

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---------------------------|---|---------------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | REDACTED PURSUANT TO |
| Plaintiff, |) | E-GOVERNMENT ACT OF 2002 |
| |) | |
| v. |) | Criminal No. H-09-098 |
| |) | |
| WOJCIECH J. CHODAN, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

PLEA AGREEMENT

The United States Department of Justice, Criminal Division, Fraud Section and the Defendant, Wojciech J. Chodan, pursuant to Rule 11(c)(1)(A) of the Federal Rules of Criminal Procedure, state that they have entered into an agreement, the terms and conditions of which are as follows:

The Defendant's Agreement

1. The Defendant agrees to plead guilty to Count 1 of the Indictment, Criminal No. H-09-098. Count 1 of the Indictment charges him with conspiracy to commit an offense against the United States, in violation of Title 18, United States Code, Section 371. The Defendant, by entering this plea, agrees that he is waiving any right to have the facts that the law makes essential to the punishment

either charged in the Indictment or proven to a jury or proven beyond a reasonable doubt.

2. This plea agreement binds only the Criminal Division of the United States Department of Justice and the Defendant; it does not bind any United States Attorney or any other Division of the Department of Justice.

Punishment Range

3. The statutory maximum penalty for a violation of Title 18, United States Code, Section 371, is imprisonment for a term of not more than five years and a fine of not more than \$250,000, or twice the gross pecuniary gain to the Defendant or loss to the victim(s), whichever is greater. Additionally, the Defendant may receive a term of supervised release after imprisonment of up to three years. Title 18, United States Code, Sections 3559(a)(4) and 3583(b)(2). The Defendant acknowledges and understands that should he violate conditions of supervised release which may be imposed as part of his sentence, then the Defendant may be imprisoned for an additional term of up to two years, without credit for time already served on the term of supervised release prior to such violation. Title 18, United States Code, Sections 3559(a)(4) and 3583(e)(3). The Defendant understands that he cannot have the imposition or execution of the sentence suspended, nor is he eligible for parole.

Mandatory Special Assessment

4. Pursuant to Title 18, United States Code, Section 3013(a)(2)(A), immediately after sentencing, the Defendant will pay to the Clerk of the United States District Court a special assessment in the amount of one hundred dollars (\$100.00). The payment will be by cashier's check or money order payable to the Clerk of the United States District Court, c/o District Clerk's Office, P.O. Box 61010, Houston, Texas 77208, Attention: Finance.

Restitution, Forfeiture, and Fines

5. This plea agreement is being entered into by the United States on the basis of the Defendant's express representation that the Defendant will make a full and complete disclosure of all assets over which the Defendant exercises direct or indirect control, or in which the Defendant has any financial interest.

6. The Defendant agrees to make complete financial disclosure to the United States by truthfully executing a sworn financial statement by the deadline set by the United States, or if no deadline is set, no later than sentencing. The Defendant agrees to authorize the release of all financial information requested by the United States, including, but not limited to, executing authorization forms for the United States to obtain tax information, bank account records, credit history, and social security information. The Defendant agrees to discuss or answer any

questions by the United States relating to the Defendant's complete financial disclosure.

7. The Defendant agrees to forfeit to the United States all of his right, title, and interest in the sum of \$726,885. In partial satisfaction of the forfeiture of this amount, the parties contemplate that, upon execution of this plea agreement, the United States will seek the transfer to the United States of the Defendant's assets in UBS (Geneva) accounts numbered xxx-xxxxxx and xxx-xxxxxx in Switzerland that have been frozen by the Swiss authorities. The Defendant agrees to forfeit to the United States and to waive all rights in, interest in, and title to the aforementioned accounts, to take all steps as requested by the United States to facilitate the transfer of the assets in the aforementioned accounts to the United States and the forfeiture of the assets therein, and to testify truthfully in any related proceeding. The Defendant agrees that all of the aforementioned property constitutes property subject to forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C). The Defendant knowingly and voluntarily agrees to waive any claim or defense he may have under the Eighth Amendment to the United States Constitution, including any claim of excessive fine or penalty as to the forfeited assets.

8. The Defendant understands that under the United States Sentencing

Guidelines, the Court may order the Defendant to pay a fine to reimburse the government for the costs of any imprisonment or term of supervised release.

Cooperation

9. The parties understand this agreement carries the potential for a motion for departure under Section 5K1.1 of the United States Sentencing Guidelines. The Defendant understands and agrees that whether such a motion is filed will be determined solely by the United States through the Fraud Section of the Criminal Division of the United States Department of Justice. Should the Defendant's cooperation, in the sole judgment and discretion of the United States, amount to "substantial assistance," the United States reserves the sole right to file a motion for departure pursuant to Section 5K1.1 of the United States Sentencing Guidelines. The Defendant understands and agrees that the United States may request that sentencing be deferred until his cooperation is complete. The Defendant agrees to persist in his plea of guilty through sentencing and to fully cooperate with the United States as described below.

10. The Defendant understands and agrees that "fully cooperate," as used herein, includes providing all information relating to any criminal activity known to the Defendant, including providing assistance to foreign authorities at the direction of the United States. The Defendant understands that this includes

providing information about all state, federal, and foreign law offenses about which he has knowledge. In that regard:

- (a) Defendant agrees to testify truthfully as a witness before a grand jury or in any other judicial or administrative proceeding when called upon to do so by the United States, including in a proceeding in a foreign jurisdiction. Defendant further agrees to waive his Fifth Amendment privilege against self-incrimination for the purpose of this agreement;
- (b) Defendant agrees to voluntarily attend any interviews and conferences as the United States may request;
- (c) Defendant agrees to provide truthful, complete and accurate information and testimony and understands that any false statements made by the Defendant to the Grand Jury, at any court proceeding (criminal or civil), or to a government agent or attorney can and will be prosecuted under the appropriate perjury, false statement or obstruction statutes; and
- (d) Defendant agrees to provide to the United States all documents in his possession or under his control relating to all areas of inquiry and investigation.
- (e) Should the recommended departure, if any, not meet the Defendant's expectations, the Defendant understands he remains bound by the terms of this agreement and cannot, for that reason alone, withdraw his plea.

Waiver of Appeal

11. The Defendant is aware that Title 18, United States Code, Section 3742 affords a Defendant the right to appeal the sentence imposed. Additionally, the Defendant is aware that Title 28, United States Code, Section 2255, affords the right to contest or “collaterally attack” a conviction or sentence after the conviction or sentence has become final. The Defendant agrees to waive the right to appeal the sentence imposed or the manner in which it was determined, and the Defendant waives the right to contest his conviction or sentence by means of any post-conviction proceeding.

12. In agreeing to these waivers, the Defendant is aware that a sentence has not yet been determined by the Court. The Defendant is also aware that any promise, representation, or estimate of the possible sentencing range under the Sentencing Guidelines that he may have received from his counsel, the United States, or the Probation Office is a prediction, not a promise, did not induce his guilty plea, and is not binding on the United States, the Probation Office, or the Court. The Defendant further understands and agrees that the United States Sentencing Guidelines are “effectively advisory” to the Court. *United States v. Booker*, 543 U.S. 220 (2005). Accordingly, the Defendant understands that, although the Court must consult the United States Sentencing Guidelines and must

take them into account when sentencing the Defendant, the Court is not bound to follow the United States Sentencing Guidelines and is not required to sentence the Defendant within the calculated guideline range.

13. The Defendant understands and agrees that all waivers contained in the agreement are made in exchange for the concessions made by the United States in this plea agreement. If the Defendant instructs his attorney to file a notice of appeal of his sentence or of his conviction, or if the Defendant instructs his attorney to file any other post-conviction proceeding attacking his conviction or sentence, the Defendant understands that the United States will seek specific performance of the Defendant's waivers in this plea agreement of the Defendant's right to appeal his conviction or sentence and of the Defendant's right to file any post-conviction proceedings attacking his conviction or sentence.

The United States' Agreements

14. The United States agrees that, if the Defendant pleads guilty to Count 1 of the Indictment and persists in that plea through sentencing, and if the Court accepts this plea agreement, the United States will move to dismiss the remaining counts of the Indictment at the time of sentencing.

United States' Non-Waiver of Appeal

15. The United States reserves the right to carry out its responsibilities

under guidelines sentencing. Specifically, the United States reserves the right:

- (a) to bring its version of the facts of this case, including its evidence file and any investigative files, to the attention of the Probation Office in connection with that office's preparation of a presentence report;
- (b) to set forth or dispute sentencing factors or facts material to sentencing;
- (c) to seek resolution of such factors or facts in conference with the Defendant's counsel and the Probation Office;
- (d) to file a pleading relating to these issues, in accordance with U.S.S.G. Section 6A1.2 and Title 18, United States Code, Section 3553(a); and
- (e) to appeal the sentence imposed or the manner in which it was determined.

Sentence Determination

16. The Defendant is aware that the sentence will be imposed after consideration of the United States Sentencing Guidelines and Policy Statements, which are only advisory, as well as the provisions of Title 18, United States Code, Section 3553(a). The United States and the Defendant agree that the applicable Sentencing Guidelines range exceeds the statutory maximum sentence of five years' imprisonment. Therefore, pursuant to U.S.S.G. Section 5G1.1, the applicable guideline sentence is five years' imprisonment. The Defendant agrees that he will not move for a downward departure on any grounds and that, as of the time of this agreement, no such grounds are applicable, nor will he seek a variance

from the applicable guidelines sentence pursuant to the factors in Title 18, United States Code, Section 3553(a). The Defendant acknowledges and agrees that the Court has authority to impose any sentence up to and including the statutory maximum for the offense to which the Defendant pleads guilty, and that the sentence to be imposed is within the sole discretion of the sentencing judge after the Court has consulted the applicable sentencing guidelines. The parties agree that a sentence within the applicable Sentencing Guidelines range, if determined in accordance with the parties' stipulations in this Agreement, would constitute a reasonable sentence in light of all of the factors set forth in Title 18, United States Code, Section 3553(a). The Defendant understands and agrees that the parties' positions regarding the application of the Sentencing Guidelines do not bind the Court and that the sentence imposed is within the discretion of the sentencing judge. If the Court should impose any sentence up to the maximum established by statute, the Defendant cannot, for that reason alone, withdraw his guilty plea, and will remain bound to fulfill all of the obligations under this plea agreement.

Rights at Trial

17. The Defendant represents to the Court that he is satisfied that his attorneys have rendered effective assistance. The Defendant understands that by entering into this agreement, he surrenders certain rights as provided in this plea

agreement. The Defendant understands that the rights of a defendant include the following:

- (a) If the Defendant persisted in a plea of not guilty to the charges, the Defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if the Defendant, the United States, and the court all agree.
- (b) At a trial, the United States would be required to present witnesses and other evidence against the Defendant. The Defendant would have the opportunity to confront those witnesses and his attorney would be allowed to cross-examine them. In turn, the Defendant could, but would not be required to, present witnesses and other evidence on his own behalf. If the witnesses for the Defendant would not appear voluntarily, he could require their attendance through the subpoena power of the court.
- (c) At a trial, the Defendant could rely on a privilege against self-incrimination and decline to testify, and no inference of guilt could be drawn from such refusal to testify. However, if the Defendant desired to do so, he could testify on his own behalf.

Factual Basis for Guilty Plea

18. The Defendant is pleading guilty because he is guilty of the charges contained in Count 1 of the Indictment. If this case were to proceed to trial, the United States would prove each element of the offense beyond a reasonable doubt. The following facts, among others, would be offered to establish the Defendant's guilt:

- a. At all times relevant to the Indictment, CHODAN was a United

Kingdom citizen and a resident of England, United Kingdom. CHODAN was a commercial vice president (a non-officer position) and then, beginning in 1999, a consultant for M.W. Kellogg Ltd., which was a United Kingdom subsidiary of The M.W. Kellogg Company and then Kellogg, Brown & Root, Inc. (collectively, "KBR"). CHODAN reported to KBR's CEO, Albert Jackson Stanley ("Stanley"), among others. CHODAN acted as an agent of a "domestic concern" within the meaning of the Foreign Corrupt Practices Act, Title 18, United States Code, Section 78dd-2(a) and (h)(1)(B). CHODAN and his co-conspirators committed acts in furtherance of the scheme described below in Houston, Texas.

- b. At all times relevant to the Indictment, CHODAN assisted KBR and its three partners in the so-called TSKJ joint venture in obtaining engineering, procurement, and construction ("EPC") contracts to build the Bonny Island Project, a series of four contracts awarded between 1995 and 2004 (corresponding to Trains 1 and 2; Train 3; Trains 4 and 5; and Train 6), collectively valued at over \$6 billion, to build liquefied natural gas ("LNG") facilities on Bonny Island, Nigeria.
- c. CHODAN believed that the support of Nigerian government officials, including top-level executive branch officials, high-level Petroleum Ministry officials, NNPC officials, and NLNG officials and employees, was necessary for the Bonny Island Project EPC contracts to be awarded to TSKJ. CHODAN believed that it was necessary for TSKJ to pay bribes to Nigerian government officials in order to secure their support for the award of the EPC contracts to TSKJ. From in or around 1994 through in or around June 2004, CHODAN agreed with Stanley and others to pay bribes to Nigerian government officials in order for TSKJ, KBR, and others to obtain and retain the EPC contracts to build the Bonny Island Project. CHODAN knew that it was unlawful under U.S. law to bribe foreign government officials.
- d. In 1994, 1999, 2001, and 2002, CHODAN recommended and agreed to the hiring of Jeffrey Tesler and Tri-Star Investments Ltd. ("Tri-

Star”) by TSKJ, expecting that Tesler and Tri-Star would pay bribes to high-level Nigerian government officials to assist TSKJ, KBR, and others in winning the EPC contracts to build the Bonny Island Project. In 1996, 1999, and 2001, CHODAN also recommended and agreed to the hiring of a global trading company headquartered in Tokyo, Japan (“Consulting Company B”) by TSKJ, expecting that Consulting Company B would pay bribes to lower level Nigerian government officials to assist TSKJ, KBR, and others in winning the EPC contracts to build the Bonny Island Project.

- e. At crucial junctures in the life of the Bonny Island Project, CHODAN, Stanley, and others met with successive holders of a top-level office in the executive branch of the Government of Nigeria to confirm that TSKJ should use Tesler as its agent and to learn or confirm who the office holder had designated as a representative with whom TSKJ and Tesler should negotiate bribes to Nigerian government officials. On or about November 30, 1994, Stanley and others met with the first such top-level executive branch official in Abuja, Nigeria, who had designated a high-level official of the Ministry of Petroleum as his representative. Thereafter, Stanley and others authorized TSKJ to enter into a consulting agreement with Tri-Star providing for TSKJ to pay it \$60 million if the EPC contract for Trains 1 and 2 was awarded to TSKJ. CHODAN understood that Tesler had negotiated the \$60 million fee with the high-level official of the Ministry of Petroleum and that the \$60 million fee would be used, in part, to pay bribes to Nigerian government officials.
- f. On or about May 1, 1997, CHODAN, Stanley, and others met in Abuja, Nigeria, with the same top-level executive branch official to ask the official to nominate a representative with whom TSKJ should negotiate bribes to Nigerian government officials in exchange for the award to TSKJ of an EPC contract to build Train 3. At the meeting, the top-level executive branch official designated a senior executive branch official as his representative.
- g. On or about February 28, 1999, CHODAN, Stanley, and others met in Abuja, Nigeria, with a second top-level executive branch official. At

the meeting, Stanley asked the top-level executive branch official to nominate a representative with whom TSKJ should negotiate bribes to Nigerian government officials in exchange for the award to TSKJ of an EPC contract to build Train 3. At the meeting, the second top-level executive branch official designated one of his advisers as his representative.

- h. On or about March 5, 1999, CHODAN, Stanley, and other co-conspirators met at a hotel in London, England, with the adviser designated by the second top-level executive branch official to negotiate the amount of bribes to be paid to the second top-level executive branch official and other Nigerian government officials in exchange for the award to TSKJ of an EPC contract to build Train 3. The amount negotiated with the representative formed the basis for the \$32.5 million fee that TSKJ promised to pay Tri-Star if the Train 3 EPC contract was awarded to TSKJ.
- i. On or about November 11, 2001, Stanley and another co-conspirator met in Abuja, Nigeria, with a third top-level executive branch official to ask the official to nominate a representative with whom Joint Venture should negotiate bribes to Nigerian government officials in exchange for the award to Joint Venture of an EPC contract to build Trains 4 and 5. At the meeting, the third top-level executive branch official designated a top-level official of NNPC as his representative. As EPC Contractor A1's senior representative on Joint Venture's Steering Committee, STANLEY authorized Joint Venture to enter into a consulting agreement with Consulting Company A providing for Joint Venture to pay it \$51 million if the EPC contract for Trains 4 and 5 was awarded to Joint Venture. At the time, STANLEY intended that the \$51 million fee would be used, in part, to pay bribes to Nigerian government officials.
- j. On or about May 28, 2002, CHODAN and others authorized TSKJ to enter into a consulting agreement with Tri-Star for the Train 6 EPC contract. At the time, CHODAN intended that the \$23 million fee would be used, in part, to pay bribes to Nigerian government officials.

Breach of Plea Agreement

19. If the Defendant should fail in any way to fulfill completely all of the obligations under this plea agreement, the United States will be released from its obligations under the plea agreement, and the Defendant's plea and sentence will stand. If at any time the Defendant retains, conceals or disposes of assets in violation of this plea agreement, or if the Defendant knowingly withholds evidence or is otherwise not completely truthful with the United States, then the United States may move the Court to set aside the guilty plea and reinstate prosecution. Any information and documents that have been disclosed by the Defendant, whether prior or subsequent to this plea agreement, and all leads derived therefrom, will be used against the Defendant in any prosecution.

20. Whether the Defendant has breached any provision of this plea agreement shall be determined solely by the United States through the Fraud Section of the Criminal Division of the United States Department of Justice, whose judgment in that regard is final.


Complete Agreement

21. This written plea agreement, consisting of 18 pages, including the attached addendum of the Defendant and his attorney, constitutes the complete plea agreement between the United States, the Defendant, and his counsel. No

promises or representations have been made by the United States except as set forth in writing in this plea agreement. The Defendant acknowledges that no threats have been made against him and that he is pleading guilty freely and voluntarily because he is guilty.

22. Any modification of this plea agreement must be in writing and signed by all parties.

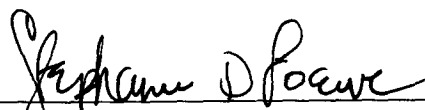
Filed at Houston, Texas, on 6 December, 2010.



Wojciech J. Chodan
Defendant

Subscribed and sworn to before me on 6 December, 2010.

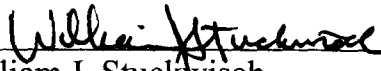
DAVID J. BRADLEY
UNITED STATES DISTRICT CLERK

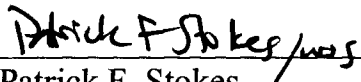
By: 

Deputy United States District Clerk


APPROVED:

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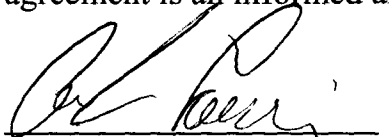

Andrew Lourie
Attorney for Defendant Wojciech J. Chodan

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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| UNITED STATES OF AMERICA, |) | |
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| |) | |
| WOJCIECH J. CHODAN, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

PLEA AGREEMENT - ADDENDUM

I have fully explained to the Defendant his rights with respect to the Indictment. I have reviewed the provisions of the United States Sentencing Guidelines and I have fully and carefully explained to the Defendant the provisions of those Guidelines which may apply in this case. I have also explained to the Defendant that the Sentencing Guidelines are only advisory. Further, I have carefully reviewed every part of this plea agreement with the Defendant. To my knowledge, the Defendant's decision to enter into this agreement is an informed and voluntary one.



Attorney for the Defendant



Date

I have consulted with my attorney and fully understand all my rights with respect to the Indictment against me. My attorney has fully explained and I understand all my rights with respect to the provisions of the United States Sentencing Guidelines which may apply in my case. I have read and carefully reviewed every part of this plea agreement with my attorney. I understand this agreement and I voluntarily agree to its terms.

W. Gibson
Defendant

12/6/10
Date