No. 23: On or about January 20, 2004, defendants R. CARSON and COSGROVE caused Company A to wire a commission payment of approximately $30,000 from its Wells Fargo bank account in California to an account at the Bank of China for the purpose of making a corrupt payment to a CPMEC official with regard to the Kela-2 project in China.

Overt Act No. 24: On or about October 15, 2004, defendants R. CARSON and COSGROVE caused Company A to wire a commission payment of approximately $100,000 from its Wells Fargo bank account in California to an account at Hang Seng Bank in China for the purpose of making a corrupt payment to a CPMEC official with regard to the Kela-2 project in China.

Overt Act No. 25: On or about January 14, 2005, defendants R. CARSON and COSGROVE caused Company A to wire a commission payment of approximately $59,005.20 from its Wells Fargo bank account in California to an account at Hang Seng Bank in China for the purpose of making a corrupt payment to a CPMEC official with regard to the Kela-2 project in China.

Overt Act No. 26: On or about March 1, 2005, defendants R. CARSON and COSGROVE caused Company A to wire a commission payment of approximately $33,706.80 from its Wells Fargo bank account in California to an account at Hang Seng Bank in China for the purpose of making a corrupt payment to a CPMEC official with regard to the Kela-2 project in China.

Corrupt Dealings with CNOOC Officials

Overt Act No. 27: On or about December 30, 2003, a Company A salesperson in China sent an email to defendant R. CARSON, as

well as Covino and others with regard to the sale of valves for the Chunxiao Gas Complex Development by Company A to CNOOC, a Chinese state-owned entity, stating "the customer agreed to marked up the price to $250,000, and required $65,000 feedback beside the 2% of the commission. . . . Therefore the total commission is $68,700. The distribution of this commission as following: $3700 as consultant fee to the Design Institute; $65,000 as commission to the enduser."

Overt Act No. 28: On or about April 14, 2004, defendant COSGROVE sent an email regarding this project to defendant S. CARSON stating that "Rose says we need to take this for future opportunities I need your approval."

Overt Act No. 29: On or about April 15, 2004, defendant S. CARSON approved the proposed payment from Company A to an official of CNOOC for the purpose of securing CNOOC's business with regard to the Chunxiao Gas Complex Development in China and future business, stating in an email that "It is my understanding that this job has been delayed by us for 3 months. I authorize engineering procurement and manufacturing to begin. I make this authorization based on my agreement that Rose will reduce commissions payable and clean up the T&C's on this job . . . ."

Overt Act No. 30: On or about April 16, 2004, defendant R. CARSON's assistant sent an email to defendants S. CARSON and COSGROVE, as well as Morlok and others stating "Hereinafter is the message from Rose: The commission included in the contract price is actually what the customer added on our quotation which won't influence our margin. . . . [Company A salesperson in China] - Rose instructed you to explain the details regarding

commission to all the gentlemen on the above email list."

Overt Act No. 31: On or about April 18, 2004, the Company A salesperson explained the arrangement to defendants S. CARSON, R. CARSON and COSGROVE, as well as Morlok by email: "Our final decision price is $185k and including 2% commission. Customer marked up to $250k as final contract price and required the balance feedback as commission, therefore the total commission is $68.7k."

Overt Act No. 32: On or about January 14, 2005, defendants S. CARSON, R. CARSON and COSGROVE, as well as Morlok caused Company A to wire a commission payment of approximately $58,500 from its Wells Fargo bank account in California to a bank account at Hang Seng Bank in China for the purpose of making a corrupt payment to a CNOOC official with regard to the Chunxiao Gas Complex Development in China.

Corrupt Dealings with NPCC Officials

Overt Act No. 33: On or about April 28, 2005, a Company A salesperson sent an email to defendant RICOTTI stating "Munther called me up today and he wants me to confirm a 5% commission on the OGDIII Chokes job (NPCC), he's got two key FICs within NPCC under his control (including the Project Direct [foreign official]) and deals have to be made now. Out of these 5%, 3% will go to his FICs and 2% to him. I told him that we could commit only 4% at this stage, and if we are not required to reduce our current pricing too much we could increase it back to 5%, he agreed. What do you think, can I proceed?"

Overt Act No. 34: On or about April 28, 2005, defendant RICOTTI sent a reply email to the Company A salesperson stating

"well done and approved" and thereby approved the payment of $67,791 from Company A to officials of NPCC, a state-owned petroleum company in the United Arab Emirates ("UAE"), for the purpose of securing NPCC's business with regard to the OGD III project in the UAE.

Overt Act No. 35: On or about April 2, 2007, defendant RICOTTI caused Company A to wire a commission payment of approximately $161,413.31 from its Wells Fargo bank account in California to an account at Arab Bank in the UAE for the purpose of making corrupt payments to NPCC officials with regard to the OGD III project in the UAE.

Overt Act No. 36: On or about April 13, 2007, defendant RICOTTI caused Company A to wire a commission payment of approximately $100,000 from its Wells Fargo bank account in California to an account at Arab Bank in the UAE for the purpose of making corrupt payments to NPCC officials with regard to the OGD III project in the UAE.

Corrupt Dealings with Dongfang Electric Corporation Officials

Overt Act No. 37: On or about March 19, 2004, defendant R. CARSON sent an email to defendants COSGROVE and EDMONDS requesting approval to pay three officials of Dongfang Electric Corporation, a Chinese state-owned company, 9% of the total contract value and an additional $2,000 to each FIC with regard to the Huizhou, Qianwan, and Shenzhen projects in China.

Overt Act No. 38: On or about March 24, 2004, defendants COSGROVE and EDMONDS approved the payment of approximately $671,695 from Company A to officials of Dongfang Electric Corporation for the purpose of securing business with regard to

the Huizhou, Qianwan, and Shenzhen projects in China.

Overt Act No. 39: On or about February 1, 2005, defendants R. CARSON, COSGROVE, and EDMONDS caused Company A to wire a commission payment of approximately $104,539.25 from its Wells Fargo bank account in California to an account at HSBC in China for the purpose of making corrupt payments to Dongfang officials with regard to the Huizhou, Qianwan, and Shenzhen projects in China.

Overt Act No. 40: On or about February 2, 2005, defendants R. CARSON, COSGROVE, and EDMONDS caused Company A to wire a commission payment of approximately $125,447.10 from its Wells Fargo bank account in California to an account at HSBC in China for the purpose of making corrupt payments to Dongfang officials with regard to the Huizhou, Qianwan, and Shenzhen projects in China.

Corrupt Dealings with Guohua Electric Power Official

Overt Act No. 41: On or about October 19, 2003, defendant COSGROVE, at the request of defendant R. CARSON, approved the payment of approximately $36,146 from Company A to an official of Guohua Electric Power, a Chinese state-owned power company, for the purpose of securing Guohua Electric Power's business with regard to the Taishan II project in China.

Overt Act No. 42: On or about October 21, 2003, defendants R. CARSON and COSGROVE caused Company A to wire a commission payment of approximately $24,500 from its Wells Fargo bank account in California to an account at Mellon Bank in Pennsylvania to pay the tuition of the Guohua Electric Power official's son, a student at the University of Pennsylvania, for

the purpose of making a corrupt payment to the Guohua Electric Power official with regard to the Taishan II project in China.

Overt Act No. 43: On or about October 21, 2003, defendants R. CARSON and COSGROVE caused Company A to wire a commission payment of approximately $11,646 from its Wells Fargo bank account in California to an account at PNC Bank in Pennsylvania to pay the tuition of the Guohua Electric Power official's son, a student at the University of Pennsylvania, for the purpose of making corrupt payments to the Guohua Electric Power official with regard to the Taishan II project in China.

Corrupt Dealings with Petronas Official

Overt Act No. 44: On or about November 6, 2003, defendant EDMONDS approved the payment of approximately $98,000 from Company A to an official of Petronas, a Malaysian state-owned petroleum company, for the purpose of securing Petronas' business with regard to the Petronas GPP shutdown project.

Overt Act No. 45: On or about January 6, 2004, defendant EDMONDS caused Company A to wire a commission payment of approximately $98,000 from its Wells Fargo bank account in California to an account at RHB Bank in Malaysia for the purpose of making a corrupt payment to a Petronas official with regard to the Petronas GPP shutdown project.

Corrupt Dealings with Company 1 Employee

Overt Act No. 46: On or about December 2, 2003, defendant EDMONDS approved the payment of approximately $10,000 from Company A to an employee of Company 1, a private company in China, for the purpose of securing Company 1's business with regard to the Meizhouwan project in China.

Overt Act No. 47: On or about March 9, 2004, defendant EDMONDS caused Company A to wire a commission payment of approximately $10,000 from its Wells Fargo bank account in California to an account at China Construction Bank in China for the purpose of making a corrupt payment to a Company 1 employee with regard to the Meizhouwan project in China.

Additional Corrupt Dealings with Company 1 Employee

Overt Act No. 48: On or about April 5, 2004, defendant EDMONDS approved the payment of approximately $5,000 from Company A to an employee of Company 1 for the purpose of securing Company 1's business with regard to the Meizhouwan project in China.

Overt Act No. 49: On or about April 25, 2005, defendant EDMONDS caused Company A to wire a commission payment of approximately $5,000 from its Handelsbanken bank account in Sweden to an account at the Bank of China for the purpose of making a corrupt payment to a Company 1 employee with regard to the Meizhouwan project in China.

Corrupt Dealings with Company 4 Employee

Overt Act No. 50: On or about May 2, 2003, a Company A employee sent an email to defendant RICOTTI, as well as Covino and others with regard to Company 4, a private engineering procurement company headquartered in Milan, Italy that controlled certain business in connection with the Kashagan Field Development project in Kazakhstan: "Thru a good contact of mine I have been told that we need to make a deal with [employee], Project Procurement Manager [Company 4] . . . . EVERY purchase order will be screened and signed off by [employee]. . . . He is working with a 'bag man' and is looking to take commission on all

major orders."

Overt Act No. 51: In or around December 2003, defendant RICOTTI approved the payment of approximately $69,420 from Company A to an employee of Company 4 for the purpose of securing Company 4's business with regard to the Kashagan Field Development project in Kazakhstan.

Overt Act No. 52: On or about December 21, 2006, defendant RICOTTI caused Company A to wire a commission payment of approximately $69,420 from its Wells Fargo bank account in California to an account at Barclays Bank in London for the purpose of making a corrupt payment to a Company 4 employee with regard to the Kashagan Field Development project in Kazakhstan.

Corrupt Dealings with Company 3 Employee

Overt Act No. 53: In or around March 2005, defendant COSGROVE approved the payment of approximately $163,449 from Company A to an employee of Company 3, a private company headquartered in Moscow, Russia, for the purpose of securing Company 3's business with regard to the SIPAT Thermal Power Plant in India.

Overt Act No. 54: On or about November 29, 2005, defendants COSGROVE and RICOTTI caused Company A to wire a commission payment of approximately $26,865 from its Handelsbanken bank account in Sweden to an account at Dresdner Bank in New York for the purpose of making a corrupt payment to a Company 3 employee with regard to the SIPAT Thermal Power Plant in India.

Overt Act No. 55: On or about October 24, 2006, defendants COSGROVE and RICOTTI caused Company A to wire a commission payment of approximately $136,584.98 from its Handelsbanken bank

account in Sweden to an account at Baltic International Bank in Latvia for the purpose of making a corrupt payment to a Company 3 employee with regard to the SIPAT Thermal Power Plant in India.

Corrupt Dealings with Company 5 Employee

Overt Act No. 56: In or around January 2002, defendant RICOTTI approved the payment of approximately $20,045 from Company A to an employee of Company 5, a private company headquartered in Houston, Texas, for the purpose of securing Company 5's business with regard to the Ras Laffan Choke Valves project in Qatar.

Overt Act No. 57: On or about February 28, 2005, defendant RICOTTI caused Company A to wire a commission payment of approximately $11,800 from its Wells Fargo bank account in California to an account at Qatar National Bank for the purpose of making a corrupt payment to a Company 5 employee with regard to the Ras Laffan Choke Valves project in Qatar.

Corrupt Dealings with Company 2 Employee

Overt Act No. 58: On or about July 12, 2003, defendant S. CARSON traveled in interstate commerce, from California to Hawaii, for the purpose of making a corrupt payment to an employee of Company 2, a private company headquartered in San Francisco, California, for the purpose of purchasing a lavish Hawaii vacation for the Company 2 employee to secure future Company 2 business.

Destruction of Records

Overt Act No. 59: On or about August 17, 2007, defendant R. CARSON destroyed documents relevant to Company A's August 2007 internal investigation into Company A's commission payments by,

among other things, taking such documents to the Company A ladies' room, tearing up the documents, and flushing them down a toilet.

COUNTS TWO THROUGH TEN

[15 U.S.C. § 78dd-2(a), (g)(2)(A); 18 U.S.C. § 2]

32. Paragraphs 1 through 31 are realleged and incorporated by reference as though set forth herein.

33. On or about the dates set forth below, in the Central District of California, and elsewhere, defendants S. CARSON, R. CARSON, COSGROVE, EDMONDS, RICOTTI, and KIM, who were domestic concerns and agents of domestic concerns within the meaning of the FCPA, willfully made use of, and aided, abetted, and caused others to make use of, the mails and the means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, offer, gift, promise to give, and authorization of the giving of anything of value to any foreign official, and to any person, while knowing that the money or thing of value will be offered, given, or promised to any foreign official, for purposes of: (i) influencing acts and decisions of such foreign official in his official capacity; (ii) inducing such foreign official to do and omit to do acts in violation of the lawful duty of such official; (iii) securing an improper advantage; and (iv) inducing such foreign official to use his influence with a foreign government and instrumentalities thereof to affect and influence acts and decisions of such government and instrumentalities, in order to assist defendants S. CARSON, R. CARSON, COSGROVE, EDMONDS, RICOTTI, and KIM, as well as Morlok, Covino, Company A and others known and unknown to the Grand Jury in obtaining and retaining business for and with, and directing business to, Company A and others, as follows:

COUNT	DEFENDANTS	ON OR ABOUT DATE	INSTRUMENTALITY OF INTERSTATE COMMERCE	INTENDED FOREIGN PUBLIC OFFICIAL BENEFICIARY
TWO	S. CARSON COSGROVE KIM	9/21/2004	Wire transfer of approximately $250,200 from California to New York	Official(s) at KHNP
THREE	EDMONDS KIM	4/21/2004	Wire transfer of approximately $57,658 from California to Korea	Official(s) at KHNP
FOUR	R. CARSON COSGROVE	4/13/2004	Wire transfer of approximately $15,000 from California to China	Official(s) at PetroChina
FIVE	R. CARSON COSGROVE	3/1/2005	Wire transfer of approximately $33,706.80 from California to China	Official(s) at CPMEC
SIX	S. CARSON R. CARSON COSGROVE	1/14/2005	Wire transfer of approximately $58,500 from California to China	Official(s) at CNOOC
SEVEN	RICOTTI	4/2/2007	Wire transfer of approximately $161,413.31 from California to the UAE	Official(s) at NPCC
EIGHT	R. CARSON COSGROVE EDMONDS	2/2/2005	Wire transfer of approximately $125,447.10 from California to China	Official(s) at Dongfang
NINE	R. CARSON COSGROVE	10/21/2003	Wire transfer of approximately $24,500 from California to Pennsylvania	Official(s) at Guohua

TEN	EDMONDS	1/6/2004	Wire transfer of approximately $98,000 from California to Malaysia	Official(s) at Petronas

In violation of Title 15, United States Code, Section 78dd-2, and Title 18, United States Code, Section 2.

COUNTS ELEVEN THROUGH FIFTEEN

[18 U.S.C. § 1952(a)(3); 18 U.S.C. § 2]

34. Paragraphs 1 through 31 are realleged and incorporated by reference as though set forth herein.

35. On or about the dates set forth below, in the Central District of California and elsewhere, defendants COSGROVE, EDMONDS, and RICOTTI did travel in interstate and foreign commerce and use and cause to be used, and aided, abetted, and caused others to make use of, the mail and any facility in interstate and foreign commerce as described below, with the intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment, and carrying on of an unlawful activity, that is, commercial bribery in violation of California Penal Code Section 641.3, and thereafter performed and attempted to perform and caused the performance of an act to promote, manage, establish and carry on, and to facilitate the promotion, management, establishment and carrying on of such unlawful activity as follows:

COUNT	DEFENDANTS	ON OR ABOUT DATE	FACILITY OF INTERSTATE AND FOREIGN COMMERCE	INTENDED PRIVATE COMPANY BENEFICIARY
ELEVEN	EDMONDS	3/9/2004	Wire transfer of approximately $10,000 from California to China	Employee(s) at Company 1
TWELVE	EDMONDS	4/25/2005	Wire transfer of approximately $5,000 from Sweden to China	Employee(s) at Company 1
THIRTEEN	RICOTTI	12/21/2006	Wire transfer of approximately $69,420 from California to the United Kingdom	Employee(s) at Company 4
FOURTEEN	COSGROVE RICOTTI	10/24/2006	Wire transfer of approximately $136,584.98 from Sweden to New York	Employee(s) at Company 3
FIFTEEN	RICOTTI	2/28/2005	Wire transfer of approximately $11,800 from California to Qatar	Employee(s) at Company 5

In violation of Title 18, United States Code, Sections 1952(a)(3) and 2.

COUNT SIXTEEN

[18 U.S.C. § 1519]

36. Paragraphs 1 through 31 are realleged and incorporated by reference as though set forth herein.

37. On or about August 17, 2007, in the Central District of California, defendant R. CARSON did knowingly alter, destroy, mutilate, conceal, and cover up a record, document, and tangible object with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of any department or agency of the United States, or in relation to or contemplation of any such matter or case, by tearing up documents relevant to the investigation and flushing the documents down the toilet in the Company A ladies' room just prior to her interview with Company A's counsel in connection

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with Company A's internal investigation into commission payments, in violation of Title 18, United States Code, Section 1519.

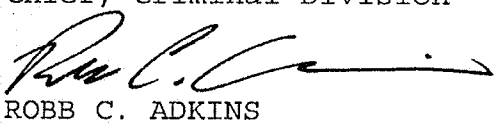
A TRUE BILL

/S/

Foreperson

THOMAS P. O'BRIEN
United States Attorney

CHRISTINE C. EWELL
Assistant United States Attorney
Chief, Criminal Division



ROBB C. ADKINS
Assistant United States Attorney
Chief, Santa Ana Office

DOUGLAS F. McCORMICK
Assistant United States Attorney
Deputy Chief, Santa Ana Office

STEVEN A. TYRRELL, Chief
MARK F. MENDELSOHN, Deputy Chief
HANK BOND WALTHER, Assistant Chief
ANDREW GENTIN, Trial Attorney
Fraud Section, Criminal Division
U.S. Department of Justice

Exhibit C

A person is deemed to have such knowledge if the evidence shows that he was aware of a high probability of the existence of such circumstance, unless he actually believes that such circumstance does not exist.

(15 U.S.C. § 78dd-2(h)(3)(A). *See Kay,* 4:01cr00914, Dkt. Entry 142 at 20-21; *Mead,* Cr. No. 98-240-01-AET.)

GOVERNMENT'S PROPOSED JURY INSTRUCTION NO. 47

Willful Blindness - Foreign Corrupt Practices Act

The element of knowledge may be satisfied by inferences you may draw if you find that Defendant Jefferson deliberately closed his eyes to what otherwise would have been obvious to him. When knowledge of the existence of a particular fact is an element of the offense, such knowledge may be established if a person is aware of a high probability of its existence and then fails to take action to determine whether it is true or not.

If the evidence shows you that Defendant Jefferson actually believed the transaction was legal, he cannot be convicted. Nor can he be convicted of being stupid or negligent or mistaken; more is required than that. But a defendant's knowledge of a fact may be inferred from ***willful blindness*** to the knowledge or information indicating that there was a high probability that there was something forbidden or illegal about the contemplated transaction and payment. It is the jury's function to determine whether or not Defendant Jefferson deliberately closed his eyes to the inferences and the conclusions to be drawn from the evidence here.

(*Mead,* Cr. No. 98-240-01-AET; *see also* Eleventh Circuit Pattern Jury Instructions for Criminal Cases, Special Instruction No. 8.)

GOVERNMENT'S PROPOSED JURY INSTRUCTION NO. 48

"Foreign Official" and "Instrumentality" -- Defined

The term "foreign official" means any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or any person acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality. In this case, the Indictment charges that the then-Vice President of Nigeria, Atiku Abubakar, was a foreign official.

An "instrumentality" of a foreign government includes government-owned or government-controlled companies, such as certain commercial carriers (*e.g.,* airlines, railroads), utilities (*e.g.,* electricity, gas), and telecommunications companies (*e.g.,* Internet, telephone, television). The Indictment in this case alleges that Nigerian Telecommunications, Limited, also known as "NITEL," was a Nigerian government-controlled company.

(15 U.S.C. § 78dd-2(h)(2)(A). *See Kay,* 4:01cr00914, Dkt. Entry 142 at 22; *Mead,* Cr. No. 98-240-01-AET.)

GOVERNMENT'S PROPOSED JURY INSTRUCTION NO. 49

"Obtaining or Retaining Business" -- Defined

The Foreign Corrupt Practices Act prohibits offers, payments, promises to pay, or authorization of payments made by a domestic concern in order to assist such domestic concern in obtaining or retaining business for or with, or directing business to, any person or company. It is therefore not necessary for the government to prove that the domestic concern itself obtained or retained any business whatsoever as a result of an unlawful offer, payment, promise, or gift.

Moreover, the Act's prohibition of corrupt payments to assist in obtaining or retaining business is not limited to the obtaining or renewal of contracts or other business, but also includes a prohibition against corrupt payments related to the execution or performance of contracts or the carrying out of existing business, such as a payment to a foreign official for the purpose of obtaining more favorable tax treatment.