IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	
	)	CRIMINAL ACTION
v.	)	
	)	NO. 06-cr-466
STOLT-NIELSEN S.A., et al.	)	
	)	

GOVERNMENT'S AMENDED
PROPOSED FINDINGS OF FACT

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I.

THE CONSPIRACY PERIOD: AUGUST 1998 TO NOVEMBER 2002

A. Beginning in August 1998, Stolt,[1] Odfjell and Jo Tankers Conspired to Allocate Customers and Rig Bids

1. Cooperman and others formed conspiracy at August 1998 meeting

1. The charged conspiracy was formed in August 1998, when Stolt executives Samuel Cooperman and Andrew Pickering met in Stolt's London offices with Odfjell executives Bjorn Sjaastad, Erik Nilsen and Atle Knutsen. During this meeting, Stolt and Odfjell agreed not to compete for each other's customers on deep-sea trade routes around the world. (Nilsen, 6/15/07 p. 146 line 3 to p. 147 line 7; Sjaastad, 6/20/07 p. 91 lines 11-22; Knutsen, 6/13/07 p. 17 lines 2-9; see also Pickering, 5/31/07 p. 153 lines 5-9, p. 154 lines 6-8). At this time, Cooperman was President and CEO of SNTG, positions which he held until 2001 when he became Chairman of SNTG. In November 2002, when Stolt applied for conditional leniency, Cooperman was still

[1] Defendants Stolt-Nielsen S.A. ("SNSA"), and its subsidiaries, Stolt-Nielsen Transportation Group Ltd. (Bermuda) and Stolt-Nielsen Transportation Group Ltd. (Liberia) (collectively "SNTG"), are collectively referred to as "Stolt" unless otherwise indicated.

Chairman of SNTG.

2. Stolt and Odfjell began the conspiracy in order to stabilize market prices by preventing an outbreak of competition at a time when the market was in a downward trend, partially due to the conditions in Asia which had a negative effect on freight rates. (Nilsen, 6/19/07 p. 208 line 10 to p. 209 line 2).

2. Customer allocation lists were created and exchanged

3. During the August 1998 meeting, Stolt and Odfjell agreed to create and exchange customer allocation lists to help carry out the worldwide agreement. Shortly after the meeting, they prepared and exchanged such lists. (See Pickering, 5/31/07 p. 136 line 23 to p. 139 line 13; Nilsen, 6/15/07 p. 120 lines 19-23; see GX-37, 38, 39A, 39B).

4. Pursuant to the agreement, Stolt and Odfjell divided almost 150 customers on numerous deep sea trade lanes around the world. (See GX-37, 38, 39A, 39B).

5. Between August 1998 and January 2001, Pickering was Manager of Tanker Trading (Pickering, 5/31/07 p. 96 lines 16-19) and Stolt's key conspirator. (See Pickering, 5/31/07 p. 134 line 5 to p. 136 line 2; p. 158 lines 21-24). During this time, Pickering reported directly to Cooperman about the conspiracy (see Pickering, 5/31/07 p. 139 line 20 to p. 140 line 1; p. 152 line 13 to p. 154 line 15), and Richard Wingfield also knew about the conspiracy. (Pickering, 5/31/07 p. 158 lines 16-20).

6. Around the same time that Stolt and Odfjell began colluding, Jo Tankers joined the conspiracy. While customer lists were not exchanged, Stolt and Pickering participated in conspiratorial discussions with Jo Tankers concerning certain customers on different trade lanes around the world. (Pickering, 5/31/07 p. 135 line 21 to p. 136 line 2).

3. Conspiracy was referred to as cooperation, coop or status quo agreement

7. The agreement was commonly referred to at Stolt as the cooperation, coop or status quo agreement (Humphreys, 6/4/07 p. 144 lines 17-21; Jansen, 6/13/07 p. 90 lines 9-17; Long, 6/5/07 p. 59 lines 6-13), including by defendant Cooperman (Jansen, 6/13/07 p. 96 lines 5-9).

B. General Operation of the Conspiracy

1. No competition for contract customers on allocation lists

8. To carry out the customer allocation agreement, Odfjell and Stolt typically would not bid or compete for contracts of customers allocated to the other conspirator. (Pickering, 5/31/07 p. 197 lines 5-16; Nystad, 6/12/07 p. 73 lines 16-21; Nilsen, 6/19/07 p. 219 line 18 to p. 221 line 5).

2. Talked about contract solicitations only when necessary

9. Stolt and Odfjell talked in connection with contract solicitations when it was necessary for one to quote for the other's contract, such as when a customer was persistent or a failure to bid would look suspicious. Implementation of the agreement generally did not require much discussion. In most instances, one company would simply not bid to a customer allocated to the other. (Nilsen, 6/19/07 p. 219 line 18 to p. 221 line 5).

10. In some instances where it was necessary to bid for the other's customer, Stolt and Odfjell discussed prices and submitted intentionally high bids to the other's customers. (Id.; 6/19/07 p. 22 lines 7-20). "Guidance" was the term used by Stolt employees to describe price discussions by the coconspirators. (Vogth-Eriksen, 6/4/07 p. 34 lines 13-21).

3. Agreement did not apply to spot cargoes, new business or regional trade

11. The allocation agreement reached in August 1998 covered contracts of affreightment for deep-sea contracts. (See Pickering, 5/31/07 p. 154 lines 6-8; Long, 6/5/07 p. 89 lines 5-15; Fleming, 6/5/07 p. 38 line 25 to p. 39 line 2; see also GX-37, 38, 39A-B).

12. This agreement did not cover spot cargoes (Long, 6/5/07 p. 88 lines 1-7; Nystad, 6/12/07 p. 37 lines 2-5). Spot cargoes only cover a single shipment. (Nystad, 6/12/07 p. 35 line 12 to p. 36 line 4).

13. This agreement did not cover new business (Vogth-Eriksen, 6/4/07 p. 33 lines 8-10; Long, 6/5/07 p. 88 line 1 to p. 89 line 4; Nystad, 6/12/07 p. 41 lines 20-22).

14. This agreement did not generally cover any regional trade (Wingfield, 6/6/07 p. 56 lines 13-16; Long, 6/5/07 p. 89 lines 5-15; Nystad, 6/12/07 p. 37 lines 2-12). However, in 2000, the agreement was modified following a discussion between Knutsen and Pickering to include one regional area, U.S. Gulf to Mexico. Lower-level executives responsible for this region carried out the agreement. (See Knutsen, 6/13/07 p. 29 line 7 to p. 39 line 9; Nystad, 6/11/07 p. 149 line 16 to p. 151 line 1; GX-40; GX-53). This subsidiary arrangement came to be the subject of some dispute between the companies. (See Nystad, 6/11/07 p. 149 line 16 to p. 151 line 1; Long, 6/5/07 p. 89 line 21 to p. 91 line 4; Fleming, 6/5/07 p. 30 lines 2-10; GX-53).

C. Wingfield Succeeds Pickering as Stolt's Key Conspirator in 2001

15. In February 2001, Wingfield became Managing Director of Tanker Trading at Stolt, i.e., the highest-ranking executive in charge of Stolt's shipping business (Wingfield, 6/6/07 p. 107 lines 18-22; Pickering, 5/31/07 p. 96 lines 13-23), and assumed Pickering's role in the conspiracy. (Pickering, 5/31/07 p. 158 lines 16-24). Pickering introduced Wingfield to Stolt's

coconspirators at Jo Tankers and Odfjell as Pickering's replacement as Stolt's key conspirator. (Pickering, 5/31/07 p. 158 line 25 to p. 159 line 8).

16. Bjorn Jansen, Wingfield's subordinate, participated in conspiratorial meetings and discussions with Odfjell. (Jansen, 6/13/07 p. 88 lines 7-18). Cooperman knew about Jansen's part in the conspiracy because prior to March 2002, Jansen discussed conspiratorial matters with Cooperman. (Jansen, 6/13/07 p. 93 line 3 to p. 94 line 11).

1. New customer allocation lists negotiated and exchanged

17. Wingfield and Jansen met with Nilsen and other representatives of Odfjell in March and May 2001. During this same time, Stolt and Odfjell negotiated and exchanged new customer allocation lists. (Nystad, 6/12/07 p. 45 line 16 to p. 50 line 4; see also GX-41; GX-42)

2. Wingfield limited conspiratorial contacts at Stolt: discussions with competition to be only through Wingfield and Jansen

18. Prior to 2001, Pickering had delegated responsibility for implementing the conspiracy to the business directors and other lower-level employees (see Pickering, 5/31/07 p. 134 line 15 to p. 135 line 20), and there was widespread communication about the conspiracy between lower-level employees of Stolt and Odfjell during this time. (See Haugsdal, 6/12/07 p. 93 line 17 to p. 94 line 21; Nystad, 6/11/07 p. 179 lines 3-25).

19. Soon after Wingfield assumed the day-to-day management of the conspiracy for Stolt in 2001, Wingfield and Odfjell's Jarle Haugsdal determined that there were too many communications among lower-level employees. Accordingly, they agreed that lower-level employees should stop communicating about the conspiracy and that communications would be limited to Wingfield and Jansen for Stolt, and Nilsen and Nystad for Odfjell. (See Haugsdal,

6/12/07 p. 92 line 15 to p. 94 line 21; Nystad, 6/11/07 p. 179 lines 3-25).

20. Wingfield then directed lower-level Stolt employees to stop talking to competitors about conspiratorial matters, and that he and Jansen would be responsible for all such contacts. (Cleary, 6/1/07 p. 161 line 10 to p. 163 line 3 (Wingfield to handle illegal contacts with Jo Tankers; Jansen to handle conspiratorial contacts with Odfjell); Long, 6/5/07 p. 92 lines 14 to p. 95 line 24; Fleming, 6/5/07 p. 10 line 11 to p. 12 line 14 (told by his superior, Long, that Jansen would handle conspiratorial contacts with Odfjell). Jansen confirmed Wingfield's instructions. (Long, 6/5/07 p. 95 lines 17-24).

3. Customer allocation lists collected from lower-level Stolt employees

21. To carry out Wingfield's direction to limit conspiratorial contacts, customer allocation lists were collected from lower-level Stolt employees in 2001. (Fleming, 6/4/07 p. 209 lines 7-15).

D. The Conspiracy was Profitable – The April 2001 Jansen Memo

22. Cooperman would not have entered into the illegal customer allocation agreement with Odfjell and exposed himself, Stolt and its employees to criminal liability unless he expected Stolt to profit from the agreement.

1. Wingfield directed Jansen to analyze the pros and cons of continuing the conspiracy

23. The conspiracy's profitability to Stolt was confirmed in April 2001, when Wingfield directed Jansen to analyze the pros and cons of continuing the illegal customer allocation agreement with Odfjell. Jansen summarized the opinion he and the business directors reached in a memorandum ("the Jansen Memo"), which he faxed to Wingfield on April 10, 2001.

(GX-2; Humphreys, 6/4/07 p. 140 line 24 to p. 144 line 21; Jansen, 6/13/07 p. 88 line 19 to p. 91 line 5).

2. Preferable to continue "coop" with Odfjell rather than "go to war"

24. In this Memo, Jansen told Wingfield that he and the business directors strongly believed that it was preferable to continue the "coop" with Odfjell rather than to "go to war" with Odfjell. (GX-2, at 2). Jansen testified that the reference to "continued coop" in his Memo meant maintaining the illegal agreement with Odfjell (Jansen, 6/13/07 p. 90 line 18 to p. 91 line 2), and that the term "go to war" meant having no conspiratorial agreement and actually competing with Odfjell. (Jansen, 6/13/07 p. 91 lines 3-5).

3. Breaking the agreement would cause Stolt to suffer a reduction of rates and could not easily be put back together

25. Jansen advised Wingfield that if Stolt were to "break the coop," i.e., compete with Odfjell, it would take Stolt and Odfjell a long time "to put it back together." Jansen further advised that breaking the agreement would cause Stolt to "suffer a reduction in rates in general." (GX-2, at 2; Jansen, 6/13/07 p. 254 lines 6-14).

26. Wingfield testified that he understood that Jansen's Memo discussed Stolt's illegal agreement with Odfjell. Specifically, Wingfield admitted that he understood Jansen's use of the term "break the coop" meant to end the illegal cooperation agreement with Odfjell (Wingfield, 6/6/07 p. 14 line 23 to p. 15 line 5), and that the term "go to war" meant Stolt actually competing with Odfjell for business. (Wingfield, 6/6/07 p. 15 lines 11-16).

27. Wingfield understood that unless Stolt continued the conspiracy with Odfjell, it would suffer a reduction in rates, which would mean a reduction in profits. (See Wingfield,

6/6/07 p. 17 line 18 to p. 18 line 1).

4. Thereafter, Stolt continued to participate in the conspiracy

28. After Jansen sent this analysis of the conspiracy's profitability to Wingfield, Stolt continued to participate in the conspiracy, and, on May 18, 2001, Jansen discussed the conspiratorial agreement with Cooperman. (Humphreys, 6/4/07 p. 146 lines 6-18).

E. Paul O'Brien Discovered the Conspiracy in Early 2002

1. O'Brien was knowledgeable about parcel tanker shipping industry and roles played by Stolt and its competitors

29. Paul O'Brien began working at Stolt in 1991. (O'Brien, 6/14/07 p. 22 line 23 to p. 23 line 2). In January 2002, O'Brien was Senior Vice-President and General Counsel and Senior Vice-President of the Projects and Legal Department at Stolt. (O'Brien, 6/14/07 p. 23 lines 9-13).

30. As General Counsel, O'Brien was directly responsible for overseeing Stolt's compliance with antitrust and other federal laws and regulations. (O'Brien, 6/14/07 p. 26 lines 14-17).

31. O'Brien's Projects Department responsibilities included developing Stolt's transportation and logistics network through mergers and acquisitions, expansions and joint ventures. (O'Brien, 6/14/07 p. 23 line 14 to p. 24 line 9).

32. During his more than ten-year tenure at Stolt, O'Brien learned about Stolt's parcel tanker shipping business and the responsibilities of its employees. (O'Brien, 6/14/07 p. 27 lines 8-17; see p. 25 line 5 to p. 27 line 7; p. 35 lines 13-23). He became familiar with Stolt's use of abbreviations for names of employees, trade lanes and competitor companies in internal company

documents. (O'Brien, 6/14/07 p. 27 line 18 to p. 28 line 13, and p. 36 line 7 to p. 37 line 25). O'Brien also was familiar with the parcel tanker industry and the identity of Stolt's competitors. (O'Brien, 6/14/07 p. 27 line 8 to p. 28 line 13).

33. Part of O'Brien's responsibilities included drafting and reviewing written agreements Stolt had with other parcel tanker shipping companies, and he was aware of all written agreements Stolt had with its competitors. (O'Brien, 6/14/07 p. 28 line 14 to p. 29 line 14).

2. O'Brien found the Jansen Memo which informed him of Stolt's participation in the allocation agreement

34. In mid-January 2002, O'Brien discovered a copy of the Jansen Memo (GX-2), which had been left anonymously on his desk. (Nannes, GX-6 p. 70 lines 12-13, p. 96 lines 14-17; O'Brien, 6/14/07 p. 33 line 7 to p. 34 line 6).

35. O'Brien understood the meanings of the abbreviations in the Jansen Memo, including the names of individuals, trade lanes, contracts of affreightment (COA's), and he knew that "OST" referred to Odfjell. (O'Brien, 6/14/07 p. 35 line 24 to p. 37 line 25). (See Nannes, GX-6 p. 104 lines 11-19).

36. O'Brien's knowledge of the parcel tanker shipping industry and Stolt's business enabled him to understand that the Jansen Memo was a conspiratorial document in which Jansen discussed the illegal agreement Stolt had with Odfjell.

3. O'Brien told Cooperman that Stolt was violating the antitrust laws in February 2002

37. In early February 2002, after O'Brien found the Jansen Memo, he sent Cooperman a memorandum raising antitrust concerns. (See Nannes, GX-5 p. 113 lines 3-6).

38. O'Brien then told Cooperman that he believed that "as exhibited in the Jansen [Memo]" Stolt "had engaged in cooperation in the form of an express agreement with Odfjell to allocate customers," in violation of the law. (Nannes, GX-6 p. 104 lines 11-19).

F. Cooperman Responded to O'Brien's Discovery With Sham Investigation and Conspiracy Continues

1. Wingfield told Jansen that O'Brien found the Jansen Memo

39. In February 2002, while he was on vacation, Jansen received a telephone call from Wingfield concerning the Jansen Memo. Wingfield told Jansen that O'Brien had obtained a copy of the Memo and that Cooperman wanted to speak to him concerning the matter as soon as Jansen returned from vacation. (Jansen, 6/13/07 p. 89 lines 5-19).

2. Cooperman told Jansen that Wingfield was stupid to ask for the Memo and Jansen was stupid to send it

40. As soon as Jansen returned from vacation, Cooperman called Jansen into his office to discuss the Memo. (Jansen, 6/13/07 p. 91 lines 9-18). Cooperman chastised Jansen for putting the agreement in writing, calling Wingfield "stupid" for having asked for this written report and Jansen "stupid" for having sent it. (Jansen, 6/13/07 p. 92 lines 18-22; see also GX-140A, at 2 ("[Cooperman] - Stupid of [Wingfield] to ask [Jansen] to make paper trail"); GX-140B, at 3; GX-140C, at 3).

41. Following his receipt of O'Brien's report concerning the Jansen Memo, Cooperman set about to conceal evidence of the conspiratorial agreement, and the fact that the Jansen Memo contained an analysis of that agreement.

3. Cooperman gave oligopoly lecture to business directors

42. Around this time, Cooperman held private one-on-one meetings with Stolt's

business directors who had participated in the conspiracy. During these meetings, Cooperman explained to the business directors the theory of oligopoly and how, for both companies to profit, it made sense for Stolt to stay away from Odfjell's customers and for Odfjell likewise to stay away from Stolt's. Cooperman never asked the directors if they had been talking to Odfjell about customers, contracts, or prices. (Humphreys, 6/4/07 p. 146 line 21 to p. 148 line 16; Cleary, 6/1/07 p. 120 line 6 to p. 124 line 1).

43. The record does not support a finding that Cooperman gave an unequivocal message that all illegal antitrust activity was to stop. Cleary testified that Cooperman did not tell him the illegal allocation agreement with Odfjell had to stop. Rather, Cooperman merely said future communications with competitors had to go through Reginald Lee, SNTG's CEO. (Cleary, 6/1/07 p. 123 line 9 to p. 124 line 1).

4. Cooperman prepared a memorandum summarizing his investigation into O'Brien's allegations

44. In order to conceal evidence of the conspiracy, which he started, Cooperman prepared a report of an investigation he purportedly conducted during February 2002, after receipt of O'Brien's memorandum to him regarding the Jansen Memo. (See GX-13B, at 001630-31).

5. Cooperman falsely reported that he interviewed Stolt employees about antitrust violations

45. Cooperman's report was received by Stolt's in-house counsel (Alan Winsor) and its outside counsel (Gary Sesser) on or before May 14, 2002. In it, Cooperman falsely stated that as part of this purported investigation he "interviewed" certain Stolt employees, including Jansen, Humphreys and Cleary. (See GX-13B, at 001630-31).

6. Cooperman falsely reported that Cleary denied any knowledge of ongoing antitrust violations

46. In his report, Cooperman falsely described his meeting with Brian Cleary. Specifically, Cooperman described this meeting as an interview and stated that Cleary "denied any knowledge of any ongoing antitrust violations." (GX-13B, at 001630). In fact, Cleary never denied any knowledge of ongoing antitrust violations because Cooperman never even asked Cleary about ongoing antitrust violations. (Cleary, 6/1/07 p. 125 lines 18-24). Nor did Cooperman ask Cleary whether he had ever talked to anyone at Odfjell concerning customers, prices or upcoming contracts. (Cleary, 6/1/07 p. 121 line 14 to p. 123 line 8).

7. Cooperman falsely reported that Humphreys denied any knowledge of ongoing antitrust violations

47. In his report, Cooperman also falsely described his meeting with William Humphreys. Specifically, Cooperman described this meeting as an interview and stated that Humphreys "denied any knowledge of any ongoing antitrust violations." (GX-13B, at 001630). In fact, Humphreys never denied any knowledge of ongoing antitrust violations as Cooperman never even asked him in the fifteen minutes Humphreys spent in Cooperman's office. (Humphreys, 6/4/07 p. 147 line 25 to p. 148 line 5). Nor did Cooperman ask Humphreys whether he was talking to anyone at Odfjell about customers, prices or upcoming contracts. (Humphreys, 6/4/07 p. 148 lines 6-16). Moreover, when shown Cooperman's report, Humphreys testified that it did not accurately reflect his discussion with Cooperman, nor did he understand their brief discussion to be part of any investigation. (See Humphreys, 6/4/07 p. 149 line 3 to p. 151 line 4).

8. Cooperman falsely reported about his meeting with Jansen

48. In his report, Cooperman falsely described his meeting with Jansen. Specifically:

a. Cooperman falsely described the meeting as an "interview" when in fact he did not interview Jansen at all.

b. Cooperman falsely stated that during this "interview," Jansen "denied any knowledge of any ongoing antitrust violations." (GX-13B, at 001630) In fact, Cooperman did not even ask Jansen whether he was involved in an illegal agreement with Odfjell or any other competitor (Jansen, 6/13/07 p. 92 line 23 to p. 93 line 2), nor did Jansen deny to Cooperman that he was involved in any illegal agreement with Stolt's competitors. (Jansen, 6/13/07 p. 94 lines 12-17).

c. Cooperman falsely stated that during this "interview," he "specifically asked" Jansen about the Jansen Memo and that Jansen denied that it discussed an illegal agreement. (GX-13B, at 001630). In reality, Cooperman reprimanded Jansen by telling him that he was stupid for writing the Memo. (Jansen, 6/13/07 p. 92 lines 18-22). In fact, Cooperman did not question Jansen about the Memo, nor did Jansen tell Cooperman that the Memo did not discuss Stolt's illegal agreement with Odfjell. (Jansen, 613/07 p. 95 lines 8-10).

d. Cooperman falsely stated that Jansen denied that the word "coop" in the Jansen Memo "referred to any anticompetitive agreement or understanding with competitors." Cooperman also suggested in his report that the term "status quo" referred to a legal condition in the market. (GX-13B, at 001630). In fact, Cooperman knew these terms referred to the illegal customer allocation agreement because, prior to the time he

wrote his report, "cooperation agreement" and "status quo agreement" were terms Cooperman himself used to refer to the illegal agreement between Stolt and Odfjell. (Jansen, 6/13/07 p. 96 lines 5-9). Indeed, the agreement with Odfjell was commonly referred to at Stolt as the "status quo agreement" or the "cooperation agreement." (See, e.g., Humphreys, 6/4/07 p. 144 lines 17-21; Long, 6/5/07 p. 59 lines 9-13). Also, Wingfield himself testified Cooperman understood Jansen's use of the term "co-op" referred to the illegal agreement between Stolt and Odfjell. (Wingfield, 6/6/07 p. 23 lines 14-21).

e. In a further effort to falsify his discussion with Jansen and cover up evidence that the Jansen Memo was a conspiratorial document, Cooperman omitted from his report that he told Jansen that he and Wingfield were both stupid for making a paper trail of the conspiracy. (See Jansen, 6/13/07 p. 95 lines 8-10, p. 235 lines 4-9; GX-13B).

G. O'Brien Resigned and then Stolt Issued a Revised Antitrust Policy - March 2002

1. Dissatisfied with Stolt's response to his report of illegal antitrust conduct, O'Brien resigned

49. On March 1, 2002, O'Brien resigned because he was dissatisfied with Stolt's and Cooperman's response to his report of Stolt's illegal conduct. (See Nannes, GX-5 p. 113 lines 14-18; see GX-8).

50. When O'Brien resigned, Cooperman told O'Brien that Stolt expected him not to disclose any confidential information he had about the company and its business activities. (GX-9).

2. Stolt revised its antitrust compliance policy in March 2002: the new antitrust compliance policy was substantially similar to its old policy

51. Prior to March 2002, Stolt had an antitrust compliance policy and handbook, issued on June 22, 2000. (GX-28).

52. The customer allocation agreement between Stolt and its two main competitors that existed prior to March 2002 violated Stolt's 2000 antitrust compliance policy. (See GX-28, at 3-4; Pickering, 5/31/07 p. 151 lines 15-19).

53. On March 11, 2002, Stolt issued a revised antitrust compliance policy and handbook. (GX-29).

54. The 2002 antitrust compliance handbook contained the same prohibitions as those contained in the 2000 handbook. (Compare GX-28, at 4-5 with GX-29, at 179068-69; Pickering, 5/31/07 p. 151 line 15 to p. 152 line 3).

55. The 2002 antitrust compliance handbook contained the same penalties for violations of the policy as those contained in the 2000 handbook, i.e., "demotion, reduction in pay, and termination of employment." (Compare GX-28, at 9 with GX-29, at 179076; Pickering, 5/31/07 p. 149 lines 2-13, p. 150 line 18 to p. 151 line 8 to p. 152 lines 1-3).

56. Both the 2000 and 2002 antitrust compliance handbooks required employees to report any conduct that may violate the antitrust laws to the company's General Counsel. (GX-28, at 2; GX-29, at 179063).

H. March 2002 NPRA Meetings - Wingfield Delivered the Message that Despite O'Brien's Discovery of the Conspiracy and Stolt's Revised Antitrust Policy, the Conspiracy Would Continue

1. Stolt waited to inform coconspirators of new policy

57. Even though O'Brien advised Cooperman in early February 2002 of his discovery of Stolt's illegal conduct, by Stolt's own account, at Cooperman's direction, Stolt delayed contacting Jo Tankers and Odfjell for over a month. (See Wingfield, 6/6/07 p. 25 lines 13-17)

58. Wingfield returned from vacation in mid-March. (Wingfield, 6/5/07 p. 134 lines 12-22; 6/6/07 p. 25 lines 4-12).

59. Cooperman and other senior management decided to wait until the end of March 2002 when the National Petrochemical Refiners Association ("NPRA") had its annual meeting to have Wingfield meet personally with Jo Tankers and Odfjell to discuss Stolt's revised antitrust compliance policy. (Wingfield, 6/6/07 p. 7 lines 17-23, p. 25 lines 4-12, p. 29 lines 1-11)

2. Cooperman and Lee sent Wingfield alone to inform coconspirators of revised antitrust policy

60. Even though Cooperman and Lee knew that Wingfield had been Stolt's key conspirator, they sent Wingfield alone to meet with Stolt's conspirators at the NPRA meeting to advise them of Stolt's revised antitrust policy. (Wingfield, 6/6/07 p. 7 line 17 to p. 9 line 2; p. 30 line 19 to p. 31 line 7; Nannes, GX-6 p. 33 lines 16-21).

3. Wingfield's meeting with Odfjell - no withdrawal: it's business as usual and the status quo prevails

61. Wingfield told Nilsen that he needed to meet personally with him at the upcoming NPRA meeting to discuss something urgent that he did not want to discuss on the telephone. (Nilsen, 6/15/07 p. 121 lines 11-24; Nystad, 6/11/07 p. 112 line 22 to p. 113 line 5, p. 118 lines

2-8).

62. Wingfield admitted calling Odfjell to arrange a meeting at the NPRA to discuss an urgent matter. (Wingfield, 6/5/07 p. 141 lines 14-20; 6/6/07 p. 29 lines 12-25).

63. Nilsen was not planning to attend the NPRA meeting, so he arranged for Morten Nystad to meet with Wingfield. (Nystad, 6/11/07 p. 117 line 16 to p. 119 line 23; Nilsen, 6/15/07 p. 122 lines 2-5). Sjaastad also attended the NPRA conference. Although Sjaastad did not know of the meeting with Wingfield before the NPRA, once Sjaastad did learn about it from Nystad, he asked to come along. (Nystad, 6/11/07 p. 118 line 21 to p. 119 line 8; Sjaastad, 6/20/07 p. 96 line 20 to p. 97 lines 4-7).

64. Wingfield met with Nystad and Sjaastad at a hotel bar on March 26, 2002. (Wingfield, 6/5/07 p. 142 line 7 to p. 143 line 15; Wingfield, 6/6/07 p. 32 line 3 to p. 33 line 4; Nystad, 6/11/07 p. 118 line 21 to p. 119 line 8; Sjaastad, 6/20/07 p. 97 lines 14-20).

65. During this meeting, Wingfield told Nystad and Sjaastad that Stolt had an internal problem caused by an ex-employee who was threatening to expose the illegal agreement between Stolt and Odfjell. (Nystad, 6/11/07 p. 119 line 25 to p. 120 line 12; see Sjaastad, p. 102 lines 16-10). Wingfield stated that, as a result, Stolt had issued a revised antitrust policy. (Sjaastad, 6/20/07 p. 99 lines 16-22; see Wingfield, 6/5/07 p. 143 lines 5-15; 6/6/07 p. 32 lines 3-12).

66. Wingfield assured Nystad and Sjaastad that, despite this internal problem, the agreement between Stolt and Odfjell would continue, that it would be business as usual and the status quo prevailed. (Nystad, 6/11/07 p. 119 line 25 to p. 120 line 8; Nilsen, 6/15/07 p. 122 line 20 to p. 123 line 4; Sjaastad, 6/20/07 p. 97 line 21 to p. 98 line 3; and p. 99 lines 11-22).

67. Wingfield further informed Nystad and Sjaastad that Stolt and Odfjell would have

to be more careful in their dealings in the future, and that communications on issues involving the agreement would be less frequent and more discreet. (Nystad, 6/11/07 p. 120 lines 9-12; see Nilsen, 6/15/07 p. 124 lines 5-9).

68. Wingfield said nothing at the NPRA meeting that led Odfjell to believe that the customer allocation scheme was over. In fact, they understood the agreement continued because Wingfield assured them it would. (Nystad, 6/11/07 p. 121 lines 14-20; Sjaastad, 6/20/07 p. 99 line 16 to p. 101 line 4).

69. There is no documentary evidence that corroborates Wingfield's testimony.

70. Nystad told Wingfield that he would relay Wingfield's message to Nilsen, i.e., that the urgent matter Wingfield needed to discuss was an internal Stolt situation that would not affect the agreement between their two companies. After the meeting, Nystad reported to Nilsen as promised. (Nystad, 6/11/07 p. 121 line 21 to p. 122 line 7; Nilsen, 6/15/07 p. 122 line 17 to p. 123 line 4).

71. There is no evidence to corroborate Wingfield's testimony that he withdrew from the conspiracy during the NPRA meeting. To the contrary, Stolt employee Jansen testified that Wingfield told him about meeting with Odfjell and said that he had assured Odfjell that Stolt would not go aggressively after Odfjell's contracts (Jansen, 6/13/07 p. 105 line 21 to p. 106 line 5), and that Jansen understood that was how Stolt should behave going forward. (Jansen, 6/13/07 p. 110 lines 13-24; see Jansen, 6/13/07 p. 102 line 20 to p. 103 line 8; p. 212 lines 13-16).

72. Moreover, the testimony of Nystad and Sjaastad is corroborated by other Odfjell witnesses:

a. Nilsen testified that Nystad reported to him that Wingfield said that an ex-employee of Stolt was threatening the company about its agreement with Odfjell, and that as a result the two companies would have to be "more careful" in their dealings, but nevertheless their agreement would continue. (Nilsen, 6/15/07 p. 122 line 22 to p. 123 line 9);

b. Haugsdal testified that either Nystad or Sjaastad told him about the meeting and that Wingfield had informed them that Stolt had a problem with an employee who had raised questions about the relationship between Odfjell and Stolt. (Haugsdal, 6/12/07 p. 87 lines 9-23); and

c. Knutsen testified that Sjaastad told him about the meeting with Wingfield at the NPRA. Specifically, Sjaastad said that "Stolt was under certain scrutiny, and they have to be very careful about how they administer this agreement" but that "there was no change in the status" "the agreement would go on." (Knutsen, 6/13/07 p. 17 line 10 to p. 18 line 9). Knutsen also recalled Sjaastad telling him that Wingfield said "the agreement would be maintained, and it was business as usual." (Knutsen, 6/13/07 p. 40 lines 15-18).

73. Wingfield conceded on cross-examination that he told Sjaastad and Nystad that just because Stolt had issued a revised antitrust policy "that didn't necessarily mean we were going to contact all of their customers" and admitted on cross-examination that "it stood to reason that if it worked one way, it was going to work the other way" and that Stolt expected Odfjell would not go after Stolt's customers. (Wingfield, 6/6/07 p. 33 lines 7-19). Wingfield's admissions support Nystad's and Sjaastad's testimony that Wingfield assured them that there would be no change in the conspiratorial agreement, despite Stolt's revised antitrust policy.

74. Wingfield admitted that telling Nystad and Sjaastad that Stolt would not be competing for all of Odfjell's customers was stating the "obvious." (Wingfield, 6/6/07 p. 33 lines 7-13). Wingfield's assurance to a coconspirator of the "obvious," is, in and of itself, a violation of the U.S. antitrust laws as it evidences a continuation of the existing conspiracy because the true reason for Wingfield making this statement was to assure Odfjell that the agreement would continue. Wingfield's giving an assurance to a conconspirator was even a violation of Stolt's own antitrust policy. (See GX-29, at 179066 ("any form of communication ... by which **assurances** are given to, or sought from, competitors concerning [Stolt's] or the competitor's commercial intentions or behavior is strictly prohibited") (emphasis added)).

75. The testimony of the Odfjell witnesses is also corroborated by the testimony of the Jo Tankers witnesses concerning Wingfield's statements to them at the NPRA. (Compare FOF 65-68 with FOF 77, 78, 82).

4. Wingfield's meeting with Jo Tankers - no withdrawal: O'Brien discovered the conspiracy so future contacts to be limited to Wingfield and van Westenbrugge

76. At Cooperman's direction, Wingfield met with representatives of Jo Tankers at the NPRA at the end of March 2002. (Wingfield, 6/5/07 p. 149 line 1 to p. 150 line 16; 6/6/07 p. 25 lines 13-17; p. 34 lines 7-22; Finlay, 6/14/07 p. 80 lines 21-24; van Westenbrugge, 6/14/07 p. 180 lines 3-10; Cleary, 6/1/07 p. 76 line 4 to p. 77 line 9). This meeting was originally scheduled to discuss the co-service agreement that Stolt and Jo Tankers entered into in December 2001, so Wingfield, Jansen and Cleary for Stolt and Hendrikus van Westenbrugge and Finlay for Jo Tankers attended. (Wingfield, 6/5/07 p. 149 line 1 to p. 150 line 16; Wingfield, 6/6/07 p. 34 lines 7-22).

77. Following discussions about the co-service agreement, Wingfield explained to van Westenbrugge that Stolt had internal problems with its general counsel, Paul O'Brien, involving antitrust issues. Wingfield specifically said that O'Brien had informed top management at Stolt that they were violating the antitrust laws. (van Westenbrugge, 6/14/07 p. 181 line 13 to p. 182 line 9; see Wingfield, 6/5/07 p. 152 lines 10-14).

78. Finlay recalled Wingfield stating that because O'Brien was causing problems regarding Stolt's contacts with its competitors, Stolt had to restate its antitrust policy and that future collusive contacts would be limited to Wingfield and van Westenbrugge. (Finlay, 6/14/07 p. 83 lines 1-15). At that point, Wingfield asked Finlay and Cleary to leave the table. (Id. at lines 18-25).

79. Jansen recalled Wingfield informing everyone at the meeting that Stolt had both a "situation" within the company and a revised antitrust policy. (Jansen, 6/13/07 p. 103 line 11 to p. 104 line 18). Because Jansen had been drinking he could not recall much else from this meeting. (Jansen, 6/13/07 p. 104 line 19 to p. 105 line 3).

80. While Cleary, van Westenbrugge and Wingfield testified that Finlay and Cleary were asked to leave the table before Wingfield made the statements about O'Brien's discussion of Stolt's criminal conduct, Finlay's recollection is credible. It is consistent with the statements made by Wingfield to van Westenbrugge, as well as statements Wingfield made to the representatives of Odfjell at the NPRA meeting.

81. There is no documentary evidence that corroborates Wingfield's version of the meeting.

82. After the NPRA meeting, Finlay and van Westenbrugge discussed the meeting on

the way back to the hotel and van Westenbrugge confirmed that any future contacts regarding collusion would be between him and Wingfield. (Finlay, 6/14/07 p. 84 lines 10-25). In fact, future collusive contacts were between Wingfield and van Westenbrugge. (Finlay, 6/14/07 p. 158 lines 14-18; see e.g., van Westenbrugge, 6/14/07 p. 188 line 16 to p. 189 line 14; p. 200 line 7 to p. 201 line 5) (discussions on Shell-Pecten and SK Corp. contracts).

5. Wingfield's e-mails forwarding antitrust policy corroborate Odfjell's and Jo Tankers' testimony that the conspiracy continued after March 2002

83. At the request of Jo Tankers and Odfjell, Wingfield sent Stolt's revised antitrust policy to them by e-mail on April 8, 2002. (See GX-12; see also van Westenbrugge, 6/14/07 p. 182 lines 19-21; Sjaastad, 6/20/07 p. 101 lines 12-16; p. 102 lines 9-17; Haugsdal, 6/12/07 p. 91 lines 15-23; Wingfield, 6/5/07 p. 147 lines 4-9; 6/5/07 p. 153 lines 12-28). However, Wingfield did so only after having assured them at the NPRA that the conspiracy would not be affected by the policy.

84. In contrast to the e-mails Wingfield sent on March 14, 2002 to Stolt's business partners which indicated that Stolt would "comply" with its antitrust policy "without deviation," the April 8, 2002 e-mails to Odfjell and Jo Tankers did not even mention compliances with the revised antitrust policy. Likewise, in contrast to the e-mails sent to Stolt's business partners, the e-mails Wingfield sent to Stolt's coconspirators did not enclose a Wall Street Journal article describing "Dawn Raids" by European antitrust officials. (Compare GX-11 (e-mails to Stolt's business partners) with GX-12 (e-mails to Stolt's coconspirators)).

85. Wingfield's failure to tell Jo Tankers and Odfjell that Stolt would comply with the antitrust policy corroborates the testimony of the Odfjell and Jo Tankers witnesses that Wingfield

said at the NPRA meetings that the conspiracy would continue.

86. Odfjell did not review Stolt's policy in any detail. Odfjell concluded that the policy was not something Odfjell needed; it apparently replaced an old Stolt policy that had not interfered with the companies' conspiracy; and it was merely a legalistic document that Stolt needed because it was a U.S. company. (Haugsdal, 6/12/07 p. 92 line 3 to p. 93 line 7; Sjaastad, 6/20/07 p. 103 line 5 to p. 104 line 22). Jo Tankers similarly did not implement an antitrust compliance policy. (van Westenbrugge, 6/14/07 p. 217 lines 19-21).

I. At the June 2002 London Meeting with Odfjell, Wingfield Confirmed That the Conspiracy Would Continue

1. Stolt sent Wingfield and Jansen alone to meet with coconspirators

87. It is undisputed that in June 2002, Wingfield and Jansen met with Nilsen and Haugsdal at a restaurant in London. (Wingfield, 6/5/07 p. 167 lines 11-16; Nilsen, 6/15/07 p. 180 line 25 to p. 181 line 6; Haugsdal, 6/12/07 p. 88 line 21 to p. 89 line 2). Nilsen and Haugsdal flew to London specifically for the purpose of meeting with Wingfield. (Wingfield, 6/6/07 p. 44 lines 8-17).

88. It is undisputed that this was the second time under Stolt's revised antitrust policy that Cooperman and Lee sent Wingfield to meet with representatives of Odfjell, without an attorney or witness, other than coconspirator Jansen. (Wingfield, 6/6/07 p. 44 lines 18-22; p. 45 lines 9-15). Jansen had accompanied Wingfield to conspiratorial meetings with Odfjell prior to March 2002 (Wingfield, 6/6/07 p. 46 lines 11-15), and Cooperman and Lee knew about Jansen's participation in the conspiracy. (Jansen, 6/13/07 p. 93 line 3 to p. 94 line 11; p. 97 line 21-24).

89. It is undisputed that there was no written agenda, nor were there any minutes or

other contemporaneous written record of this meeting, even though Wingfield told Nilsen and Haugsdal that he was supposed to prepare minutes of all his meetings with competitors. (Haugsdal, 6/12/07 p. 90 lines 6-9; p. 164 lines 18-21; Nilsen, 6/15/07 p. 184 line 19-22; Nilsen, 6/19/07 p. 233 lines 5-10, p. 234 lines 6-10).

2. Wingfield repeated NPRA message: the conspiracy continues

90. Wingfield told Nilsen and Haugsdal that O'Brien was "threatening to make noises about the agreement," but assured them that they had nothing to fear because the attorney-client privilege prevented O'Brien from revealing what he knew. (Nilsen, 6/15/07 p. 125 lines 4-19; Haugsdal, 6/12/07 p. 89 line 20 to p. 90 line 5; cf. Wingfield, 6/5/07 p. 168 lines 13-16 (NPRA discussions referenced at June 2002 meeting)). Wingfield further stated that it would be business as usual and the agreement between the two companies would continue as it had. (Nilsen, 6/15/07 p. 125 lines 16-19; Haugsdal, 6/12/07 p. 89 line 18 to p. 90 line 9). Wingfield also told Nilsen and Haugsdal about the problems O'Brien had created and said that future conspiratorial contacts would be with Wingfield or Jansen, if Wingfield was not available. (Jansen, 6/13/07 p. 114 line 23 to p. 115 line 16).

3. Wingfield never told Odfjell the conspiracy was over

91. Wingfield did not say that the allocation agreement between the two companies was over. In fact, Wingfield reconfirmed that the "understanding [not to compete for each other's customers] was ongoing." (Haugsdal, 6/12/07 p. 91 line 1).

4. Wingfield sought written agreement on the BAJ trade lane

92. Prior to March 2002, Stolt had unsuccessfully attempted to get Odfjell to sign written co-service agreements on trade lanes that were part of the customer allocation agreement,

including the Brazil-Africa-Japan trade lane (the "BAJ"). (Wingfield, 6/6/07 p. 41 line 23 to p. 42 line 8; p. 44 lines 3-7).

93. Odfjell refused to enter such written agreements, fearing that customers would become suspicious of Odfjell's relationship with Stolt and their illegal agreement. (Nilsen, 6/15/07 p. 127 lines 11-14).

94. Despite Odfjell's prior refusals to enter into written agreements with Stolt, Cooperman and Lee directed Wingfield to seek Odfjell's agreement to enter a written co-service agreement on the BAJ trade lane. (Wingfield, 6/6/07 p. 41 lines 15-22; p. 44 lines 8-12).

95. The customers on the BAJ trade lane were subject to the allocation agreement between Stolt and Odfjell. (Cleary, 6/1/07 p. 96 line 25 to p. 97 line 2; Wingfield, 6/6/07 p. 40 lines 7-11; GX-38, at 2). During the course of the conspiracy, Stolt and Odfjell regularly sublet cargoes on this trade lane to one another. (Wingfield, 6/5/07 p. 166 line 17 to p. 167 line 10). This subletting practice took place both prior to and after O'Brien's discovery of the conspiracy. (Cleary, 6/1/07 p. 62 line 8 to p. 63 line 1; p. 65 line 5 to p. 66 line 1).

96. Even though Stolt could have alleviated any concerns about its employees communicating with Odfjell about the BAJ sublets with the simple step of employing an independent broker to handle the sublets (see Humphreys, 6/4/07 p. 178 lines 19-24 (after Nannes began his independent investigation, Stolt employees were directed to use independent brokers for sublets)), Wingfield was sent to this private meeting with Odfjell to seek a written agreement regarding the sublets.

97. Wingfield discussed the proposed co-service agreement with Nilsen and Haugsdal during the June 2002 meeting. Even though they did not intend to enter into such an agreement,

as a matter of courtesy, they told Wingfield they would consider the matter. (Haugsdal, 6/12/07 p. 166 lines 5-12; Nilsen, 6/15/07 p. 126 line 23 to p. 127 line 23).

98. Nilsen subsequently advised Wingfield that Odfjell would not enter into a written agreement concerning the sublets. (Nilsen, 6/15/07 p. 127 line 24 to p. 128 line 8; see also DX-625 (June 28, 2002 e-mail from Haugsdal to Nilsen re: "Co service request" at point 5: "If we were to formalise a co-service agreement on paper; difficult not to make it public . . . and we do not want to make it public for various reasons"; Haugsdal, 6/12/2007 p. 261 line 1 to p. 262 line 9 (reasoning that it would make it "easier . . . for others to see that [Stolt and Odfjell] maybe were too close"). Wingfield accepted Nilsen's rejection of his proposal without much comment. (Nilsen, 6/15/07 p. 128 lines 6-11).

99. Thereafter, Stolt and Odfjell continued to sublet cargoes to one another on the BAJ trade lane, just as they had previously. (Wingfield, 6/6/07 p. 50 lines 17-20; Nilsen, 6/15/07 p. 128 lines 12-17). Not until independent counsel undertook an investigation of the conspiracy did Stolt change its practice regarding sublets with Odfjell and begin using an independent broker as an intermediary between competitor companies. (See Humphreys 6/4/07 p. 178 lines 19-24).

J. Immediately After the June London Meeting, Stolt and Odfjell Rigged SK

1. 2001 SK contract had been rigged by Stolt and Odfjell

100. In 2001, Stolt entered into a contract with SK Corp. ("SK")to ship lubricating oils from Korea to the U.S. Gulf. The 2001 SK contract was a two-year contract to end in June 2003. (Harrison, 5/31/07 p. 234 line 21 to p. 235 line 2; Edvardsdal, 6/15/07 p. 8 lines 20-23).

101. The SK contract from Korea to the U.S. Gulf was allocated to Stolt under the

agreement. (Nilsen, 6/15/07 p. 128 line 18 to p. 129 line 16; Knutsen, 6/13/07 p. 27 lines 9-11).

102. Odfjell had been asked by SK to bid for its business in 2001 and Nilsen's subordinate, Hallvard Edvardsdal, wanted the business. But Jansen and Nilsen agreed that Odfjell would "back off" the contract, and Odfjell did so. Edvardsdal used the fact that SK had introduced New Orleans as an additional discharge port (Houston was initially the sole discharge port) as the excuse to SK for Odfjell not to submit a final bid on the contract. (Edvardsdal, 6/15/07 p. 17 line 10 to 18 line 11). Even though Houston was Odfjell's main port in the Gulf of Mexico, Odfjell was, in fact, capable of serving New Orleans. (Edvardsdal, 6/15/07 p. 18 lines 12-16).

2. SK contract was important business

103. The SK contract was important business to Stolt because it guaranteed cargo for Stolt's ships coming back to the U.S. from the Far East. (Wingfield, 6/6/07 p. 70 lines 12-14; p. 71 line 22 to p. 72 line 13).

3. In early 2002, SK sought over a $1 million discount from Stolt because its contract rate grossly exceeded the market price

104. In early 2002, SK asked Stolt for a reduction of $1 million to $1.5 million from the 2001 contract (Harrison, 5/31/07 p. 235 lines 8-20), because the 2001 contract price of roughly $60 per ton was 50 percent higher than the current market price of roughly $40 per ton. Stolt refused. (See Wingfield, 6/6/07 p. 71 lines 5-12; DX-2722, at 143282 (Y.M. Park of SK demanding discount from Stolt because "COA rate[] is around $60/[ton] when the current market rate is in 40's. [I]t means that there is around $20/[ton] difference").

4. In June 2002, SK invited Odfjell to quote for business to Houston

105. Dissatisfied with Stolt's refusal to reduce pricing, in June 2002, SK invited Odfjell to submit an offer for the shipment of base/lube oils from Korea to Houston. (Edvardsdal, 6/15/07 p. 7 lines 1-18; see GX-57, at OD0077413 (June 12, 2002 e-mail from Edvardsdal to SK's broker, in which Edvardsdal states "I have not forgotten you nor SK Corp's COA for lube oils to Houston.")).

106. Nilsen had told Edvardsdal that Odfjell could not bid until they learned Stolt's prices because of the agreement between the two companies. (Edvardsdal, 6/15/07 p. 9 lines 14-23).

5. Immediately after June London meeting, Stolt and Odfjell rigged the SK bid

107. Just days after the June London meeting, Jansen or Wingfield called Nilsen to ensure that Odfjell would not undercut Stolt on the SK bid and gave prices to Nilsen for Odfjell to offer to SK. (Nilsen, 6/15/07 p. 130 lines 8-25; p. 194 line 22 to p. 195 line 17).

6. Documentary evidence confirms Stolt and Odfjell rigged the June 2002 SK bid

108. On June 17, 2002, Wingfield wrote in his business journal the numbers "58/62" in the upper right hand corner, next to the notations "Houston" and "SK to USA guidance." (Wingfield, 6/6/07 p. 126 line 18 to p. 127 line 1; see GX-26A.5634).

109. On June 18, 2002, Nilsen sent Edvardsdal an e-mail regarding "SK to USA" with the notation, "58/62," and instructed Edvardsdal to bid a higher amount, "64/65." (Edvardsdal, 6/15/07 p. 10 lines 11-25; Nilsen, 6/15/07 p. 131 lines 1-16; see GX-56).

110. The e-mail that Nilsen sent Edvardsal contained the same prices, "58/62," and the

same notations, "SK to USA," "guidance" and "Houston," that are in Wingfield's business journal. The reference to "Houston" is significant because Odfjell was only invited to bid to Houston (Edvardsdal, 6/15/07 p. 7 lines 1-18; see GX-57, at OD0077413), while Stolt's contract was for both New Orleans and Houston. (Harrison, 5/31/07 p. 234 line 21 to p. 235 line 2) The reference to "guidance" is significant because that is the term used by Stolt employees to describe price discussions by the coconspirators. (Vogth-Eriksen, 6/4/07 p. 34 lines 13-21).

111. Stolt attempts to refute the fact that Nilsen obtained the prices "58/62" from Stolt by arguing they are similar to prices found in an April 1, 2002 Odfjell memo regarding a completely different trade lane (Far East to South Africa). (See Stolt FOF 506). Stolt's claim is illogical because the prices in Nilsen's June 18, 2002 e-mail are identical to the prices in Wingfield's business journal just one day earlier, June 17, 2002. (Wingfield, 6/6/07 p. 126 line 20 to p. 127 line 1; see GX-26A.5634). Moreover, the prices in Nilsen's e-mail do not match the prices in the April 1, 2002 e-mail which are 105/58/62.5. (See DX-1916, at 91984).

112. Nilsen could not have gotten "58/62" from SK or its broker because these prices also do not match Stolt's then current prices, which were actually 58/60/63. (See GX-266, at 252240).

113. Ultimately, Edvardsdal did not submit an offer to SK because he thought the rates Nilsen told him to bid were too high – over $20 more than the market price. Instead, shortly after receiving the high prices from Nilsen, Edvardsdal sent SK an e-mail with excuses so as not to appear foolish by bidding so high. (Edvardsdal, 6/15/07 p. 11 line 1 to p. 13 line 3; Nilsen, 6/15/07 p. 131 lines 17 to p. 132 line 6; see GX-57, at 77412).

K. In June 2002, O'Brien Sued Stolt and Cooperman

114. On June 18, 2002, O'Brien filed a constructive termination suit against Stolt and Cooperman in Connecticut state court alleging, inter alia, that they refused to terminate their participation in illegal conduct after he brought it to Cooperman's attention in February 2002. (See GX-10A ¶¶ 18, 19, 21).

115. In this initial complaint, O'Brien did not contain any allegations that Stolt's had violated U.S. antitrust laws. (See GX-10A).

L. Cooperman Lied to SNSA's Board of Directors

116. In order to continue to conceal his and the company's illegal conduct, Cooperman lied to and misled the independent members of SNSA's Board of Directors when confronted with O'Brien's complaint.

1. Fisher requested that O'Brien's complaint be addressed at the August 2002 Board meeting

117. Sometime after June 2002, Richard Fisher, an independent member of SNSA's Board of Directors, obtained anonymously a copy of O'Brien's complaint. (Fisher, 6/11/07 p. 12 lines 8-19). Fisher immediately contacted Stolt to inquire about O'Brien's allegations. (Fisher, 6/11/07 p. 14 lines 8-16).

118. On August 1, 2002, Cooperman contacted Fisher, and they discussed O'Brien's complaint. Following their discussion, Fisher requested that it be addressed at the August board meeting. (Fisher, 6/11/07 p. 14 line 23 to p. 16 line 13; GX-75).

2. Cooperman assured the Board that O'Brien's allegations were a baseless attempt to blackmail the company

119. Cooperman attended the August 2002 board meeting and gave a presentation

concerning O'Brien's allegations. Cooperman had with him, among other things, the report he prepared of his investigation into O'Brien's allegations in February 2002. During the meeting, Cooperman summarized his investigation. Cooperman "assured" the board that "the accusations of Mr. O'Brien were baseless and that the matter was not worthy of pre-occupation by the board." (GX-77, at 1641; Fisher, 6/11/07 p. 26 lines 7-18). Cooperman advised the board that O'Brien's suit was only an attempt to "blackmail" the company. (Fisher, 6/11/07 p. 64 lines 8-14).

120. Cooperman's characterization of O'Brien's complaint as "blackmail" is the same way that Wingfield characterized O'Brien's actions to Odfjell at both the NPRA and the June London meeting. Cooperman's assurances to SNSA's Board of Directors, like the report of his purported February 2002 investigation (GX-13B), were false.

121. After Cooperman gave these false assurances to the Board, Stolt continued to participate in the conspiracy.

M. Wingfield Rigged the Sasol Bid in October 2002

1. Sasol was an important contract allocated to Odfjell under the conspiracy

122. In 2002, Odfjell was the incumbent shipping company for Sasol's South Africa to India contract. (Humphreys, 6/4/07 p. 72 lines 2-5).

123. Sasol was important business for Odfjell. (Vogth-Eriksen, 6/4/07 p. 30 lines 21 to p. 31 line 1; Nilsen, 6/15/07 p. 139 lines 22-25).

124. Sasol was allocated to Odfjell under the allocation scheme between Stolt and Odfjell. (Vogth-Eriksen, 6/4/07 p. 30 line 21 to p. 31 line 7; Jansen, 6/13/07 p. 117 lines 17-19; Humphreys, 6/4/07 p. 128 lines 4-9; Nilsen, 6/15/07 p. 140 lines 10-15; Sjaastad, 6/20/07 p. 122

lines 7-11).

2. Because of the O'Brien situation, Stolt wanted to demonstrate its willingness to take a contract that belonged to Odfjell

125. On August 30, 2002, Sasol sent an invitation to bid for Sasol's South Africa to India contract to, among other competitors, Stolt and Odfjell. (Humphreys, 6/4/07 p. 72 lines 22-25; see also DX-1288).

126. Humphreys believed that in light of the "situation," Stolt management decided to bid for the Sasol business in order to demonstrate that Stolt would steal a contract from Odfjell. (Humphreys, 6/4/07 p. 74 lines 1-4; p. 122 line 22 to p. 123 line 1).

127. Humphreys and two of his subordinates were responsible for preparing Stolt's bid for the Sasol contract. (Humphreys, 6/4/07 p. 74 lines 12-15).

128. In order to gain a competitive advantage and help conceal its interest in the business, Stolt decided to bid to Sasol using a black empowerment partner. (See Humphreys, 6/4/07 p. 75 line 5 to p. 76 lines 16).

3. Wingfield, Cooperman and SNSA's CEO were informed of Stolt's Sasol bid

129. Humphreys always informed Wingfield both orally and in writing of the prices Stolt planned to bid as well as its actual bid prices for the Sasol contract. (Humphreys, 6/4/07 p. 78 lines 16-19; p. 106 line 21 to p. 107 line 2; p. 131 lines 2-14; p. 176 lines 7-13).

130. Although it was not common for Humphreys to discuss contracts with Cooperman (Humphreys, 6/4/07 p. 130 lines 12-14), Humphreys discussed the Sasol contract with Cooperman, summarizing Stolt's bid, the background, the pricing rationale, and the black empowerment initiative. (Humphreys, 6/4/07 p. 124 lines 20-22).

131. Stolt management and Wingfield also kept Niels G. Stolt-Nielsen, SNSA's CEO, informed about the bid to Sasol. (See GX-72).

4. In violation of its agreement with Odfjell, Stolt submitted a competitive bid to Sasol

132. In mid-September 2002, both Stolt and Odfjell submitted initial bids to Sasol. (Humphreys, 6/4/07 p. 77 lines 6-19; see also DX-2832 (Stolt's bid), DX-2525 (Odfjell's bid)).

133. Stolt's competitive bid to Sasol was a violation of the customer allocation agreement. (Wingfield, 6/6/07 p. 64 lines 2-14 and p. 54 lines 15-20; Nilsen, 6/15/07 p. 143 lines 1-4; Haugsdal, 6/12/07 p. 97 line 21 to p. 98 line 3; p. 258 lines 18-22).

5. Recognizing its Sasol bid violated the agreement, Stolt prepared an excuse for Odfjell

134. On October 1, 2002, Niels G. Stolt-Nielsen sent an e-mail to Wingfield asking Wingfield how Odfjell would retaliate if Stolt won the Sasol contract. In his reply to Stolt-Nielsen (copied to SNTG CEO Reginald Lee), Wingfield explained that in order to avoid retaliation by Odfjell, what Stolt would say "publicly (and ot [Odfjell] will pick up on this) is that this is regional business and not part of main fleet business." (GX-72).

135. Wingfield admitted in cross-examination that Sasol was not regional business. (Wingfield, 6/6/07 p. 57 lines 5-6). Regional business was not part of the allocation agreement. (Wingfield, 6/6/07 p. 56 lines 13-16; Long, 6/5/07 p. 89 lines 5-15). By saying publicly that Sasol was regional business, Wingfield intended to signal Odfjell that despite Stolt's bid, Stolt remained committed to the allocation agreement. (See GX-72). Wingfield could provide no explanation for his plan to send such a signal to Odfjell. (Wingfield, 6/6/07 p. 57 lines 2 to p. 58 lines 23).

6. Odfjell repeatedly called Stolt to complain about Stolt's bid to Sasol

136. Knut Holsen was responsible for preparing Odfjell's bid to Sasol. (Nilsen, 6/15/07 p. 140 lines 20-23). In October 2002, Holsen called Stolt's Nils Vogth-Eriksen and asked to speak with Humphreys about the Sasol contract. (Vogth-Eriksen, 6/4/07 p. 14 line 23 to p. 15 line 22). Vogth-Eriksen told Holsen that Humphreys was out of the country and that the person handling the day-to-day details of the Sasol bid was unavailable. (Vogth-Eriksen, 6/4/07 p. 15 lines 7-13).

137. When Holsen could not reach anyone at Stolt, Holsen told Nilsen that Stolt was competing on Sasol and asked him to call Wingfield about this breach of the agreement. (Nilsen, 6/15/07 p. 141 line 19 to p. 142 line 10).

138. Final bids to Sasol were due October 11, 2002 by close of business Johannesburg time, and Odfjell became increasingly concerned about Stolt submitting a competitive bid on Sasol. (Humphreys, 6/4/07 p. 90 lines 13-17). Accordingly, Nilsen and Haugsdal began to call Wingfield repeatedly to complain and influence Stolt to withdraw its bid. (Wingfield, 6/6/07 p. 63 line 13 to p. 64 line 1).

7. Wingfield accepted Odfjell's repeated calls

139. Wingfield admitted receiving "a lot of calls" about the Sasol bid from Odfjell on October 11, 2002. (Wingfield, 6/6/07 p. 63 lines 16-19; see also Jansen, 6/13/07 p. 134 line 2 to p. 135 line 12 (testimony concerning getting call from Nilsen about Sasol and transferring call to Wingfield).

140. Wingfield accepted at least two telephone calls from Nilsen. (Wingfield, 6/6/07 p. 63 lines 13-19; Nilsen, 6/15/07 p. 144 line 10 to p. 148 line 2). Wingfield admitted that he

never refused to speak to Nilsen, (Wingfield, 6/6/07 p. 93 lines 11-15), nor did he tell Nilsen that he could not discuss the Sasol bids. (Wingfield, 6/6/07 p. 93 lines 11-13; see also Humphreys, 6/4/07 p. 131 line 25 to p. 132 line 4; p. 135 line 21 to p. 136 line 2, p. 136 lines 16-21).

141. During one of these calls, Nilsen told Wingfield that Sasol was the "backbone" of that trade lane for Odfjell, and that Odfjell resented Stolt's offer to Sasol. (See Wingfield, 6/6/07 p. 60 lines 11-17, p. 64 lines 5-9; Nilsen, 6/15/07 p. 142 line 11 to p. 144 line 25). Wingfield told Jansen that Nilsen had complained that Stolt's bid was a "deal breaker," which Jansen understood referred to the "status quo agreement" between Stolt and Odfjell. (Jansen, 6/13/07 p. 120 line 13 to p. 121 lines 7).

142. Wingfield admitted that Odfjell's complaints in October showed that Odfjell believed the conspiracy continued. (See Wingfield, 6/6/07 p. 64 lines 5-14).

143. Haugsdal also called Wingfield several times that day to complain about Sasol. (Wingfield, 6/6/07 p. 63 lines 16-21; Haugsdal, 6/12/07 p. 99 line 22 to p. 101 line 7). There is no evidence in the record that Wingfield refused to speak to Haugsdal about Sasol or told Haugsdal that he could not discuss the Sasol bid.

144. During one of their calls, Haugsdal and Nilsen demanded that Wingfield withdraw Stolt's bid to Sasol. (Haugsdal, 6/12/07 p. 100 lines 14-23; Nilsen, 6/15/07 p. 144 lines 10-25). Wingfield said he could not withdraw Stolt's bid because the "bidding and the pricing" were controlled by Stolt's South African joint venture partner. (Id.) Haugsdal then asked Wingfield to give him Stolt's prices and Wingfield said he would look into getting them. (Haugsdal, 6/12/07 p. 100 line 24 to p. 101 line 1).

145. Concerned about the impending bid deadline, Nilsen and Haugsdal asked Bjorn

Sjaastad, Odfjell's CEO, to call Cooperman about the matter. (Haugsdal, 6/12/07 p. 100 lines 2-9; Nilsen, 6/15/07 p. 145 lines 6-15; Sjaastad, 6/20/07 p. 122 line 19 to 123 line 1; p. 147 lines 18-20). Sjaastad tried to reach Cooperman, but was told by Cooperman's secretary that he was en route to the airport. (Haugsdal, 6/12/07 p. 100 lines 7-9; Nilsen, 6/15/07 p. 147 lines 8-15; Sjaastad, 6/20/07 p. 123 lines 2-8).

8. Although Humphreys determined Stolt's bid could be lower, Wingfield decided to leave it as is

146. The same day the bids were due and Odfjell was calling repeatedly about Stolt's bid, Humphreys told Wingfield that Stolt could reduce its prices 50 cents or a dollar. (Humphreys, 6/4/07 p. 108 lines 16-21, p. 131 lines 2-6; Wingfield, 6/6/07 p. 59 lines 13-18). Wingfield told Humphreys to "leave [the bid] as is." (Id.).

9. Wingfield told Humphreys Odfjell had complained

147. In the same conversation in which he told Humphreys not to reduce Stolt's bid, Wingfield told Humphreys that he had spoken to Odfjell, and Odfjell was upset by Stolt's bid to Sasol. (Humphreys, 6/4/07 p. 91 lines 15-22, p. 131 lines 15-24).

10. Humphreys reported Wingfield's violation of Stolt's antitrust policy to Cooperman

148. Because Wingfield's discussion with Odfjell about Sasol was a violation of Stolt's antitrust policy (see GX-29), Humphreys reported to Cooperman what Wingfield told him about his call from Odfjell. (Humphreys, 6/4/07 p. 92 lines 6-20). Cooperman told Humphreys that Wingfield should not be speaking to the competition. (Humphreys, 6/4/07 p. 92 lines 22-25). Humphreys then observed Cooperman meeting with Wingfield behind closed doors. (Humphreys, 6/4/07 p. 92 line 21 to p. 93 line 9; p. 132 lines 12-16).

11. Cooperman never mentioned Humphreys' complaint to Wingfield

149. Despite Humphreys' complaint to Cooperman, Cooperman never asked Wingfield about his conversation with Odfjell, nor reminded Wingfield to comply with the antitrust policy. (Wingfield, 6/6/07 p. 63 lines 3-12). Instead, Cooperman merely asked Wingfield the status of Stolt's offer to Sasol and agreed that Stolt should not lower its price. (Wingfield, 6/6/07 p. 62 lines 5 to p. 63 line 12).

150. After Cooperman left Wingfield's office, Humphreys told Wingfield that he had reported Wingfield's discussion with Odfjell to Cooperman. (Humphreys, 6/4/07 p. 132 line 22 to 133 line 10). Wingfield had no reaction, other than to say "something along the line, '[t]hat's fine.'" (Humphreys, 6/4/07 p. 133 lines 11-14).

151. To Humphreys' knowledge, Cooperman never investigated or otherwise followed up with anyone concerning Wingfield's discussions with Odfjell on the day the Sasol bids were submitted. (Humphreys, 6/4/07 p. 135 lines 16-20).

12. Humphreys observed Wingfield discussing Sasol freight rates with Nilsen and left Wingfield's office in disgust

152. Shortly after Cooperman left Wingfield's office, Humphreys was in Wingfield's office when another call from Nilsen was announced. (Humphreys, 6/4/07 p. 94 lines 9-17). Wingfield did not refuse the call, but spoke to Nilsen. During the call, Wingfield did not tell Nilsen he could not discuss the Sasol contract. (Humphreys, 6/4/07 p. 136 lines 3-21). Instead, Humphreys heard Wingfield repeat freight rates. (Humphreys, 6/4/07 p. 95 lines 15-20). Humphreys "couldn't believe this was happening, all these events at the eleventh hour, 59th minute." (Humphreys, 6/4/07 p. 96 lines 2-5). At that point, Humphreys left Wingfield's office

because he had "just had enough." (Humphreys, 6/4/07 p. 96 lines 6-7; p. 136 lines 3-13).

153. Humphreys did not report this call to Cooperman or anyone else at the company because his earlier report to Cooperman had no effect as evidence by the fact that Wingfield had taken Nilsen's call without hesitation less than one hour later. (Humphreys, 6/4/07 p. 168 lines 17-19; p. 136 line 25 to p. 137 line 7).

13. Wingfield gave Stolt's Sasol prices to Odfjell and Odfjell retained the contract

154. That same morning, Wingfield called Haugsdal and gave him Stolt's Sasol bid prices. (Haugsdal, 6/12/07 p. 101 lines 1-3; p. 259 lines 9-10; Nilsen, 6/15/07 p. 147 line 19 to p. 148 line 5). Haugsdal then gave the prices to Nilsen, who in turn gave them to Holsen. (Haugsdal, 6/12/07 p. 101 lines 1-3; Nilsen, 6/15/07 p. 148 lines 3-11). Holsen used Stolt's prices to adjust Odfjell's final bid to Sasol (Haugsdal, 6/12/07 p. 259 line 11 to p. 260 line 5) and Odfjell retained the Sasol contract. (Humphreys, 6/4/07 p. 99 lines 5-7; Haugsdal, 6/12/07 p. 260 lines 4-5; Nilsen, 6/15/07 p. 148 lines 16-17).

155. Contrary to arguments by defense counsel, there is no evidence in the record that Odfjell received a last look from Sasol.

156. Cooperman never investigated whether Stolt's loss of the Sasol contract was related to Wingfield's discussions with Odfjell. (See Humphreys, 6/4/07 p. 139 lines 8-15; Wingfield, 6/6/07 p. 63 lines 3-12).

14. Odfjell's prices to Sasol were similar to or just slightly lower than Stolt's

157. Shortly after final bids were submitted to Sasol, Sasol informed Stolt that its prices "were similar or 'just slightly higher'" than Odfjell's. (GX-204, Humphreys, 6/4/07 p. 137

line 23 to p. 138 line 11).

158. Stolt claims that Odfjell undercut Stolt's rate proposal by 7% (see Stolt FOF 417-421) by reducing its initial proposal by 14% (see Stolt FOF 417-420), but substantial evidence shows that Odfjell did not reduce its proposed rates by 14% and that Odfjell did not bid 7% less than Stolt.

a. Stolt's proposed claim that Odfjell reduced its prices by 14% and was 7% below is wrong and is based on documents that are not in evidence for the truth of their contents and whose authors did not testify to explain them. (See, e.g., DX-977; DX-2543).

b. The accuracy of the hearsay Stolt cites and on which its expert witness Barry Harris relied is questionable. For example, Barry Harris relied on the hearsay declaration of Sasol employee Kevin McCormack (see Harris, 6/20/07 p. 46 line 5 to p. 47 line 19; p. 84 lines 17-20), who wrote that Odfjell reduced its proposed rates 14% between its initial and final offers. (DX-977 ¶ 20). But McCormack's 2006 declaration is contradicted by an October 15, 2002 e-mail he prepared just four days after Odfjell submitted its final proposal in October 2002. (See DX-2541). McCormack's e-mail contains a spreadsheet showing how Odfjell's final rates compared both to its rates under the existing contract and to the rates Odfjell initially proposed for the new contract. (DX-2541, at 192 ("please note the 3rd spreadsheet which has Odfjell's final offer rates shown against original offer and current rates")). That spreadsheet shows that the changes in Odfjell's proposed rates for the various ports and quantities ranged from an increase of 1.2% to a decrease of only 6.9%, far less than the 14% average decrease McCormack noted in his 2006 declaration.

McCormack's 2006 declaration also says Odfjell's final prices were approximately 4% less than its existing contract prices (DX-977 ¶ 21), but his October 2002 spreadsheet shows that almost every Odfjell price actually increased. (See DX-2541, at 195).

c. In support of his belief that Odfjell's final prices were 4% less than the existing contract prices, McCormack mistakenly relied in his 2006 declaration on an "Exhibit H." (See DX-977 ¶ 21). McCormack's Exhibit H is identical to DX-2541, which is discussed in paragraph b. above. Because "Exhibit H" contains two spreadsheets, it is impossible to know, without McCormack's testimony, on which he relied in determining that Odfjell's final prices were 4% below existing rates, but in any event, neither spreadsheet supports his conclusion. The spreadsheet on the third page has "totals" under the columns with "Odfjell New" prices that are greater than those under "totals" for "Curr Freight" prices. The spreadsheet on the fourth page shows that almost all of Odfjell's final prices were higher than its existing prices.

d. In fact, Stolt's own evidence undercuts its argument and supports what Sasol told Odfjell at the time of the bids - that Odfjell did not undercut Stolt's prices by 7%, but only slightly undercut Stolt's prices. Stolt introduced internal Sasol analyses to show that Odfjell's initial proposal reflected an increase of approximately 9.6% over its existing contract rates, and that Stolt's final rates were approximately 3.2% higher than Odfjell's existing rates. (See DX-2529, at 124; DX-2543, at 202; Stolt FOF 414, 418). Stolt's demonstrative Exhibit DD-9 comparing Odfjell's initial and final proposals shows that Odfjell reduced the rates it initially proposed by between 3.5% and 9.4% depending on the port and quantity, with an average reduction of just 5.9%. Only 3 of 19 reductions

exceed 7.1%. (See DD-9; see also DX-2525 (Odfjell's September 2002 proposal) and DX-2539 (Odfjell's October 11, 2002 proposal)). Odfjell's reductions bring its higher initial rates in line with Stolt's rates (the initial average increase of 9.6% followed by reduction of between 3.5% and 9.4%).

e. Stolt cites two select simulations in particular - DX-2529 and DX-2543 - but their significance cannot be understood without testimony by their author, McCormack. This is particularly true because the different simulations are based on different voyages (DX-2529 compares Jouf, Madinah, and Mekka (v200104) while DX-2543 compares Najran, Jizan, and Mekka (v200204). (Compare DX-2529, at 124 with DX-2543, at 202). Although Stolt relies heavily on DX-2543, Sasol also did another post-bid simulation which again is based on different voyages. (Compare DX-2541, at 194 with DX-2543, at 202). Moreover, McCormack stated that he did not always use Odfjell's actual rates in doing his analysis. (See DX-977 McCormack Declaration ¶ 10).

159. To the extent Stolt relies on Sasol simulations without having called a Sasol witness, such documents are misleading and should be given no weight.

160. Stolt's October 2002 internal e-mail stating that Stolt's prices were "similar or 'just slightly higher'" than Odfjell's, was written just days after the final submission of bids (see GX-204; Humphreys, 6/4/07 p. 137 line 23 to p. 138 line 11), and is the most credible evidence concerning how their bids compared.

N. Wingfield Met with Odfjell at Heathrow One Week After the Sasol Bids

1. Stolt again sent Wingfield and Jansen to meet alone with coconspirators

161. It is undisputed that one week after the Sasol bids, Wingfield and Jansen met with

Nilsen and Haugsdal at London's Heathrow Airport. (Wingfield, 6/5/07 p.180 lines 22-25; Jansen, 6/13/07 p. 123 line 19 to p. 124 line 6; Haugsdal, 6/12/07 p. 219 lines 15-25) with the knowledge of SNTG CEO Regional Lee. (Wingfield, 6/5/07 p. 68 lines 13 to p. 69 line 14)..

2. Odfjell raised conspiratorial matters at the meeting

a. Odfjell prepared a list of issues to raise with Stolt

162. Prior to the October meeting, as had been his practice, Nilsen asked Nystad to identify issues for Nilsen to raise with Wingfield. (Nystad, 6/11/07 p. 145 lines 2-7).

163. Nystad identified issues for Nilsen to bring up with Wingfield. (See Nilsen, 6/15/07 p. 150 line 15 to p. 154 line 8; Nystad, 6/11/07 p. 144 line 18 to p. 151 line 9). The issues he identified are reflected in contemporaneous Odfjell documents. (See GX-49, GX-51, GX-52, GX-53).

164. The main issue was a complaint of Stolt cheating on the agreement by stealing two Odfjell customers, Dow (in 2001) and GE Plastics ("GE") in the Gulf of Mexico. (See GX-53). This was not the first time customers in the Gulf of Mexico had been a subject of complaints between Stolt and Odfjell. (See Long, 6/5/07 p. 89 line 21 to p. 91 line 4; Fleming, 6/5/07 p. 30 lines 2-10). To better inform Nilsen about this complaint, Nystad directed a subordinate, Jakob Sorhus, to prepare a summary of the history and status of the agreement involving the U.S. - Gulf of Mexico region. Sorhus did so by sending an e-mail to Nilsen on October 15, 2002. (Nystad, 6/11/07 p. 149 line 18 to p. 151 line 9; see also GX-53).

b. Odfjell raised those complaints with Wingfield

165. During the October Heathrow meeting, Nilsen raised with Wingfield the complaints that were in Sorhus' October 15, 2002 e-mail. (See GX-53). Nilsen tore off part of

the e-mail and gave it to Wingfield. (Nilsen, 6/15/07 p. 152 line 25 to p. 153 line 25; Haugsdal, 6/12/07 p. 103 line 8 to p. 104 line 10; p. 111 line 1 to p. 112 line 14). Nilsen asked Wingfield to look into the matter and Wingfield agreed. (Nilsen, 6/15/07 p. 154 line 1 to p. 155 line 4; Nystad, 6/11/07 p. 153 line 3 to p. 156 line 2).

166. Wingfield claimed, however, that he met with Odfjell to discuss a legitimate business matter, i.e., to discuss quality problems with Odfjell's handling of sublets on Dow shipments on the BAJ trade lane. (Wingfield, 6/5/07 p. 176 line 21 to p. 177 line 15). Wingfield's claim is not credible. It is inconsistent with the testimony of Cleary – the Stolt executive responsible for the Dow BAJ contract and most knowledgeable about the problems Stolt was experiencing with the sublets to Odfjell on Dow BAJ cargoes – that no one, including Wingfield, ever told him about the meeting, either before or after it took place. (Cleary, 6/1/07 p. 97 line 23 to p. 98 line 9). Nor is there any Stolt record of this meeting. Defendants attempt to create the misimpression that Wingfield was fully informed by Cleary about the Odfjell subletting prior to the October meeting by introducing three documents. This attempt fails because two are multi-page documents discussing many aspects of Stolt's extensive Dow business, and contain only a single paragraph regarding the BAJ that does not even mention Odfjell (see DX-657, at 010140 ¶ 8; DX-692 ¶ 8), the third document was never even sent to Wingfield. (DX-670). Neither these nor any other Stolt document refers to the Heathrow meeting.

c. Wingfield thereafter designated himself as point-of-contact for future conspiratorial issues regarding Gulf of Mexico

167. Within a week after the meeting, Wingfield called Nilsen and told him he had

looked into Odfjell's complaint and confirmed that Odfjell was correct. Wingfield said that he would handle any future issues relating to the U.S. Gulf to Mexico trade area. (Haugsdal, 6/12/07 p. 103 line 8 to p. 104 line 15; Nilsen, 6/15/07 p. 155 line 14 to p. 156 line 2).

d. Jansen also followed up within Stolt regarding complaints raised by Odfjell at the meeting

168. After the October Heathrow meeting, Jansen asked Long for information about the U.S. Gulf to Mexico trade area, including the Dow and GE contracts (GX-54; Long, 6/5/07 p. 97 lines 20 to p. 98 line 18), the same customers Nilsen raised at the October meeting. (Nilsen, 6/15/07 p. 154 line 1 to p. 155 line 4). On November 1, 2002, Long forwarded an e-mail to Jansen with the information he requested. (See GX-54; Long, 6/5/07 p. 97 line 20 to p. 98 line 18; Jansen, 6/13/07 p. 131 line 23 to p. 132 line 10). Long did not have reporting obligations to Jansen. Jansen had no responsibility for COAs in the Gulf of Mexico (Jansen, 6/13/07 p. 131 lines 13-18; p. 132 line 2 to p. 133 line 2) and had no reason to request this information from Long except to follow up on Nilsen's complaints.

e. Shortly after the meeting, several longstanding complaints were resolved

169. As a result of the October Heathrow meeting, Wingfield agreed to drop an older Stolt complaint regarding Dow sublets from the U.S. to South American in exchange for Nilsen dropping his complaint regarding GE and Dow. Hence, both complaints were resolved, and the status quo agreement continued. (See Nilsen, 6/15/07 p. 157 lines 2-25; Nystad, 6/11/07 p. 153 line 15 to p. 156 line 11). Also, during this call, Nilsen also agreed to look into Wingfield's question about another contract, Oxiquim. (Nilsen, 6/15/07 p. 156 line 2 to p. 157 line 1).

3. When Jansen complained about an allocated customer during the Heathrow meeting in violation of Stolt's antitrust policy, Wingfield admitted he did nothing

170. During the October Heathrow meeting, Jansen and Nilsen also discussed Equatorial (Jansen, 6/13/07 p. 125 line 24 to p. 127 line 3), a South African customer allocated to Stolt. (Nilsen, 6/15/07 p. 132 lines 7-13).

171. Jansen complained to Nilsen that Odfjell's agent in South Africa was quoting low rates in that market (Jansen, 6/13/07 p. 125 line 25 to p. 129 line 4), which because of price renegotiation terms in Equatorial's contract with Stolt, had the effect of reducing the price Equatorial would pay Stolt. (See Jansen, 6/13/07 p. 127 line 22 to p. 129 line 4; see DX-2918, at 252633 ("MFN [most favored nation] Clause"); see Wingfield, 6/6/07 p. 68 line 18 to p. 69 line 2). Nilsen responded that he would "look into" Jansen's complaint. (Wingfield, 6/6/07 p. 69 lines 10-12).

172. Wingfield admitted he did nothing in response to Jansen's blatant violation of Stolt's antitrust policy. In fact, Wingfield said nothing when he heard Jansen's complaint. (Wingfield, 6/6/07 p. 69 lines 13-19). Wingfield did not tell Jansen he should not bring up customer complaints with Odfjell (Wingfield, 6/6/07 p. 69 lines 20-23), nor did he tell Nilsen not to follow up on Jansen's complaint. (Wingfield, 6/6/07 p. 69 line 24 to p. 70 line 2). Wingfield incredibly testified that he merely viewed Jansen's Equatorial complaint as just a "throwaway" comment. (Wingfield, 6/6/07 p. 69 lines 13-19).

173. Jansen admitted that he and Wingfield had raised similar complaints to Nilsen about Equatorial after March 2002. (Jansen, 6/13/07 p. 112 line 5 to p. 113 line 24; p. 250 line 19 to p. 252 line 20; see Nilsen, 6/15/07 p. 132 line 7 to p. 134 line 17). Jansen also spoke to

Nilsen after the NPRA meeting about customers other than Equatorial, although he does not recall which ones (Jansen, 6/13/07 p. 216 lines 6-13). Nilsen did recall Jansen's calling him about Rhodia. (Nilsen, 6/15/07 p. 136 line 17 to p. 137 line 5).

4. In violation of the revised antitrust policy, Wingfield failed to report Jansen's discussion with Nilsen regarding Equatorial to Stolt's general counsel

174. Stolt's revised antitrust policy required employees to report conduct that violated the revised antitrust policy, such as Jansen's complaint to Nilsen concerning Equatorial, to the company's general counsel. (GX-29, at 179063). There is no evidence, however, that Wingfield ever reported Jansen's violation of the policy to anyone.

5. Neither a written agenda nor minutes of the Heathrow meeting was prepared

175. There was no written agenda, minutes or any other documentation about what happened at the October Heathrow meeting. This belies Wingfield's and Stolt's claim that the October meeting was for legitimate business reasons.

176. In contrast, lower-level Stolt employees were told such documentation was required for meetings with competitors (see Soffree, 6/4/07 p. 57 lines 9-19; DX-441) and Wingfield himself told Odfjell that such documentation was required. (See Haugsdal, 6/12/07 p. 89 line 18 to p. 90 line 9; p. 164 lines 15-21; Nilsen, 6/15/07 p. 184 lines 19-22; 6/19/07 p. 233 lines 5-10).

O. Stolt and Wingfield Continued to Conspire after the October Heathrow Meeting

1. Wingfield rigged the Shell-Pecten Contract with Jo Tankers in November 2002

177. In 2002, Jo Tankers had a contract with Shell-Pecten for shipments on the U.S.

Gulf to Far East trade lane. (Finlay, 6/14/07 p. 85 line 24 to p. 86 line 3; van Westenbrugge, 6/14/07 p. 185 lines 4-6). As initially contemplated, the renewal of the contract was to include shipments to ports in the Far East which were known as "main ports" (such as Ulsan, Kaohsiung and Singapore) and "out ports." (Finlay, 6/14/07 p. 87 lines 17-19; p. 89 lines 18-23). Generally, "main ports" were larger ports in the Far East and "out ports" were smaller ports which were more difficult or more expensive to service. (Finlay, 6/14/07 p. 89 line 17 to p. 90 line 4).

178. The contract was important for Jo Tankers because it represented base load business, i.e., the carriage of cargo sufficient in volume to justify regular service on a particular trade route. (van Westenbrugge, 6/14/07 p. 185 lines 7-20).

179. During the summer and fall of 2002, Jo Tankers was involved in contract renewal discussions with Shell-Pecten. (Finlay, 6/14/07 p. 86 lines 12-14; van Westenbrugge, 6/14/07 p. 185 line 21 to p. 186 line 1). Finlay was responsible for negotiating the renewal of the contract with Shell-Pecten's broker, Netco. (Finlay, 6/14/07 p. 86 lines 15-18; van Westenbrugge, 6/14/07 p. 186 lines 22-25). Jo Tankers was seeking a substantial price increase of at least ten percent. (Finlay, 6/14/07 p. 92 lines 15-18; van Westenbrugge, 6/14/07 p. 186 lines 20-21). Eventually, Jo Tankers became aware that Shell-Pecten, through its broker, was going to seek competing bids for the contract. (van Westenbrugge, 6/14/07 p. 187 lines 4-13).

a. During the fall of 2002, Wingfield and van Westenbrugge discussed the Shell-Pecten Contract

180. During the fall of 2002, van Westenbrugge had several telephone calls with Wingfield regarding the contract. (See van Westenbrugge, 6/14/07 p. 187 lines 14-24; p. 188

lines 18-21; p. 188 line 25 to p. 189 line 14; p. 190 line 18 to p. 191 line 6).

b. Wingfield and van Westenbrugge agreed that Jo Tankers would keep the contract

181. During their first call, Wingfield said that Stolt had been asked to bid on the contract. (van Westenbrugge, 6/14/07 p. 187 lines 14-24). After this conversation, van Westenbrugge understood from Wingfield that Stolt would not compete against Jo Tankers for the contract. (van Westenbrugge, 6/14/07 p. 188 lines 18-21).

c. Wingfield asked van Westenbrugge for price guidance on Stolt's bid

182. During a subsequent call, Wingfield told van Westenbrugge that Stolt had to submit a bid on the contract and asked for price guidance to ensure that Stolt did not underbid Jo Tankers. (van Westenbrugge, 6/14/07 p. 188 line 25 to p. 189 line 14). Van Westenbrugge replied that he had to get the price information and would get back to Wingfield. (van Westenbrugge, 6/14/07 p. 189 lines 15-18).

183. After Wingfield's call, van Westenbrugge asked Finlay for the prices Jo Tankers was seeking in its negotiations with Shell. (van Westenbrugge, 6/14/07 p. 190 line 18 to p. 191 line 6; Finlay, 6/14/07 p. 87 lines 8-16). Van Westenbrugge told Finlay he needed the information to give to Wingfield because Stolt had been asked to bid and Wingfield did not want to underbid Jo Tankers. (van Westenbrugge, 6/14/07 p. 190 line 18 to p. 191 line 6; Finlay, 6/14/07 p. 87 lines 8-16).

184. Before Finlay provided van Westenbrugge with the price information, Wingfield called van Westenbrugge again asking for Jo Tankers' prices because Stolt's bid to Shell-Pecten was due soon. (van Westenbrugge, 6/14/07 p. 189 line 23 to p. 190 line 9).

d. Finlay gave van Westenbrugge price guidance to provide to Stolt

185. On October 30, 2002, Finlay e-mailed van Westenbrugge the requested information about Jo Tankers' rates to Shell-Pecten, including both out port and main port prices. (Finlay, 6/14/07 p. 88 line 7 to p. 94 line 12; van Westenbrugge, 6/14/07 p. 191 lines 11-22; see also GX-69). Finlay also told van Westenbrugge in this e-mail that Jo Tankers was seeking a "10% increase" in prices plus a "$10" surcharge for shipments over 12,000 metric tons. Finlay then explained what it would take to ensure Stolt's bid would be higher than Jo Tankers' proposed rates, i.e., Jo Tankers' current rate "+10%" and "+$10." This "+$10" did not refer to the $10 excess volume surcharge; rather, it was an example of a "safety margin," i.e., an amount another owner should add to its bid to allow Jo Tankers to achieve its 10% increase. (van Westenbrugge, 6/14/07 p. 193 line 18 to p. 194 line 24; Finlay, 6/14/07 p. 93 line 22 to p. 94 line 9). To hide the fact that his e-mail discussed giving prices to competitor Stolt, Finlay wrote "in order to be higher than these rates . . . an ownmer (sic) would need to offer . . .." (GX-69; see van Westenbrugge, 6/14/07 p. 193 line 8 to p. 194 line 24; Finlay, 6/14/07 p. 92 lines 19 to p. 94 line 9). The only reason Finlay would provide this detailed information to van Westenbrugge, who typically did not receive such information, was so van Westenbrugge could tell Wingfield what Stolt needed to bid to ensure it bid prices higher than Jo Tankers'. (van Westenbrugge, 6/14/07 p. 188 line 25 to p. 189 line 8).

e. Van Westenbrugge gave price guidance to Wingfield

186. Once van Westenbrugge had this information from Finlay, he "made some quick computations, and - because I didn't want to give Wingfield these exact numbers and because he had asked for some guidance, I thought if I gave him, say, three price levels, then that is enough

to know where we are." (van Westenbrugge, 6/14/07 p. 191 line 25 to p. 192 line 5). Van Westenbrugge then tried to phone Wingfield but did not reach him. (van Westenbrugge, 6/14/07 p. 192 line 9 to p. 193 line 7).

187. The next day, Wingfield sent van Westenbrugge an e-mail thanking him for the call back and saying that he would call van Westenbrugge first thing in the morning. (van Westenbrugge, 6/14/07 p. 192 line 9 to p. 193 line 7; see also GX-70).

188. Wingfield and van Westenbrugge spoke the following day, on November 1, 2002. (van Westenbrugge, 6/14/07 p. 192 line 9 to p. 193 line 7). During this call, van Westenbrugge had a copy of Finlay's October 30, 2002 e-mail (GX-69) in front of him. (van Westenbrugge, 6/14/07 p. 193 lines 12-15). Using the rates Finlay e-mailed to him, van Westenbrugge gave Wingfield three price estimates, which included figures from Finlay's October 30, 2002 e-mail. (van Westenbrugge, 6/14/07 p. 193 line 8 to p. 194 line 2; see also GX-69). Van Westenbrugge also discussed laytime (delay penalties) during this call and told Wingfield that Jo Tankers was "not interested [in] implement[ing] a laytime bank for [Shell-Pecten]." (van Westenbrugge, 6/14/07 p. 196 lines 13-19). Wingfield told van Westenbrugge that he had enough information to instruct his people. (van Westenbrugge, 6/14/07 p. 196 lines 20-23).

f. Wingfield's business journal entry corroborates van Westenbrugge's testimony

189. An entry Wingfield made in his business journal between October 28 to November 1, 2002 (Wingfield, 6/6/07 p. 130 lines 6-13; see GX-26B.5768) corroborates van Westenbrugge's testimony that he gave Wingfield price guidance. It contains references to "+10%" and "+$10," the same figures Finlay wrote in his October 30, 2002 e-mail that an

"owner" would need to offer in order to bid higher than Jo Tankers. (Compare GX-69 with GX-26B.5768). Wingfield also noted "no laytime bank" (GX-26B.5768). This is a clear reference to van Westenbrugge's testimony that he told Wingfield that Jo Tankers was "not interested to implement a laytime bank . . ." with Shell-Pecten. (van Westenbrugge, 6/14/07 p. 196 lines 13-19).

190. Wingfield's testimony that the entry reflects information from Brian Cleary (Wingfield, 6/6/07 p. 130 lines 6-13) is not credible. While these notations are made below an entry "BAC," Cleary testified that he did not recall giving this information to Wingfield. (Cleary, 6/1/07 p. 104 lines 14-16). Nor did he have any reason to do so because Stolt was not asked to bid on this contract. (See Cleary, 6/1/07 p. 86 line 24 to p. 87 line 1; p. 99 line 25 to p. 100 line 3).

g. Wingfield duped van Westenbrugge into believing Stolt had been asked to compete for the Shell-Pecten contract

191. Wingfield falsely told van Westenbrugge that Stolt had been asked to compete for the Shell-Pecten contract, including all the main ports. (See van Westenbrugge, 6/14/07 p. 187 line 14 to p. 188 line 1; p. 225 line 16 to p. 226 line 5; p. 227 line 22 to p. 228 line 3). In fact, Stolt bid to Shell-Pecten but only for two out ports, not the main ports covered by Jo Tankers' contract. (See DX 1716).

h. Jo Tankers retained the Shell-Pecten contract at the 10% rate increase it sought

192. Jo Tankers retained the Shell-Pecten contract and obtained the 10 percent price increase it had been seeking. (Finlay, 6/14/07 p. 95 line 24 to p. 96 line 1; van Westenbrugge, 6/14/07 p. 197 line 25 to p. 198 line 7; see also GX-71).

2. Wingfield rigged the SK Corp. Contract in November 2002 with both Odfjell and Jo Tankers

a. SK sought bids for a new contract in Fall 2002

193. When Stolt rejected SK's request in mid-2002 for a substantial price reduction or "giveback" on its existing contract, SK put the contract on the market in October 2002. (See Harrison, 5/31/07 p. 235 line 19 to p. 236 line 22). This business was important to Stolt because it guaranteed cargo for its ships returning to the U.S. from the Far East. (Wingfield, 6/6/07 p. 70 lines 12-14; p. 71 line 22 to p. 72 line 13).

194. The SK contract included the ports of both New Orleans and Houston. In June, to comply with the allocation agreement, Odfjell had justified not bidding for the SK contract by informing SK that it could not service New Orleans. (See GX-57 at 77412; Edvardsdal, 6/15/07 p. 11 line 1 to p. 13 line 3). In October, SK invited Odfjell to bid and permitted it to bid just for the Houston portion of the business. (Edvardsdal, 6/15/07 p. 18 line 22 to p. 19 line 13; p. 16 lines 1-5, see GX-105, at 77420).

195. Toward the end of October 2002, SK also invited Jo Tankers to offer for the SK contract. (Finlay, 6/14/07 p. 98 lines 19-21).

b. Wingfield and Jansen were involved in negotiations with SK

196. The Stolt business directors who were negotiating the contract, Wayne Harrison and James Gibney, kept Wingfield and Jansen informed of the negotiations. (Wingfield; 6/6/07 p. 71 lines 13-21). In fact, Wingfield and Jansen were "very much involved in the 2002 SK negotiations." (Harrison, 5/31/07 p. 237 lines 4-11). Wingfield personally met with SK on multiple occasions in 2002 (Wingfield, 6/6/07 p. 70 lines 15-25), and Jansen was directly

involved in determining Stolt's rates. (Harrison, 5/31/07 p. 238 lines 5-8).

c. Stolt lower-level employee expected Odfjell and Jo Tankers to be competitive

197. Harrison expected Odfjell and Jo Tankers to be aggressive competitors. (Harrison, 5/31/07 p. 244 lines 1-9; Harrison, 6/1/07 p. 14 lines 21-23).

d. Stolt agreed that Jo Tankers would keep Shell-Pecten in exchange for Jo Tankers not bidding for SK

198. During the Summer/Fall 2002, Wingfield asked van Westenbrugge twice whether Jo Tankers would bid on the SK contract. (Wingfield, 6/6/07 p. 72 line 14 to p. 76 line 10; van Westenbrugge, 6/14/07 p. 199 line 9 to p. 200 line 16).

199. On or about November 1, 2002, when van Westenbrugge gave Wingfield price guidance for Shell-Pecten, Wingfield again asked van Westenbrugge about Jo Tankers' interest in the SK contract. Wingfield told van Westenbrugge that it was important business for Stolt and that it would not give up the business. (van Westenbrugge, 6/14/07 p. 200 line 7 to p. 201 line 1). Van Westenbrugge replied that he didn't know the extent of Jo Tankers' interest. (van Westenbrugge, 6/14/07 p. 201 lines 6-10).

200. In order to respond to Wingfield's inquiries, on November 1, 2002, van Westenbrugge asked his subordinate, Allan Bendixen, via e-mail about Jo Tankers' interest in the SK contract. (See GX-62). Bendixen replied that the SK business was attractive to Jo Tankers. (van Westenbrugge, 6/14/07 p. 201 line 6 to p. 202 line 4). Finlay also told van Westenbrugge that the SK business was worth pursuing. (Finlay, 6/14/07 p. 98 line 22 to p. 99 line 19).

201. Van Westenbrugge, however, told Finlay not to bid on the SK contract, and that

this was in exchange for Stolt not competing for the Shell-Pecten contract. (Finlay, 6/14/07 p. 99 line 23 to p. 100 line 6). Van Westenbrugge also instructed Bendixen not to bid for the SK contract. (van Westenbrugge, 6/14/07 p. 202 lines 5-22; Finlay, 6/14/07 p. 100 line 20 to p. 102 line 22; see GX-63). Following van Westenbrugge's direction, Jo Tankers abandoned its effort to obtain the SK business. (Finlay, 6/14/07 p. 102 line 23-25; van Westenbrugge, 6/14/07 p. 202 lines 23-25).

202. Van Westenbrugge initially testified that he did not believe that collusion on the SK and the Shell-Pecten contracts were linked. He later admitted, however, that when he learned on the evening prior to his hearing testimony that Wingfield had deceived him about Stolt being asked to bid by Shell-Pecten – he believed that Wingfield had taken him "for a ride." (van Westenbrugge, 6/14/07 p. 227 line 23 to p. 228 line 3; p. 233 lines 8-18). In essence, van Westenbrugge admitted that Wingfield had duped him into not bidding for SK in return for Stolt not competing for Shell-Pecten.

e. Wingfield knew Stolt's bid prices

203. Harrison kept Wingfield apprised of the prices he was considering bidding to SK (See Harrison, 6/1/07 p. 11 line 3 to p. 12 line 14) and also copied Wingfield on most Stolt e-mails concerning the SK contract. (Harrison, 6/1/07 p. 11 line 25 to p. 12 line 2).

f. Wingfield knew Stolt's targeted rate of $45

204. Wingfield also received and responded to an October 21, 2002 e-mail (6:48 p.m.) from Gibney, in which Gibney stated that Stolt was considering bidding $45 to SK. (Harrison, 6/1/07 p. 12 line 15 to p. 14 line 13; GX-59).

g. Odfjell's Edvardsdal was not permitted to compete for SK business because of the agreement with Stolt

205. Edvardsdal wanted badly to obtain the SK business for Odfjell; however, Nilsen told him that Odfjell could not compete for SK because it was Stolt's allocated customer. (Nilsen, 6/15/07 p. 158 line 24 to p. 159 line 6).

h. Edvardsdal is corroborated by Atle Knutsen of Odfjell Logistics

206. Edvardsdal told Atle Knutsen of Odfjell's logistics division that Odfjell could not compete for a logistics package that included shipping for SK because this would be a violation of the agreement with Stolt. (Knutsen, 6/13/07 p. 28 lines 9-13). Nilsen also told Knutsen that Odfjell could not bid on the shipping business because it belonged to Stolt. (Knutsen, 6/13/07 p. 28 line 17 to p. 29 line 1.).

i. Wingfield and Jansen met with SK on November 12, 2002

207. On November 12, 2002, Harrison, Jansen, and Wingfield met with SK officials, BK and YM Park, to discuss the upcoming bid. (Harrison, 5/31/07 p. 238 line 9 to p. 240 line 6).

j. Wingfield and Nilsen agreed that Odfjell would bid higher than Stolt's targeted rate of $45

208. After meeting with SK, Wingfield called Nilsen to make sure that Odfjell would not compete for Stolt's SK contract and Nilsen agreed. (Nilsen, 6/15/07 p. 158 lines 5-16). Nilsen told Wingfield, however, that Odfjell would need to bid and asked Wingfield for price guidance. Wingfield agreed (Nilsen, 6/15/07 p. 158 lines 17-23) and later told Nilsen that Stolt's target rate was $45. Nilsen and Wingfield agreed that Odfjell should add $2 to $3 to Stolt's $45 target rate. (Nilsen, 6/15/07 p. 159 lines 7-11; Edvardsdal, 6/15/07 p. 20 line 8-23).

k. As agreed, Odfjell bid higher than Stolt

209. On November 14 or 15, 2002, after obtaining Wingfield's price guidance of $45, Nilsen instructed Edvardsdal to bid $47/$48 and told him that these numbers were $2 to $3 higher than Stolt's. (Edvardsdal, 6/15/07 p. 20 line 8-23).

210. On November 15, 2002, as directed by Nilsen, Edvardsdal submitted to SK intentionally high prices for the Houston business, i.e., $48 for 5,000 to 7,999 tons and $47 for 8,000 to 10,000 tons. (Edvardsdal, 6/15/07, p. 20 line 24 to p. 22 line 1, GX-64, at 77429 ¶ 13). The $48/47 figures were $2 to $3 higher than the $45 target rate that Wingfield had provided to Nilsen. (Compare GX-64 with GX-59).

l. Stolt retained its SK Contract

211. Stolt ultimately retained the contract. (Harrison, 5/31/07 p. 248 lines 14-16).

m. MTMM and Aurora - not Odfjell and Jo Tankers - caused Stolt to drop prices

212. Stolt claims that, in response to a "last look," it reduced its SK rates significantly and granted a $640,000 discount off of the existing SK contract. (Stolt FOF 474). However, it actually was competition from MTMM and Aurora that caused Stolt to reduce its final prices to SK, not competition from Odfjell or Jo Tankers. (Harrison, 6/1/07 p. 14 line 24 to p. 15 line 3). Moreover, Stolt's $640,000 discount was substantially less than the $1.5 million discount SK sought. (Harrison, 5/31/07 p. 235 lines 8-20).

213. Contrary to Defendants' argument (see Wingfield FOF 329, Stolt FOF 532), the fact that non-conspirator companies, e.g., MTMM and Aurora, competed for SK is irrelevant. Non-conspirator companies competed in the market during the entire period of the conspiracy.

n. Pickering made false statements to support Stolt's SK story

214. In anticipation of litigation, Andrew Pickering executed a declaration for Stolt in which he stated that Stolt's bidding on SK was "entirely independent" and "entirely unilateral." On cross-examination, however, Pickering admitted that he had no knowledge whether these statements were true. (Pickering, 5/31/07 p. 169 line 17 to p. 171 line 12)

215. Pickering also admitted that contrary to the suggestions in his declaration, he had little or nothing to do with the negotiations, no role in pricing, and no knowledge whether Wingfield discussed the contract with van Westenbrugge, or whether Wingfield provided prices to Erik Nilsen. (Pickering, 5/31/07 p. 169 line 17 to p. 171 line 12).

P. Odfjell Continued to Abide by the Agreement by Not Bidding Competitively to Stolt's Customers

1. Chevron Phillips

216. Chevron Phillips was allocated to Stolt under the conspiracy. (See GX-42, at 76819, "Chevron" under "usg/cont"). In August 2002, Odfjell's logistics subsidiary wanted to submit a proposal to Chevron Phillips for a single contract combining parcel tanker shipping services from Houston to Europe (allocated to Stolt) with terminal services not subject to the allocation agreement. Nilsen and Nystad did not permit Odfjell to submit a proposal that included parcel tanker shipping, however, because that business was allocated to Stolt. (Knutsen, 6/13/07 p. 24 line 21 to p. 27 line 1, p. 49 line 3 to p. 57 line 18; Nyastad, 6/11/07 p. 137 line 12 to p. 144 line 2; see also GX-83, at 92745 ("the shipping portion cannot easily be ours the way things are – let us discuss"); GX-84, at 92740 ("enthusiasm [from] [Odfjell Seachem] is limited due to the fact Stolt is doing most, if not all of this . . . I [have] notified

[Odfjell Logistics employees] we are not there to jeopardize any arrangements"); GX-85, at 93078 (". . . we need to discuss whether to offer to Chevron TA or not. We [have] certain obligations and these must be clarified before we decide how to proceed on the shipping")). Although Stolt's existing contract with Chevron Phillips did not expire until June 2003 (DX-499), it was not unusual for customers to explore alternatives well before an existing contract's expiration date. (Knutsen, p. 80 line 90 to p. 81 line 4; see FOF 100, 105 (although Stolt's 2001 SK Corp. contract was due to expire in June 2003, SK still solicited an bid from Odfjell in June 2002)).

2. Sasol Transatlantic

217. In 2002, Sasol asked Odfjell to quote for its Transatlantic business. Because Sasol was an important Odfjell customer on other routes, it did not want to ignore the request. Odfjell then quoted different rates for loading at two different terminals. One was the Stolt terminal, where the customer currently stored its product, and Odfjell submitted an intentionally high rate to protect Stolt for this terminal. Although Odfjell quoted a competitive rate for the other terminal, this was not in competition with Stolt because Sasol had informed Odfjell that shipments would not be made from this other terminal. (Nystad, 6/11/07 at p. 221 line 9 to p. 223 line 24; Nystad, 6/12/07 at p. 40 line 13 to p. 42 line 14).

3. SK Corp.

218. In October 2002, Odfjell was invited to bid on a logistics package for SK that included storage and shipping from Korea to the United States. Despite interest from Odfjell's logistics subsidiary, Nilsen would not provide shipping rates for Odfjell to quote because the shipping portion had been allocated to Stolt. As a result, Odfjell did not quote for the combined

shipping and storage. (Knutsen, 6/13/07 p. 27 line 2 to p. 29 line 6). As set forth above, as a result of bid-rigging discussions between Wingfield and Nilsen, Odfjell submitted an intentionally high bid to SK for this business.

Q. After March 2002, Lack of Competition is Evidence that the Conspiracy Continued

219. There was no evidence of actual competition for deep sea contracts that were subject to the allocation agreement during the lengthy period between the March 2002 NPRA meeting, when Stolt claims it withdrew from the conspiracy, and its November 22, 2002 approach to the Government.

220. No customers on any allocated deep-sea contract changed hands during the period of March to November 2002.

221. The single allocated contract that changed hands after Stolt revised its antitrust policy - a U.S. Gulf of Mexico contract with Dow - was a regional contract covered by a subsidiary agreement that often had been the subject of disputes prior to March 2002.

222. This lack of evidence refutes Stolt's claim of vigorous competition after it revised its antitrust compliance program, and supports a finding that its anticompetitive activities during that period continued.

1. Six contracts touted by defense counsel at the hearing as proof of post-March 2002 competition are irrelevant to whether conspiracy continued

223. BP (U.S. Gulf to Brazil) – BP was a spot cargo (see Fleming, 6/4/07 p. 192 line 6 to p. 195 line 8) and was not subject to the agreement. (Long, 6/5/07 at p. 88 lines 5-8; Nystad, 6/12/07 p. 37 lines 2-5).

224. Tricon – Tricon was new business (Fleming, 6/4/07 p. 195 line 25 to p. 197 line 1

(Tricon had been a "spot" business) and was not subject to the agreement. (Long, 6/5/07 p. 88 line 1 to p. 89 line 8; Nystad, 6/12/07 p. 41 lines 20-22). Nor was Tricon included on any allocation list. (See GX-41; GX-42).

225. BP, GE, Mitusi (U.S. Gulf to Mexico) – Although BP, GE and Mitsui were subject to the subsidiary agreement covering regional trade in the Gulf of Mexico, Stolt competed for each of these contracts prior to March 2002 (Fleming, 6/5/07 p. 16 line 4 to p. 20 line 20; see also GX-210; GX-211), the date Stolt claims it withdrew from the conspiracy.

226. Dow (U.S. Gulf to Mexico) – Dow was the only allocated contract that changed hands after Stolt revised its antitrust policy. Like BP, GE, and Mitsui, it was a regional contract subject to the Gulf of Mexico subsidiary agreement. As stated above, this regional trade area had been the subject of that disputes prior to March 2002. (Fleming, 6/5/07 p. 16 line 4 to p. 20 line 20; Nystad, 6/11/07 p. 149 line 24 to p. 150 line 4).

227. Stolt's claim to have taken numerous allocated contracts after March 2002 is baseless. In fact, Stolt bid on the Sasol contract in October 2002 to show that it would go after an Odfjell allocated customer after the O'Brien suit, but even then Wingfield gave Odfjell Stolt's bid numbers and Odfjell retained its allocated customer. (Gov't FOF's 126, 152, 154)

2. Stolt did not take any contracts from Jo Tankers after March 2002

228. Stolt has not identified any contract that it won from Jo Tankers after the revision of its compliance policy in March 2002.

3. Stolt's claim to have lost business to Odfjell does not show conspiracy ended

229. Methanex/Waterfront (Chile to Argentina and Brazil) – Although Stolt introduced testimony that Odfjell won this contract post-March 2002 (See, e.g., Fleming, 6/4/07 p. 202 line

3 to p. 203 line 5), it did not. A non-conspirator company, Ultragas, won the contract. Odfjell provided freight service for Ultragas because a co-service agreement required it to do so. (Nystad, 6/12/07 p. 42 line 15 to p. 43 line 19).

230. Oxiquim (Peru to Chile and U.S. Gulf to Chile) – Although Odfjell won a contract in November 2002 that included a right of first refusal to carry U.S. Gulf to Chile trade that was allocated to Stolt, Odfjell honored the allocation agreement by quoting only for the Peru to Chile route, which was regional trade not subject to the allocation. (GX-112; Nystad, 6/11/07 p. 240 line 17 to p. 243 line 18; Nystad, 6/12/07 p. 38 line 18 to p. 39 line 7). Moreover, Odfjell's new Oxiquim contract did not require Odfjell to carry any of the freight allocated to Stolt (see DX-1751, at 38182), and the "backbone" of the contract was the regional trade, not the trade allocated to Stolt. (See DX-4068, at 31130).

231. Rhodia (Europe to South America and Europe to Asia) – Although Odfjell won a post-March 2002 contract that included freight service from Europe to Asia that had been allocated to Stolt, the 2002 contract was a logistics contract that also included freight service from Europe to South America that had been allocated to Odfjell, as well as storage and boxing services, which Stolt could not provide. When the customer consolidated what had previously been separate contracts into a single contract, Stolt was unable to bid for the contract because it did not have freight service from Europe to South America. (Knutsen, 6/13/07 p. 19 lines 19 to p. 24 line 17; Nystad, 6/11/07 p. 8 line 25 to p. 9 line 12; Nilsen, 6/15/07 p. 134 line 14 to p. 137 line 5).

4. Stolt did not lose any contracts to Jo Tankers after March 2002

232. The only contract Stolt claims to have lost to Jo Tankers was Exxon Mobil.

However, as Stolt employee Wayne Harrison admitted, Stolt never even had a contract of affreightment with Exxon Mobil, but merely shipped on a spot basis. (Harrison, 5/31/07 p. 233 lines 4-13).

5. Stolt's unsuccessful bids for certain Odfjell business after March 2002 were not truly competitive and are not evidence that the conspiracy ended

233. Copene (Brazil to U.S. Gulf) – Although Stolt claims it competed against Odfjell for a 2002 contract (Stolt FOF 243), Copene involved only spot cargo that was not subject to the allocation agreement. (See Nystad, 6/11/07 p. 231 line 24 to p. 232 line 19; 6/12/07 at p. 37 lines 2-5; Long, 6/5/07 p. 88 lines 5-7).

234. Celanese (U.S. Gulf to South America) – Stolt's quote to Celanese was not truly competitive because its ships were too large to service all of the ports required by the contract. (Fleming, 6/4/07 at p. 204 line 6 to p. 206 line 10; Long, 6/5/07 at p. 73 line 10 to p. 74 line 18).

235. Shell-Pecten (U.S. Gulf to West Coast South America and Caribbean) – As with Celanese, Stolt's quote to Shell-Pecten was not truly competitive because its ships were too large to service all of the ports required by the contract. (Fleming, 6/4/07 p. 204 line 6 to p. 206 line 10).

236. Celmex (Mexico to Europe) – Although Stolt apparently bid against Odfjell for a 2002 contract, Stolt's bid to Celmex was not truly competitive because it could not service the contract with the ships it currently used on that route. (Long, 6/5/07 p. 71 line 17 to p. 72 line 19; p. 82 line 19 to p. 83 line 5).

237. Agility (Europe to Far East) – Although Stolt quoted against Odfjell for a 2002 contract (Cleary, 6/1/07 p. 92 lines 8-12), it did not submit its quote until after Stolt approached

the Government for amnesty on November 22, 2002. (See GX-294, at 147129).

238. Sasol (South Africa to India and Arabian Gulf) – This is the contract Stolt and Odfjell rigged when Nilsen told Wingfield Stolt's bid would be a "deal breaker."

6. Stolt did not attempt to take any Jo Tankers business after March 2002

239. There was no evidence that Stolt attempted to compete for any of Jo Tankers' customers after Stolt revised its compliance policy in March 2002.

7. Stolt's claim that it faced competition from Odfjell does not show the conspiracy ended

240. Occidental Chemical (United States to Europe) – Stolt introduced evidence only that a low-level Odfjell employee who was never linked to the conspiracy suggested that Odfjell seek an invitation to quote for a post-March 2002 contract. (DX-4063, at 92619-20; Nystad, 6/11/07 p. 230 line 3 to p. 231 line 23). There is no evidence that Odfjell even quoted for this contract.

241. Foskor (South Africa to India) – Foskor business in the South Africa to India trade lane was not allocated to Stolt. (See GX-42; see also Vogth-Eriksen, 6/4/07 p. 31 lines 11-21).

242. Maroc Phosphore – Maroc Phosphore was allocated to both Odfjell and Stolt (see GX-41, at 5818, GX-42, at 76824) and there is no evidence that Odfjell sought to take any of the business allocated to Stolt, or that Stolt dropped its price in response to any competition from Odfjell. (See Vogth-Eriksen, 6/4/07 p. 32 lines 8-18).

243. Sasol (transatlantic) – As set forth above, Odfjell bid in accordance with the status quo agreement by submitting a bid not designed to win when submitting no bid would have raised suspicions of collusion.

244. Equatorial (Malaysia/Indonesia/Singapore to Africa and Brazil) – As set forth above, both Jansen and Wingfield complained to Nilsen about Equatorial after March 2002. Stolt's contract with Equatorial required rate renegotiation based on the general level of pricing to all companies in the market. Because Odfjell's agent in South Africa was quoting low rates in the market generally, Equatorial demanded that Stolt lower its rates. (Jansen, 6/13/07 p.125 line 24 to p. 129 line 4; see DX-2918, at 252633 - "MFN [most favored nation] Clause"). Thus, this did not reflect an attempt by Odfjell to take a Stolt allocated customer.

245. SK Corp. (Far East to U.S. Gulf) – As set forth above, Odfjell's quote to SK was rigged.

8. Cheating occasionally occurred during the conspiracy

246. Stolt witnesses admitted that, even prior to Marach 2002, Odfjell and Jo Tankers occasionally cheated on the conspiratorial agreement. (E.g., Long, 6/5/07 p. 91 line 8 to p. 92 line 13 (Atlantic Ocean Service, including South America); Vogth-Eriksen, 6/4/07 p. 34 line 13 to p. 35 line 8; p. 36 lines 8-12 (Indian Ocean Service)).

II.

PUBLIC EXPOSURE ENDS CONSPIRACY IN NOVEMBER 2002

A. In November 2002, Stolt Learned Public Disclosure of Its Criminal Conduct Was Imminent

247. As noted above, O'Brien's June 18, 2002 constructive termination suit against Stolt and Cooperman did not allege any antitrust violation. (See GX-10A). However, on November 1, 2002, O'Brien filed an amended complaint, in which he publicly alleged, for the first time, that Stolt and Cooperman had been involved in criminal violations of U.S. antitrust

laws. (See GX-10B).

248. Shortly thereafter, Stolt learned that one of its customers had been approached by a class action attorney, who solicited the customer to join an antitrust action against Stolt, and showed the customer portions of Wingfield's business journal detailing illegal contacts with competitors. (Nannes, GX-5 p. 112 line 8 to p. 113 line 1).

249. On approximately November 21, 2002, Stolt was contacted by the Wall Street Journal concerning an article it was preparing about O'Brien's allegations of Stolt's criminal conduct. These allegations also began appearing on the message board for SNSA's publicly-traded stock. (See GX-86). At the same time, Stolt's outside antitrust counsel, Gary Sesser, arranged a meeting with John Nannes, an experienced antitrust counsel and former Deputy Assistant Attorney General for the Antitrust Division for November 22, 2002. (Nannes, GX-5 p. 107 lines 13-22).

B. Cooperman Met with Nannes to Discuss Potential Leniency Application

250. On November 22, 2002, Nannes met with Cooperman, Sesser and Alan Winsor, Stolt's general counsel. (Nannes, GX-5 p. 124 lines 13-20). This was the same day the Wall Street Journal published its article about O'Brien's lawsuit. (See GX-14).

251. In the almost day-long meeting, Cooperman never admitted any specific knowledge of or role in criminal antitrust violations. Instead, Cooperman spent a large part of the meeting talking about the parcel tanker industry, explaining that the industry was an oligopoly, explaining that customers rarely changed shipping companies for many legitimate reasons, and enumerating various legitimate reasons for competitor contacts in the parcel tanker industry. (Nannes, GX-5 p. 109 line 9 to p. 112 line 7).

252. During this meeting, they also discussed that day's Wall Street Journal article. (Nannes, GX-6 p. 103 lines 10-16). Cooperman also provided Nannes with a "chronology of events" that occurred after O'Brien found a copy of the Jansen Memo. Cooperman then described a February 2002 memorandum O'Brien wrote to Cooperman. Cooperman said that O'Brien raised "some antitrust concerns" and, as a result of their discussions, the company instituted a number of steps to strengthen its antitrust program. Cooperman told Nannes that, despite the company's efforts, O'Brien was dissatisfied with the company's response and resigned. (Nannes, GX-5 p. 113 lines 3-18).

253. Cooperman's failure to disclose his participation in and knowledge of Stolt's illegal conduct, coupled with his misleading description of competition in the industry, prevented Nannes from understanding the criminal nature of the Jansen Memo. (GX-5, at 163 lines 14-17). Nannes testified that it was not until he later obtained the customer allocation lists, that he believed Stolt had been engaged in a criminal conspiracy. (GX-5, at 156 line 12 to p. 157 line 1).

254. While it appeared to Nannes that Cooperman and Winsor were knowledgeable about the Division's Conditional Leniency Program, he nonetheless reviewed its requirements with them. (Nannes, GX-5 p. 131 lines 3-18). Thereafter, Cooperman directed Nannes to contact the Division and discuss a potential application by Stolt for conditional leniency. (Nannes, GX-5 p. 131 lines 19-23).

C. Fisher complained to Niels G. Stolt-Nielsen that Cooperman had misled the Board in his August presentation to the Board

255. On November 22, 2002, after the Wall Street Journal published an article reporting about O'Brien's amended complaint, Fisher wrote to the CEO of SNSA, Niels G. Stolt-

Nielsen, complaining that Cooperman had not been honest in his August presentation to the board. (GX-77, at 1640-44). Cooperman drafted Niels G. Stolt-Nielsen's response in which Cooperman falsely claimed he had not misled the Board. (See GX-77, at 1638-39). Niels G. Stolt-Nielsen sent the response Cooperman drafted to Fisher. (See GX-78)

D. Cooperman Again Misled the Board in November 2002

256. On November 25, 2002, three days after Nannes first contacted the Division, Cooperman wrote to the SNSA Board of Directors concerning the matter. (GX-16). Cooperman stated "[a]bout ten days ago information came to my attention for the first time regarding possible antitrust violations by SNTG during 2000 and 2001." (GX-16, at 445522). Cooperman further advised the Board that an independent investigation was to be conducted to determine if the "allegations of collusion with competitors" were correct. (GX-16, at 445523).

257. These statements by Cooperman to SNSA's Board of Directors were false and misleading because Cooperman not only knew of but initiated Stolt's illegal allocation conspiracy in 1998.

258. Dissatisfied with Stolt's handling of the investigation of its illegal conduct, Fisher resigned in December 2002. (Fisher, 6/11/07 p. 40 line 18 to p. 41 line 24; GX-82).

III.

SUMMARY OF WITNESS CREDIBILITY

A. Stolt Employee Bjorn Jansen's Testimony That the Conspiracy Continued After the NPRA is Credible

259. When Jansen was first interviewed, on February 5, 2003, pursuant to his cooperation/non-prosecution agreement (DX-6), he told the Government that Stolt ended its

participation in the conspiracy when Stolt implemented its revised antitrust policy in March 2002. At the time he made that statement, Jansen was accompanied by Stolt counsel, John Nannes. (Jansen, 6/13/07 p. 136 line 8 to p. 137 line 16; p. 147 lines 14-16).

260. Thereafter, Jansen told Wingfield that he had lied to the Government about the true duration of the conspiracy and Jansen created a document to determine whether he could justify the lies he told the Government. (Jansen, 6/13/07 p. 145 line 12 to p. 146 line 5; p. 256 line 3 to p. 257 line 25; see DX-4009).

261. When Jansen learned that the Government questioned the truth of his interview statements, he retained individual counsel and recanted his lies. Jansen testified before the grand jury that his initial interview statement was false (see Jansen, 6/13/07 p. 141 lines 12-16), and that he and Wingfield had continued to participate in the conspiracy after March 2002. (Jansen, 6/13/07 p. 144 lines 13-24). Jansen repeated his testimony at this hearing. (See Jansen, 6/13/07 p. 102 line 20 to p. 103 line 8; p. 212 lines 13-16).

262. Defendants have offered no plausible reason why Jansen would falsely implicate himself in criminal conduct more extensive than that which he actually committed. In fact, Jansen had direct knowledge of the continuation of the conspiracy:

a. Following the March 2002 NPRA meeting, Wingfield told Jansen he had told Odfjell that Stolt's revised antitrust policy did not mean that Stolt was going to go to war with Odfjell. Jansen understood Wingfield's statement as an instruction not to compete for Odfjell's customers. (Jansen, 6/13/07 p. 211 lines 17-23; p. 110 lines 17-25).

b. Thereafter, Wingfield never told Jansen, who was the business manager for Stolt's Pacific Ocean Service, that he should compete for Odfjell customers. (See Jansen,

6/13/07 p. 105 line 13 to p. 106 line 5; p. 110 lines 13-24).

c. Jansen continued to have conspiratorial phone discussions about customers with Odfjell, although he could only specifically recall Equatorial. (Jansen, 6/13/07 p. 250 line 19 - p. 252 line 20; p. 216 lines 6-13).

d. Wingfield told Jansen of discussions that he had with Nilsen concerning Equatorial (Jansen, 6/13/07 p. 250 line 19 - p. 252 line 20).

e. At the June London meeting, Jansen heard Wingfield tell Odfjell about the problems O'Brien had created at Stolt and say that future conspiratorial contacts would be with Wingfield or Jansen, if Wingfield was not available. (Jansen, 6/13/07 p. 114 line 23 to p. 115 line 16).

f. In October 2002, Jansen received a call from Nilsen complaining about Stolt's Sasol bid and then transferred the call to Wingfield. (Jansen, 6/13/07 p. 134 line 2 to p. 135 line 12).

g. Later that day, Wingfield told Jansen that he had spoken to Nilsen who complained that a bid by Stolt would be a "deal breaker." Jansen understood that the "deal" Nilsen complained Stolt was breaking was the "status quo agreement" between Stolt and Odfjell. (See Jansen, 6/13/07 p. 120 line 13 to p. 121 line 7).

h. One week later at the October Heathrow meeting, Wingfield stood by while Jansen complained to Odfjell about Equatorial and Nilsen agreed to look into it. (Jansen, 6/13/07 p. 125 line 25 to p. 127 line 3).

263. Jansen's inability to recall more specifically his own conspiratorial conduct does not undermine his testimony that the conspiracy continued until November. Although Stolt

relieved Jansen of all work duties in August 2003, it continued to pay him his full salary at least through the date of his hearing testimony, almost four years later. Between August 2003 and June 2007, Stolt paid Jansen almost $1 million dollars. Jansen admitted that he expected to remain on Stolt's payroll, despite providing no services, until he is eligible for retirement. (See Jansen, 6/13/07 p. 141 line 12 to page 143 line 3). Stolt's past and expected future payments to Jansen provided Jansen with an incentive to testify favorably for Stolt despite his cooperation agreement with the Government.

264. Jansen's failure to recall specific matters on direct examination and his willingness to readily agree when questioned by Stolt counsel appear to reflect such bias. During his direct testimony for the Government, Jansen repeatedly did not recall certain matters until confronted by the Government with his prior grand jury testimony. (E.g., Jansen, 6/13/07 p. 114 line 3 to p. 115 line 7. In contrast, Jansen had no failure of memory when responding to questions posed by Stolt counsel, simply responding "yes" to more than 200 questions. (Jansen, 6/13/07 *passim*).

B. Testimony of Odfjell Witnesses that the Conspiracy Continued Until November 2002 is Credible

1. When Odfjell employees were interviewed, their incentive was to tell the truth

265. When Odfjell employees were first interviewed by the Government:

a. they did not know what information or documents Stolt had provided the Government concerning the customer allocation agreement (e.g., Haugsdal, 6/12/07 p. 244 line 21 to p. 245 line 8);

b. they did not focus on the period March to November 2002, but provided

information regarding the full scope of their involvement in illegal antitrust conduct (e.g., Nystad, 6/11/07 p.173 line 20 to p. 174 line 21; Haugsdal, 6/12/07 p. 143 line 3 to p. 144 line 13); and

c. contrary to defendants' arguments, they did not know that Odfjell counsel, in connection with Odfjell's plea negotiations, had claimed that Stolt did not qualify for the Antitrust Division's Corporate Leniency Program (e.g., Nystad, 6/11/07 p.170 lines 2-23; Haugsdal, 6/12/07 p. 151 lines 21-24; p. 153 line 20 to p. 154 line 12).

266. There is no evidence that when Odfjell employees were first interviewed by the Government, they knew anything about what Finlay told the Government either about Wingfield's meeting with Jo Tankers at the NPRA or that Stolt and Jo Tankers had engaged in collusion regarding specific contracts as late as November 2002. There is no evidence that Odfjell employees communicated with Finlay or any other Jo Tankers employee concerning what evidence they had provided the Government, and it does not make sense for Odfjell and Jo Tankers employees (or their attorneys) to concoct and coordinate false stories while their companies were negotiating separate plea agreements.

267. It is not plausible that Odfjell and Jo Tankers employees could have concocted substantially similar stories when first interviewed about Stolt's and their own continuing participation in the conspiracy without talking to each other, thus the similarity of the information they provided corroborates each other's testimony.

2. Odfjell witnesses' testimony concerning the NPRA meeting is credible

268. Nystad's and Sjaastad's testimony that Wingfield told them at the March 2002 NPRA meeting that Stolt would continue to participate in the allocation agreement is credible. It

is consistent with and corroborated by one another's testimony (compare Nystad, 6/11/07 p. 112 line 16 to p. 113 line 5; p. 116 line 15 to p. 122 line 7 with Sjaastad, 6/20/07 p. 96 line 12 to p. 101 line 16), and with testimony of other Odfjell witnesses. (Compare Nystad, 6/11/07 p. 121 line 22 to p. 122 line 7 with Nilsen, 6/15/07 p. 122 line 17 to p. 123 line 15; compare Sjaastad, 6/20/07 p. 96 line 12 to p. 101 line 16 with Knutsen, 6/13/07 p. 17 line 10 to p. 18 line 9).

269. Nystad's and Sjaastad's testimony that Wingfield told them at the March 2002 NPRA meeting that Stolt would continue participating in the allocation agreement is consistent with and corroborated by:

a. Wingfield's testimony that he told Sjaastad and Nystad that just because Stolt had issued a revised antitrust policy "that didn't necessarily mean we were going to contact all of their customers" and his admission on cross-examination that "it stood to reason that if it worked one way, it was going to work the other way" and that Stolt expected Odfjell would not go after Stolt's customers. (Wingfield, 6/6/07 p. 33 lines 7-19). Even Wingfield's characterization of what he said to Odfjell reflects an assurance that Stolt and Odfjell would not compete for their already allocated customers.

b. Jansen's testimony regarding Wingfield's report to him after that meeting during which Wingfield said he had told Odfjell that Stolt's revised antitrust policy did not mean that Stolt was going to go to war with Odfjell. Jansen understood Wingfield's statement as an instruction not to compete for Odfjell's customers. (Jansen, 6/13/07 p. 110 lines 13-25).

c. Jansen's testimony that the conspiracy continued and that Wingfield never told Jansen that he should compete for Odfjell customers. (Jansen, 6/13/07 p. 102 line 20

to p. 103 line 8; p. 105 line 13 to p. 106 line 5; see p. 110 lines 13-24).

d. Finlay's testimony concerning Wingfield's NPRA meeting with Jo Tankers. (Finlay, 6/14/07 p. 80 line 21 to p. 85 line 4). There is no evidence that Nystad or Sjaastad communicated with Finlay concerning Wingfield's meetings with them at the NPRA meeting.

e. the testimony of Nilsen and Haugsdal concerning what Wingfield told them at the June 2002 London meeting. (Compare Nystad, 6/11/07 p. 112 line 16 to p. 113 line 5; p. 116 line 15 to p. 121 line 20 with Haugsdal, 6/12/07 p. 88 line 21 to p. 91 line 14).

f. their own testimony on cross-examination. (Compare Nystad, 6/11/07 p. 112 line 16 to p. 113 line 5; p. 116 line 13 to p. 122 line 7 with Nystad, p. 175 line 24 to p. 179 line 2; compare Sjaastad, 6/20/07 p. 96 line 12 to p. 101 line 25 with Sjaastad, 6/20/07 p. 111 line 11 to p. 113 line 2; p. 115 line 23 to p. 116 line 11).

3. Odfjell witnesses' testimony concerning the June 2002 London meeting is credible

270. Haugsdal's and Nilsen's testimony that Wingfield told them at the June 2002 London meeting that the agreement was continuing (Haugsdal, 6/12/07 p. 89 line 12 to p. 91 line 14; Nilsen, 6/5/07 p. 125 lines 2-19) is credible. It is corroborated by Jansen's testimony that Wingfield told Odfjell that, despite the problems O'Brien had created at Stolt, future conspiratorial contacts would be with Wingfield or Jansen. (Jansen, 6/13/07 p. 114 line 23 to p. 115 line 16).

4. Odfjell witnesses' testimony that the October 2002 Sasol bid was rigged is credible

271. Haugsdal's and Nilsen's testimony that Stolt allowed Odfjell to win the October 2002 Sasol bid by providing Odfjell with Stolt's final bid numbers (Haugsdal, 6/12/07 p.97 line 10 to p. 102 line 2; Nilsen, 6/15/07 p. 143 line 19 to p. 148 line 17) is credible. It is consistent with and corroborated by the testimony of several other witnesses and by documentary evidence, including:

a. the testimony of Stolt employee Humphreys that Odfjell had told him that Nilsen had called concerning the Sasol bid on the day bids were due (see FOF 147);

b. the testimony of Humphreys that he had told Cooperman about Wingfield's call with Nilsen and then observed Cooperman meeting with Wingfield behind closed doors (see FOF 148);

c. the testimony of Humphreys that shortly after Cooperman met with Wingfield, Humphreys observed Wingfield talking with Nilsen again concerning Sasol rates (see FOF 152, 153):

d. the testimony of Nils Vogth-Eriksen that Odfjell's Knut Holsen had called him in October 2002 asking to speak with Humphreys concerning the Sasol bid (see FOF 136);

e. Wingfield's own admission that he had numerous conversations with Odfjell concerning the Sasol bid on October 11, 2002 (see FOF 139-143);

f. Wingfield's own admission on cross-examination that Odfjell believed a competitive bid by Stolt on the Sasol contract in October 2002 was a breach of the

agreement and Wingfield's statement to Jansen that Odfjell would consider it a "deal breaker" if Stolt won the Sasol contract (see FOF 141, 142);

g. Wingfield's October 1, 2002 e-mail to Niels G. Stolt-Nielsen in which he falsely characterized the Sasol contract as "regional" (GX-72; see FOF 134, 135);

h. Sasol's report to Stolt that Stolt's prices "were similar or 'just slightly higher'" than Odfjell's. (GX-204, Humphreys, 6/4/07 p. 137 line 23 to p. 138 line 11); and

i. one week after the Sasol bid, Wingfield and Jansen met with Nilsen and Haugsdal at Heathrow Airport.

5. Odfjell witnesses' testimony concerning the October Heathrow meeting is credible

272. Nilsen and Haugsdal testified that at the October 18, 2002 Heathrow meeting, Nilsen had complained about Stolt's activities in early 2002 in the Gulf of Mexico regarding two customers, Dow Mexico and GE, and that Wingfield had agreed to look into the complaints, and that Wingfield did so following the meeting. (Nilsen, 6/15/07 p. 153 line 7 to p. 155 line 4; Haugsdal, 6/12/07 p. 102 line 3 to p. 104 line 10; p. 111 line 1 to p. 112 line 14). Their testimony is credible. It is corroborated by both Odfjell and Stolt contemporaneous documents and the testimony of Stolt employee Long. GX-53 is an internal Odfjell e-mail dated October 15, 2002, just prior to the London meeting, that describes Odfjell's complaint. GX-54 is an internal Stolt e-mail chain dated November 1, 2002, i.e., shortly after the October meeting, in which Long forwarded to Jansen an explanation from Knut Staubo regarding Stolt's competition for the Dow Mexico and GE contracts. Long testified that Jansen had asked him to provide this information.

(Long, 6/5/07 p. 97 line 10 to p. 98 line 18; see FOF 168). Jansen was present with Wingfield at the October 2002 Heathrow meeting when Nilsen raised his complaint, but had no responsibilities for the route covered by those contracts. Jansen could not explain why Staubo and Long provided him the information just two weeks after the October 2002 meeting. (Jansen, 6/13/07 p. 129 line 15 to p. 133 line 24; see GX-54).

6. Odfjell witnesses' testimony that the conspiracy continued beyond March 2002 is corroborated by other evidence

273. The Odfjell witnesses' testimony that the conspiratorial agreement between Stolt and Odfjell continued and that Odfjell continued to abide by the agreement after March 2002 is credible. It is corroborated by:

a. the testimony of Stolt employee Jansen that the conspiracy continued (Jansen, 6/13/07 p. 117 line 13 to p. 121 line 7; p. 133 line 25 to p. 134 line 25);

b. the testimony of Stolt employee Humphreys that he heard Wingfield discussing Sasol bid figures in October 2002, as well as by Humphreys' other testimony concerning the events surrounding the Sasol contract and the calls by Odfjell to Stolt (see FOF 147-153);

c. Wingfield's own admission on cross-examination that Odfjell believed a competitive bid by Stolt on the Sasol contract in October 2002 was a breach of the agreement and Wingfield's statement to Jansen that Odfjell would consider it a "deal breaker" if Stolt won the Sasol contract (see FOF 141, 142);

d. contemporaneous internal Odfjell e-mails concerning Odfjell's decisions not to compete for Stolt customers (GX-83, GX-84; GX-85);

e. the testimony of Stolt witnesses that Odfjell continued to call Stolt after March 2002 concerning the agreement (E.g., Vogth-Eriksen, 6/4/07 p. 14 line 23 to p. 15 line 22); and

f. the November 1, 2002 internal Stolt e-mail from Long to Jansen concerning the contracts about which Odfjell had complained at the October Heathrow meeting (GX-54; see FOF 168).

7. Inconsistencies between drafts of witness declarations, witness declarations and hearing testimony, or government interview notes and hearing testimony should be given no weight by this Court

274. During the investigation, several Odfjell witnesses signed declarations in lieu of testifying before the grand jury. The Odfjell witnesses did not personally draft the declarations they signed. (E.g., Nystad, 6/12/07 p. 59 line 25 to p. 61 line 21; Nilsen, 6/19/07 p. 162 lines 5-25). In some instances, there are differences between the signed declarations and initial drafts that had been prepared by the Government. There is no evidence that any witness saw the draft prepared by the Government, and there is no evidence as to who made changes between any Government draft and any final declaration. It is possible that changes were made by Odfjell counsel before Odfjell witnesses reviewed any draft. Because there is no evidence that Odfjell witnesses made or were aware of any specific change from the original Government version to the signed declaration, no significance should be given to such changes.

275. To the extent the Odfjell witness declarations did not include references to all of the matters to which the witnesses testified, such omissions will not be given significant weight. The declarations were prepared initially by the Government who determined what to include in them. The witnesses were asked to review the declarations only for accuracy. The very brief

declarations obviously did not contain all information they knew concerning the conspiratorial activities of Stolt and Odfjell. Furthermore, any differences between the versions of the declarations are insignificant. For example, Haugsdal and Nilsen were questioned by defense counsel about why "understanding" replaced "status quo" in their declarations. (Haugsdal, 6/12/07 p. 197 lines 4-19, Nilsen, 6/19/07 p. 84 lines 8-20). Such a difference is insignificant; "status quo" was the phrase used at Stolt, not Odfjell, to refer to the agreement. (See, e.g., Humphreys, 6/4/07 p. 144 lines 17-21; Jansen, 6/13/07 p. 90 lines 9-13).

276. To the extent the testimony of the Odfjell witnesses may differ from Government notes of their interviews, such difference will not be given significant weight because:

a. the Government's notes were not transcriptions of the witnesses' interviews; rather, they reflect attorneys' selected mental impressions;

b. Odfjell witnesses never saw or reviewed attorney notes of their interviews and never confirmed their accuracy or completeness. (See, e.g., Haugsdal, 6/12/07 p. 260 lines 6-15; Knutsen, 6/13/02 p. 74 lines 14 to p. 76 line 16; p. 78 lines 7-14); and

c. the Odfjell witnesses' testimony was not inconsistent with the Government's notes of their interviews. For example:

(1) Stolt attacked Nystad's credibility because he testified that he called Nilsen the day after he met with Wingfield at the NPRA meeting in March 2002, despite Government interview notes reflecting that he called Nilsen the same day or possibly after Easter. (See Stolt FOF 626). The precise date when Nystad called Nilsen to report what Wingfield told them is not significant. Nystad's hearing testimony that he called Nilsen is consistent with what is reflected in

Government interview notes, i.e., that he called Nilsen soon after meeting with Wingfield.

(2) Stolt insinuates that Edvardsdal's story changed because his testimony was that the spot market had fallen to $35, rather than to the 40's as suggested by the Government interview notes. (See Stolt Finding of Fact 702). Whether the spot market had fallen to $35 or to the $40's is not significant. The importance of Edvardsdal's testimony is that by June 2002, the spot market was dramatically lower than Stolt's contract rate with SK, which was in the $60's. (See DX-2722, at 143282, where YM Park of SK demanded a discount from Stolt because "COA rate[] is around $60/[ton] when the current market rates is in 40's. [I]t means that there is around $20/[ton] difference").

277. Defendants' failure to cite any material inconsistencies between the testimony of the Odfjell witnesses and the Government's notes of their interviews demonstrates that the description of the conspiracy by these witnesses always has been consistent.

8. Any differences between Odfjell witnesses' testimony and the Korean Fair Trade Commission documents should be given no weight by this Court

278. The testimony of Odfjell witnesses is credible despite any claims by Stolt that their testimony is inconsistent with information submitted to the Korean Fair Trade Commission ("KFTC"). Most importantly, there is no reference in any of the KFTC documents (DX-508; DX-524; DX-526; DX-4095) to Wingfield, or any Stolt employee, having told Odfjell that the agreement was over or that the communication between the companies should stop. In fact, quite the contrary is true. (See DX-508, at (regarding the NPRA meeting: "Wingfield never mentioned

that the communication with the companies should stop"; see also, Nystad, 6/12/07 p. 34 line 21 to p. 35 line 11)).

279. To the extent Odfjell witnesses' testimony differs from information contained in DX-4095 or DX-508, documents submitted to the KFTC by Odfjell counsel, such differences will not be given significant weight because:

a. they are not statements of the witnesses but were prepared by Odfjell's counsel (see DX-4095, at 2 (referencing submission by the Yulchon Law Offices Woo Yun Kang Jeong & Han of Seuol Korea); DX-508 (containing no statements of any particular witness)); and

b. the witnesses had never read or reviewed the documents for accuracy before they were submitted to the KFTC, and, in fact, had never seen the documents prior to being shown them on cross-examination. (Haugsdal, 6/12/07 p. 175 line 18 to p. 176 line 5; p. 177 line 5 to p. 178 line 23; Nystad, 6/11/07 p. 195 lines 11-17; p. 198 lines 9-13; p. 201 lines 2-7).

280. Erik Nilsen's hearing testimony is credible despite any claims by Stolt that it is inconsistent with a summary of his oral testimony in the KFTC proceedings (DX-524). However, any claimed difference has no bearing on Nilsen's credibility. For example, Nilsen's statement to the KFTC that the 2002 meetings were "minor" as compared with the earlier meetings is not inconsistent with his hearing testimony. Unlike 1998 and 2001, customer lists were not negotiated and exchanged in 2002. Moreover, the summary was prepared in connection with an investigation of whether Korean antitrust laws had been violated and did not address issues relevant to U.S. antitrust law. Thus, facts that are critical at this hearing may not have been

relevant to the proceedings in Korea.

281. Edvardsdal's testimony is credible. Stolt wrongly claims that Edvardsdal's testimony about SK is inconsistent with his declaration submitted to the Korean authorities (DX-526). (See Stolt FOF 703 and 704). First, Edvardsdal testified that his declaration did not refer to collusion on the June 2002 SK Corporation bid because he was not asked about it for his Korean declaration. (Edvardsdal, 6/15/07 p. 37 lines 19-20). As U.S. and Korean antitrust laws differ, facts that are critical in this hearing may not have been relevant in the Korean proceedings. Moreover, Edvardsal's testimony at this hearing that Nilsen obtained bid numbers from Wingfield is consistent with his KFTC statement that the numbers came from someone at Stolt since Wingfield was a Stolt employee.

C. Testimony of Jo Tankers Witnesses that the Conspiracy Continued until November 2002 is Credible

1. Hugo Finlay's testimony that the conspiracy continued after the NPRA is credible

282. Prior to his testimony, Hugo Finlay of Jo Tankers entered into an individual cooperation/non-prosecution agreement with the Government and was interviewed by the Government in April 2003. (See Amended Stipulation and Order filed July 9, 2007) (Doc. No. 275). At the time of his interview, Finlay knew nothing about what the Government had learned about the allocation agreement during its investigation. (Finlay, 6/14/07 p. 73 lines 24 to p. 74 line 2). Finlay did not know what the Government previously had been told about the scope of the agreement, who had participated in the agreement, or when the agreement had ended (Finlay, 6/14/07 p. 74 line 25 to p. 75 line 20), and so he did not know the significance of information he could provide that the agreement continued beyond March 2002.

283. When Finlay was interviewed by the Government in April 2003, he had no incentive to lie to the Government about the agreement continuing after March 2002.

284. Finlay's non-prosecution agreement was expressly conditioned on his truthfulness, and he risked losing protection if he provided false information about the scope of the conspiracy. (GX-94; see also Finlay, 6/14/07 p. 72 lines 1-9).

285. Finlay testified that he was present during the March 2002 NPRA meeting when Wingfield said that Stolt had revised its antitrust policy as a result of the O'Brien problem, but that the agreement would continue. (Finlay, 6/14/07 p. 83 lines 1-15). Finlay also said that after the meeting he and van Westenbrugge discussed what Wingfield had said. (Finlay, 6/14/07 p. 84 lines 10-25). If Finlay was mistaken about being present during that part of the conversation between Wingfield and van Westenbrugge, it is likely he learned what Wingfield said from the conversation he had with van Westenbrugge following the meeting. Finlay also testified about later conspiratorial discussions Wingfield had with van Westenbrugge concerning specific contracts. (Finlay, 6/14/07 p. 86 line 19 to p. 103 line 12). Finlay was the first witness to tell the Government that Wingfield had informed his coconspirators about the problem with O'Brien, but that Stolt would continue to participate in the allocation agreement. (See Amended Stipulation and Order filed July 9, 2007) (Doc. No. 275). Finlay could not have fabricated this information because it is consistent with the later testimony of several Odfjell witnesses that Wingfield told them the same thing. (See Nystad, 6/11/07 p. 119 line 16 to p. 120, line 17; Sjaastad, 6/20/07 p. 97 line 21 to p. 99 line 22; Nilsen, 6/15/07 p. 122 line 20 to p. 123 line 4; Haugsdal, 6/12/07 p. 88 line 21 to p. 91 line 14).

286. Finlay's testimony that Wingfield participated in conspiratorial discussions with

Jo Tankers regarding the Shell-Pecten contract (Finlay, 6/14/07 p. 86 line 19 to p. 96 line 4), is consistent with van Westenbrugge's testimony (van Westenbrugge, 6/14/07 p. 187 line 14 to p. 198 line 18), and corroborated by a contemporaneous internal Jo Tankers e-mail created and sent in October 2002. (GX-69).

287. Finlay's testimony that Jo Tankers initially had pursued the SK business in mid-2002 (Finlay, 6/14/07 p. 97 line 23 to p. 98 line 24), but later backed off at Stolt's request (Finlay, 6/14/07 p. 99 line 23 to p. 100 line 6), is corroborated by:

a. contemporaneous internal Jo Tankers e-mails which show Jo Tankers initially expressed interest in bidding for the SK business (GX-62), then later noting van Westenbrugge's direction not to offer for the SK business (GX-63);

b. van Westenbrugge's testimony that he told Wingfield that Jo Tankers had already submitted a price indication to SK in mid-2002 (van Westenbrugge, 6/14/07 p. 199 line 9 to 200 line 6); and

c. van Westenbrugge's admission that the SK business would have fit in with Jo Tankers' business plans. (van Westenbrugge, 6/14/07 p. 198 line 20 to p. 199 line 8).

288. Although Finlay previously testified in the Celanese private antitrust litigation that he was not aware of a "conspiracy" among Stolt, Odfjell and Jo Tankers between August 1998 and November 2002 (Finlay, 6/14/07 p. 106 line 2 to p. 107 line 8), during that same deposition Finlay provided testimony about his conspiratorial discussions with Stolt. (Finlay, 6/14/07 p. 112 lines 11-19). At this hearing, Finlay explained that when questioned at the deposition**,** he had incorrectly believed that the term "conspiracy" referred to a formal allocation of "all customers" rather than the more ad hoc informal arrangement that existed between Stolt and Jo

Tankers (Finlay, 6/14/07 p. 109 lines 2-19) as described by Pickering. (Pickering, 5/31/07 p. 135 line 24 to p. 136 line 2). In pointing out these inconsistencies, Stolt has merely demonstrated that Finlay did not understand the legal definition of "conspiracy."

2. Hendrikus van Westenbrugge's testimony about the conspiracy continuing after the NPRA is credible

a. Van Westenbrugge's testimony is credible to the extent it is corroborated by documentary evidence

289. Van Westenbrugge admitted that Wingfield conspired with Jo Tankers on the Shell-Pecten contract. (van Westenbrugge, 6/14/07 p. 187 line 14 to 198 line 18). As discussed in Findings of Fact 185-189, his admission is consistent with two e-mails created in October 2002: an internal Jo Tankers e-mail (GX-69) and an e-mail from Wingfield to van Westenbrugge. (GX-70). It is further corroborated by Finlay's testimony. (Finlay, 6/14/07 p. 86 line 19 to 96 line 4).

b. Van Westenbrugge's testimony is not credible when there is contrary documentary evidence or when his testimony is inconsistent with his prior statements

290. Van Westenbrugge's testimony that there was no quid quo pro that Jo Tankers would refrain from bidding on SK in exchange for Stolt not bidding competitively for the Shell-Pecten contract is an attempt to minimize his own criminal conduct and is not credible. It is inconsistent with:

a. his admission that the SK business would have fit in with Jo Tankers' business plans (van Westenbrugge, 6/14/07 p. 198, line 20 to p. 199, line 8), and his testimony that he told Wingfield that Jo Tankers had submitted a price indication to SK in mid-2002 (van Westenbrugge, 6/14/07 p. 199, line 9 to 200, line 1);

b. Finlay's testimony that Jo Tankers had been very interested in winning the SK business until van Westenbrugge directed Jo Tankers not to bid (Finlay, 6/14/07 p. 97, line 23 to p. 98, line 24);

c. two internal Jo Tankers' e-mails (GX-62 (expressing interest in the SK business); GX-63 (noting van Westenbrugge's direction not to offer for the SK business)); and

d. his testimony after he learned that Wingfield had deceived him about Stolt being invited to bid by Shell-Pecten, that he felt Wingfield had taken him "for a ride" (van Westenbrugge, 6/14/07 p. 227 line 23 to p. 228 line 3; p. 233 lines 8-18), admitting, in essence, that Wingfield had duped him into not bidding for SK in return for Stolt not competing for Shell-Pecten.

291. That the Government linked the Shell-Pecten and SK Corp. contracts is reasonable because (a) Finlay testified van Westenbrugge told him of the quid pro quo arrangement (Finlay, 6/14/07 p. 99 line 23 to p. 100 line 6); and (b) on May 26, 2004, van Westenbrugge voluntarily signed a sworn declaration admitting they were linked in light of the above evidence demonstrating the link between Shell-Pecten and SK.

292. Van Westenbrugge testified that when Wingfield told him at the March 2002 NPRA meeting about Stolt's problem with O'Brien, and said that future communications regarding "severe matters" would have to be limited to Wingfield and van Westenbrugge, he understood that Wingfield was referring to limiting future legitimate discussions regarding the co-service agreement between Jo Tankers and Stolt. (van Westenbrugge, 6/14/07 p. 183 line 7 to p. 184 line 11). His testimony that "severe matters" meant legitimate discussions is not credible

because it is inconsistent with:

a. his admission at this hearing that he said in the Celanese private antitrust litigation that he and Wingfield "had set up a platform to do things, to discuss things which were not allowed according to the antitrust handbook." (van Westenbrugge, 6/14/07 p. 230 line 18 to p. 232 line 13) (emphasis added); and

b. with his hearing testimony that he had conspiratorial discussions with Wingfield after the NPRA to rig the Shell-Pecten bid (van Westenbrugge, 6/14/07 p. 187 line 14 to p. 196 line 23); and

c. evidence that co-service communications between Jo Tankers and Stolt continued to take place after the NPRA just as they had previously. (See Finlay, 6/14/07 p. 85 lines 5-15; Cleary, 6/1/07 p. 119 line 19 to 120 line 5).

293. Van Westenbrugge testified on cross-examination that when he learned, shortly after joining Jo Tankers in January 2001, that Jo Tankers and its competitors had an understanding not to go after each other's base contracts, he believed that understanding was not the result of an illegal agreement but was an independent decision by Jo Tankers not to compete for its competitors' contracts. (van Westenbrugge, 6/14/07 p. 211 line 9 to 212 line 1). This testimony was an attempt to minimize his own criminal culpability and shows his bias in favor of the defendants. It is inconsistent with van Westenbrugge's willingness to submit voluntarily to U.S. jurisdiction, and, in fact, he pleaded guilty to the Information in United States v. van Westenbrugge (GX-19B) charging him with joining the conspiracy in January 2001.

294. There is no evidence to support van Westenbrugge's testimony that Finlay would falsely incriminate Van Westenbrugge to protect himself. (See van Westenbrugge, 6/14/07 p.

223 line 15 to 224 line 5). To the contrary, Finlay's testimony corroborates van Westenbrugge's testimony that he rigged the Shell-Pecten and SK contracts with Wingfield, and Finlay provided no other testimony that incriminated van Westenbrugge in other bid-rigging incidents.

295. Van Westenbrugge's claim that he knowingly signed a false declaration as a matter of personal convenience (van Westenbrugge, 6/14/07 p. 203 line 10 to 205 line 3) shows his bias against the Government in this matter.

296. Van Westenbrugge's testimony that he did not tell Finlay about the conversation he had with Wingfield after Finlay left the table (van Westenbrugge, 6/14/07 p. 210 lines 10-13) is not credible. If Wingfield had told van Westenbrugge that the allocation agreement was over, van Westenbrugge would have had to inform Finlay because Finlay participated in the agreement on Jo Tanker's behalf.

D. Stolt Employee William Humphreys' Testimony Regarding Wingfield's Sasol Discussions with Odfjell is Credible

297. Stolt employee William Humphreys' testimony that Wingfield discussed Sasol freight rates with Nilsen on the day final quotes were due is credible because: (a) as a Stolt employee, he has no motive to fabricate a story that would be adverse to his employer's interest and (b) his demeanor evidenced his sincerity when he testified about how upset he was to observe Wingfield discussing bid numbers with Nilsen "at the eleventh hour, 59th minute" of the Sasol bid day after having just reported Wingfield's prior conversation with Nilsen to Cooperman. (Humphreys, 6/4/07 p. 96 lines 2-5; p. 136 lines 13; p. 92 lines 11-20).

E. Defendant Richard Wingfield's Testimony that he Withdrew from the Conspiracy at the March 2002 NPRA Meeting is Not Credible

1. Wingfield had a strong motive to lie to avoid criminal conviction and a likely prison sentence

298. Defendant Wingfield has admitted participating in a lengthy, criminal violation of the Sherman Act. Having essentially admitted his guilt to the charges in this case, Wingfield would likely face conviction and a prison sentence of up to three years if his motion to dismiss the Indictment is denied. Thus, Wingfield had a strong motive to lie about matters to falsely testify that he and Stolt withdrew from the conspiracy at the March 2002 NPRA meeting and that he thereafter abided by Stolt's revised antitrust policy.

2. Wingfield's inability to recall important matters calls into question the credibility of his entire testimony

299. During his testimony on cross-examination, Wingfield claimed he was unable to recall important matters that conflict with his claim that Stolt withdrew from the conspiracy at the March 2002 NPRA meetings. That is implausible, particularly in light of his professed ability to recall minor details, which if true, would support his claim. For example:

a. Wingfield provided conflicting testimony about his discussion with Cooperman concerning the Jansen Memo after O'Brien discovered the Memo in early 2002. Ultimately, after objections from defense counsel, Wingfield claimed not to recall anything that was said during his meeting with Cooperman, despite the great concern O'Brien's report caused at Stolt. (See Wingfield, 6/6/07 p. 18 line 8 to p. 23 line 13).

b. Wingfield claimed not to recall whether he had told Nannes that he had told Jo Tankers and Odfjell at their March 2002 NPRA meetings that the allocation agreement

was over (Wingfield, 6/6/07 p. 88 lines 12-17), despite the fact that his November 25, 2002 business journal entry proves he knew the importance of the NPRA meetings. (See GX-26C.5789.A-5790.A).

c. Wingfield claimed not to recall whether, during Nannes' internal investigation, he had provided Nannes with any of the inculpatory information about which he testified regarding his post-March 2002 conversations with Odfjell and Jo Tankers in 2002. (See Wingfield, 6/6/07 p. 95 lines 1-4).

d. Wingfield claimed not to recall whether Nannes had ever asked him to explain his October 2002 journal entry about Sasol which says "EN - Not Accepting!! backbone of [Odfjell] trade told [Nilsen] won't discuss" (Wingfield, 6/6/07 p. 93 lines 16-19; GX-26B.5746-47), even though Nannes brought that journal entry to the Government's attention as proof that the Government's concern that Stolt had not ended its collusive activity was unfounded. (Nannes, GX-6 p. 76 line 22 to p. 78 line 3).

e. Wingfield claimed not to recall the connection between the two parts of his November 25, 2002 journal entry: (i) "first found out - ended promptly" and (ii) "[g]ave AT policy to competitors/partners" (GX-26C.5789.A-5790.A), but he admitted the notation was a record of his discussion with Cooperman about the Corporate Leniency Program requirement of prompt and effective action to terminate upon discovery. (Wingfield, 6/6/07 p. 83 line 16 to p. 86 line 10). The obvious meaning – that in November 2002, Stolt recognized it had discovered its illegal activity prior to the NPRA meetings and would claim it complied with its obligation to terminate by providing its antitrust policy to its competitors following the March 2002 NPRA meetings – conflicts

with Stolt's current position that it did not discover its illegal conduct until the end of 2002.

300. Wingfield's claimed inability to recall important matters is in stark contrast to his recollection of minor details that support his defense. For example:

a. Wingfield recalled the names of specific airlines he claimed Sjaastad had mentioned during their March 2002 NPRA meeting while discussing antitrust issues in the airline industry. (Wingfield, 6/5/07 p. 145 lines 19-22).

b. To bolster his testimony that he did not provide Stolt's final Sasol prices to Odfjell, Wingfield claimed on cross-examination, five years later, to recall that he never opened the attachment to an e-mail in which Humphreys had sent Wingfield Stolt's proposal. (Wingfield, 6/6/07 p. 59 line 21 to p. 60 line 1).

3. Wingfield's testimony was inconsistent

301. Wingfield often changed his testimony on cross-examination. For example:

a. Wingfield initially testified that when he discussed the Jansen Memo with Cooperman, Cooperman appeared to understand that its use of the word "coop" referred to the illegal agreement between Stolt and Odfjell (Wingfield, 6/6/07 p. 23 lines 14-21), but Wingfield then retreated from his testimony and said he did not know what Cooperman understood. (Wingfield, 6/6/07 p. 23 line 22 to p. 24 line 1).

b. Wingfield initially admitted that Humphreys told him about having reported the fact that Wingfield had spoken to Nilsen concerning Sasol the morning the bids were submitted (Wingfield, 6/6/07 p. 60 lines 11-24), but later denied knowing that

Humphreys had told Cooperman about it. (Wingfield, 6/6/07 p. 60 line 25 to p. 61 line 17).

4. Wingfield's testimony about what he told Odfjell and Jo Tankers at the March 2002 NPRA meetings is not credible

302. Wingfield's testimony that he told Odfjell and Jo Tankers at the March 2002 NPRA meetings that their illegal agreement was over is not credible. If he said the agreement was over:

a. Why did he ask Finlay and Cleary to leave the table? (Wingfield, 6/5/07 p. 151 lines 12-24). If Wingfield planned to tell Jo Tankers that the conspiracy was over, Finlay would have to be told as well since Finlay had been a key conspirator for Jo Tankers. Moreover, his claim that he feared Finlay would tell the "3,000 individuals that were attending the NPRA" that the agreement was over (Wingfield, 6/5/07 p. 151 lines 12-24) is absurd. The conspiracy in which Wingfield and Finlay had been participating was a secret agreement to cheat their customers, and the idea that Finlay would publicly announce that they would no longer cheat their customers is patently incredible. More likely, Wingfield did not want Stolt employee Cleary to learn that the conspiracy would continue despite Stolt's revised antitrust policy.

b. Why did he continue to have customer allocation lists readily accessible in his desk drawer? (See Wingfield, 6/6/07 p. 87 line 15 to p. 88 line 1).

c. Why would he plan to signal Odfjell that Stolt's bid to Sasol was for "regional business," i.e., that Stolt's bid was not a violation of the status quo agreement? (See GX-72; cf. Wingfield, 6/6/07 p. 55 line 24 to p. 56 line 16).

d. Why would Odfjell have believed, as Wingfield admitted, that a competitive bid by Stolt on Sasol would be a breach of their conspiratorial agreement? (See Wingfield, 6/6/07 p. 64 lines 5-14).

e. Why would Wingfield admittedly stand by and do nothing when Jansen complained to Nilsen about Stolt's allocated customer Equatorial and Nilsen agreed to look into it at the October Heathrow meeting? (Wingfield, 6/6/07 p. 69 lines 13-19). If it were a "throwaway comment" as Wingfield now claims, five years later, he wouldn't remember it. (See Wingfield, 6/6/07 p. 69 lines 13-19).

5. Wingfield's testimony regarding the October 2002 Heathrow meeting with Odfjell is not credible

303. Wingfield's testimony that the reason he and Jansen met with Nilsen and Haugsdal at Heathrow Airport in October 2002 was to discuss complaints by Dow about Odfjell's handling of sublets on the BAJ trade lane is not credible. (See Wingfield, 6/5/07 p. 176 line 24 to p. 177 line 15). It is inconsistent with the testimony of Cleary – the Stolt executive responsible for and most knowledgeable about the matters Wingfield claims were discussed – that he was never told about the meeting, either before or after it occurred. (Cleary, 6/1/07 p. 97 line 23 to p. 98 line 9). Moreover, there is no documentary evidence of what occurred at the meeting to corroborate Wingfield's explanation.

6. Wingfield's false exculpatory journal entries

304. In October 2002, Wingfield made a false exculpatory entry in his business journal regarding a telephone discussion he had that day with Nilsen concerning the Sasol contract, falsely stating: "Told him won't discuss." Wingfield admitted on cross-examination that he had

several discussions with Nilsen concerning Sasol and that he never told Nilsen he would not discuss the matter. (Compare GX-26B.5746-47 with Wingfield, 6/6/07 p. 93 lines 11-15; Wingfield, 6/6/07 p. 91 line 18 to p. 93 line 15). Wingfield's false exculpatory entry shows he knew what he was doing was illegal.

305. On or about November 1, 2002, Wingfield made a false exculpatory entry in his business journal regarding a telephone discussion he had with van Westenbrugge concerning the Shell-Pecten contract, falsely noting "BAC," i.e., Brian Cleary, the Stolt business director responsible for Shell-Pecten (GX-26B.5768), to create the false impression that he obtained the pricing information from Cleary rather than van Westenbrugge. Cleary testified that he did not recall giving this information to Wingfield (Cleary, 6/1/07 p. 104 lines 14-16), nor was it likely he would have done so since Stolt was not asked to bid on the contract. (See Cleary, 6/1/07 p. 86 line 24 to p. 87 line 1; p. 99 line 25 to p. 100 line 3).

7. Wingfield lied about learning when O'Brien found the Jansen Memo

306. Wingfield's testimony that he did not learn that O'Brien had found the Jansen Memo until March 11, 2002 (Wingfield, 6/6/07 p. 9 line 23 to p. 11 line 3), is not credible. Since Wingfield admitted he was "well aware" of Stolt's revised antitrust policy by this time, he must have been aware of the O'Brien problem that prompted the revised policy. (See Wingfield, 6/5/07 p. 110 line 23 to p. 111 line 4).

F. Testimony of Other Stolt Employees is Misleading, Irrelevant and/or Not Credible

1. Claims of vigorous competition beginning in March 2002 are not credible

307. Stolt employees' testimony that Stolt, Odfjell and Jo Tankers began competing vigorously when Stolt implemented its revised antitrust policy in March 2002 is not credible.

Not a single allocated deep-sea contract changed hands during the entire eight-month period prior to Stolt's approach to the Government in November 2002, and no other contracts Stolt cites support its claim as set forth above in Findings of Fact 219-246.

308. For example, Humphreys testified Stolt management decided to bid for the October Sasol contract in order to demonstrate that Stolt would steal a contract from Odfjell. (Humphreys, 6/4/07 p. 74 lines 1-4; p. 122 line 22 to p. 123 line 1). If Stolt had been competing vigorously against Odfjell since March 2002 as it claims, there would have been no need to demonstrate in October its willingness to steal an Odfjell customer.

309. Confrey's testimony that after March 2002 Wingfield directed him to obtain "gold level accounts" and to compete against Jo Tankers and Odfell is misleading. (See Confrey, 6/1/07 p. 218 lines 8-21). On cross-examination, he acknowledged that whatever direction Wingfield gave him was in early 2002 before Stolt revised its antitrust policy, and at a time when Stolt was admittedly still participating in the allocation agreement. (Confrey, 6/1/07 p. 233 lines 8-18).

2. Testimony concerning the lack of lower-level employee communication after March 2002 is misleading

310. Stolt introduced testimony that its lower-level employees did not engage in conspiratorial communications after Stolt introduced its revised antitrust policy in March 2002, but their testimony was misleading. Only on cross-examination did they acknowledge that they did not end their illegal communications with Odfjell and Jo Tankers due to the revised antitrust policy, but, in fact, had ended their illegal communications with Odfjell and Jo Tankers much earlier in 2001 when Wingfield directed that he and Jansen would be responsible for

conspiratorial communications going forward. (See, e.g., Long, 6/5/07 p. 92 lines 14 to p. 95 line 24; Fleming, 6/5/07 p. 10 line 11 to p. 12 line 14).

3. Stolt witnesses' testimony that it was impossible for Stolt to continue conspiring without their knowledge is wrong

311. Confrey's testimony on direct examination that it was "impossible" that Stolt could have continued to conspire without his knowledge is not credible because:

a. It was based solely on the fact that he sat on the trading floor with lower-level employees whose conversations he could overhear and he did not hear communications with competitors. (Confrey, 6/1/07 p. 227 line 20 to p. 228 line 25). In fact, the lower-level employees whose conversations he could overhear had ended their conspiratorial communications in 2001, well before even Stolt claims it withdrew from the conspiracy. (See, e.g., Long, 6/5/07 p. 92 lines 14 to p. 95 line 24; Fleming, 6/5/07 p. 10 line 11 to p. 12 line 14).

b. Confrey could not and did not know whether Wingfield spoke to or met with coconspirators because, as he admitted on cross-examination, he could not overhear Wingfield's telephone conversations since Wingfield had a private office (see Confrey, 6/1/07 p. 235 line 17 to p. 236 line 3), nor was he even aware that Wingfield met with Odfjell in 2002. (Confrey, 6/1/07 p. 234 line 2 to p. 235 line 6).

312. Harrison's testimony that he did not know of any collusion post-March 2002 is irrelevant because he acknowledged that Stolt had colluded for years without him knowing about it. (Harrison, 6/1/07 p. 10 line 20 to p. 11 line 2). Stolt introduced Harrison's testimony that he, not Wingfield, set Stolt's final SK prices in November 2002 to prove that Wingfield did not rig

the bid. However, Harrison's set Stolt's SK prices in 2001 and yet did not know that Odfjell and Stolt had rigged the 2001 SK contract. (Harrison, 6/1/07 p. 7 lines 4-20; p. 10 lines 3-7; see Edvardsdal, 6/15/07 p. 17 line 10 to p. 18 line 11).

G. Testimony of Stolt's Economic Expert Witness Barry Harris is Based on Incorrect Assumptions

313. Stolt provided the testimony of an economic expert, Barry Harris, that Stolt's revised antitrust policy was likely to be effective in preventing collusion because "people who would be talking with competitors" (i.e., Wingfield and Jansen) had "severed their relationship within Stolt from the people who actually bid on contracts" such as Sasol and SK. (Harris, 6/20/07 p. 24 lines 13-21). Harris' assumption conflicts with testimony of Stolt employees and Stolt documents that Wingfield and Jansen were, at minimum, kept informed of pricing on those contracts. For example,

a. Humphreys reported to and kept Wingfield informed regarding Stolt's bids for the Sasol contract (Humphreys, 6/4/07 p. 78 lines 16-19; p. 131 lines 2-14), Humphreys informed Wingfield of the freight rates Stolt intended to and did bid for the Sasol contract both orally and by copying him on Stolt's bids to Sasol (Humphreys, 6/4/07 p. 106 line 21 to p. 107 line 2; p. 176 lines 8-13), and Humphreys and Wingfield discussed whether or not to reduce the rates to Sasol on October 11, 2002 and Wingfield agreed that Stolt should not do so. (Humphreys, 6/4/07 p. 108 lines 16-21, p. 131 lines 2-6; see also Wingfield, 6/6/07 p. 59, lines 13-18).

b. Wingfield and Jansen were "very much involved" in the 2002 SK negotiations, (Harrison, 5/31/07 p. 237 line 4-11), their subordinates Harrison and Gibney

kept them generally informed of the negotiations, (Wingfield; 6/6/07 p. 71 lines 13-21), and, in fact, Jansen was directly involved in the determination of Stolt's rates. (Harrison, 5/31/07 p. 238 lines 5-8).

c. Numerous internal Stolt e-mails show that Wingfield was in contact with his subordinates regarding bidding and pricing. (See, e.g., GX-59; GX-65; DX-1912; DX-1617; DX-2722).

d. There is no evidence in the record and it is absurd to think that Wingfield, as Managing Director of Tanker Trading, would not be able to obtain whatever pricing or other competitive information he wanted from his subordinates. Even Jansen, who had no supervisory authority over Long, obtained information concerning the Dow and GE contracts from Long shortly after Nilsen complained about these contracts at the October Heathrow meeting. (Nilsen, 6/15/07 p. 154 line 1 to p. 155 line 4; Long, 6/5/07 p. 97 line 20 to p. 98 line 18; Jansen, 6/13/07 p. 131 line 23 to p. 132 line 10; GX-54). Moreover, Long provided the information to Jansen without question, even though it involved contracts outside of Jansen's trade area and Long knew Jansen was one of Stolt's two principal conspirators with Odfjell. (Jansen, 6/13/07 p. 131 lines 13-18, p. 132 line 2 to p. 133 line 2; Long, 6/5/07 p. 93 lines 11-16).

314. Likewise, Harris' testimony concerning whether the Sasol bid appeared to be rigged from an economic perspective is irrelevant because he relied on inaccurate hearsay, as explained in Findings of Fact 158-159).

IV.

CORPORATE LENIENCY

A. Antitrust Division's Corporate Leniency Policy

1. The Corporate Leniency Policy provides incentives for companies to come forward and cooperate

315. The Antitrust Division adopted a new Corporate Leniency Policy in August 1993 that provided an expanded opportunity and incentive for companies to come forward and cooperate with the Division's criminal investigations into illegal conduct. (Griffin, GX-5 p. 189 lines 5-9).

2. The Corporate Leniency Policy has been publicized and explained to the antitrust bar and business community

316. Since 1993, the Antitrust Division has publicized its Corporate Leniency Policy in many ways, including making speeches to bar associations, business groups and criminal enforcement groups, issuing policy statements, and publishing information on the Division's website. (Griffin, GX-5 p. 189 lines 17-22).

317. Because the Antitrust Division believes it is important for the antitrust bar and the business community to understand the provisions of its Corporate Leniency Policy, it has issued public statements as to how the Policy is applied. (Griffin, GX-5 p. 193 lines 1-19).

3. Leniency is available to corporations that self-report illegal activity and meet the Policy's stated conditions

318. The Corporate Leniency Policy established a Program under which the Government will grant leniency, i.e., agree not to charge criminally, to companies that report their illegal antitrust activity to the Government and otherwise meet all of the Policy's stated

conditions. (Corporate Leniency Policy, GX-3, Preamble).

319. Only one company can qualify for leniency per conspiracy. (GX-3, at 1-2).

4. Model conditional leniency letter agreement

320. In 1998, the Antitrust Division prepared and published a model conditional leniency letter agreement (the "Model Agreement"). The Model Agreement and subsequent modifications to its terms and conditions have been published by the Antitrust Division and are publicly available. (Griffin, GX-5 p. 196 lines 6-21).

321. The Model Agreement sets forth the conditions for obtaining leniency; a company that applies for leniency represents therein that it has satisfied those express conditions. These representations are subject to verification before leniency is granted. (GX-4, Attachment).

5. To qualify under the Program, a company must have taken prompt and effective action to terminate its part in the conspiracy upon discovery

322. Among the conditions a company must meet to qualify for the Corporate Leniency Program is that "[t]he corporation, upon its discovery of the illegal activity being reported, took prompt and effective action to terminate its part in the activity." (GX-3, at 1-3 ¶ A.2, ¶ B.3). It is the Division's position that, as a matter of good public policy, it is not appropriate to provide leniency to a company that continued to engage in illegal conduct after discovering it. In addition, a company's failure to terminate its illegal conduct may diminish the credibility and value of evidence it may later provide in connection with the investigation and prosecution of other cartel members. (Griffin, GX-5 p. 191 lines 5-24).

323. The term "discovery" is not defined in the Model Agreement. The Division clarified the meaning of the term "discovery" in a 1998 Policy Statement, The Corporate

Leniency Policy: Answers to Recurring Questions (the "1998 Policy Statement"). (GX-4). This Policy Statement provides "[g]enerally, the Division will consider the corporation to have discovered the illegal activity at the earliest date on which either the board of directors or counsel for the corporation (either inside or outside) were first *informed* of the conduct at issue." (emphasis added). Thus, the fact that top executives, individual members of the board of directors, or owners participated in the conspiracy will not necessarily bar the corporation from eligibility for amnesty. (GX-4, at 3 ¶ IIA(2)).

324. Because the Antitrust Division cannot know with certainty the date of discovery at the time an agreement is signed, the Model Agreement does not specify the date of discovery, and therefore, it does not specify the date on which the obligation to take prompt and effective action to terminate its part in the anticompetitive activity arises. The obligation to take action to terminate the illegal conduct is triggered by the act of discovery, whenever the date discovery occurred. (Griffin, GX-5 p. 209 lines 2-22).

325. The phrase "prompt and effective action to terminate" is not defined in the Model Agreement. The Division's 1998 Policy Statement provides express guidance to leniency applicants on the meaning of their obligation to take "prompt and effective action to terminate their illegal activity upon discovery." Specifically, a leniency applicant must "refrain[] from further participation [in the conspiracy] unless continued participation is with Division approval." (GX-4, at 3 ¶ IIA(1)).

326. The 1998 Policy Statement further provides that "[t]ermination does not require announcement of withdrawal in the illegal activity to other participants in the activity (although that would constitute one means of termination). Termination can also be effectuated by

reporting the illegal activity to the Division and refraining from further participation unless continued participation is with Division approval." (GX-4, at 3 ¶ IIA(1)).

327. "Prompt and effective action" should be construed to have its reasonable meaning, i.e., action that does not lead to actual termination of a company's anticompetitive activity within a reasonable period of time after discovery is not prompt and effective.

6. Leniency agreements are expressly conditioned on the Government's verification of a company's representations

328. Because conditional leniency agreements often are entered into at the early stage of an investigation, the Antitrust Division has little information concerning the crime being reported and typically no way to verify a company's representations. For this reason, the Model Agreement is expressly conditioned on the Government's verification of the representations. (Griffin, GX-5 p. 192 lines 8-25).

7. To qualify for the Program, a company must provide full, continuing and complete cooperation

329. Also among the conditions a company must meet is the condition that it provide full, continuing and complete cooperation to the Antitrust Division in connection with the activity being reported. (GX-3, at 3 ¶ B.4).

8. Directors, officers and employees are also considered for leniency

330. Once a corporation qualifies for leniency under Part B of the Leniency Program, its directors, officers and employees who come forward with the corporation will be considered for immunity from criminal prosecution on the same basis as if they had approached the Division individually. (See GX-3 ¶ C; GX-1 ¶¶ 3-4) (The Division agreed conditionally to accept Stolt into Part B of the Corporate Leniency Program.)

B. Stolt Applied for Leniency

1. Division read November 22, 2002 WSJ article about O'Brien's allegations

331. On November 22, 2002, the Division obtained and read a copy of the November 22, 2002, Wall Street Journal article which described O'Brien's allegations and stated that Stolt denied all of O'Brien's allegations. (GX-14). Soon after that, the Division also obtained copies of O'Brien's civil complaint filed June 18, 2002 (GX-10A) and O'Brien's amended civil complaint filed November 1, 2002. (GX-10B).

2. Stolt was represented by experienced antitrust counsel

332. On November 22, 2002, John M. Nannes first contacted the Division on behalf of Stolt, but did not identify Stolt as his client. Nannes, an experienced attorney who had worked previously for the Antitrust Division, had held the positions within the Division of Acting Assistant Attorney General and Deputy Assistant Attorney General in 1998 through 2001. (Nannes, GX-5 p. 103 line 1 to p. 106 line 16). Nannes was familiar with the Corporate Leniency Program and the Antitrust Division's policy statements concerning the Program. (Nannes, GX-5 p. 105 lines 22-25; p. 176 line 17 to p. 177 line 3; see Nannes, GX-5 p. 114 line 19 to p. 115 line 8).

3. The Antitrust Division put Stolt on notice that it would not qualify for leniency if the conspiracy continued despite O'Brien's discovery

333. During the following week, Nannes spoke on several occasions concerning the matter with James Griffin, Deputy Assistant Attorney General, responsible for criminal enforcement for the Division. (Griffin, GX-5 p. 198 line 18 to p. 199 line 18). As soon as

Nannes identified Stolt as his client in late November 2002, Griffin advised Nannes that the Division was aware of O'Brien's allegations and that in light of those allegations, the Division was concerned whether Stolt took prompt and effective action to terminate its role in the criminal agreement as required by the Conditional Leniency Policy. (Griffin, GX-5 p. 199 line 19 to p. 200 line 12). Nannes responded that he did not think that O'Brien's allegations were credible and that he was confident he could satisfy the Division accordingly. (Griffin, GX-5 p. 200 lines 13-18).

334. Division officials met with Nannes on December 4, 2002 to discuss O'Brien's allegations before permitting Stolt to apply for Conditional Leniency. (Nannes, GX-5 p. 138 lines 4-23; Griffin, GX-5 p. 200 line 19 to p. 201 line 4). During this meeting, Division officials expressly informed Nannes that if the antitrust conspiracy continued despite O'Brien's discovery, Stolt would not qualify for leniency. (Griffin, GX-5 p. 204 lines 7-15).

335. During the December 4, 2002 meeting, Nannes assured the Division that "O'Brien's allegations [that Stolt continued its criminal conduct after O'Brien resigned in March 2002] were not credible," noting that O'Brien had a "history of animosity" toward Stolt management and was using his "lawsuit to try to extort a settlement, a substantial amount of money" from Stolt. (Nannes, GX-5 p. 169 line 5 to p. 170 line 9; Griffin, GX-5 p. 200 lines 13-18; p. 204 lines 16-21). Nannes also emphasized that since O'Brien had left Stolt in March 2002, he could not have had any first-hand knowledge about Stolt's participation in any criminal activity after that date. (Nannes, GX-5 p. 169 line 5 to p. 170 line 9).

336. During the December 4, 2002 meeting, to rebut O'Brien's allegations, Nannes also detailed the steps Stolt took in response to O'Brien's report to the company, including that it

revised its antitrust compliance policy, held antitrust seminars and required certificates of compliance to be executed by company employees. Nannes also provided Division officials with copies of Stolt's revised antitrust handbook. (Nannes, GX-5 p. 138 line 21 to p. 140 line 21; Griffin, GX-5 p. 201 line 15 to p. 202 line 4).

337. Nannes further stated during the December 4, 2002 meeting that Stolt met with its coconspirators at the NPRA meeting in March 2002 and told them that "[Stolt] no longer would participate in the conspiracy." (Griffin, GX-5 p. 202 line 14 to p. 203 line 16; see Nannes, GX-6 p. 48 line 7 to p. 52 line 7). As corroboration, Nannes gave the Division copies of e-mails Stolt sent to its coconspirators, which Nannes claimed "provided unequivocal evidence or proof that the company had in fact terminated its conduct in March and April [2002]." (GX-12; Griffin, GX-5 p. 201 line 21 to p. 202 line 13; Nannes, GX-6 p. 51 line 8 to p. 52 line 12).

338. Division officials informed Nannes that if the Division entered into a conditional leniency agreement with Stolt and subsequently learned that the criminal conduct continued despite O'Brien's discovery, the Division would revoke the agreement. (Griffin, GX-5 p. 204 lines 7-15). During the December 4, 2002 meeting, Nannes never said that the actions Stolt took after O'Brien's discovery were irrelevant because O'Brien had not discovered Stolt's illegal conduct. (Nannes, GX-6 p. 40 lines 10-23).

339. During discussions prior to January 15, 2003, Nannes also advised the Division that Cooperman had interviewed employees with knowledge of the illegal conduct (Nannes, GX-6 p. 46 lines 6-24), and that all such individuals, including Cooperman and Wingfield, remained in Stolt's employ. (See June 22, 2007 Stipulation and Order (Doc. No. 267)). Nannes also said that Stolt employees likewise had told Nannes that they did not continue to participate in the

illegal agreement. (Nannes, GX-5 p. 53 lines 4-12).

4. In fairness to Stolt, the Division determined that O'Brien's unsubstantiated allegations would not bar Stolt from applying for conditional leniency

340. The Division's decision to enter a conditional leniency agreement with Stolt was based on the fact that, after a full discussion of O'Brien's allegations and the consequences that would result if the Division determined the allegations were true, Stolt was willing to stand by the truth of its written representation in the Agreement itself that it "took prompt and effective action to terminate its part in the anticompetitive activity [it] reported upon discovery of the activity." (Griffin, GX-5 p. 207 line 18 to p. 208 line 13).

341. Had the Antitrust Division known that Stolt continued its illegal conduct until November 2002, it would not have entered into a conditional leniency agreement with Stolt. (Griffin, GX-5 p. 208 line 14 to p. 209 line 1).

C. Stolt and the Division enter Conditional Leniency Agreement on January 15, 2003

342. Ultimately, on January 15, 2003, the Division and Stolt-Nielsen Transportation Group Ltd. entered into a conditional leniency agreement ("the Conditional Agreement").

343. The Conditional Agreement was based on the Division's Model Agreement in effect at the time. (Griffin, GX-5, p. 196 lines 19-21).

344. While negotiating the Conditional Agreement on Stolt's behalf, Nannes believed the terms of the Agreement to be "well considered" and did not believe any changes to the Agreement were needed before he signed it. (Nannes, GX-5 p. 176 line 25 to p. 177 line 3).

345. At the time Stolt entered the Conditional Agreement, Nannes was familiar with the Division's policy statements, and Stolt and the Division intended the Conditional Agreement

would have the meanings provided in the Division's policy statements. (Nannes, GX-5 p. 105 lines 22-25; p. 176 line 17 to p. 177 line 3; see Nannes, GX-5 p. 114 line 19 to p. 115 line 8).

1. Relevant Terms of the Conditional Agreement

a. Stolt represented it took prompt and effective action to terminate upon discovery

346. When it executed the Conditional Agreement, Stolt represented it "took prompt and effective action to terminate its part in the anticompetitive activity [it] reported upon discovery of the activity." (GX-1, at 1 ¶ 1(a)).

347. Consistent with the Model Agreement, the requirement that Stolt take prompt and effective action to terminate the anticompetitive conduct was triggered by its discovery of the activity being reported. (GX-1, at 1 ¶ 1(a)).

348. The phrase "prompt and effective action to terminate" is not defined in the Conditional Agreement. The parties intended interpretation of this phrase to be guided by the Division's 1998 Policy Statement, which provides express guidance to leniency applicants on the meaning of their obligation to take "prompt and effective action to terminate their illegal activity upon discovery." Specifically, a leniency applicant must "refrain[] from further participation [in the conspiracy] unless continued participation is with Division approval." (GX-4, at 3 ¶ IIA.1). Stolt concedes it understood this meaning of their obligation. (See, Stolt Mem. 12–13 In Support of Its Motion to Dismiss the Indictment).

349. "Prompt and effective action to terminate" should be construed to have its reasonable meaning, i.e., action that does not lead to actual termination of a company's anticompetitive activity within a reasonable period after discovery is not prompt and effective.

This interpretation is supported by Stolt's employees' understanding of the term "prompt" in Stolt's Antitrust Compliance Policy. (See Pickering, 5/31/07 p.150 lines 9-15).

350. In fact, Stolt's antitrust compliance seminars, conducted after O'Brien's discovery, discussed the Division's Leniency Policy and correctly explained that prompt termination meant "[s]top illegal activity immediately upon discovery." (GX-30, at 21 (Slide from Stolt Antitrust Compliance Seminar Presentation, Apr. 2002)).

351. The Division explained in a 1998 Policy Statement (GX-4) that "[t]ermination does not require announcement of withdrawal in the illegal activity to the other participants in the conspiracy (although that would constitute one means of termination). Termination can also be effectuated by reporting the illegal activity to the Division and refraining from further participation unless continued participation is with Division approval." (GX-4, at 3 ¶II A.1).

352. A company need not legally withdraw from a conspiracy to satisfy the requirement that it took prompt and effective action to terminate its part in the anticompetitive activity. Termination of the company's participation in the conspiracy is sufficient. (Griffin, GX-5 p. 193 line 23 to p. 195 line 8). Accordingly, the Conditional Agreement provides protection through the date the conduct is reported in order to assure the corporate applicant that it will not be subject to prosecution if its coconspirators continued to carry out the conspiracy after the applicant terminated its own active participation. (Griffin, GX-5 p. 209 line 23 to p. 210 line 19). Giving Stolt conditional protection up to January 15, 2003 covered contracts that were rigged prior to March 2002 but were still in effect on January 15, 2003, a date of unequivocal withdrawal. (See, e.g., Long, 6/5/07 p. 65 line 25 to p. 66 line 14 (concern in signing Stolt's compliance of confirmation)).

353. Consistent with the Model Agreement, the Conditional Agreement does not include an exact date of discovery. Because the Division did not know with certainty the date of discovery at the time the agreement was signed, it did not include such a date in the Agreement. (See Griffin, GX-5 p. 209 lines 2-22).

354. The language in the Christie's International plc conditional agreement is irrelevant to this case. Christie's voluntarily waived its attorney-client privilege, enabling the Government to make a date-specific statement about the timing of discovery in its agreement. (DX-43). In this case, Stolt expressly declined the Government's request that it make a limited waiver of its privilege and permit the Government to question O'Brien concerning his knowledge of the company's illegal activities. (See Griffin, GX-5 p. 204 line 22; p. 205 line7). The Government honored Stolt's decision not to make a partial waiver of its attorney-client privilege and, as a result, the Government could not narrow its definition of "discovery" as it had done in the Christie's agreement. Accordingly, the Stolt Agreement contains the standard language contained in the Model Agreement. (Compare GX-1 with GX-4, Attachment).

b. Stolt agreed to provide "full, continuing and complete cooperation"

355. Consistent with the Model Agreement, in the Conditional Agreement, Stolt agreed to provide "full, continuing and complete cooperation. . . , including . . . a full exposition of all facts known to [Stolt] relating to the anticompetitive activity [Stolt] reported." (GX-1, at 1 ¶ 2 to 2(a)).

c. Conditional Agreement did not grant Stolt leniency

(1) Division's promise not to prosecute is expressly conditioned upon truth of Stolt's representations and Stolt's cooperation

356. In the Conditional Agreement, the Antitrust Division agreed not to prosecute Stolt for any act or offense it may have committed prior to January 15, 2003 in connection with the anticompetitive activity Stolt reported, i.e., "possible collusive activity or other conduct violative of the Sherman Act in the parcel tanker industry involving transportation to and from the United States." (GX-1 Preamble, ¶¶ 1, 3). However, this promise is expressly conditioned upon Stolt first satisfying its obligations under the Conditional Agreement, i.e., Stolt's representations in paragraph 1 must be true and Stolt must have cooperated as required in paragraph 2. (GX-1 at 2 ¶ 3).

357. The Antitrust Division's promise not to prosecute Stolt was subject to Stolt's "strict compliance" with the conditions set forth in the Conditional Agreement. Stolt-Nielsen v. United States, 442 F.3d 177, 180 (3d Cir. 2006).

(2) The Division is entitled to verify representations

358. The Division was entitled to verify the truth of the representation Stolt made in the Conditional Agreement, including the representation that it "took prompt and effective action to terminate its part in the anticompetitive activity [it] reported upon discovery of the activity." (GX-1 at ¶¶ 1(a), 3) ("Subject to verification of [Stolt's] representations in paragraph 1 above, and subject to its full, continuing and complete cooperation, as described in paragraph 2 above, the Antitrust Division agrees conditionally to accept [Stolt] into Part B. of the Corporate Leniency Program . . .").

(3) Conditional Agreement is void if the Division determines Stolt has violated it, subjecting Stolt to prosecution without limitation

359. The Conditional Agreement provides that if the Antitrust Division determines Stolt has violated the Agreement, the Agreement "shall be void," and the Antitrust Division "may revoke [Stolt's] conditional acceptance . . . into the Corporate Leniency Program." (GX-1, at 3 ¶ 3).

360. The Conditional Agreement provides that if the Antitrust Division revokes Stolt's conditional acceptance into the Corporate Leniency Program, the Division may "initiate a criminal prosecution against [Stolt], without limitation" and any "documentary or other information provided by [Stolt], as well as any statements or other information provided by any current or former director, officer or employee of [Stolt] . . . may be used against [Stolt] in any such prosecution." (GX-1 ¶ 3).

d. Leniency for individuals is subject to Stolt's cooperation and individual's own conditions

361. Subject to "[Stolt's] full, continuing and complete cooperation," the Conditional Agreement provides non-prosecution protection for corporate directors, officers and employees of Stolt on the following conditions: (a) they "admit their knowledge of, or participation in" the anticompetitive activity Stolt reported, and (b) they "fully and truthfully cooperate with the Antitrust Division in its investigation of the anticompetitive activity" Stolt reported. (GX-1, at 3 ¶ 4). The required cooperation includes "otherwise voluntarily providing the United States with any materials or other information, not requested in [other subparagraphs], that he or she may have relevant to the anticompetitive activity being reported." (GX-1, at 3 ¶ 4(d)).

362. The term "voluntarily" is not defined in the Conditional Agreement and should be

construed to have its reasonable meaning. Defendants' argument that the term "voluntarily" means without being compelled by subpoena is not supported by the testimony of Stolt's own employees. Stolt's antitrust policy contains a provision using the term "voluntarily" (GX-28, at 9 ¶ VII), and Pickering understood that to do something voluntarily meant to do something without having to be asked. (See Pickering, 5/31/07 p. 150 lines 3-8).

2. Stolt understood the terms of the Conditional Agreement

363. Nannes understood that (a) the Agreement was conditional, (b) Stolt's representations in the Agreement were conditions of the Agreement, (c) the Agreement would be void if the conditions were not met, and (d) Stolt could be prosecuted without limitation if the Agreement were void. (Nannes, GX-6 p. 58 line 10 to p. 59 line 4).

364. Stolt understood the Conditional Agreement was conditional. Before Nannes contacted the Antitrust Division on Stolt's behalf, Nannes reviewed the criteria for a successful application with Cooperman and Stolt's counsel, even though Nannes believed they already were aware of them. (Nannes, GX-5 p. 113 lines 19 to p. 115 line 22). Earlier in 2002, Gary Sesser, Stolt's outside antitrust counsel, conducted a compliance program for all Stolt employees that included a PowerPoint presentation outlining the requirements to qualify for the Corporate Leniency Program, including the requirement that a company must stop its illegal activity upon discovery. (Nannes, GX-6 p. 65 line 7 to p. 66 line 11; Cleary, 6/1/07 p. 107 line 23 to p. 110 line 8; GX-30, at 21). The PowerPoint presentation said the illegal conduct must stop immediately upon discovery. (GX-30, at 21). Both Cooperman and Wingfield attended this compliance seminar. (See DX-389, at 179094-95 (April 24, 2002 Compliance Meeting Sign-in Sheets)).

365. Nannes advised Stolt that even if it provided incriminating evidence, if leniency was not granted it could still be prosecuted: "the clear implication of the leniency agreement was if you went into [sic] the Antitrust Division, you bared your soul, provided them with incriminating evidence, that could be compromising to your position in the event the government didn't accord you leniency." (Nannes, GX-6 p. 60 lines 11-19) (emphasis added).

366. In February 2003, Stolt publicly admitted that it understood the Conditional Agreement was conditional in a press release, in which it stated that its leniency was "subject to the conditions of the amnesty program[], including continued cooperation." (GX-17).

367. Stolt employees also understood that the Conditional Agreement was conditional. (E.g., Pickering, 5/31/07 p. 156 lines 12-21).

D. Defendants' Cooperation

1. Production of documents

368. On January 31, 2003 and February 18, 2003, the Government made written requests for documents from Stolt. (Nannes, GX-6 p. 8 lines 13-22; p. 15 line 21 to p. 16 line 6). The Government used letter requests for documents, rather than subpoenas duces tecum, at the express request of Nannes. (Nannes, GX-6 p. 78 line 15 to p. 79 line 15).

369. In response, Stolt produced:

a. Three boxes of business records that had already been gathered for production to the European Commission. These documents included the customer allocation lists, expense reports reflecting meetings with Odfjell, and portions of Wingfield's business journals. (Nannes, GX-6 p. 5 line 21 to p. 7 line 7); and

b. Files maintained by Bjorn Jansen and a lower-level employee. (Nannes, GX-6 p. 16 line 7 to p. 17 line 9).

370. All of the customer lists had been produced by Wingfield to Nannes before Nannes made a factual proffer to the Government and before the Conditional Agreement was signed. (Nannes, GX-5 p. 155 line 23 to p. 161 line 14). The customer lists would be clear, without explanation, only to "someone in the business." (See Pickering, 5/31/07 p. 196 lines 5-13).

371. The documents produced by Stolt were its business records, subject to subpoena. (See Nannes, GX-6 p. 79 lines 9-15).

2. Jansen and Pickering interviews

372. On February 5, 2003, Nannes brought Jansen and Pickering to Government offices for interviews. (Nannes, GX-6 p. 5 lines 14-20).

373. Jansen and Pickering were interviewed and received protection pursuant to individual agreements with the Government. (Nannes, GX-6, p. 10 lines 12 to p. 12 line 18; p. 69 line 15 to p. 70 line 7; see DX-6 (Jansen agreement); DX-7 (Pickering agreement)).

374. During his interview, Jansen falsely told Government attorneys that he ended his conspiratorial conduct when the company's new antitrust policy came into effect. (Nannes, GX-6 p. 70 line 23 to p. 71 line 1; Jansen, 6/13/07 p. 137 lines 1-16; p. 141 lines 12-16). Jansen further falsely stated that Wingfield and all other Stolt employees also ended their conspiratorial conduct at that time. (Nannes, GX-6 p. 70 line 23 to p. 71 line 6).

375. The statements by Jansen during his February 5, 2003 interview were consistent with the information Nannes had previously provided Government officials. (Nannes, GX-6 p.

71 lines 7-15). The Government does not contend Nannes was aware that Jansen lied to the Government.

376. After his interview, Jansen told Wingfield that he lied to the Government about when he and Wingfield ended their conspiratorial activities. (Jansen, 6/13/07 p. 144 line 13 to p. 145 line 19).

3. Defendant's full exposition of the facts

377. Stolt proffered information to the Government that, beginning in 1998, Stolt had been involved in a conspiracy to allocate customers with its competitors, Odfjell and Jo Tankers. (Nannes, GX-5 p. 164 line 18 to p. 166 line 10). Nannes did not identify specifically the Stolt employees who provided this information to him. (Nannes, GX-5, p. 166 lines 11-20).

378. Stolt told the Government that O'Brien's discovery of the Jansen Memo (GX-2) was the event that prompted Stolt to take steps to revise its antitrust policy. (Nannes, GX-6 p. 53 lines 18-22). Stolt never told the Government that Nannes, not O'Brien, discovered the conspiracy. (Nannes, GX-6 p. 79 line 16 to p. 80 line 1; Griffin, GX-5 p. 205 line 8 to p. 206 line 10).

379. Stolt told the Government that Wingfield met personally with representatives of Odfjell and Jo Tankers at the March 2002 NPRA meeting and told them that Stolt had a new antitrust policy and that it was going to adhere to that policy. (Nannes, GX-6 p. 50 line 25 to p. 51 line 25).

380. Stolt told the Government that it communicated withdrawal from the conspiracy to Jo Tankers and Odfjell in March 2002. (Nannes, GX-6 p. 53 lines 4-9).

381. Stolt neither told the Government nor provided any information to the

Government about its participation in the conspiracy after March 2002. (Nannes, GX-6 p. 52 line 22 to p. 53 line 12).

382. Stolt never told the Government nor provided any information to the Government about the conspiratorial contacts that Wingfield and Jansen had with Odfjell and Jo Tankers after March 2002, including conspiratorial discussions during the June 2002 London meeting with Odfjell, their October Heathrow meeting, or about contacts related to the Sasol, Shell-Pecten and SK contracts.

383. At no time did Stolt advise the Government that the information provided by Jansen was false. (Nannes, GX-6 p. 71 line 7-11).

384. No one at Stolt told Nannes that the conspiracy continued after March 2002. (Nannes, GX-6 p. 53 lines 10-12). Nannes considered this information to be "important" and had anyone from Stolt told Nannes about the conspiratorial activity after March 2002, Nannes would have given this information to the Government. (See Nannes, GX-6 p. 31 lines 17-20).

385. Even after Jansen told Wingfield that he lied to the Government about when they ended their conspiratorial activities, Wingfield never told Nannes that he continued to conspire with Odfjell and Jo Tankers until November 2002. (See Nannes, GX-6 p. 31 lines 12-16).

386. Nannes interviewed Wingfield "at least a dozen times." (Wingfield, 6/6/07 p. 91 lines 13-17). Wingfield expected any information he provided to Nannes to be passed on to the Government. (See Wingfield, 6/6/07 p. 94 lines 8-12). Had Wingfield given information to Nannes concerning the continuation of the conspiracy after March 2002, Nannes would have considered it important information to give to the Government. (Nannes, GX-6 p. 31 lines 17-20).

387. Cooperman and Wingfield admit that the Government never spoke to them directly and any information they provided to the Government was through Nannes. Nannes never identified Wingfield or Cooperman as the source of any information he proffered the Government. (Nannes, GX-5, p. 166 lines 11-20).

388. Wingfield testified that, if he had been interviewed by the Government prior to its revocation of Stolt's Conditional Leniency Agreement, he would have provided the same information as he testified to during his hearing. (Wingfield, 6/6/07 p. 95 lines 5-16). This admission by Wingfield demonstrates that, had the Government interviewed him in 2003 or at any time prior to this Hearing, he would have lied.

E. Suspension and Revocation of the Conditional Agreement

1. Finlay's Interview - April 2003: Division obtains first evidence that Stolt continued to conspire

389. Hugo Finlay of Jo Tankers was the first non-Stolt witness interviewed by the Government. He was interviewed in April 2003. (See Amended Stipulation and Order filed July 9, 2007) (Doc. No. 275).

390. At the time of his interview, Finlay knew nothing about the Government's investigation. (Finlay, 6/14/07 p. 73 lines 24 to p. 74 line 2).

391. At the time of his interview, Finlay did not know what Stolt or anyone had told the Government about the customer allocation agreement. (Finlay, 6/14/07 p. 74 line 25 to p. 75 line 4).

392. At the time of his interview, Finlay also did not know what Stolt told the Government about who was involved in the agreement, the scope of the agreement, or when the

agreement began or ended. (Finlay, 6/14/07 p. 75 lines 5-20).

393. During his interview, Finlay provided credible information that Stolt did not withdraw from the conspiracy during the March 2002 NPRA meetings as Nannes proffered, but instead continued to conspire thereafter. (See Griffin, GX-5 p. 204 line 6; p. 211 lines 9-14).

2. As a matter of fairness, the Division suspended Stolt's obligations under the Conditional Agreement

394. On April 8, 2003, the Government notified Stolt that it had obtained evidence that Stolt had not met the conditions for leniency set forth in the Conditional Agreement. The Government suspended Stolt's obligation to cooperate under the Conditional Agreement, pending further investigation of Stolt's eligibility for leniency. (DX-11).

395. The Government suspended Stolt's obligation to cooperate under the Conditional Agreement out of fairness to Stolt. (Griffin, GX-5 p. 212 lines 5-11).

396. While the April 8, 2003 letter suspended Stolt's obligation to cooperate, it did not prohibit Stolt or its employees from presenting additional information to the Government. (Griffin, GX-5 at 212 lines 12-15).

397. Nowhere in the April 8, 2003 suspension letter, does the Division suggest that it was suspending Stolt's obligation on the Conditional Agreement because Stolt failed to conduct an independent investigation or discipline its employees. (See DX-11).

398. After receiving the April 8, 2003 suspension letter, Nannes sought and received the opportunity to meet with Government attorneys to present information that Stolt claimed showed that its conspiratorial activity did not continue after March 2002. (Nannes, GX-6 p. 72 line 7 to p. 76 line 7; p. 80 lines 9-21).

399. During an April 21, 2003 meeting with the Government, Nannes brought a copy of an October 2002 entry in Wingfield's business journal referencing Sasol and Erik Nilsen of Odfjell with the notation "EN - Not Accepting!! backbone of [Odfjell] trade told him won't discuss" (GX-26B.5746-47), and said that the entry showed Wingfield and Stolt were not engaged in ongoing illegal activities with Odfjell after March 2002. (Nannes, GX-6 p. 76 line 22 to p. 78 line 3). Prior to making this representation to the Government attorneys, Nannes had discussions with Wingfield about the conspiracy. (Nannes, GX-6 p. 78 lines 11-14). This representation to the Government was false and misleading as shown by the evidence at this hearing, including Wingfield's own admission on cross-examination that he spoke to Odfjell a number of times concerning Sasol. (See Wingfield, 6/6/07 p. 91 line 18 to p. 93 line 15).

400. After the Government issued the April 8, 2003 suspension letter, Jansen obtained his own counsel and recanted the lies he told during his February 2003 interview. Jansen also told the Government that he had told Wingfield about his lying to the Government in his February interview. (Jansen, 6/13/07 p. 144 line 13 to p. 145 line 19).

401. Stolt counsel continue to meet with Division officials concerning its suspension. In addition to its staff attorneys having meetings and discussions with Stolt, Division officials, including the Assistant Attorney General, met with Stolt counsel in Washington several times. (Griffin, GX-5 p. 212 line 16 to p. 213 line 12; see Nannes, GX-6 p. 79 lines 16-20).

402. At no time during any of these meetings, did Nannes ever say that O'Brien did not discover Stolt's illegal conduct but instead he (Nannes) discovered it in January 2003. It was not until over a year later in April 2004 during the civil hearing that Nannes stated that O'Brien did not discover Stolt's illegal conduct. (See Nannes, GX-6 p. 79 line 21 to p. 80 line 1).

3. Stolt's lies and omissions impeded and delayed the Government's investigation

403. As a result of Stolt's failure to cooperate and tell the truth about the scope of its participation in the conspiracy, the Government was forced to spend additional time and resources to learn the truth. It immunized coconspirators it otherwise could have prosecuted and entered into plea agreements that were less favorable than they would have been had Stolt been completely forthcoming from the outset. (See GX-18A-C; 19A-B)

404. The Government entered into plea agreements with corporations, Odfjell and Jo Tankers, that required the Government to file a motion to depart from the Sentencing Guidelines based on their substantial assistance in providing evidence concerning the true duration of the conspiracy. (GX-18A, 19A).

405. The Government entered into plea agreements with Sjaastad and Nilsen of Odfjell and van Westenbrugge of Jo Tankers that required the Government to file motions to depart from the Sentencing Guidelines based on their substantial assistance in providing evidence concerning the true duration of the conspiracy. (GX-18B-C, 19B). The Government did so and each was given a reduced sentence. (Sjaastad, 6/20/07 p. 92 lines 20-24; Nilsen, 6/15/07 p. 119 lines 6-13; van Westenbrugge, 6/14/07 p. 206 line 21 to p. 208 line 11).

406. Due to Stolt's failure to admit the conspiracy continued until November 2002, the Government also had to exclude the volume of commerce that was affected by the conspiracy after March 2002 in calculating the Sentencing Guideline fine and incarceration ranges for Stolt's coconspirators who provided such information. (GX-18A-C; 19A-B).

407. Other individuals who had participated in the conspiracy were provided protection

from prosecution under Odfjell's or Jo Tankers' corporate plea agreements. (E.g., Knutsen, 6/13/07 p. 14 lines 7-22; Nystad, 6/11/07 p. 110 line 12 to p. 111 line 3).

408. During its investigation, the Government entered into separate, individual cooperation/immunity agreements with Stolt employees. These agreements provided Stolt employees with protection from prosecution even if the Government revoked Stolt's Conditional Agreement. (See, e.g., Humphreys, 6/4/07 p. 61 line 17-23; DX-513; Cleary, 6/1/07 p. 107 lines 3-12).

4. Revocation of the Conditional Agreement

409. On March 2, 2004, the Government revoked Stolt's conditional acceptance into the Government's Corporate Leniency Program. (DX-20).

410. As the Government advised Stolt, the revocation was based on two independent grounds: 1) Stolt's false representation in paragraph 1(a) of the Agreement that it took prompt and effective action to terminate its part in the anticompetitive activity it reported upon discovery of the activity; and 2) Stolt's failure to provide the full and complete cooperation required in paragraph 2 of the Agreement. (DX-20).

411. Nowhere in the March 2, 2004 revocation letter, does the Division suggest that it was suspending Stolt's obligation on the Conditional Agreement because Stolt failed to conduct an independent investigation or discipline its employees. (See DX-20).

412. Upon the Government's determination that Stolt violated the Conditional Agreement, the Agreement was void. (DX-20; see GX-1 ¶ 3).

5. Stolt employees with non-prosecution agreements have protection

413. The Stolt employees who testified at the hearing (except Richard Wingfield) had

previously entered into to individual non-prosecution agreements or had been previously been conferred immunity. Such protections stand despite the revocation of Stolt's corporate leniency. (See, e.g., Pickering, 5/31/07 p. 156 line 2 to p. 157 line 6; DX-7; Humphreys, 6/4/07 p. 61 line 17-23; DX-513; Cleary, 6/1/07 p. 107 lines 3-12).

F. Stolt's Representation That it Took Prompt and Effective Action to Terminate its Anticompetitive Conduct Upon Discovery is False

1. O'Brien discovered the conspiracy

414. In January 2002, O'Brien discovered a copy of the Jansen Memo (GX-2), which had been left anonymously on his desk. (Nannes, GX-6 p. 70 lines 12-13, p. 96 lines 14-17; O'Brien, 6/14/07 p. 33 line 7 to p. 34 line 6).

415. O'Brien's knowledge of the parcel tanker shipping industry and Stolt's business enabled him to understand that the Jansen Memo was a conspiratorial document in which Jansen discussed the illegal agreement Stolt had with Odfjell. (See FOF 29-36).

a. Cooperman's admissions to Nannes prove O'Brien discovered the conspiracy

416. During his testimony in the civil case, Nannes testified that Cooperman admitted that O'Brien told Cooperman that he believed that "as exhibited in the Jansen [Memo]" Stolt "had engaged in cooperation in the form of an express agreement with Odfjell to allocate customers," in violation of the law. (Nannes, GX-6 p. 103 lines 17 to p. 104 line 19). Nannes, in his hearing testimony, conceded that O'Brien's allegations that Stolt had been involved in price fixing were true. (Nannes, GX-6 p. 39 line 11 to p. 40 line 3).

417. Nannes also admitted that the date on which O'Brien obtained the Jansen Memo could constitute discovery for purposes of the leniency application. (See Nannes, GX-6 p. 104

line 20 to p. 105 line 1).

b. Wingfield's journal entries show that O'Brien discovered the conspiracy

418. Wingfield's November 25, 2002 journal entry contains the notation "first found out - ended promptly," which Cooperman told him was a condition for Stolt to be admitted into the Conditional Leniency Program. (See Wingfield, 6/6/07 p. 83 line 16 to p. 85 line 8; GX-26C.5789.A-5790.A). Directly under that notation, Wingfield wrote "Gave AT policy to competitors/partners." (Wingfield, 6/6/07 p. 85 line 16 to p. 86 line 10). It is undisputed that Wingfield gave Stolt's antitrust policy to its competitors shortly after the March 2002 NPRA meeting. The obvious meaning of this entry is that in November 2002, Stolt recognized it had discovered its illegal activity prior to the NPRA meetings and would claim it complied with its obligation to terminate by providing its antitrust policy to its competitors following the March 2002 NPRA meetings. The fact Wingfield wrote the journal notations while discussing the conditions for leniency with Cooperman show that Stolt discovered its illegal conduct before the March 2002 NPRA meeting. These journal entries show that Cooperman and Wingfield discussed a critical condition of the Leniency Policy, and prove that Cooperman and Wingfield understood the Agreement was conditional, and that they knew one of those conditions was that Stolt had to have ended its part in the conspiracy upon O'Brien's discovery of it.

c. Nannes never disputed that O'Brien discovered the conspiracy

(1) Meetings and discussions between Nannes and Division were premised on shared belief that O'Brien discovered conspiracy

419. Nannes also admitted that all his meetings and discussions with the Division were premised on the shared belief that O'Brien's discovery of the Jansen Memo was the event that

prompted Stolt to take steps to revise its antitrust compliance policy. (See Nannes, GX-6 p. 53 lines 13-22).

(2) Nannes never said that O'Brien did not discover conspiracy

420. Nannes further admitted that when he met with Division officials to discuss their concerns about the allegations in O'Brien's lawsuit, he never told them that O'Brien did not discover Stolt's illegal conduct. (Nannes, GX-6 p. 40 lines 19-23). Instead, he told Division officials that the proper issue for the Division to consider was "what the company did after Mr. O'Brien learned about the antitrust conduct." (Nannes, GX-6 p. 35 lines 13-18; p. 36 line 18 to p. 37 line 8). This proves Nannes knew O'Brien discovered the conspiracy.

(3) Nannes never claimed to have discovered the conspiracy

421. At no time when he met with Division officials, did Nannes claim that he discovered the conspiracy. (Nannes, GX-6 p. 40 lines 19-23).

d. Stolt's reaction to O'Brien's discovery of the Jansen Memo proves O'Brien discovered the conspiracy

422. The steps Stolt took following O'Brien's discovery of the Jansen Memo, e.g., revising its antitrust policy, holding seminars, and requiring 130 employee confirmations, prove O'Brien discovered the conspiracy.

e. Wingfield admitted to Jo Tankers and Odfjell that O'Brien discovered the conspiracy

423. Wingfield told Jo Tankers that O'Brien was blackmailing the company over their illegal agreement. (See Finlay, 6/14/07 p. 157 line 20 to p. 158 line 7).

424. Wingfield told Odfjell that O'Brien was threatening to expose the illegal agreement between Stolt and Odfjell. (Nystad, 6/11/07 p. 119 line 25 to p. 120 line 12; Nilsen,

6/15/07 p. 125 lines 4-19; see Sjaastad, p. 102 lines 16-10).

425. These statements by Wingfield are admissions that O'Brien discovered the conspiracy.

2. Stolt failed to take prompt and effective action to terminate its illegal conduct

426. Stolt failed to take prompt and effective action to terminate its part in the illegal activity it reported to the Government upon its discovery by O'Brien in January 2002.

a. Cooperman and Stolt knowingly sent Stolt's principal coconspirator, Wingfield, allegedly to withdraw from the conspiracy

427. Cooperman knew that, prior to March 2002, Richard Wingfield was Stolt's principal representative in its illegal agreement with Odfjell and Jo Tankers because Cooperman and Wingfield discussed it during this time. (See Wingfield, 6/6/07 p. 8 line 8 to p. 9 line 22).

428. Lee knew that, prior to March 2002, Wingfield was a principal coconspirator for Stolt in its illegal agreement with Odfjell and Jo Tankers because Wingfield reported to Lee about conversations, discussions and important matters concerning the agreement. (See Wingfield, 6/6/07 p. 8 line 8 to p. 9 line 2).

429. Cooperman knew that, prior to March 2002, Bjorn Jansen was a principal representative for Stolt in its illegal agreement with Odfjell because they discussed it; Cooperman and Jansen had one such discussion on May 18, 2001. (Jansen, 6/13/07 p. 93 line 3 to p. 94 line 11).

430. Lee knew that, prior to March 2002, Jansen was a principal representative for Stolt in its illegal agreement with Odfjell because they discussed it. (See Jansen, 6/13/07 p. 97 lines 21-24).

431. Even though they knew of his past conspiratorial conduct, Cooperman and Lee directed Wingfield to meet personally at the March 2002 NPRA meeting with individuals from Jo Tankers and Odfjell who had participated in the illegal customer allocation agreement with Wingfield. (See Wingfield, 6/6/07 p. 25 lines 4-12; p. 29 lines 1-11).

432. Cooperman and Lee waited almost two months after O'Brien's discovery of the conspiracy, i.e., until the end of March 2002, before sending Wingfield to meet personally with representatives of Odfjell and Jo Tankers to inform them of the issuance of Stolt's revised antitrust policy. (Wingfield, 6/6/07 p. 25 lines 4-12; p. 29 lines 1-11). During that time no one from Stolt contacted Odfjell or Jo Tankers to advise them that the illegal agreement was over. (See Wingfield, 6/6/07 p. 25 lines 13-17).

3. Stolt did not take prompt and effective action because the strict requirements imposed on lower-level employees after March 2002 were not applied to Wingfield

a. Wingfield was not required to prepare meeting agendas or minutes

433. Wingfield instructed lower-level Stolt employees that they write minutes and agendas for meetings with competitors. (See Soffree, 6/4/07 p. 57 lines 9-19; DX-441). Wingfield, himself, also told Odfell employees that such documentation was required. (See Haugsdal, 6/12/07 p. 89 line 18 to p. 90 line 9; p. 164 lines 15-21; Nilsen, 6/15/07 p. 184 lines 19-22; Nilsen, 6/19/07 p. 233 lines 5-10).

434. There is no evidence that an agenda or minutes were prepared for Wingfield's meetings with Odfjell or Jo Tankers at the March 2002 NPRA meeting.

435. There is no evidence that an agenda or minutes were prepared for Wingfield's June 2002 meeting with Nilsen and Haugsdal in London. (See also Haugsdal, 6/12/07 p. 164

lines 15-21).

436. There is no evidence that an agenda or minutes were prepared for Wingfield's October meeting with Nilsen and Haugsdal at London's Heathrow Airport.

b. Wingfield was sent unsupervised to meetings with competitors

437. Pursuant to Stolt's 2002 antitrust policy, lower-level Stolt employees were not permitted even to have social contacts with competitors. (See, e.g., Soffree, 6/4/07 p. 48 line 15 to p. 49 line 2; Harrison, 5/31/07 p. 226 lines 8-17). For example, one non-commercial employee stopped all social contact with a neighbor who worked for a competitor company. (Judd, 6/1/07 p. 183 lines 11-19). Reginald Lee ordered another lower-level Stolt employee to end all social contact with a friend, with whom the employee played in a rock band on weekends. (Soffree, 6/4/07 p. 45 line 22 to p. 46 line 5).

438. Despite Stolt's application of the antitrust policy to lower-level employees, Wingfield was permitted, even directed, to meet with competitors, unaccompanied by lawyers and unsupervised, and with no minutes or other written record of the discussions. The only Stolt employee who accompanied Wingfield to the June London and October Heathrow meetings was Jansen, a fellow conspirator. (Wingfield, 6/5/07 p. 176 lines 21-23; Wingfield, 6/6/07 p. 67 lines 4-15). For example, Wingfield's claimed purpose for the October Heathrow meeting was to discuss service issues related to Odfjell's handling of sublets on Dow shipments on the BAJ trade lane. (Wingfield, 6/5/07 p. 176 line 21 to p. 177 line 15). However, Cleary, the Stolt executive responsible for and most knowledgeable about these issues was never told about the meeting, either before or after. (Cleary, 6/1/07 p. 97 line 23 to p. 98 line 9). If Stolt had genuinely attempted to enforce its antitrust policy, it would have known the scope of Wingfield's continued

contacts with competitors, and, in this instance, attempted to ascertain why Cleary not only did not attend the meeting but also did not even know about the October Heathrow meeting.

c. Stolt took no action to determine the purpose of Wingfield's contacts with Odfjell after Stolt failed to win Sasol contract

439. Despite Stolt's revised antitrust policy and its alleged determination to obtain the Sasol contract, there is no evidence that Cooperman, Lee or anyone else investigated whether Wingfield's calls with Odfjell had anything do with the fact that Stolt lost the Sasol contract in the South Africa to India trade lane in October 2002.

440. Wingfield had several telephone conversations with Odfjell concerning the Sasol bid on October 11, 2002, the day bids to Sasol were due. (See FOF 139-144, 152, 154). Humphreys informed Cooperman of at least one of these calls. (See FOF 148).

441. Cooperman never followed up with Humphreys concerning Wingfield's discussions with Odfjell on the day the Sasol bids were submitted. (See Humphreys, 6/4/07 p. 134 lines 3-7).

442. To Humphreys' knowledge, Cooperman never followed up with anyone concerning Wingfield's discussions with Odfjell on the day the Sasol bids were submitted (see Humphreys, 6/4/07 p. 135 lines 16-20), nor is there any evidence that Cooperman did so.

443. Cooperman did not follow up with Humphreys concerning Wingfield's discussions with Odfjell regarding Sasol even after Cooperman learned that Stolt lost the contract to Odfjell (Humphreys, 6/4/07 p. 139 lines 3-15), nor did Cooperman question Wingfield about the matter. (Wingfield, 6/6/07 p. 66 line 22 to p. 67 line 3). There is no evidence that Cooperman followed up with anyone concerning this matter.

4. Wingfield did not report Jansen's violation as required by Stolt's revised antitrust policy

444. Stolt's revised antitrust compliance policy and handbook required employees to report any conduct that may violate the antitrust laws to the company's General Counsel. (GX-29, at 179063). Despite admitting being present at the October Heathrow meeting when Jansen had requested Odfjell's intercession regarding Equatorial and Nilsen's agreement to look into the matter, Wingfield did not report this as required under the policy. (Wingfield, 6/6/07 p. 69 lines 13 to p. 70 line 2). The penalties contained in the 2002 policy and handbook, i.e., "demotion, reduction in pay, and termination of employment," for Jansen violating the policy and for Wingfield failing to report Jansen's violations were not applied to Wingfield or Jansen, both of whom have been on administrative leave and have received their full salaries since 2003. (See Wingfield, 6/5/07 p. 108 lines 13-15; p. 142 lines 2-25).

5. Any restrictions on lower-level employees' communications with competitors are not relevant to whether Stolt took prompt and effective action

445. Certain lower-level witnesses of Stolt did not even know of any collusive activity during the time Stolt admitted it colluded with competitors. (Judd, 6/1/07 p. 185 lines 15-18; Harrison, 6/1/07 p. 10 line 20 to p. 11 line 2). Stolt witness, Harrison, acknowledged that the collusion lasted for years without him even knowing about it. (Harrison, 6/1/07 p. 10 line 20 to p. 11 line 2). Since lower-level employees did not even know about Wingfield's and Jansen's collusive communications prior to March 2002, their lack of knowledge of their collusive activities after March 2002 is not relevant to whether Stolt took prompt and effective action.

446. Stolt's suggestion that Wingfield could not continue to carry out the conspiracy

without the involvement of lower-level employees, and that the authority of lower-level employees to submit bids without Wingfield's approval changed under the revised policy is wrong. It is inconsistent with both admissions of Stolt employees that there was no change in their pricing authority after March 2002 and Stolt's own documents. (See Harrison, 6/1/07 p. 6 line 12 to p. 7 line 23, p. 8 line 22 to p. 9 line 17; DX-2175, at 113092).

447. Lower-level employees' communications with competitors about the allocation agreement ended in 2001, well prior to any change in Stolt's antitrust policy. (Fleming, 6/5/07 p. 11 line 23 to p. 12 line 14; p. 46 line 7 to p. 47 line 5; Long, 6/5/07 p. 92 line 14 to p. 93 line 18). Wingfield had directed that such communications stop when he took charge in 2001 and directed that future conspiratorial contacts would be limited to him and Jansen. (See, e.g., Long, 6/5/07 p. 92 line 14 to p. 93 line 18).

448. This change did not prevent Wingfield from carrying out the conspiracy.

449. This change in Stolt's procedure was made by agreement with Odfjell because too many people had been involved in discussions. (Haugsdal, 6/12/07 p. 93 line 8 to p. 94 line 21; Nilsen, 6/19/07 p. 222 lines 3-10; Nystad, 6/11/07 p. 114 line 17 to p. 116 line 12, and p. 179 lines 3-25) and Wingfield wanted to personally control conspiratorial contacts. (Long, 6/5/07 p. 92 lines 14 to p. 95 line 24). Lower-level communications were not needed to implement the agreement, and the absence of such discussions diminished the risk of detection. (See Haugsdal, 6/12/07 p. 92 line 15 to p. 94 line 21).

450. While Wingfield's subordinates testified they did not know of his activities continuing the conspiracy after March 2002 (Harrison, 6/1/07 p. 16 lines 12-25; Confrey, 6/1/07 p. 233 line 19 to p. 235 line 7), they also admitted they typically would not expect to know of

Wingfield's activities generally. (E.g., Harrison, 6/1/07 p. 18 lines 8-18).

451. Even the Stolt lower-level employees who admitted communicating with competitors prior to 2002 did not testify that they had routinely discussed quotations for contracts of affreightment for customers on the allocation lists. Rather, Stolt and Odfjell lower-level employees occasionally talked to each other, as a courtesy, when an allocated customer put cargo on the spot market, a practice known as "flagging." A lack of flagging on spot cargoes in South America occurred from time to time both before and after March 2002. (Nilsen, 6/19/07 p. 57 lines 6-16; Nystad, 6/11/07 p. 147 line 8 to p.148 line 19; p. 214 line 1 to p. 215 line 3).

6. Stolt employees never told their coconspirators that the agreement was over

452. After Stolt revised its antitrust policy, Stolt employees were never told to respond to calls from Jo Tankers and Odfjell by saying that the conspiratorial agreement was over. (Cleary, 6/1/07 p. 128 lines 4-7).

453. After March 2002, lower-level Stolt employees who received telephone calls from competitors never told them that the agreement was over. (See, e.g., Vogth-Eriksen 6/4/07 p. 14 line 23 to p. 15 line 13 (deflected call from Knut Holsen by saying Humphreys was unavailable).

454. Jansen never told Nilsen or anyone from Odfjell that the agreement was over (Jansen, 6/13/07 p. 135 lines 5-12).

Respectfully submitted,

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Dated: August 23, 2007

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	)	
	)	CRIMINAL ACTION
v.	)	
	)	NO. 06-cr-466
STOLT-NIELSEN S.A., et al.	)	
	)	

CERTIFICATE OF SERVICE

This is to certify that on the 23th day of August, 2007, a copy of the Government's Amended Proposed Findings of Fact has been sent by first-class mail to counsel of record for the defendants as follows:

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