

**Client Alert**

March 10, 2009

**FCPA Watch: Indictment Unsealed Against KBR Middlemen****Areas of Interest****Foreign Corrupt Practices Act****Global Trade****Securities Enforcement & Investigations****White Collar Defense & Compliance**

The Indictment of two UK citizens charged with helping Houston-based Kellogg, Brown & Root (KBR) participate in a decade-long scheme to bribe Nigerian government officials was unsealed on March 5, 2009. Between 1995 and 2004, KBR was awarded engineering, procurement and construction (EPC) contracts worth \$6 billion to build liquefied natural gas (LNG) facilities on Bonny Island, Nigeria.

In February 2009, KBR pleaded guilty and agreed to pay a \$402 million fine for Foreign Corrupt Practices Act (FCPA) violations. KBR and its former parent company, Halliburton Company, also settled FCPA proceedings with the US Securities & Exchange Commission and agreed to disgorge \$177 million. (See Mayer Brown Client Alert, "[FCPA Watch: KBR and Halliburton Agree to Pay US\\$402 Million Fine to Settle FCPA Charges in Nigerian Bribery Case.](#)")

The now [unsealed Indictment](#) shows that on February 17, 2009, a federal grand jury in the US District Court for the Southern District of Texas indicted UK citizens Jeffrey Tesler and Wojciech Chodan and charged each with one count of conspiracy to violate the FCPA and ten counts of violating the FCPA. The Indictment seeks a forfeiture of \$132 million from the defendants.

According to a Department of Justice [press release](#), the Indictment was kept under seal until Tesler was arrested by London police on March 5, 2009. An arrest warrant has been issued in the United States for Chodan, and the United States is seeking extradition of the defendants from the United Kingdom.

**Indictment**

According to the allegations in the Indictment, in 1991, KBR and three other companies formed a joint venture for the purpose of bidding on and, if successful, working on the Bonny Island Project. In 1995, Tesler was hired as an agent of the joint venture. Between 1995 and 2004, Nigeria LNG Ltd., (NLNG) awarded the joint venture four EPC contracts to build LNG facilities on Bonny Island. The largest shareholder of NLNG with 49% of the company was the government-owned entity Nigerian National Petroleum Corporation (NNPC).

The Indictment further alleges that the joint venture held "cultural meetings" where Chodan, a former sales vice president and consultant for KBR's UK subsidiary, and other co-conspirators discussed paying bribes to Nigerian government officials through Tesler and other agents to secure support from Nigerian government officials in awarding EPC contracts to the joint venture. Chodan is also accused of wiring \$50 million to a Japanese trading company from KBR-controlled accounts to be used to bribe Nigerian officials.

The joint venture allegedly used Tesler to bribe high-level Nigerian government officials and used another

agent to bribe lower-level Nigerian government officials. The high-level government officials allegedly bribed by Tesler included top-level executive officials. In order to commit these acts, the joint venture entered into a series of consulting contracts with Tri-Star Investments, a Gibraltar corporation allegedly controlled by Tesler. The joint venture allegedly paid Tri-Star approximately \$132 million for Tesler to use to bribe Nigerian government officials in exchange for the officials' assistance in obtaining and retaining contracts. Tesler allegedly wired bribe payments on behalf of the joint venture to, or for the benefit of, various Nigerian officials.

## Unique Issues

This case may test the FCPA's jurisdictional reach over foreign citizens who apparently were not in the United States at any times relevant to the charged conduct. In this case, the Indictment alleges that Tesler and Chodan were agents of KBR, a US "domestic concern," and that Tesler and Chodan used, and caused to be used, the means and instrumentalities of interstate commerce when, among other acts, they caused wire transfers via US banks, when Chodan sent a facsimile from the United Kingdom to the United States, and when they caused two emails to be sent to and through the United States. The Indictment appears to rest its jurisdictional assertion over Chodan on his relationship with KBR. In contrast, as to Tesler, the Indictment notes 15 U.S.C. § 78dd-3 as one of the bases for jurisdiction.

While the FCPA asserts jurisdiction over foreign companies and foreign nationals that commit any act in furtherance of a corrupt payment while within US territory, and the [DOJ interprets](#) this as conferring jurisdiction whenever a foreign company or national *causes* an act to be done within the United States, this Indictment does not reach to this outer jurisdictional limit. By characterizing Tesler and Chodan as agents of a "domestic concern," the Indictment rests on more familiar ground and may save the pure "effects test" under the FCPA for another day.

Lastly, the government's use of the forfeiture remedy in seeking the entire \$132 million that KBR transferred to Tri-Star back or the property derived from it is unusual. Of note is the fact that the US government has not distinguished between the money Tesler allegedly paid out in bribes and the money he may have kept for himself.

This case, therefore, highlights the implications of broad jurisdictional authority by US enforcement agencies under the FCPA that non-US entities and citizens should consider when conducting business worldwide with US companies.

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