Shearman SHEARMAN & STERLING

United States v. Kellogg Brown & Root LLC (S.D. Tex. 2009)

Nature of the Business.

Engineering, procurement, and construction ("EPC") contracts for natural gas liquefaction facilities at Bonny Island in Nigeria ("Bonny Island Project"). During most of the time of the conduct, which occurred between 1994 and 2004, Kellogg Brown & Root LLC, a U.S. corporation, was a subsidiary of Halliburton Company ("Halliburton"). Kellogg Brown & Root LLC is now a wholly-owned subsidiary of KBR, Inc. ("KBR"). Halliburton and KBR are incorporated in Delaware and headquartered in Houston, Texas. The government's charges identified the three foreign partners in the joint venture as "unindicted co-conspirators."

Influence to be Obtained.

Kellogg Brown & Root LLC participated in a joint venture to obtain and perform EPC contracts to build and expand the Bonny Island Project for Nigeria LNG Limited, which is owned in part by the Nigerian National Petroleum Corporation. The joint venture was awarded four EPC contracts for the Bonny Island Project between 1995 and 2004. From August 1994 until June 2004, Kellogg Brown and Root LLC and its partners in the joint venture authorized, promised, and paid bribes to Nigerian government officials, including officials in the executive branch, employees of the government-owned Nigerian National Petroleum Corporation, and employees of government-controlled Nigeria LNG Limited, to win and retain the EPC contracts to build the Bonny Island Project. To conceal the bribes, the joint venture entered into sham consulting or services agreements with intermediaries. The joint venture hired one consultant to pay bribes to high-level Nigerian government officials. That consultant received over $130 million for use in bribing the officials. Another consultant, hired to bribe lower-level Nigerian officials, received over $50 million to use for that purpose.

Enforcement.

On February 11, 2009, Kellogg Brown & Root LLC pleaded guilty to one count of conspiring to violate the FCPA and four counts of violating the anti-bribery provisions of the FCPA. Kellogg Brown & Root LLC and KBR, which is also a party to the February 11, 2009 plea agreement, agreed to pay a $402 million fine. Pursuant to the master separation agreement between Halliburton and KBR, Halliburton agreed to indemnify KBR for certain FCPA-related matters, and Halliburton will pay $382 million of the fine. As part of the plea agreement, Kellogg Brown & Root LLC will retain an independent corporate monitor for a term of three years.

Halliburton and KBR also settled a related SEC action on February 11, 2009. Without admitting or denying the allegations in the complaint, Halliburton and KBR consented to the entry of final judgments permanently enjoining future violations, ordering disgorgement of $177 million, requiring Halliburton to retain an independent consultant to evaluate its FCPA-related policies and procedures and adopt any recommendations, and requiring KBR to obtain an independent corporate monitor for a term of three years.

In the criminal information against KBR, the DOJ alleged that the other members of the joint ventures, French, Italian, and Japanese companies, were "unindicted co-conspirators." On June 28, 2010, the DOJ and SEC announced that they had settled their charges against Technip, one of the joint venture partners. The DOJ and SEC reported the company agreed to pay $98 million in disgorgement and prejudgment interest along with a payment of $240 million as a criminal penalty. Snamprogetti Netherlands B.V. and ENI S.p.A., other members of the joint venture, similarly settled pending DOJ and SEC charges with an agreement to disgorge $125 million.

Previously, in September 2008, Albert "Jack" Stanley, former CEO and chairman of Kellogg Brown & Root LLC, pleaded guilty to conspiring to violate the FCPA, admitting that he participated in a scheme to bribe Nigerian government officials. Two of Stanley's alleged co-conspirators, Wojciech Chodan and

Key Facts

Citation. *United States v. Kellogg Brown & Root LLC*, No. 4:090-cr-00071 (S.D. Tex. 2009).

Date Filed. February 6, 2009.

Country. Nigeria.

Date of Conduct. 1994 – 2004.

Amount of the Value. Approximately $180 million.

Amount of Business Related to the Payment. Over $6 billion.

Intermediary. Agents.

Foreign Official. Officials in the executive branch of the Nigerian government; employees of Nigerian National Petroleum Corporation; and employees of Nigeria LNG Limited, controlled by the Nigerian government.

FCPA Statutory Provision. Conspiracy (Anti-Bribery); Anti-Bribery.

Other Statutory Provision. None.

Disposition. Plea Agreement.

Defendant Jurisdictional Basis. Domestic Concern.

Defendant's Citizenship. United States.

Total Sanction. $402,000,000.

Compliance Monitor/Reporting Requirements. Compliance Monitor.

Related Enforcement Actions. *SEC v. KBR, Inc.; SEC v. Halliburton Co.*.

Total Combined Sanction. $579,000,000.

Jeffrey Tesler, were indicted on February 17, 2009. Chodan pleaded guilty to conspiracy on December 6, 2010. Tesler subsequently pleaded guilty to one count of conspiracy and one count of violating the anti-bribery provisions of the FCPA on March 11, 2011. Stanley, Chodan, and Tesler were sentenced in February 2012.

French, Nigerian, Swiss, and British authorities are continuing to investigate this matter. In an SEC filing on February 17, 2010, Halliburton reported it was seeking plea negotiations with the United Kingdom's Serious Fraud Office. On February 16, 2011, KBR announced that its wholly-owned subsidiary, M.W. Kellogg Limited ("MWKL"), reached a civil settlement with the Serious Fraud Office, according to which MWKL paid approximately $11,238,886 and agreed to improve its internal audit and compliance systems.

According to a February 17, 2011 SEC filing, Halliburton and KBR reached a settlement to resolve charges filed against the two corporations in Nigeria in December 2010. As a result, Halliburton agreed to pay $33 million to the Government of Nigeria and an additional $2 million for the Government of Nigeria's attorneys' fees.

Although it was not clear whether there is a separate Italian investigation of the Italian joint venture partner, the DOJ acknowledged the assistance of the Italian authorities.