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14
15 UNITED STATES DISTRICT COURT
16 FOR THE CENTRAL DISTRICT OF CALIFORNIA
17 SOUTHERN DIVISION

18 UNITED STATES OF AMERICA,) SA CR 09-00077-JVS
)
19 Plaintiff,) GOVERNMENT'S OPPOSITION TO
) DEFENDANTS' MOTION TO COMPEL
20 v.) DISCOVERY; MEMORANDUM OF POINTS
) AND AUTHORITIES
21 STUART CARSON et al.,)
)
22 Defendants.)
)
23)

24
25 Plaintiff United States of America, by and through its
26 attorneys of record, the United States Department of Justice,
27 Criminal Division, Fraud Section, and the United States Attorney
28 for the Central District of California (collectively, "the

1 government"), hereby files its Opposition to Defendants' Motion
2 to Compel Discovery. The government's Opposition is based upon
3 the attached memorandum of points and authorities, the files and
4 records in this matter, as well as any evidence or argument
5 presented at any hearing on this matter.

6 DATED: October 21, 2009

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES**I.****INTRODUCTION**

In a motion sweeping in its requests, defendants seek to obtain from the government approximately 5.6 million documents, including a significant number of privileged documents, that are not in the government's possession, custody or control.¹ The government has turned over to the defense all non-privileged documents in its possession -- a total of approximately 39,000 pages which, in effect, comprises its entire case file. But the defendants, proposing a broad "constructive possession" theory that directly contradicts binding Ninth Circuit case law, now seek to obtain from the government approximately 75 million pages of documents in the possession of CCI, which amounts to over 1,900 times the number of pages which the government obtained from CCI in connection with its investigation.

The government has already instructed CCI to produce all documents related to corrupt payments, and the government is satisfied that CCI has fully complied with the government's requests. By turning over all non-privileged documents obtained from CCI, the government has gone beyond the requirements of Brady, Giglio, and Rule 16 to ensure that the defendants have all

¹ In their Motion to Compel, the individual defendants seek Control Component Inc.'s ("CCI") entire electronic database. At the time they filed their motion, the defendants, relying on the inaccurate page-count presented in CCI's corporate sentencing memorandum, indicated that the database contained 5.5 million pages. In its Reply Memorandum in Support of its Motion to Intervene, CCI states that the database actually contains 5.6 million documents, consisting of approximately 75 million pages. The defendants have not indicated to the government that they have altered their request for the entire database in any way so the government is proceeding based on the assumption that the defendants are seeking all 75 million pages.

1 documents remotely related to the matters under investigation.

2 Defendants' current request is the very definition of a
3 fishing expedition and is a barely concealed attempt to clog up
4 the case. To the extent defendants can identify specific,
5 relevant, and admissible documents in the possession of CCI, the
6 correct, well-established mechanism to obtain such documents is
7 through a subpoena served on CCI pursuant to Rule 17(c) of the
8 Federal Rules of Criminal Procedure. Defendants should not be
9 permitted to circumvent Rule 17 to obtain documents that are not
10 in the government's possession, custody or control.

11 **II.**

12 **FACTS**

13 A. The Indictment

14 A federal grand jury returned a sixteen-count indictment on
15 April 9, 2009 ("the Indictment"), charging defendants Stuart
16 Carson ("S. Carson"), Hong "Rose" Carson ("R. Carson"), Paul
17 Cosgrove, David Edmonds, Flavio Ricotti, and Han Yong Kim
18 (collectively, "the defendants") with conspiring to pay bribes to
19 officials of foreign state-owned companies and officers and
20 employees of foreign and domestic private companies for the
21 purpose of assisting their employer, CCI, to obtain and retain
22 business.

23 Count One of the Indictment charges the defendants with
24 conspiring to violate the Foreign Corrupt Practices Act ("FCPA"),
25 15 U.S.C. § 78dd-2, and the Travel Act, 18 U.S.C. § 1952, from
26 1998 through 2007. Counts Two through Ten of the Indictment
27 allege substantive FCPA violations involving corrupt payments to
28 foreign officials in Korea, China, United Arab Emirates, and

1 Malaysia. Counts Eleven through Fifteen allege substantive
2 violations of the Travel Act involving corrupt payments to
3 officers and employees of private companies. The final count of
4 the indictment alleges that defendant R. Carson obstructed an
5 investigation within the jurisdiction of a federal agency when
6 she destroyed documents relevant to CCI's internal investigation
7 of the corrupt payments by flushing them down the toilet of CCI's
8 ladies' restroom.

9 B. CCI's Guilty Plea

10 On July 31, 2009, CCI pleaded guilty before this Court to a
11 three-count Information. Count One of the Information charged CCI
12 with conspiring to violate the FCPA and the Travel Act; Counts
13 Two and Three charged CCI with substantive FCPA counts. The
14 Information and Statement of Facts filed with the Court largely
15 track the allegations in the Indictment in this case. This Court
16 imposed the sentence set forth in the corporate Plea Agreement,
17 which included an \$18.2 million criminal fine, three years of
18 organizational probation including the appointment of an
19 independent corporate monitor, and the creation and
20 implementation of a rigorous Compliance Code.

21 The Plea Agreement also requires CCI to continue to provide
22 full, complete, and truthful cooperation to the Justice
23 Department. Specifically, paragraph 6 of the Plea Agreement
24 states, in relevant part:

25 CCI shall truthfully disclose to the Department all
26 non-privileged information with respect to the
27 activities of CCI and its affiliates, its present and
28 former directors, officers, employees, agents,
**consultants, contractors and subcontractors, concerning
all matters relating to corrupt payments to foreign
public officials or to employees of private customers**

1 in connection with their operations about which CCI has
2 any knowledge and about which the Department, the
3 Federal Bureau of Investigation, or, at the request of
4 the Department, any foreign law enforcement authorities
5 and agencies, shall inquire. This obligation of
6 truthful disclosure includes the obligation of CCI to
7 provide to the Department, upon request, any **non-
privileged document, record, or other tangible evidence
relating to such corrupt payments to foreign public
officials or to employees of private customers** about
8 which the aforementioned authorities and agencies shall
9 inquire of CCI, subject to the direction of the
10 Department.

11 (Emphases added).

12 C. Discovery Provided

13 The government's investigation into the bribery charges
14 related to CCI and its employees arose from a voluntary
15 disclosure to the government made by IMI, CCI's parent company,
16 on August 15, 2007. IMI/CCI retained the law firm Steptoe &
17 Johnson ("Steptoe") to undertake an internal investigation with
18 regard to potential violations of the FCPA and other laws.
19 Steptoe retained forensic accountants at Ernst & Young to assist
20 with document collection and analysis. According to Steptoe,
21 Ernst & Young secured approximately 75 million pages of documents
22 and electronic records at the outset of the investigation,
23 including entire email servers and forensic images of over 200
24 hard drives of company employees.

25 On October 18, 2007, IMI/CCI and the government entered into
26 a Confidentiality and Non-Waiver Agreement, which provided that
27 IMI/CCI intended to cooperate in the government's investigation
28 by producing document compilations, oral summaries of witness
interviews, and other investigative findings (the "Confidential
Information"), some of which were protected by the attorney-
client privilege and/or the attorney work product doctrine. The

1 government agreed to maintain the confidentiality of the
2 Confidential Information and not disclose it to any third party,
3 except to the extent that disclosure was required by law.

4 Pursuant to the Confidentiality and Non-Waiver Agreement,
5 CCI, through Steptoe, produced approximately 37,000 pages of
6 documents to the government. Steptoe indicated that the
7 production consisted of the relevant, non-privileged documents
8 reflecting potentially improper payments to employees of state-
9 owned and private CCI customers. Steptoe also produced (1) a
10 chart of the 236 improper payments identified during its
11 investigation, and (2) a chart summarizing the gifts, travel, and
12 entertainment expenses provided to customers, and certain
13 improper training trips provided by CCI to employees of state-
14 owned enterprises. Steptoe assured the government throughout the
15 production process, and still maintains, that it searched the
16 documents previously secured by Ernst & Young for documents
17 relevant to corrupt payments made by CCI to state-owned or
18 private companies, and then turned over such documents to the
19 government.

20 Except for the handful of privileged documents created by
21 Steptoe and provided to the government (the government has
22 provided the individual defendants with Steptoe's privilege log
23 summarizing these documents), the government has produced to the
24 individual defendants every single page of every document
25 provided to the government by Steptoe.² The government has also

26
27 ² In their motion, defendants state that they are missing
28 about 5,000 pages of discovery material which CCI produced to the
government. See Defendants' Motion to Compel at 22-23. As CCI
can confirm, CCI erroneously stated in its Sentencing Memorandum

1 turned over the following categories of documents to the
2 defendants: (1) written summaries of the statements made to
3 Steptoe by the individual defendants during the course of
4 Steptoe's internal investigation, which were communicated orally
5 by Steptoe to the government; (2) written summaries of those
6 portions of statements made by witnesses to Steptoe during the
7 course of its internal investigation that are favorable to the
8 defendants, which were communicated orally by Steptoe to the
9 government; (3) all documents subpoenaed by the government or
10 obtained via Mutual Legal Assistance Treaty request during the
11 course of the government's investigation; (4) all documents
12 provided to the government by individual witnesses; (5) all
13 documents produced to the government by KPMG, the external
14 auditors for IMI and CCI; (6) all written agreements between the
15 government and individual witnesses; (7) all FBI 302 reports
16 except those relating to four witnesses, which the government
17 plans to provide sixty days before trial;³ and (8) any
18 Brady/Giglio material to the extent such material is not covered
19 by the above listed categories.

20 In accordance with the Court's May 18, 2009, Order, the
21

22 that it had produced approximately 42,000 pages of documents to
23 the government. In fact, CCI produced approximately 37,000 pages
24 of documents to the government. The government has also produced
25 to the defendants approximately 2,000 pages of additional
26 materials that the government obtained from non-CCI sources.

27 ³ As they have in the past, the defendants boldly assert
28 that the government "essentially outsourced its investigation to
Steptoe" See Defendants' Motion to Compel at 4. This
claim is patently false. While the government need not detail
the investigative steps it took in this case, the government
notes that it conducted over fifty witness interviews prior to
indictment.

1 government also produced to the defendants a Bill of Particulars
2 in the form of a chart summarizing each of the 236 improper
3 payments alleged in the indictment. See Exhibit 1 (attached).
4 The defendants now assert that the chart is deficient with regard
5 to several of the payments. See Defendants' Motion to Compel at
6 43-44.

7 In fact, the chart contains even more information than is
8 required by the Court's Order. It not only contains the "on or
9 about date" and approximate amount of each of the 236 alleged
10 improper payments, but provides the names of both the
11 intermediaries **and** ultimate recipients, where known, together
12 with their respective business affiliations. The government also
13 provided the defendants with explanatory endnotes, which supply
14 further information, especially with respect to the substantive
15 counts payments. The chart and endnotes, together with the
16 government's identification of the Bates range at which the
17 supporting documents for each of the 236 payments are
18 sequentially organized, provide a straightforward framework which
19 allows the defendants to easily "mesh the discovery with the
20 Indictment." See Court's May 18, 2009, Order at 2.

21 D. Defendants' Motion to Compel Discovery

22 In their Motion to Compel Discovery, the defendants,
23 positing a broad "constructive possession" theory that reaches
24 private parties, seek a wide range of documents, none of which
25 are in the actual possession, custody or control of the
26 government except for the eight documents listed on the CCI
27 privilege log and a small number of correspondence documents and
28 drafts of CCI's Plea Agreement. The defendants seek, *inter alia*:

1 (1) all 5.6 million documents in the electronic database that
2 Ernst & Young created to permit Steptoe to search for relevant
3 documents; (2) the documents identified on CCI's privilege log;
4 (3) all documents relating to Steptoe's internal investigation,
5 including interview memoranda; (4) documents reflecting
6 communications between IMI and/or CCI and the government; and (5)
7 several other broad categories of documents.

8 While the government is committed to fulfilling all aspects
9 of its discovery obligations, it strongly opposes this effort to
10 further delay this case because: (1) the defendants' broad
11 "constructive possession" theory has no merit and, in any event,
12 does not apply to the many documents requested that are outside
13 the scope of CCI's cooperation agreement because they are not
14 related to corrupt payments; (2) it seeks documents protected by
15 CCI's attorney-client privilege and work product doctrine; and
16 (3) to the extent defendants can identify specific, relevant, and
17 admissible documents that the government has not produced,
18 defendants can obtain such materials via the proper, and more
19 direct, means -- a Rule 17(c) subpoena served upon CCI.

20 **III.**

21 **ARGUMENT**

22 Under general principles of contract law, the defendants,
23 who are not a party to the Plea Agreement, cannot seek to enforce
24 one of its provisions. Furthermore, pursuant to Ninth Circuit
25 Authority, the documents sought by the defendants are not within
26 the government's possession, custody or control for purposes of
27 Rule 16. To the extent CCI possesses additional documents that
28 the defense believes are material to their case, which the

1 government has no reason to believe actually exist, the
2 defendants should seek to obtain such documents via the more
3 direct, well-established mechanism of a Rule 17(c) subpoena
4 served on CCI.

5 A. Defendants Have No Authority to Compel the Government to
6 Request Documents from CCI Pursuant to a Plea Agreement
to which they were not a Party

7 To the extent that CCI possesses any documents that the
8 defendants now seek and that have not already been produced, the
9 individual defendants cannot compel the government to seek
10 additional documents from CCI as a result of cooperation language
11 in a plea agreement entered into between the government and CCI.
12 As a third party, the individual defendants cannot seek to
13 enforce a plea agreement between two other parties, especially
14 where they are not third party beneficiaries. See United States
15 v. Lopez, 944 F.2d 33, 36-37 (1st Cir. 1991) (stating that court
16 is unaware of legal authority to allow enforcement of plea
17 agreement by a third party).

18 Federal courts can look to general principles of contract
19 law to interpret a plea agreement. United States v. Given, 164
20 F.3d 389, 395-96 (7th Cir. 1999). "Individuals who are not
21 parties to a contract may enforce its terms only when the
22 original parties intended the contract to directly benefit them
23 as third parties." United States v. Andreas, 216 F.3d 645, 663
24 (7th Cir. 2000). The critical inquiry "centers on the intention
25 of the parties, which is to be gleaned from the language of the
26 contract and the circumstances surrounding the parties at the
27 time of its execution." Id. (citation omitted).

28 To the extent contract principles allow a third-party

1 beneficiary to enforce a contract, the contract must reflect an
2 express or implied intention to benefit the third party. United
3 States v. El-Sadiq, 133 F. Supp. 2d 600, 608 (N.D. Ohio 2001).

4 "If the promisee has no intent to benefit a third party, then any
5 third-party beneficiary to the contract is merely an 'incidental
6 beneficiary,' who has no enforceable rights under the contract."
7 Norfolk & Western Co. v. United States, 641 F.2d 1201, 1208 (6th
8 Cir. 1980).

9 In this case, neither the government nor CCI intended to
10 benefit the individual defendants by entering into the Plea
11 Agreement. The individual defendants cannot be viewed, under any
12 reasonable interpretation, as third party beneficiaries of the
13 Plea Agreement. As a result, under general principles of
14 contract law, they have no right to attempt to enforce one of the
15 provisions of a contract between the government and CCI. See,
16 e.g., United States v. Andreas, 39 F. Supp. 2d 1048, 1069 (N.D.
17 Ill. 1998) ("the surrounding circumstances clarify that neither
18 [of the defendants] were intended beneficiaries of the plea
19 agreement" and thus had no right to enforce the agreement);
20 United States v. Andreas, 216 F.3d at 663 (upholding lower court
21 ruling and stating "the circumstances conclusively establish that
22 neither the promisee [] nor the promisor (the government)
23 intended to give [the defendants] any benefit of the promise
24 since both knew [the defendants] specifically would be excluded
25 from the plea deal"); cf. United States v. El-Sadiq, 133 F. Supp.
26 at 608-09 (defendant permitted to enforce non-prosecution
27 agreement because he was a third party beneficiary).

28

1 B. Rule 16 Requires Actual Possession, Custody or Control and a
2 Showing of Materiality

3 Federal Rule of Criminal Procedure 16(a)(1)(E) describes
4 certain information that the government must disclose to
5 defendants during discovery:

6 Upon a defendant's request, the government must
7 permit the defendant to inspect and to copy or
8 photograph books, papers, documents, data, photographs,
9 tangible objects, building or places, or copies or
portions of any of these items, if the item is within
the government's possession, custody, or control and:

10 (i) the item is material to preparing the
defense;

11 (ii) the government intends to use the item in its
12 case-in-chief at trial; or

13 (iii) the item was obtained from or belongs to the
defendant.

14 As discussed further below, "the triggering requirement under
15 Rule 16(a)(1)(E) is that the papers, documents, and tangible
16 objects be in the **actual** possession, custody or control of the
17 government." United States v. Fort, 472 F.3d 1106, 1118 (9th
18 Cir. 2007) (quoting United States v. Gatto, 763 F.2d 1040, 1049
19 (9th Cir. 1985)) (emphasis added).

20 Additionally, before a court may order disclosure of any
21 such materials, a defendant must make a *prima facie* showing of
22 materiality. "Neither a general description of the information
23 sought nor conclusory allegations of materiality suffice; a
24 defendant must present facts which would tend to show that the
25 Government is in possession of information helpful to the
26 defense." United States v. Mandel, 914 F.2d 1215, 1219 (9th Cir.
27 1990). Evidence is material if it will "play **an important role**
28 in uncovering admissible evidence, aiding in witness preparation,

1 corroborating testimony, or assisting impeachment or rebuttal.”
2 United States v. Liquid Sugars, 158 F.R.D. 466, 474 (E.D. Cal.
3 1994) (emphasis in original).

4 Rule 16(a)(2) provides certain exceptions to the discovery
5 requirements of Rule 16(a)(1)(E):

6 Except as Rule 16(a)(1) provides otherwise, this rule
7 does not authorize the discovery or inspection of
8 reports, memoranda, or other internal government
9 documents made by an attorney for the government or
10 other government agent in connection with investigating
or prosecuting the case. Nor does this rule authorize
the discovery or inspection of statement made by
prospective government witnesses except as provided in
18 U.S.C. § 3500.

11 In United States v. Armstrong, 517 U.S. 456 (1996), the
12 Supreme Court considered the parameters of Rule 16(a)(1)(C) [now
13 Rule 16(a)(1)(E)] and ruled that defendants are entitled to the
14 discovery of only those materials that are material to the
15 defendant’s response to the government’s case in chief:

16 While it might be argued that as a general matter, the
17 concept of a ‘defense’ includes any claim that is a
18 ‘sword,’ challenging the prosecution’s conduct of the
19 case, the term may encompass only the narrower class of
20 ‘shield’ claims, which refute the Government’s
21 arguments that the defendant committed the crime
22 charged. Rule 16(a)(1)(C) tends to support the
‘shield-only’ reading. If ‘defense’ means an argument
in response to the prosecution’s case in chief, there
is a perceptible symmetry between documents ‘material
to the preparation of the defendant’s defense,’ and, in
the very next phrase, documents ‘intended for use by
the government as evidence in chief at the trial.’

23 Id. at 462; see also United States v. Chon, 210 F.3d 990, 995
24 (9th Cir. 2000) (quoting Armstrong).

25 Courts have consistently recognized that criminal pretrial
26 discovery is much narrower than discovery in civil cases. “In
27 contrast to the wide-ranging discovery permitted in civil cases,
28 Rule 16 . . . delineates the categories of information to which

1 defendants are entitled in pretrial discovery in criminal cases,
2 with some additional material being discoverable in accordance
3 with statutory pronouncements and the due process clause of the
4 Constitution." United States v. Ramos, 27 F.3d 65, 68 (3rd Cir.
5 1994).

6 Despite defendants' apparent belief to the contrary, Rule 16
7 is not the equivalent of a "request for production" in a civil
8 suit, in that the defendants are not entitled to all documents
9 that might lead the defendants to relevant evidence. See Chon,
10 210 F.3d at 995 (defendants only entitled to materials relevant
11 to the specific charges); Ramos, 27 F.3d at 67 (criminal and
12 civil discovery "vastly different"); United States v. Hancock,
13 441 F.2d 1285, 1287 (5th Cir. 1971) (criminal discovery
14 "narrower" than civil discovery). Were it to be adopted, the
15 defendants' view of Rule 16 would lead to an unprecedented
16 expansion of the scope of criminal discovery.

17 C. The Documents Sought by the Defendants Are Not Within the
18 Government's Possession, Custody or Control for Purposes of
Rule 16

19 Ignoring all Ninth Circuit case law on the issue of the
20 definition of "possession, custody or control" in the context of
21 Rule 16, defendants rely on a single, distinguishable, out-of-
22 circuit decision, United States v. Stein, 488 F. Supp. 2d 350
23 (S.D.N.Y. 2007), to concoct a theory of broad "constructive
24 possession" in an attempt to trigger Rule 16 and avoid having to
25 comply with the stricter standards of Rule 17. No other court
26 has adopted the defendants' position that documents in the actual
27 possession of a cooperating, private, third party are within the
28 government's constructive possession for purposes of Rule 16 and

1 thus must be produced to individual defendants. This Court
2 should not rely on this single, outlying decision, where the
3 government was not even invited to submit a written brief
4 regarding the court's novel "constructive possession" theory.⁴

5 In this Circuit, the case law is clear; the application of
6 the constructive possession concept in the Rule 16 context is
7 limited to documents possessed by certain **federal agencies** other
8 than the prosecution. See United States v. Santiago, 46 F.3d
9 885, 893 (9th Cir. 1995); United States v. Bryan, 868 F.2d 1032,
10 1036 (9th Cir. 1989) (prosecutor has constructive possession of
11 "anything in the possession, custody or control of any federal
12 agency participating in the same investigation of the
13 defendant").

14 Thus, the Ninth Circuit's limited acceptance of constructive
15 possession in the context of Rule 16 only applies to other
16 federal agencies that participated in the same investigation. It
17 does not even extend to documents possessed by state or local
18 agencies, much less a private third party with no ties to the

19
20 ⁴ The defendants in Stein did not initially attempt to
21 obtain the documents at issue via Rule 16; instead, pursuant to
22 well-established practice, they applied for a subpoena pursuant
23 to Rule 17(c) requiring KPMG to produce certain documents. The
24 court, in addressing KPMG's motion to quash the subpoena, on its
25 own volition invited the parties at oral argument to address the
26 question of whether the documents were within the government's
27 possession, custody or control. Following oral argument, the
28 Court directed KPMG to submit evidence and argument "on the issue
whether the documents described by the subpoena are within the
government's control and whether KPMG is obliged to produce them
to the government, either voluntarily or upon request." Stein,
488 F. Supp. 2d at 356. **Significantly, the government was not
invited to submit a brief on the issue and did not do so.** On May
11, 2007, following the court's ruling, the U.S. Attorney's
Office for the Southern District of New York wrote a letter to
Judge Kaplan noting its disagreement with the Opinion and seeking
the opportunity to fully brief the issue, which was not granted.

1 government. In ruling that documents found and held by a state
2 agency were not discoverable in a federal criminal case, the
3 court stated that Rule 16 "triggers the government's disclosure
4 obligation only with respect to documents within the **federal**
5 **government's** actual possession, custody or control." United
6 States v. Gatto, 763 F.2d 1040, 1048 (9th Cir. 1985) (emphasis
7 added); see also United States v. Liquid Sugars, Inc., 158 F.R.D.
8 466, 474 (E.D. Cal. 1994); United States v. Robertson, 634 F.
9 Supp. 1020, 1024 (E.D. Cal. 1986).

10 Gatto's holding was recently reaffirmed in United States v.
11 Fort, 472 F.3d 1106, 1118 (9th Cir. 2007), where the court held
12 with respect to state-gathered evidence that, in the absence of
13 federal agency involvement, "physical possession [is] the
14 dispositive factor" and that "Gatto's emphasis on possession as
15 the triggering requirement for Rule 16 accords with decisions by
16 this and other circuits." Id.; see, e.g., United States v.
17 Adkins, 741 F.2d 744, 747 (5th Cir. 1984) (Rule 16(a)(1)(E)
18 "require[s] the government only to turn over those records
19 actually in its possession"). Evidence gathered by state
20 authorities only "becomes subject to the disclosure obligation
21 established by Rule 16(a)(1)(E) when it passes into federal
22 possession." Fort, 472 F.3d at 1118.

23 In her concurrence in the denial of an *en banc* rehearing,
24 Judge Graber summed up the holding in Fort as follows:

25 For the purposes of Rule 16(a)(1)(E), this court has
26 held, '[t]he prosecutor will be deemed to have
27 knowledge of and access to anything in the possession,
28 custody or control of any **federal agency** participating
in the same investigation of the defendant.' United
States v. Bryan, 868 F.2d 1032, 1036 (9th Cir. 1989)
(emphasis added). The majority opinion does not deem

1 the prosecution to have knowledge of or access to
2 anything generated by a state or local actor that is
3 not **actually** known by and in the possession of the
4 prosecutor.

5 United States v. Fort, 478 F.3d 1099, 1100 (9th Cir. 2007)
6 (Graber, J. concurring in the denial of rehearing *en banc*)
7 (emphases in original).

8 Thus, the very basis of the Stein opinion and of defendants'
9 argument - that "actual possession" by the government is not
10 "necessary if the [government] has control of the items" (see
11 Defendant's Motion to Compel at 6) - is directly contradicted by
12 the Ninth Circuit's controlling case law.⁵ Gatto and Fort
13 unequivocally hold that, absent federal agency involvement,
14 actual physical possession by the prosecuting agency is the
15 dispositive factor in determining whether materials are
16 discoverable under Rule 16. Here, there is no dispute that the
17 government does not have actual physical possession of the 5.6
18 million documents in the Ernst & Young database.⁶

19 ⁵ Under the defendants' reasoning, the government would
20 seemingly also be required to subpoena any document from a third
21 party at a defendant's request, and then turn over the results to
22 the defendant pursuant to Rule 16, since the government could
23 obtain such documents through the grand jury process. Of course,
24 no court has held the government would be required to take such
25 action.

26 ⁶ There would also be significant public policy implications
27 if criminal defendants were permitted to gain access to any
28 materials in the possession of an independent, third-party,
including corporate entities that disclose criminal wrongdoing to
the Department of Justice. Because corporations are
understandably reluctant to share internal corporate documents
with outsiders, especially where such documents might contain
privileged or proprietary material, far fewer companies would be
willing to cooperate with the government or self-disclose
violations to the government. Of course, this would also result
in a reduction of the concomitant prosecutions of individuals.

1 The federal government's relationship with state
2 investigative authorities is much closer than any relationship
3 the federal government may have with a private party, even where
4 the private party is cooperating with the government. If the
5 "constructive possession" doctrine does not apply in the Rule 16
6 context to documents in the possession of state and local law
7 enforcement authorities, it has even less application to
8 documents in the possession of private entities such as CCI. See
9 United States v. Armstrong, 621 F.2d 951, 954 (9th Cir. 1980)
10 (although Rule 16(a)(1)(E) "provides for the inspection and
11 photographing of buildings or places which are within the
12 possession, custody or control of the Government, there are no
13 comparable provisions allowing inspection of the property of
14 third parties."); United States v. Josleyn, 206 F.3d 144, 154
15 (1st Cir. 2000) ("While prosecutors may be held accountable for
16 information known to police investigators, . . . we are loath to
17 extend the analogy from police investigators to cooperating
18 private parties who have their own set of interests. Those
19 private interests, as in this case, are far from identical to --
20 or even congruent with -- the government's interests.").⁷

21 The relationship between the government and a cooperating
22 third party can, in many respects, be analogized to that between
23 a U.S. prosecutor and a foreign government where the foreign
24 authority is in possession of relevant evidence. In United
25 States v. Mejia, 448 F.3d 436 (D.C. Cir. 2006), the court

26
27 ⁷ See also United States v. Fred, 2006 WL 4061156 (D. N.M.
28 2006) ("objects in the possession of state authorities, foreign
governments, or private parties are not discoverable under Rule
16").

1 addressed the issue of whether a U.S. prosecutor should be
2 required to produce to criminal defendants evidence that is
3 abroad but can be obtained by the U.S. prosecutor pursuant to a
4 Mutual Legal Assistance Treaty request. Like the cooperation
5 language in CCI's Plea Agreement, the applicable treaty **required**
6 Costa Rica to produce certain material at the U.S. government's
7 request. Compare CCI Plea Agreement, Paragraph 6 ("CCI **shall**
8 truthfully disclose to the Department all non-privileged
9 information . . . concerning all matters relating to corrupt
10 payments . . .") with Convention Against Illicit Traffic in
11 Narcotic Drugs and Psychotropic Substances, Article 12 (1988) ("A
12 request [for evidence] **shall** be executed in accordance with the
13 domestic law of the requested Party . . .") (emphases added).

14 The defendants in Mejia argued that the prosecution had the
15 power to secure the evidence from the Costa Rican government as a
16 result of the contractual requirements of the treaty, and thus
17 had the obligation to do so and then produce the evidence to the
18 defendants under Rule 16. The court, however, rejected the
19 defendants' argument, ruling that the U.S. government's
20 obligations under Rule 16 did not require it to seek the evidence
21 from Costa Rica despite the fact that it had the authority to do
22 so. "The government's obligation was to comply with Rule 16, and
23 there is no dispute that it did so." Id. at 444; see also United
24 States v. Hughes, 211 F.3d 676, 688 (1st Cir. 2000) (U.S.
25 prosecutor not required to obtain via informal means materials
26 held by Mexican authorities); United States v. Friedman, 593 F.2d
27 109, 119-20 (9th Cir. 1979) (U.S. prosecutor not required to
28 obtain via informal means materials held by Chilean authorities).

1 In finding that CCI has standing to litigate the scope of
2 the government's contractual right to custody and control of some
3 sphere of CCI's documents, this Court stated that "[u]nlike the
4 typical situation, where the pre-existing relationship between
5 the United States Attorney and another governmental agency
6 defines the scope, here any such argument depends on the Plea
7 Agreement, a contract between the Government and [CCI]." See
8 Court's Order Regarding CCI's Motion to Intervene at 3.

9 While the government maintains that the Court's decision
10 should be guided by the Ninth Circuit's "actual possession" case
11 law, Mejia affirms that the same result would be obtained if the
12 Court were to focus on the contractual relationship between the
13 government and CCI in the Rule 16 context. Given the
14 similarities between the language in CCI's plea agreement and the
15 relevant treaty in Mejia (i.e., both require one party to produce
16 certain documents at the request of the other party), this Court
17 should follow Mejia in ruling that, to the extent it finds that
18 the government has constructive possession over any of the
19 documents in CCI's possession, the government's obligations under
20 Rule 16 do not require it to seek the evidence from CCI. As
21 described further below, if such documents exist, the proper
22 means by which defendants can obtain them is by a Rule 17(c)
23 subpoena.

24 D. The Plea Agreement Only Gives the Government the Ability to
25 Request from CCI Non-Privileged Documents Relating to
Corrupt Payments

26 Even if the Court were to determine that the applicable Rule
27 16 standard is "constructive possession" rather than actual
28 possession and that the government does have constructive

1 possession over documents in CCI's possession, which the
2 government strongly disputes, the government's ability to obtain
3 additional documents from CCI would be severely circumscribed
4 because the Plea Agreement does not give the government the
5 ability to obtain **all** documents in CCI's possession. The Plea
6 Agreement only gives the government the ability to request non-
7 privileged documents relating to "corrupt payments to foreign
8 public officials or to employees of private customers." See Plea
9 Agreement, Paragraph 6. Steptoe maintains that it has produced
10 such documents to the government, and the government has no
11 specific knowledge of the existence of additional documents in
12 CCI's possession that relate to corrupt payments.

13 In order to make it appear that the government can request
14 any document from CCI, defendants erroneously assert that "CCI's
15 Plea Agreement reflects that the government has the legal right
16 to demand production by CCI of any of its non-privileged
17 documents in connection with the government's case." See
18 Defendants' Motion to Compel at 8; see also Defendants' Motion to
19 Compel at 6 ("CCI's Plea Agreement gives the government the
20 unqualified right to demand from CCI the production of any non-
21 privileged documents within CCI's control."). This is simply not
22 the case; the Plea Agreement is crystal clear in only requiring
23 CCI to disclose information relating to corrupt payments.

24 Aside from the fatal weaknesses associated with Stein's
25 "constructive possession" theory, defendants' reliance on Stein
26 is further weakened by the clear differences between the broad
27 cooperation language in KPMG's Deferred Prosecution Agreement and
28 the narrow language in CCI's Plea Agreement. The cooperation

1 language in KPMG's Deferred Prosecution Agreement required KPMG
2 to produce "**all** documents, records, information, and other
3 evidence in KPMG's possession, custody, or control as may be
4 requested by the [U.S. Attorney's] Office or the IRS." United
5 States v. Stein, 488 F. Supp. 2d at 353 (emphasis added).

6 The Deferred Prosecution Agreement also required KPMG to
7 "[c]ompletely and truthfully disclos[e] **all** information in its
8 possession to the [U.S. Attorney's] Office and the IRS about
9 which the [U.S. Attorney's] Office and the IRS may inquire,
10 including but not limited to **all** information about activities of
11 KPMG, present and former partners, employees, and agents of
12 KPMG." Id. (emphases added). On the other hand, CCI's Plea
13 Agreement only requires it to produce evidence relating to
14 corrupt payments.⁸

15 Despite the broad cooperation language in the KPMG Deferred
16 Prosecution Agreement, the individual defendants in that case did
17 not seek all documents in KPMG's possession but, rather, only
18 requested a narrow set of documents. Within this narrow set, the
19 court granted some requests and denied others on the grounds that
20 certain requests had not met the requisite materiality standard.

21
22 ⁸ Defendants' reliance on United States v. Kilroy, 523 F.
23 Supp. 206 (E.D. Wis. 1981) is similarly misplaced. In Kilroy,
24 the cooperating third party, Standard Oil, made available to the
25 government "**any** records which Standard Oil has and which the
26 Government wants." Id. at 215 (emphasis added). Thus, like the
27 language in the KPMG cooperation agreement in Stein, there were
28 no qualifiers as to the types of documents the government could
request. Further, there was no requirement that Standard Oil
make the documents available; Standard Oil's decision as to
whether to produce the documents was entirely voluntary. Id.
Last, the court's decision in Kilroy was based on the belief that
such documents could only be obtained via subpoena after the
trial had started, and the court was reluctant to disrupt the
trial in any manner. Id.

1 Thus, even in the broad "constructive possession" Stein context,
2 the Stein court did not grant the type of wide-ranging request
3 for documents in the possession of a cooperating third party that
4 the CCI individual defendants are requesting in this case.

5 CCI maintains that it has produced to the government the
6 relevant, non-privileged documents reflecting potentially
7 improper payments to employees of state-owned and privately-owned
8 CCI customers. See CCI's Reply Memorandum in Support of Motion
9 to Intervene at 6. The government has, in turn, produced all of
10 these documents to the defendants.

11 A ruling by the Court ordering the government to instruct
12 CCI to produce all documents related to corrupt payments would be
13 fraught with practical, definitional, and other difficulties.
14 The government and Steptoe worked together to come up with a
15 common understanding of the term "corrupt payment" to ensure that
16 Steptoe produced all documents related to corrupt payments within
17 the statute of limitations. Based on Steptoe's representations,
18 the government is satisfied that CCI fully complied with the
19 government's requests for the production of documents related to
20 "corrupt payments" as defined by the parties.

21 Were the Court to order the government to instruct CCI to
22 produce all documents related to "corrupt payments" based on a
23 more expansive interpretation of that phrase, the Court would be
24 placed in the position of having to create another definition of
25 the phrase "corrupt payment," which would be different from the
26 understanding of the term that was used by the government and
27 Steptoe. The Court may also be placed in the position of having
28 either to approve or create search terms that could be run on the

1 Ernst & Young database, and deciding what time period any such
2 searches should cover. To the extent the Court orders the
3 government to instruct CCI to produce all documents related to
4 corrupt payments, the government has already done so and CCI has
5 already complied.

6 As further described below, if the defendants can identify
7 specific additional material evidence they need from CCI, they
8 should obtain such evidence by a Rule 17(c) subpoena. See, e.g.,
9 United States v. Robertson, 634 F. Supp. 1020, 1029 (E.D. Cal.
10 1986) (in denying discovery because the materials requested were
11 not within the government's custody, possession or control, court
12 stated that its decision "does not foreclose defendant from
13 obtaining the requested material, but only denies him the ability
14 to discover it under Rule 16(a)(1)(C) [now Rule 16(a)(1)(E)]. If
15 defendant wants these items, he can subpoena the IRS or any other
16 agency which he believes possesses them.").

17 E. CCI's Intervention on Defendants' Motion Will Permit It to
18 Litigate Its Claims of Privilege

19 _____The Court has permitted CCI's intervention for the purpose
20 of addressing its attorney-client and attorney work-product
21 privilege claims over certain documents in the government's
22 possession (as identified in the privilege log produced to
23 defendants). To the extent that the Court finds that some or all
24 of the documents identified in the privilege log are not
25 privileged or that any such privilege has been waived, the
26 government is prepared to produce those documents.

1 F. The Proper Means By Which Defendants Should Seek the
2 Requested Documents is Through a Rule 17(c) Subpoena

3 Should this Court conclude that the documents sought by
4 defendants are not in the constructive possession or control of
5 the government by means of its plea agreement with CCI,
6 defendants are not without a remedy. Rule 17(c) of the Federal
7 Rules of Criminal Procedure provides defendants with an avenue to
8 obtain the documents they seek, and to do so by means of a
9 procedure which allows CCI to present its claims of privilege.

10 Rule 17(c) provides for the issuance of a subpoena *duces*
11 *tecum* to "order the witness to produce any books, papers,
12 documents, data, or other objects the subpoena designates." The
13 Supreme Court issued guidelines for the issuance and enforcement
14 of Rule 17(c) subpoenas in United States v. Nixon, 418 U.S. 683
15 (1974), which established that the burden for showing good cause
16 for production prior to trial is on the party seeking production.
17 This burden may be met by showing the following:

- 18 (1) that the documents are evidentiary and relevant;
19 (2) that they are not otherwise procurable reasonably
20 in advance of trial by exercise of due diligence; (3)
21 that the party cannot properly prepare for trial
22 without such production and inspection in advance of
23 trial and that the failure to obtain such inspection
24 may tend unreasonably to delay the trial; (4) that the
25 application is made in good faith and is not intended
26 as a general "fishing expedition."

27 Id. at 699-700 (footnote omitted).⁹

28 The Nixon Court further provided that "against this
background, [the party seeking production], in order to carry his

⁹ Rule 17(c)'s "chief innovation was to expedite the trial
by providing a time and place before trial for the inspection of
subpoenaed materials." Bowman Dairy Co. v. United States, 341
U.S. 214, 220 (1951).

1 burden, must clear three hurdles: (1) relevance; (2)
2 admissibility; (3) specificity." Id. at 700. To the extent
3 defendants can meet this standard with respect to some or all of
4 the categories of documents outside of the government's
5 possession or control, they can utilize Rule 17(c) subpoenas to
6 compel their production from CCI or other third parties.¹⁰

7 In addition to the 75 million page database, the defendants
8 seek certain documents over which CCI claims either attorney-
9 client or attorney work-product privilege. The proper mechanism
10 for adjudicating CCI's claim of privilege over these documents,
11 the vast majority of which were never produced to the government
12 in connection with CCI's cooperation, is through litigation under
13 Rule 17 and its case law. Aside from Stein, the pursuit of such
14 documents via Rule 17(c) has been the well-established avenue
15 through which these claims of privilege have been adjudicated.
16 See, e.g., United States v. Reyes, 239 F.R.D. 591 (N.D. Cal.
17 2006) (addressing defendant's efforts to obtain via Rule 17(c)
18 subpoena from two law firms production of documents related to
19 internal investigation of stock options backdating, including
20 "interview summaries," "reports," and "memoranda" related to the
21 interviews of company witnesses); United States v. Ferguson, 2007
22 WL 2815068 (D. Conn. 2007) (addressing defendant's efforts to
23 obtain via Rule 17(c) subpoena documents from government

24
25 ¹⁰ One district court in this Circuit has held that "[t]he
26 notion that because Rule 16 provides for discovery, Rule 17(c)
27 has no role in the discovery of documents can, of course, only
28 apply to documents in the government's hands; accordingly, Rule
17(c) may well be a proper device for discovering documents in
the hands of third parties." United States v. Tomison, 969 F.
Supp. 587, 593, n.14 (E.D. Cal. 1997)

1 cooperators and company in a securities fraud prosecution).

2 As the government is not in actual possession, custody or
3 control of the 75 million page database, and has never even seen
4 the materials contained in the database (with the exception of
5 those that CCI produced), it cannot make determinations about
6 whether documents contained within that database are material.¹¹

7 If defendants are compelled to specify which categories of
8 documents within that database they seek, as they presumably
9 would be under Rule 17(c), the court could then determine, after
10 hearing from CCI and perhaps conducting an *in camera* review of
11 certain documents, whether the documents sought were relevant.
12 See, e.g., Reyes, 239 F.R.D. at 601 (compelling the production of
13 materials requested by subpoena to the court for *in camera*
14 review).

15 G. Defendants Are Not Entitled to Obtain Additional
16 Communications Between the Government and CCI

17 Aside from the categories of documents sought by defendants
18 that are not in the possession or custody of the government,
19 defendants seek an order compelling the government to produce at
20 least two categories of documents that are in the government's
21 actual possession:

- 22 • "[C]orrespondence and drafts of CCI's Plea Agreement

23
24 ¹¹ Aside from the documents that CCI has produced to the
25 government, the government has no specific knowledge as to what
26 is contained in the 75 million pages in the electronic database.
27 Given Steptoe's representations, however, that the database was
28 compiled from entire CCI email servers and hundreds of employee
hard drives, including that of the IMI general counsel, the
defendants' claim that "each of the more than 5.5 [now 75]
million pages is material to the defense as they relate directly
to each of the 236 payments" (see Defendants' Motion to Compel at
15) strains credulity.

1 and the statement of facts contained therein"; and

- 2 • "any submissions made by IMI/CCI to the government."

3 See Defendants Motion at 29.¹² Defendants are entitled to
4 neither.

5 Relying entirely on Stein, defendants assert that these
6 documents are subject to disclosure under Rule 16(a)(1)(E). The
7 government agrees in part: such documents are subject to
8 disclosure to the extent that they contain exculpatory
9 information under Brady and/or Giglio.¹³ The government remains
10 mindful of its ongoing obligation to produce exculpatory and
11 impeachment material. Within these categories, however, the
12 government represents that it is not aware of any documents not
13 otherwise disclosed that are subject to disclosure as Brady or
14 Giglio material.

15 To the extent the district court in Stein concluded that all
16 communications between the government and a cooperating defendant
17 were subject to disclosure under Rule 16(a)(1)(E), its analysis
18 is flawed, especially given the case law in this Circuit. As
19 noted above, conclusory allegations of materiality do not
20 suffice. Mandel, 914 F.2d at 1219; United States v. Cadet, 727

22 ¹² Defendants are in possession of several items identified
23 on page 29 of their Motion to Compel, including: (1) the non-
24 waiver agreement dated October 18, 2007 (see Declaration of Brian
25 M. Heberlig in support of Motion to Intervene by IMI plc and
Control Components, Inc. [Heberlig Decl.], Exh. A); and (2) the
letter reflecting the government's agreement not to prosecute IMI
(see Heberlig Decl. Exh. B).

26 ¹³ One could imagine, for example, that CCI corrected an
27 early draft of the statement of facts appended to its plea
28 agreement in such a way that tended to exculpate one of the
defendants. As noted in the text, the government is not aware of
any communication that meets this description.

1 F.2d 1453, 1466 (9th Cir. 1984). In United States v. Santiago,
2 46 F.3d 885, 894-95 (9th Cir. 1995), the Ninth Circuit concluded
3 that a defendant had not made the threshold showing of
4 materiality where he had offered nothing more than "assertions .
5 . . without ground in fact." "These assertions, although not
6 implausible, do not satisfy the requirement of specific facts,
7 beyond allegations, relating to materiality." Id.

8 Here, likewise, defendants have offered nothing more than
9 conclusory allegations and assertions that these documents will
10 aid them to "uncover[] . . . evidence," "aid[] witness
11 preparation," "corroborat[e] testimony," or "assist[] impeachment
12 or rebuttal." These assertions - although copied verbatim from
13 the standard employed by Stein - fall woefully short of the Ninth
14 Circuit's requirement of "specific facts." See Santiago, 46 F.3d
15 at 894-95.¹⁴

16 This is especially true where, as here, defendants seek such
17 things as draft plea agreements and statements of fact. As at
18 least one district court has noted in a different context,
19 "[d]rafts, by their very nature, rarely satisfy the test of
20 relevance." Grossman v. Schwarz, 125 F.R.D. 376, 385 (S.D.N.Y.
21 1989). Another district court has relied on that conclusion to
22 determine that "absent evidence showing the relevance of a
23

24 ¹⁴ Stein adopted a different test of materiality from that
25 established in the Ninth Circuit, importing a test from the D.C.
26 Circuit: "The 'materiality standard [of Rule 16] is not a heavy
27 burden; rather, evidence is material so long as there is a strong
28 indication that it will play an important role in uncovering
admissible evidence, aiding witness preparation, corroborating
testimony, or assisting impeachment or rebuttal.'" Stein, 488 F.
Supp. 2d at 356-57 (quoting United States v. Lloyd, 992 F.2d 348,
351 (D.C. Cir. 1993)).

1 particular draft, production of draft documents is likely to
2 produce a wasteful fishing expedition." United States v.
3 Shanahan, 252 F.R.D. 536, 542 (E.D. Mo. 2008). Defendants have
4 offered no facts to support any inference that any **non-**
5 **exculpatory** changes in the plea agreement or the statement of
6 facts have any relevance to their defense.

7 **IV.**

8 **CONCLUSION**

9 Defendants have no legal authority to enforce the provisions
10 of a plea agreement between the government and CCI. Furthermore,
11 defendants' broad "constructive possession" theory directly
12 contradicts binding Ninth Circuit case law. To the extent CCI
13 does have any documents in its possession that are material to
14 the defense, the proper, well-established mechanism to obtain
15 such documents is to seek them directly from the source via a
16 Rule 17(c) subpoena. Accordingly, defendants' motion should be
17 denied.

McCormick, Doug (USACAC)

From: Gentin, Andrew (CRM)
Sent: Monday, June 08, 2009 3:07 PM
To: Hanna, Nicola T.; Dunne, Kimberly A.; tbienert@bmwklaw.com; dwiechert@aol.com
Cc: Walther, Hank (CRM); McCormick, Doug (USACAC); Smith, Courtney (CRM)
Subject: Payments Chart
Attachments: Payments Chart.pdf

Nick, Kim, Tom, and Dave:

In accordance with Judge Selna's May 18 ruling regarding your Joint Motion for a Bill of Particulars, attached is a payments chart which provides further details concerning the 236 payments.

Andrew Gentin
Trial Attorney
Fraud Section, Criminal Division
U.S. Department of Justice
202-353-3551 (telephone)
202-514-0152 (fax)
andrew.gentin@usdoj.gov

Payment	On or About Date	Approximate Amount	Recipient and/or Beneficiary
1	2005	\$6,530	Mr. Khiter (Asmidal Fertilizer)
2	2004	\$1,890	Mr. Nasri (Sonatrach)
3	5/12/2005	\$14,162	Dhafir Engineering, Giuseppe Giardina (Technip)
4	3/30/2004	\$5,231	Kyung Maek Co., Mr. Choi (Hyundai Heavy Industries ("HHI")), Mr. Cho (HHI)
5	1/26/2004	\$13,200	HHI Friend(s)-in-Camp ("FIC(s)")
6	2/16/2005	\$9,686	CV Control S.A., Total Austral FIC(s)
7	11/30/2005	\$5,652	Solve Computers, Alstom FIC(s)
8	2006	\$5,542	A.K. Al-Moayed, Gulf Petrochemical Industries Company ("GPIC") FIC(s)
9	2005	\$38,048	Sun Xing Di, Shanghai Electric Corporation ("SEC") FIC(s), Power Design Institute ("PDI") FIC(s)
10	2004	\$705	VDM Control, Neale Chelin (Botswana Ash)
11	2006	\$9,481	Neale Chelin (Botswana Ash)
12	2006	\$7,080	Valtork, Marco Pfeiffer (P&S Eng Asociados), Petrobras FIC(s)
13	9/16/2005	\$1,662	Valtork, Rafael Maccartello (Sulzer), Claudio Machado (Sulzer)
14	8/30/2005	\$9,992	Valtork, Sulzer FIC(s)
15	5/31/2007	\$6,234	Valtork, Petrobras FIC(s)
16	6/2/2005	\$1,644	Valtork, Sulzer FIC(s)
17	5/31/2007	\$2,436	Valtork, Petrobras FIC(s)
18	9/25/2006, 10/2/2006, 11/6/2006	\$8,793	Valtork, Marco Pfeiffer (P&S Eng Asociados), Petrobras FIC(s)
19	12/20/2005	\$6,345	Valtork, Eletrobras Termonuclear SA FIC(s)
20	2006	\$3,560	Valtork, Petrobras FIC(s)
21	2005	\$13,200	Bontcho Bonev (TEZ Maritza Iztak)
22	2005	\$10,544	Dimitar Yordanov (Bobov)
23	2003	\$2,725	Maritza Iztok FIC(s)
24	2006-2007	\$1,760	Ever Exquisite, Beilun Power FIC(s)
25	3/9/2004	\$10,000	Fujian Pacific FIC(s) (Count Eleven)
26	4/18/2004	\$13,000	Fujian Pacific FIC(s)
27	2004	\$10,000	Fujian Pacific FIC(s)
28	4/25/2005	\$5,000	Fujian Pacific FIC(s) (Count Twelve)
29	10/21/2003	\$36,146	Qin Rui (son of Qing Ding Guo and Sha Li (Guo Hua Electric Power)) (Count Nine)

30	1/20/2003, 2/18/2003	\$30,923	China Warenhandels-gesellschaft, Zhang Minyou (Shenhua International), Li Daolin (Shenhua International / Taishan Electric), Zhan Weihua (Shenhua International / Taishan Electric), Yang Xiaohua (Guangdong PDI)
31	2004	\$41,373	Qin Rui (son of Qing Dingguo and Sha Li (Guo Hua Electric Power))
32	1/20/2004, 4/2004, 10/15/2004, 1/14/2005, 3/1/2005	\$226,712	Lu Yan (Jia Long Mechanical), Mr. Li (Kela-2), Zhao Qun (Jia Long Mechanical), China Petroleum Materials & Equipment Corp. ("CPMEC") FIC(s) (Count Five)
33	1/14/2005, 3/1/2005	\$85,920	Zhao Qun (Jia Long Mechanical), CPMEC FIC(s)
34	1/23/2004	\$42,596	Dabn Qiang (Guang Xi PDI); Sun Mingli (Datang Gui Guan Heshan Power Generating Corp. Ltd.)
35	2003	\$7,500	Meson Technology Hong Kong Ltd., Sichuan Chemical Works FIC(s)
36	2003	\$2,500	PetroChina FIC(s)
37	1/18/2005	\$16,000	Luo Anping (Chengdu Xin Pu Technology), PetroChina FIC(s)
38	4/13/2004	\$15,000	Luo Anping (Chengdu Xin Pu Technology), PetroChina FIC(s) (Count Four)
39	2003	\$143,019	Golden Fidelity Ltd., Zhang Pei, Liu Peixian (CPMEC), Cheng Shuang (Lang Fang PDI), GC&C Inc.
40	4/2/2004	\$5,000	Liu Hui (Chengdu Chuanliao Trading Company), Chengdu Aircraft FIC(s), PetroChina FIC(s)
41	7/7/2004	\$15,000	Hui Xie Hong Kong Ltd., Yu Jinghai (China Nuclear Energy Industry Corp. ("CNEIC"))
42	1/19/2004	\$3,850	Li Ping (Suzhou Engineering), Wu Tao (Central Southern China Electric Power Design Institute ("CSEPDII")), Wu Qiong (CSEPDI)
43	2004, 2006	\$78,000	Pu Xinmao (Daqianjun Power), RenQun (Chengdu Chenhua), China Electric Power Technology FIC(s), Mr. Shengke (PDI)
44	3/3/2004	\$3,333	Huang Haipin (Ao Xiang Engineering), PDI FIC(s)
45	2/19/2004	\$11,236	Peng Tao (PDI), Xuzhou China Resources Electric Power FIC(s)
46	1/23/2004	\$3,516	Ju Yongtao (PDI)
47	1/20/2004	\$7,612	Fu Xiangwei (Northeast Design Institute)
48	1/15/2004	\$18,000	Kang Jian (Zhong Neng Long Intl. Corp. Ltd.), Zhejiang Natural Gas FIC(s)
49	1/5/2004	\$55,598	Kang Jian (Zhong Neng Long Intl. Corp. Ltd.), Zhejiang Natural Gas FIC(s)

50	12/5/2003	\$3,920	Lu Yan (Jia Long Machinery Ltd.), China National Offshore Oil Co. ("CNOOC") FIC(s)
51	2004	\$40,437	Lilian Cai, Wang Mei, Guo Yuchao (China Huaneng Electrical Power), Li Huasheng (China Huaneng Electrical Power), Zheng Jianlong (China Huaneng Electrical Power)
52	5/13/2004	\$16,000	Wang Congrong, Jiangsu Nuclear Power Corp. ("JNPC") FIC(s)
53	1/31/2005	\$31,500	Sheng Jier, Datang Power FICs
54	9/26/2005	\$47,196	Sheng Jier, Gong Rong (China Electric / Datang Power)
55	2005	\$64,400	Skoda Power FIC(s), Datang Power FIC(s)
56	8/1/2003	\$7,500	Kang Hui (Xin Pu), CNOOC FIC(s)
57	3/16/2004, 4/20/2004	\$29,400	Bao Yuanzhu (Dingzhou Power), Li Guizhen (Dingzhou Power), Long Haiyun (Dingzhou Power), Jiang Congjin (Dingzhou Power)
58	7/31/2003	\$1,500	Li Zhenxin (Henan Huamei Power Equipment)
59	3/15/2004	\$8,180	Long Yuan Company, PDI FIC(s)
60	5/10/2007, 7/3/2007	\$33,525	Mr. Xiao, Sang Linhuai (Huainin Lairui Power High Tech Dev. Co.), Spring Energy Technologies, Datang Power FIC(s)
61	2003	\$23,264	Bohai Offshore Oil Co. / CNOOC FIC(s)
62	2003	\$5,000	CNOOC FIC(s)
63	8/1/2003	\$1,000	Liu Hui (Chengdu Chuanliao Trading Company), SDIC Huajing Power / Meiya Power FIC(s)
64	2005	\$3,900	Liu Hui (Chengdu Chuanliao Trading Company), China Guodian FIC(s)
65	2006	\$3,654	Chengdu Chuanliao Trading Company, China Guodian FIC(s)
66	2006	\$1,134	Chengdu Chuanliao Trading Company, China Guodian FIC(s)
67	2006	\$4,860	Chengdu Chuanliao Trading Company, China Guodian FIC(s)
68	2006	\$2,430	Chengdu Chuanliao Trading Company, Ningxia Power FIC(s)
69	2006	\$2,191	Chengdu Chuanliao Trading Company, Huaneng Group FIC(s)
70	9/30/2004	\$45,307	Meson Technologies, China Petroleum Pipeline Engineering ("CPPE") FIC(s)
71	11/2/2003	\$1,000	Tang Liqun (Fujian Pacific)
72	2004	\$8,000	China Guodian FIC(s)
73	2003	\$66,000	Sichuan Chemical Works FIC(s)
74	6/1/2004	\$7,000	Zhen Yongzhong (Shenzhen Mawan Power)
75	1/8/2004	\$2,016	Liu Hui (Chengdu Chuanliao Trading Company), Huaneng Power FIC(s)
76	2/3/2005	\$105,000	Zhao Qun (Jia Long Mechanical), Erdos Electric Power FIC(s)

77	2006	\$15,623	Wang Dawei (Guorun Electric), Yan Lin (Shanghai Nibo Auto Control Equipment)
78	1/14/2004	\$634	Li Zhengxing (Qujing Power Generation)
79	2/2/2005, 2005-2007	\$316,000	Digiton Technology, Shineast Int'l Ltd., Dongfang FIC(s) (Count Eight)
80	2005-2007	\$348,000	Digiton Technology, Shineast Int'l Ltd., Dongfang FIC(s) (Count Eight)
81	8/3/2006	\$7,500	Shanghai Juhon Consulting Co., Ltd., Genting Power FIC(s)
82	4/18/2007	\$58,800	Hu Yan Liang (Hunan HCC Super Information System), China Resources Power FIC(s)
83	2004	\$82,866	General Technology, PDI FIC(s), Kentex, Suntech, China Huaneng FIC(s)
84	7/5/2006	\$17,662	Yan Lin (Shanghai Nibo), PDI FIC(s), GuoDa FIC / Zhangjiang Power FIC(s)
85	9/15/2005, 10/7/2005	\$24,967	Digitone Technology Ltd., Mr. Xue (PDI), Mr. Shi (PDI)
86	2006	\$27,860	Champ Win International, Profit Net Technology, Huizhou Power FIC(s)
87	2006	\$44,043	Zhang Qiang (Shanxi Fulite), Xie Pingzhou (Shanxi Bai Hui), Ningxia Power FIC(s)
88	2004	\$2,480	Digitone, Zhejiang Electric Power FIC(s)
89	2004	\$24,870	CNOOC FIC(s)
90	2003	\$14,425	China Civil Engineering Construction Corporation ("CCECC") FIC(s)
91	2003-2004	\$23,700	Nara Systems, Daelim Industrial FIC(s)
92	3/21/2006	\$20,260	Mature Yield Ltd., PDI FIC(s), China National Water / China Datang FIC(s)
93	2005	\$27,442	Meson, Spring Energy, Shenhua / Guo Hua Electric Power FIC(s)
94	1/14/2005	\$58,500	Kang Jian (CNOOC / Sky Team Trading), CNOOC FIC(s), PDI FIC(s) (Count Six)
95	4/11/2003, 9/18/2003	\$15,300	Chen Yena, Lu Tianyin (Harbin Power)
96	2004	\$8,000	Sultec, TE Plomin FIC(s)
97	2007	\$11,024	BTG Slovensko, Skoda Power FIC(s), Stanko Peric, Ante Despot (Hrvatska Elektroprivreda)
98	2004	\$6,286	Jun Vladimir (Sokolovska)
99	2004	\$5,416	Teplarna Otrokovice FIC(s)
100	2005	\$4,830	BTG Slovensko, Frantschach Energo FIC(s)

101	2003	\$47,738	Dominion Marketing, M.W. Kellogg FIC(s)
102	9/22/2006, 1/30/2007	\$27,089	Dominion Marketing, JP Kenny FIC(s)
103	12/23/2005	\$10,956	Broward, Engineering for the Petroleum and Process Industries ("ENPPI") FIC(s) / Petrobel FIC(s)
104	9/29/2003	\$45,671	Broward, AGIP FIC(s)
105	12/23/2005	\$7,455	Broward, ENPPI / Petrobel FIC(s)
106	5/28/2003	\$15,243	Panagiotis Varsakis (Transteco Hellas), Public Power FIC(s)
107	2003	\$44,543	Transteco Hellas Ltd., Public Power FIC(s)
108	2003-2004	\$29,643	Transteco Hellas Ltd., Public Power FIC(s)
109	2007	\$3,000	Toyo Engineering FIC(s)
110	11/6/2006, 1/9/2007	\$69,012	Industrial Trading, Bharat Heavy Electricals Limited ("BHEL") FIC(s), Maharashtra State Electricity Board ("MSEB") FIC(s)
111	10/16/2006	\$11,732	International Materials and Components Corp. ("IMCC"), BHEL FIC(s), MSEB FIC(s)
112	3/12/2004	\$15,000	Spin Industries, J. Mehta & Co., MSEB FIC(s)
113	7/20/2007	\$15,802	Industrial Trading, Haryana State Electricity Board ("HSEB") FIC(s)
114	2007	\$31,029	Consolidated Suppliers, Michel Latouf (National Petroleum Construction Company ("NPCC"))
115	2005, 2007	\$27,700	Doosan Heavy Industries FIC(s)
116	11/29/2005, 10/24/2006	\$163,449	<i>Vladimir Batenko (Power Machines) (Count Fourteen)</i>
117	2003	\$1,230	Valves.com, TopBottom Impex, National Thermal Power Corp. ("NTPC") FIC(s)
118	2006	\$1,725	IMCC, BHEL FIC(s)
119	2005	\$5,025	IMCC, BHEL FIC(s)
120	2007	\$8,600	Industrial Trading, Bhilai Electric FIC(s)
121	3/19/2007	\$14,175	Woo Yang Industry Ltd., Doosan Heavy Industries FIC(s) / Torrent Power FIC(s)
122	7/20/2006	\$22,280	Regent Overseas Global, West Bengal Power FIC(s)
123	2005	\$1,400	TCE Consulting, Jindal Power FIC(s)
124	2004	\$306	Jindal Power FIC(s)
125	2005	\$2,971	PT Kota Minyak, Indah Kiat FIC(s)
126	2004	\$1,750	PT Kota Minyak, Tjwi Kimia FIC(s)
127	2004	\$26,000	PT Kacida, Valves.com, Ray Anderson (Conoco)
128	2005	\$11,000	PT Kacida, Conoco FIC(s)
129	2004	\$10,000	PT Kota Minyak, Indah Kiat FIC(s)

130	2004	\$3,000	PT Kota Minyak, Indah Kiat FIC(s)
131	2004	\$1,500	PT Kota Minyak, Indah Kiat FIC(s)
132	2/17/2004	\$19,920	PT Kacida, Paiton FIC(s)
133	2/2/2005	\$13,500	PT Kacida, Paiton FIC(s)
134	3/4/2004	\$3,000	PT Technindo, Riau Prima Energi FIC(s)
135	9/18/2006, 3/27/2007	\$8,703	PT Kacida, Ray Anderson (Conoco)
136	12/29/2006	\$2,525	PT Kacida, Paiton FIC(s)
137	2004	\$311,000	Pyunsung System Engineering, AGIP FIC(s), D.J. Han (Hyundai), K.C. Lim (Hyundai), S.S. Lee (Hyundai), C.S. Kim (Hyundai), M.H. Jun (Hyundai)
138	2003	\$126,590	Pars Terminal, Mr. Shirazi (National Iranian Gas Company ("NIGC"))
139	2006	\$25,986	Pars Terminal, NIGC FIC(s), Industrial Projects Management of Iran ("IPMI") FIC(s)
140	2006	\$135,000	Pars Terminal, J.S. Kim (LG), National Iranian Oil Company ("NIOC") FIC(s)
141	2004	\$135,464	Pars Terminal, Iran Marine Industries ("SADRA") FIC(s)
142	2005	\$31,699	Pars Terminal, SADRA FIC(s)
143	12/21/2006	\$69,420	<i>Broward & Co., Giovanni Toscani (AGIP) (Count Thirteen)</i>
144	6/9/2005	\$8,619	Nara Systems, Daelim Industrial FIC(s)
145	12/4/2003	\$8,185	Kwang-Woo Lee (Korea Electric Power Co. ("KEPCO"))
146	12/4/2003	\$13,987	Kwang-Woo Lee (KEPCO)
147	4/21/2004	\$29,426	<i>Namsing Heo (Korea Hydro and Nuclear Power ("KHNP")) (Count Three)</i>
148	4/21/2004	\$27,747	<i>Namsing Heo (KHNP) (Count Three)</i>
149	3/25/2003, 4/7/2003	\$17,761	Se-Jeong (Scott) Oh (MnO Korea), Korea National Oil Corporation ("KNOC") FIC(s), Hyundai Heavy Industries FIC(s)
150	1/15/2004, 6/9/2004	\$27,294	Jangwon Technology, Hicopyland, Dae Hwa, Daelim Industrial FIC(s)
151	9/21/2004	\$145,950	<i>Koseal, Mr. Kwan (KHNP), KHNP FIC(s) (Count Two)</i>
152	9/18/2006	\$2,363	Kian C&T Co., KHNP FIC(s)
153	2004	\$12,192	PETCO, Ministry of Electricity and Water ("MEW") FIC(s)
154	6/12/2007	\$8,177	PETCO, MEW FIC(s)
155	3/19/2007	\$15,013	Won-Woo Lee (Hyundai Engineering and Construction ("HDEC"))
156	10/18/2006	\$12,110	Panaron, Tanjung Bin Power Plant FIC(s)
157	7/1/2003	\$100,000	S.K. Wong, Petronas FIC(s)
158	10/4/2004	\$4,347	Tan Kean Soon (Inovatif), Petronas FIC(s)

159	2006	\$47,000	Inovatif, Petronas FIC(s)
160	1/6/2004	\$98,000	Crystal Progress (parent of Inovatif), Petronas FIC(s) (Count Ten)
161	2007	\$7,580	Panaron, Tenaga Nasional Berhad FIC(s)
162	2/13/2004	\$6,197	Tan Kean Soon, Petronas FIC(s)
163	2/3/2005	\$18,225	Tan Kean Soon, Exxon FIC(s)
164	2004	\$105,000	Inovatif, Sime Semcorp Engineering FIC(s)
165	8/16/2004	\$925	Inovatif, BASF Petronas FIC(s)
166	2005	\$29,185	Inovatif, Petronas FIC(s)
167	2004	\$3,020	Inovatif, Petronas FIC(s)
168	2004	\$679	Inovatif, Exxon FIC(s)
169	2004	\$3,395	Inovatif, Exxon FIC(s)
170	2004	\$3,402	Inovatif, Petronas FIC(s)
171	2004	\$11,722	Inovatif, Petronas FIC(s)
172	2004	\$2,652	Inovatif, Petronas FIC(s)
173	2004	\$1,407	Inovatif, Exxon FIC(s)
174	2004	\$3,017	Inovatif, Petronas FIC(s)
175	2004	\$2,704	Inovatif, Petronas FIC(s)
176	2007	\$14,100	Inovatif, Exxon FIC(s)
177	2006	\$20,682	Inovatif, Petronas FIC(s)
178	1/14/2005	\$4,170	ControlPro, Cerrey FIC(s)
179	2005	\$14,502	ControlPro, Comisión Federal de la Electricidad de Mexico FIC(s)
180	2005	\$15,058	ControlPro, Petroleos Mexicanos ("Pemex") FIC(s)
181	8/1/2003	\$4,424	Thomas Logan (Rotatech), J.R. Kim (Daewoo), Shell FIC(s)
182	2005-2007	\$31,710	MAQ International, AES Corporation FIC(s)
183	5/1/2003	\$52,751	Venugopal Ambadi (Qatargas)
184	2006	\$251,000	Munther Helwani (Consolidated Suppliers), National Petroleum Construction Company ("NPCC") FIC(s), Sam Mebarek (Dhafir Engineering), Technip FIC(s)
185	2007	\$40,000	Specialized Oil Services ("SOS"), Shell Qatar FIC(s)
186	5/19/2006, 4/20/2006	\$13,605	SOS, Priyalal Liyanage (McDermott)
187	2/28/2005, 2003-2005	\$20,045	SOS, Priyalal Liyanage (McDermott) (Count Fifteen)
188	3/28/2006, 5/9/2006	\$70,437	Trust Technical Services, IBA Ltd., Ibrahim Lari (Dolphin Energy), Sandi Chopola (Dolphin Energy)
189	4/20/2006, 2/8/2007	\$100,978	SOS, Sudarsanam Krishnaiyer (McDermott), Techma, Ziad Ben Achour (Total)

190	2005	\$134,769	BTG Tecno Engineering, Rovinari FIC(s)
191	1/26/2004	\$43,645	AA Turki, Saudi Aramco FIC(s)
192	4/29/2005	\$144,324	Baqthiaruddin Nooruddin Ahmed (Rayes Consultant), Syed Sadathulla (Safco)
193	5/4/2006	\$79,245	Baqthiaruddin Nooruddin Ahmed (Rayes Consultant), Syed Sadathulla (Safco)
194	2005-2006	\$38,712	Djordje Radojevich (RMS), Electric Power Industry of Serbia ("EPS") FIC(s)
195	2003-2004	\$9,723	Djordje Radojevich (RMS), Novi Sad and Panonske Elektrane FIC(s)
196	2003	\$2,374	BTG Slovensko, Neusiedler FIC(s)
197	2007	\$9,840	BTG Slovensko, Skoda Power FIC(s) / Zorlu Energy FIC(s)
198	2002-2003	\$133,242	Sultech International, Kovintrade, Termoelektrama Soštanj FIC(s)
199	2004	\$48,704	Sultech International, Kovintrade, Termoelektrama Soštanj FIC(s)
200	2/10/2006	\$9,798	Malakaibo Trading, Danie Smith (SASOL)
201	7/18/2003	\$5,201	Asiam, Chiahui Power FIC(s)
202	7/18/2003	\$13,929	Asiam, Mr. Hoo (Chiahui), Teh-Jen Chen (wife of Mr. Hoo)
203	7/18/2003	\$6,964	Asiam, Mr. Hoo (Chiahui), Teh-Jen Chen (wife of Mr. Hoo)
204	2003	\$68,410	Asiam, Taiwan Power Co. ("TPC") FIC(s)
205	2003	\$40,000	Asiam, TPC FIC(s)
206	2003	\$12,270	Asiam, TPC FIC(s)
207	4/7/2003	\$6,919	Asiam, TPC FIC(s)
208	2/4/2005	\$16,700	Lin Wen-Hsiu (Ho-Ping Power)
209	2005	\$8,848	Asiam, Ho-Ping Power FIC(s)
210	2004	\$9,910	Asiam, Sun Ba Power FIC(s)
211	2/4/2005	\$16,350	Asiam, Huon-Chong (Taiwan Power)
212	2006	\$66,000	Asiam, Vincent Engineering, T.R. Ho (Taiwan Power), Taiwan Power FIC(s)
213	2/4/2005	\$5,800	Asiam, Fang Ching-Long (Taiwan Power)
214	2003	\$3,113	Asiam, Alstom FIC(s)
215	2003	\$1,120	Asiam, Ever Power IPP Co. ("EPIC") FIC(s)
216	2003	\$21,051	IMI Industries, Viktor Machek, Alstom FIC(s), TLP Cogen FIC(s)
217	3/4/2005	\$4,387	IMI Industries, S.W. Hur (Samsung)
218	2005	\$25,000	Atikol, Cayirhan Thermal Power Plant FIC(s)
219	3/25/2002, 4/7/2003	\$22,193	Atikol, Turkey Electricity Generation and Transmission Corporation ("TEAS") FIC(s)
220	2007	\$3,499	BTG Slovensko, Dominik Adam (SES)

221	4/2/2007, 4/13/2007	\$67,791	Consolidated Suppliers, Michel Latouf (National Petroleum Construction Company ("NPCC")), NPCC FIC(s) (Count Seven)
222	1/9/2007, 4/11/2007	\$18,841	Trust Technical Services, Ibrahim Lari (Dolphin Energy)
223	8/29/2005, 1/6/2006	\$33,070	Consolidated Suppliers, NPCC FIC(s), Abu Dhabi Company for Oil Operations ("ADCO") FIC(s)
224	10/16/2006	\$27,224	Consolidated Suppliers, Nama Development, ADCO FIC(s)
225	2007	\$71,250	Trust Technical Services, GASCO FIC(s)
226	6/16/2003	\$6,095	Kumwoo Limited, Jae Seop Jeong (Doosan)
227	6/26/2005	\$15,811	Deco Energy, Power Machines FIC(s)
228	4/18/2006	\$87,650	Vladimir Batenko (Power Machines)
229			Not included in 236 payments
230	1/5/2004	\$13,000	Lu Yan (Winfo), CNOOC FIC(s)
231	1/5/2004	\$9,000	Kang Jian (Digitone), CNOOC FIC(s)
232	1/5/2004	\$3,000	Lu Yan (Winfo), CNOOC FIC(s)
233	1/5/2004	\$300	Lu Yan (Winfo), Sichuan Meifeng Chemical Co. FIC(s)
234	2004	\$4,641	IMCC, Andhra Pradesh Power Generation Corporation FIC(s)
235	2003	\$4,000	Jang Dong-II (Daesan)
236	2003-2004	\$6,410	Zhang Jiabo (China National Machinery and Equipment Corp.)
237	8/12/2003	\$2,000	VDM Control Solutions, Danie Smith (SASOL Synfuels), Tom van Schalkwyk (SASOL Synfuels)

Payments Chart Endnotes

The charged payments are listed in italics on the payments chart. The corresponding count in the Indictment for each of these charged payments is noted on the chart. The chart contains 237 entries; payment number 229 is not included in the 236 payments mentioned in the Indictment.

Payment 29 - CCI made two separate payments totaling approximately \$36,146 on or about October 21, 2003, for the benefit of Qin Rui. The payment of approximately \$24,500 is charged as a substantive count.

Payment 32 - The payment of approximately \$33,706 on or about March 1, 2005, is charged as a substantive count.

Payments 79 & 80 - Payment 79 concerns the commission related to the Dongfang factory sales order; Payment 80 concerns the commission related to the Dongfang aftermarket sales order. The payments were made in connection with a promise to pay an 11% commission. The payment of approximately \$125,447 on or about February 2, 2005, is charged as a substantive count.

Payment 116 - CCI made two separate payments totaling approximately \$163,449 for the benefit of Vladimir Batenko. The payment of approximately \$136,584 on or about October 24, 2006, is charged as a substantive count.

Payments 147 & 148 - Payment 147 concerns the commission related to the Wolsong project; Payment 148 concerns the commission related to the YGN project. CCI paid the commissions related to both the Wolsong and YGN projects in one wire transfer of approximately \$57,658 on or about April 21, 2004.

Payment 151 - CCI made a payment to Koseal, CCI's representative, on or about September 21, 2004, in the amount of approximately \$250,200. CCI requested that Koseal pay approximately \$145,950 (7% of the sales order) of this amount to the KHNP FICs.

Payment 187 - The total commissions promised for this sales order totaled approximately \$20,045. The payment of approximately \$11,800 on or about February 28, 2005, is charged as a substantive count.

Payment 221 - CCI made two payments to Consolidated Suppliers, CCI's representative, related to this NPCC project. On or about April 2, 2007, CCI made a payment in the amount of approximately \$161,413; on or about April 13, 2007, CCI made a payment in the amount of approximately \$100,000. CCI requested that Consolidated Suppliers pay approximately \$67,791 (1.5% of the sales order) of this amount to the NPCC officials. The payment of approximately \$161,413 on or about April 2, 2007, is charged as a substantive count.