

United States District Court
Southern District of Texas
FILED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SEP 29 2010

David J. Bradley, Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff,

v.

ABB INC.,

Defendant.

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CRIMINAL NO. H-10-

H 10

664

Violations

18 U.S.C. § 371 (Conspiracy)

15 U.S.C. § 78dd-2

(Violation of the FCPA)

CRIMINAL INFORMATION

The United States Attorney charges that at all times relevant to this Information, unless otherwise specified:

COUNT ONE

**Conspiracy
(18 U.S.C. § 371)**

Introduction

1. The Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. §§ 78dd-1, *et seq.* (“FCPA”), prohibited certain classes of persons and entities from corruptly making payments to foreign government officials to assist in obtaining or retaining business. Specifically, the FCPA prohibited certain companies and individuals from willfully making use of any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or

authorization of the payment of money or anything of value to any person, while knowing that all or a portion of such money or thing of value would be offered, given, or promised, directly or indirectly, to a foreign official to influence the foreign official in his or her official capacity, induce the foreign official to do or omit to do an act in violation of his or her lawful duty, or to secure any improper advantage in order to assist in obtaining or retaining business for or with, or directing business to, any person.

Relevant Persons and Entities

2. ABB Ltd was a corporation headquartered and incorporated in Switzerland. ABB Ltd had sponsored American Depositary Shares (“ADSs”) publicly traded on the New York Stock Exchange. ABB Ltd issued and maintained a class of publicly-traded securities registered pursuant to Section 12(g) of the Securities Exchange Act of 1934 (15 U.S.C. § 78l) and was required to file periodic reports with the United States Securities and Exchange Commission under Section 13 of the Securities Exchange Act (15 U.S.C. § 78m). Accordingly, ABB Ltd was an “issuer” within the meaning of the FCPA, 15 U.S.C. § 78dd-1(a).

3. The defendant, **ABB INC.**, was an indirect subsidiary of ABB Ltd and was incorporated under the laws of the State of Delaware. **ABB INC.** was a “domestic concern” as that term is defined in the FCPA, 15 U.S.C. § 78dd-2(h)(1).

ABB INC. conducted business, in part, through a business unit it called **ABB NETWORK MANAGEMENT** (“**ABB NM**”) that had its principal place of business in Sugar Land, Texas and was acquired by **ABB INC.** in or around January 1999. **ABB NM**’s primary business was to provide products and services to electrical utilities for network management in power generation, transmission, and distribution. Many of **ABB NM**’s clients were foreign state-owned utilities. **ABB NM** conducted business in a number of its foreign markets through sales representatives.

4. JOHN JOSEPH O’SHEA was the General Manager of **ABB NM** and oversaw its operations both before and after its acquisition by **ABB INC.** Among O’SHEA’s responsibilities was approving payments to sales representatives. O’SHEA was a citizen of the United States. In light of the foregoing, O’SHEA was a “domestic concern” and an officer, employee, and agent of a domestic concern, as these terms are defined in the FCPA, 15 U.S.C. § 78dd-2(h)(1).

5. Comisión Federal de Electricidad (“CFE”) was an electric utility company owned by the United Mexican States (“Mexico”) responsible for supplying electricity to all of Mexico other than Mexico City. CFE contracted with

Mexican and foreign companies for goods and services to help it perform its mission. CFE did business with **ABB NM**.

6. CFE Officials N, J, C, and G held official positions at CFE and had influence over decisions concerning **ABB NM**'s contracts with CFE. CFE Officials N, J, C, and G were "foreign officials" as that term is defined in the FCPA, 15 U.S.C. § 78dd-2(h)(2).

7. Mexican Company X was a Mexican company headquartered in Mexico City, Mexico. The principal business of Mexican Company X was to be a sales representative for foreign and domestic companies doing business with Mexican government agencies. Mexican Company X was **ABB NM**'s sales representative in Mexico pursuant to representative agreements, and **ABB NM** was an important customer for Mexican Company X. In light of the foregoing, Mexican Company X was an agent of a domestic concern, as that term is defined in the FCPA, 15 U.S.C. § 78dd-2(h)(1).

8. **ABB NM** and Mexican Company X entered into multiple commission-based representation agreements in which **ABB NM** agreed to pay Mexican Company X a percentage of the revenue generated from business with Mexican governmental utilities, including CFE. Mexican Company X was retained by the Sugar Land operation prior to its acquisition by an ABB entity in

1999. **ABB NM** obtained multiple contracts with CFE for goods and services related to CFE's network while using Mexican Company X as its sales representative. In or around December 1997, CFE awarded **ABB NM** a contract referred to as the SITRACEN Contract (using the Spanish language acronym for Real Time Information and Control System). The purpose of this contract was to significantly upgrade the backbone of Mexico's electrical network system. The SITRACEN Contract generated over \$44 million dollars in revenue for **ABB NM**. In or around October 2003, CFE awarded **ABB NM** a multi-year contract for maintenance and upgrades of the SITRACEN Contract, referred to as the Evergreen Contract. The Evergreen Contract, a sole source award, generated over \$37 million in revenue for **ABB NM**.

9. FERNANDO MAYA BASURTO was a citizen of Mexico. BASURTO was a principal of Mexican Company X, performed work for **ABB NM** on its contracts with CFE, and had primary responsibility at Mexican Company X for the Evergreen Contract. In light of the foregoing, BASURTO was an agent of a domestic concern, as that term is defined in the FCPA, 15 U.S.C. § 78dd-2(h)(1).

10. Co-conspirator X was a citizen of Mexico. Co-conspirator X founded and was a principal of Mexican Company X and also performed work for **ABB**

NM on its contracts with CFE. In light of the foregoing, Co-conspirator **X** was an agent of a domestic concern, as that term is defined in the FCPA, 15 U.S.C. § 78dd-2(h)(1).

11. Intermediary Company **O** was a company incorporated in and headquartered in Mexico. Intermediary Company **O** maintained a bank account in Mexico. Intermediary Company **O** was paid by **ABB NM** in connection with the Evergreen Contract, purportedly to perform maintenance support and administration. In light of the foregoing, Intermediary Company **O** was an agent of a domestic concern, as that term is defined in the FCPA, 15 U.S.C. § 78dd-2(h)(1).

12. Intermediary Company **S** was a company incorporated in Panama and headquartered in Mexico. Intermediary Company **S** maintained bank accounts abroad. Co-conspirator **S** was the President and Executive Director of Intermediary Company **S** and a Mexican citizen. Intermediary Company **S** was paid by **ABB NM** in connection with the Evergreen Contract purportedly to perform technical support. Intermediary Company **S** had previously also been paid by **ABB NM** during the SITRACEN Contract. In light of the foregoing, Intermediary Company **S** and Co-conspirator **S** were agents of a domestic concern, as that term is defined in the FCPA, 15 U.S.C. § 78dd-2(h)(1).

The Conspiracy and Its Objects

13. From in or before December 1997, through in or around April 2005, in the Southern District of Texas, and elsewhere, the defendant,

ABB INC.,

did unlawfully, willfully, and knowingly conspire, confederate, and agree with JOHN JOSEPH O'SHEA, FERNANDO MAYA BASURTO, Mexican Company X, Co-conspirator X, Intermediary Companies O and S, Co-conspirator S, and other persons known and unknown to the Grand Jury, to commit offenses against the United States, that is to willfully make use of the mails and means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, offer, gift, promise to give, and authorization of the giving of anything of value to any foreign official, or any person, while knowing that a portion of such money and thing of value will be offered, given, and promised, directly and indirectly, to any foreign official, for purposes of: (i) influencing acts and decisions of such foreign official in his official capacity; (ii) inducing such foreign official to do and omit to do acts in violation of the lawful duty of such official; (iii) securing an improper advantage; and (iv) inducing such foreign official to use his influence with a foreign government and instrumentalities thereof to affect and influence acts and

decisions of such government and instrumentalities in order to assist the defendant, **ABB INC.**, along with O'SHEA, BASURTO, Mexican Business X, Co-conspirator X, Intermediary Companies O and S, Co-conspirator S and others known and unknown, in obtaining and retaining business for and with, and directing business to **ABB INC.** and **ABB NM**, in violation of the Foreign Corrupt Practices Act, Title 15, United States Code, Sections 78dd-1, *et seq.*

Purposes of the Conspiracy

14. The purpose of the conspiracy was for **ABB INC.** and its co-conspirators to unjustly enrich themselves by making concealed corrupt payments to CFE Officials N, J, C, and G, and others in exchange for improper business advantages to **ABB INC.** and **ABB NM**, including the award of contracts.

Manner and Means of the Conspiracy

15. **ABB INC.**, along with O'SHEA, BASURTO, Mexican Business X, Co-conspirator X, Intermediary Companies O and S, Co-conspirator S, and others used the following manner and means, among others, to accomplish the object and purpose of the conspiracy:

The Agreement to Make Corrupt Payments for the SITRACEN Contract

- a. CFE officials would inform O'SHEA, BASURTO, Co-conspirator X, and others that corrupt payments would need to be paid in order to receive the SITRACEN Contract.
- b. O'SHEA would authorize **ABB NM** to make corrupt payments for the benefit of CFE officials through the use of Intermediary Company S.
- c. O'SHEA would also authorize BASURTO and Co-conspirator X to make corrupt payments to CFE Official J on **ABB NM**'s behalf for the SITRACEN Contract. BASURTO and certain of his family members would make these payments in the form of checks to family members of CFE Official J.

The Agreement to Make Corrupt Payments for the Evergreen Contract

- d. In anticipation of future business based on the success of the SITRACEN Contract, O'SHEA, BASURTO, Co-conspirator X, and CFE Officials N and C would meet to discuss how to make corrupt payments to CFE Officials N and C, as well as others at CFE, in order to secure the Evergreen Contract and cause the inclusion of terms favorable to **ABB NM**.
- e. The conspirators would agree that the CFE officials collectively would receive approximately 10% of the revenue from the CFE contract to distribute among themselves and others.

f. The conspirators would further agree that Mexican Company X would serve as an intermediary company for approximately one million dollars of the corrupt payments over the course of the Evergreen Contract, with BASURTO and Co-conspirator X retaining a portion of these funds for themselves for their efforts.

g. O'SHEA would cause **ABB NM** to wire transfer funds to BASURTO and his family members for this purpose.

h. BASURTO would follow instructions from CFE officials about how to then transfer the funds for the CFE officials' benefit. The conspirators would refer to this portion of the corrupt payments as the "extra for the friends that we handle" and payments to the "Good Guys."

i. The conspirators would further agree that the CFE officials would submit false invoices to **ABB NM** from companies that did not do any work for **ABB NM** to conceal the remaining portion of the corrupt payments.

j. CFE officials would then select Intermediary Companies O and S to receive these funds from **ABB NM**.

k. BASURTO would receive the false invoices from CFE Official C in the names of Intermediary Companies O and S and then would transmit them

to **ABB NM** for payment. The conspirators sometimes referred to these payments as the “Third World Tax.”

l. O’SHEA, BASURTO, and Co-conspirator X would make, use, and email charts and spreadsheets that reflected the “Good Guys” and “Third World Tax” or “3WT” payments.

Transferring the Corrupt Payments

m. The conspirators would employ a series of financial transactions to conceal the origin and the ultimate recipients of the corrupt payments.

i. BASURTO would direct that **ABB NM**’s payments to the “Good Guys” be broken up into a series of smaller payments that would then be wired to accounts at U.S. banks in the name of BASURTO and certain of his family members.

ii. BASURTO would maintain control over all of these funds and would, at CFE Official C’s instruction, wire funds from these accounts to a Merrill Lynch brokerage account. CFE Official C would then cause some of these funds to be further transferred to the son-in-law of CFE Official N and to the brother of CFE Official C. BASURTO would follow additional instructions from

CFE Official C concerning the “Good Guys” funds, including giving CFE Official C approximately \$20,000 in cash.

iii. O’SHEA would approve payment on the false invoices received from BASURTO in the names of Intermediary Companies O and S, knowing their corrupt purpose. **ABB NM** would then purport to pay these false invoices by wire transfer to accounts in the Federal Republic of Germany (“Germany”) and Mexico.

Benefits from the Corrupt Payments

n. **ABB NM** would receive a variety of business advantages from CFE including, but not limited to, obtaining the SITRACEN and Evergreen Contracts from CFE and securing favorable terms in the Evergreen Contract.

Compensation and Kickbacks

o. BASURTO and Co-conspirator X’s compensation from **ABB NM** for Mexican Company X’s work would vary, but they would typically receive approximately 9% of the value of the SITRACEN and Evergreen Contracts for both the legitimate services they performed on the contracts as well as the illegal services they provided as conduits for corrupt payments.

p. BASURTO and Co-conspirator X would also make kickback payments out of their commissions to O’SHEA. These kickback payments would

be made in a concealed fashion by writing checks to multiple payees, including O'SHEA, his family members, a friend, and American Express to pay O'SHEA's credit card bills. To further conceal the payments to O'SHEA, BASURTO would use multiple accounts to make these payments. At times, O'SHEA would also receive kickback payments in cash.

Internal Investigation and Voluntary Disclosure

q. **ABB INC.** terminated O'SHEA in November 2004 and thereafter conducted a thorough internal investigation of the improper payments. It voluntarily disclosed the conduct to the Department of Justice and the Securities and Exchange Commission in April 2005.

Overt Acts

16. In furtherance of the conspiracy and to achieve the objects and purposes thereof, the co-conspirators committed, or caused to be committed, in the Southern District of Texas and elsewhere, the following overt acts, among others:

Corrupt Payments for the "Good Guys"

a. On or about February 2, 2004, BASURTO sent an email to O'SHEA referring to payments from **ABB NM** to Mexican Company X, including those intended to be corrupt payments, that read, in part, "This is the transfer

arrangement for the bonus portion we are handling. It is the same amount shown in the table you have, the first two figures under the Good Guys column.”

b. On or about May 7, 2004, BASURTO sent an email to O’SHEA discussing corrupt payments Mexican Company X was responsible for transferring that read, in part, “We have already informed [CFE Officials N and C] that you are not coming the 11th. . . . Regarding the numbers we handle for them, we will need a transfer of US\$42,344.”

c. On or about May 11, 2004, BASURTO sent an email to O’SHEA regarding the latest requested corrupt payment that read, in part, “This 42k is for the extra we handle for our friends.”

d. On or about July 23, 2004, BASURTO sent an email to O’SHEA explaining which portion of Mexican Company X’s commissions was for services and which was for corrupt payments, which read, in part, “Commission 3 is the extra bonus for our friends that we handle.”

e. On or about the following dates, O’SHEA caused **ABB NM** to wire transfer the following amounts to various accounts controlled by BASURTO as corrupt payments for the “Good Guys”:

	Approximate Date	Approximate Amount	To	Bank	Account
i.	February 17, 2004	\$30,000	Family Member of BASURTO	Bank of America	xx543
ii.	February 17, 2004	\$30,000	Family Member of BASURTO	Bank of America	xx569
iii.	February 17, 2004	\$30,000	BASURTO	Wells Fargo	xx010
iv.	February 17, 2004	\$30,000	Family Member of BASURTO	JP Morgan Chase	xx065
v.	February 17, 2004	\$30,000	Family Member of BASURTO	Bank of America	xx519
vi.	February 17, 2004	\$31,750	BASURTO	Bank of America	xx414
vii.	May 13, 2004	\$42,343	Family Member of BASURTO	Bank of America	xx772
viii.	September 27, 2004	\$42,342	Family Member of BASURTO	Bank of America	xx772

f. On or about the following dates at the direction of CFE Official C, BASURTO caused the following wire transfers to be made to a Merrill Lynch brokerage account held in the name of a third party out of the “Good Guys” funds:

	Approximate Date	Approximate Amount	Bank	Account
i.	February 20, 2004	\$22,500	Bank of America	xx519
ii.	February 20, 2004	\$22,500	Bank of America	xx543
iii.	February 23, 2004	\$22,500	Bank of America	xx569
iv.	February 23, 2004	\$22,500	Bank of America	xx513
v.	February 23, 2004	\$45,000	Bank of America	xx519
vi.	May 14, 2004	\$30,831	Bank of America	xx772
vii.	October 4, 2004	\$31,750	Bank of America	xx772

g. On or about the following dates, CFE Official C caused the following wire transfers to be made from the same Merrill Lynch brokerage account to an account in the name of the son-in-law of CFE Official N:

	Approximate Date	Approximate Amount	Bank	
i.	February 26, 2004	\$68,159	Wells Fargo	xx248
ii.	May 21, 2004	\$15,878	Wells Fargo	xx248
iii.	October 14, 2004	\$15,875	Wells Fargo	xx248

h. On or about June 21, 2004, CFE Official C caused a wire transfer of approximately \$2,000 to be made from the same Merrill Lynch brokerage account to a Mexican bank account in the name of the brother of CFE Official C.

Corrupt Payments to Intermediary Companies O and S

i. In or around March 2004, BASURTO transmitted an invoice to **ABB NM** on behalf of Intermediary Company O that had been given to him by CFE Official C, which falsely requested payment for “6 MONTHS (7-12/2003) OF MAINTENANCE SUPPORT SERVICES AND ADMINISTRATION OF CFE EVERGREEN PROJECT AT ALL SITES IN MEXICO” and requested payment of \$327,000.

j. In or around May 2004, BASURTO transmitted an invoice to **ABB NM** on behalf of Intermediary Company O that had been given to him by CFE Official C, which falsely requested payment for “4 MONTHS OF MAINTENANCE SUPPORT SERVICES AND ADMINISTRATION OF CFE EVERGREEN PROJECT AT ALL SITES IN MEXICO” and requested payment of \$76,200.

k. On or about the following dates, O’SHEA caused **ABB NM** to wire transfer the following amounts to Intermediary Company O’s Mexican bank account:

	Approximate Date	Approximate Amount
i.	March 8, 2004	\$327,000
ii.	June 3, 2004	\$76,200

l. On or around March 2004, BASURTO transmitted an invoice to **ABB NM** on behalf of Intermediary Company S and signed by Co-conspirator S that had been given to him by CFE Official C, which falsely requested payment for “Technical support for 6 months” and requested that \$218,000 be sent to a German bank account.

m. On or around May 2004, BASURTO transmitted an invoice to **ABB NM** on behalf of Intermediary Company S and signed by Co-conspirator S that had been given to him by CFE Official C, which falsely requested payment for “Technical support for 4 months” and requested that \$50,800 be sent to a German bank account.

n. On or about the following dates, O’SHEA caused **ABB NM** to wire transfer the following amounts to Intermediary Company S’s German bank account:

	Approximate Date	Approximate Amount
i.	April 1, 2004	\$218,000
ii.	June 3, 2004	\$50,800

o. On or about the following dates, Co-conspirator S caused the following wire transfers to be made to the U.S. bank account of a military academy to pay for the tuition of CFE Official N’s son:

	Approximate Date	Approximate Amount
i.	April 5, 2004	\$24,500
ii.	June 4, 2004	\$5,000

All in violation of Title 18, United States Code, Section 371.

COUNT TWO
Violation of the Foreign Corrupt Practices Act
(15 U.S.C. § 78dd-2(a); 18 U.S.C. § 2)

17. Paragraphs 1 through 12, and 14 through 16 of Count One are realleged and incorporated by reference as though set forth herein.

18. On or about the date set forth below, in the Southern District of Texas, and elsewhere, the defendant,

ABB INC.,

a domestic concern within the meaning of the FCPA, willfully made use of and caused others to make use of, the mails and means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, offer, gift, promise to give, and authorization of the giving of anything of value to any foreign official, and to any person, while knowing that the money and thing of value will be offered, given, and promised, directly and indirectly, to any foreign official for the purposes of: (i) influencing acts and decisions of such foreign official in his official capacity; (ii)

inducing such foreign official to do and omit to do acts in violation of the lawful duty of such official; (iii) securing an improper advantage; and (iv) inducing such foreign official to use his influence with a foreign government and instrumentalities thereof to affect and influence acts and decisions of such government and instrumentalities, in order to assist, **ABB INC.**, as well as **ABB NM**, O'SHEA, BASURTO, Co-conspirator X, and others known and unknown in obtaining and retaining business for and with, and directing business to **ABB INC.** and **ABB NM**, as follows:

Count	Approximate Date	Use of Instrumentality of Interstate Commerce	CFE Contract
Two	March 8, 2004	"Third World Tax" corrupt payment of \$327,000 wire transferred from ABB NM 's bank account to Intermediary Company O's Mexican bank account	Evergreen Contract

All in violation of Title 15, United States Code, Sections 78dd-2(a) and Title 18, United States Code, Section 2.

JOSÉ ANGEL MORENO
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