

United States District Court
Southern District of Texas
FILED

SEP 29 2010

David J. Bradley, Clerk of Court

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ABB LTD - JORDAN,

Defendant.

§
§
§
§
§
§
§
§
§

CRIMINAL NO. H-10-

H 10 665

Violation

18 U.S.C. § 371 (Conspiracy)

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)**

GENERAL ALLEGATIONS

Relevant Entities and Individuals

1. **ABB LTD - JORDAN** was a wholly owned subsidiary of ABB Ltd.
ABB Near East Trading Ltd ("ABB Near East") was a 95% owned subsidiary of
ABB LTD - JORDAN. ABB Ltd was a corporation headquartered and
incorporated in Switzerland and 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 Foreign Corrupt Practices Act (“FCPA”), 15 U.S.C. § 78dd-1(a). By virtue of its status as an issuer within the meaning of the FCPA, ABB Ltd was required to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflected the transactions and disposition of assets of ABB Ltd and its subsidiaries, including those of **ABB LTD - JORDAN**, which were incorporated into the books of ABB Ltd.

2. **ABB LTD - JORDAN**, through ABB Near East, provided equipment and services to electrical utilities, including control measurement and protection systems, transducers, and metering equipment. On occasion, **ABB LTD - JORDAN** and ABB Near East would act through employees of the Jordan branch of ABB International Marketing Ltd, which was a wholly owned subsidiary of ABB Ltd. Employee A was an employee of ABB International Marketing Ltd who often performed work for **ABB LTD - JORDAN** and ABB Near East and held the title of General Manager.

3. ABB Near East had three principle customers under the United Nations Oil-for-Food Program (“OFFP”). These were the General Company for Electricity Energy Production (“GEEP”), the Baghdad Mayoralty, and State Company Baghdad Electricity Distribution, all of which were regional companies of the Iraqi Electricity Commission, an Iraqi government agency. Jointly, they are referred to as the “Iraqi Electricity Companies.”

The United Nations Oil-for-Food Program

4. On or about August 6, 1990, days after Iraq’s invasion of Kuwait, the United Nations (“U.N.”) adopted Security Council Resolution 661, which prohibited U.N. member states from transacting business with Iraq, except for the purchase and sale of humanitarian supplies. Resolution 661 prohibited virtually all direct financial transactions with the government of Iraq.

5. On or about April 15, 1995, the U.N. adopted Security Council Resolution 986, which served as a limited exception to the Iraq sanctions regime in that it allowed Iraq to sell its oil. However, Resolution 986 required that the proceeds from oil sales be used by the Iraqi government to purchase humanitarian supplies, including but not limited to food, for the Iraqi people. Hence, this program became known as the Oil for Food Program. Payments made to the Iraqi

government which were not approved by the U.N. and which were outside the strict contours of the OFFP were prohibited.

6. The rules of the OFFP required that the proceeds from all sales of Iraqi oil be deposited into a U.N.-controlled escrow account at the New York, New York branch of Banque Nationale de Paris (“BNP-Paribas”). That escrow account funded the purchase of humanitarian goods by the Iraqi government.

7. Under the rules of the OFFP, a supplier of humanitarian goods contracted with a ministry or other department of the Iraqi government to sell goods to the government. Once that contract was finalized, the contract was submitted to a U.N. Committee (“the 661 Committee”) which reviewed the contracts to ensure that their terms complied with all U.N. OFFP and Iraqi sanction regulations. The 661 Committee accepted the contracts, rejected them or asked the supplier to provide additional information upon which the committee could make a decision.

8. If a contract was approved by the 661 Committee, a letter of credit was issued by the New York, New York branch of BNP-Paribas to the supplier’s bank stating that the supplier would be paid by the OFFP for the relevant goods once certain conditions were met, including delivery of the goods to Iraq and inspection of the goods by a U.N. contractor. Once those conditions were deemed

by the U.N. to have been met, the U.N. would direct BNP-Paribas to release payment to the supplier.

9. On or about December 10, 1996, the first Iraqi oil exports under the U.N. OFFP began. The OFFP continued from in or about December 1996 until the United States invasion of Iraq on or about March 19, 2003. From in or about December 1996 through March 2003, the United States government prohibited United States companies and individuals from engaging in transactions with the government of Iraq, unless such transactions were authorized by the U.N. pursuant to the OFFP.

10. Beginning in approximately August 2000, the Iraqi government demanded that suppliers of humanitarian goods pay a kickback, usually valued at 10% of the contract price, to the Iraqi government in order to be awarded a contract by the government. These kickbacks violated U.N. OFFP regulations and U.N. sanctions, which prohibited payments to the Iraqi government which were not expressly approved by the U.N. and which were not contemplated by the guidelines of the OFFP.

11. Often, these kickbacks were termed “after sales service fees” (“ASSFs”), but did not represent any actual service being performed by the supplier. These ASSFs were usually included in the contract price submitted by

the supplier to the U.N. without disclosing to the U.N. that the contract contained an extra 10% which would be returned to the Iraqi government. Including the 10% in the contract price allowed the supplier to avoid paying the 10% out of its profits; instead, the suppliers caused the U.N., unknowingly, to fund the kickbacks to the Iraqi government.

12. Some suppliers labeled the ASSFs as such, thereby leading the U.N. to believe that actual after-sales services were being provided by the supplier. Other suppliers disguised the ASSFs by inserting fictitious line items into the contracts for goods or services that were not being provided. Still other suppliers simply inflated their contract prices by 10% to account for the payments they would make, or cause to be made, to the Iraqi government.

The Kickback Scheme

13. From in or about April 2000 through in or about April 2004, **ABB NEAR EAST**, received eleven purchase orders for electrical equipment and services worth over \$5.9 million with the Iraqi Electricity Companies, pursuant to the OFFP. To obtain these purchase orders, **ABB NEAR EAST** caused over \$300,000 in kickbacks to be paid to the government of Iraq.

14. In order to generate the funds to pay the kickbacks to the Iraqi government and to conceal those payments, **ABB NEAR EAST** would inflate the

price of its contracts with the Iraqi government by approximately 10% before submitting the contracts to the U.N. for approval.

15. After the U.N. approved the contracts, BNP-Paribas issued letters of credit, via international wire communication, to banks used by **ABB NEAR EAST**, in the amount of the contract prices. These letters of credit authorized the companies to be paid the amounts specified in the contracts, which included the 10% kickbacks to be paid to the Iraqi government.

The Conspiracy and Its Objects

16. From in or about April 2000 through in or about April 2004, within the territory of the United States and elsewhere, **ABB LTD - JORDAN**, ABB Near East, Employee A, and others known and unknown, did unlawfully and knowingly combine, conspire, confederate and agree together to commit the following offenses against the United States:

a. to knowingly devise, and intend to devise a scheme and artifice to defraud the U.N. and the Oil-for-Food Program, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, through the use of interstate and foreign wire communications, in violation of Title 18, United States Code, Section 1343; and

b. to knowingly falsify and cause to be falsified books, records, and accounts required to, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of ABB Ltd, an issuer within the meaning of the FCPA, in violation of Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5) and 78ff(a).

Purpose of the Conspiracy

17. The primary purpose of the conspiracy was to obtain and retain lucrative business with the Iraqi government through the payment of kickbacks to the Iraqi government, which were concealed from the U.N. and portrayed as legitimate charges.

Manner and Means of the Conspiracy

18. To achieve the objects of the conspiracy, **ABB LTD - JORDAN** and others used the following manner and means, among others:

a. It was part of the conspiracy that **ABB LTD - JORDAN** would agree to pay and cause kickbacks to be paid, to the government of Iraq in exchange for contracts being awarded by the Iraqi government to **ABB LTD - JORDAN**.

b. It was a further part of the conspiracy that **ABB LTD - JORDAN** would pay and conceal such kickbacks.

c. It was a further part of the conspiracy that **ABB LTD -**

JORDAN submitted contracts to the U.N. for approval which failed to disclose, and concealed, the fact that the prices of the contracts had been inflated by approximately 10% in order to generate money to pay the kickbacks to the Iraqi government.

d. It was a further part of the conspiracy that **ABB LTD - JORDAN** caused the transmission of international wire communications, to and from the United States: (i) to provide notice to the U.N. that **ABB LTD - JORDAN** goods had been shipped to, and inspected in, Iraq; and (ii) to provide notice to banks used by **ABB LTD - JORDAN** that the U.N. had authorized payments pursuant to the contracts.

e. It was a further part of the conspiracy that **ABB LTD - JORDAN** falsely described at least one of the kickbacks paid to the Iraqi government in its corporate books and records as “commission” payments.

Overt Acts

19. In furtherance of the conspiracy and to achieve the objects and purpose thereof, the co-conspirators committed, or caused to be committed, in the territory of the United States and elsewhere, the following overt acts, among others:

Contract 800584

20. In or around April 2000, **ABB LTD - JORDAN** through ABB Near East executed a purchase order with GEEP for a control protection and measurement system for 100,903 Swiss Francs (CHF) (“Contract 800584”), which included approximately an extra 10% to be used to pay kickbacks to the Iraqi government and which was listed as “consultation fees” on the order calculation model.

21. On or about March 2, 2002, **ABB LTD - JORDAN** through ABB Near East caused approximately 2,000 CHF to be delivered to the Iraqi government in kickbacks, pursuant to Contract 800584, delivered by Employee A and documented in a receipt for ASSF issued by the government of Iraq.

22. On or about May 29, 2002, a company based in Geneva, Switzerland, that provided commercial inspection services on behalf of the U.N. in Iraq (the “inspection company”) sent an international wire communication from Iraq to the U.N. in New York, New York notifying the U.N. that the products purchased pursuant to Contract 800584 had been received and inspected upon entry into Iraq; this notification, in turn, triggered payment by the U.N. to ABB Near East for Contract 800584, minus applicable late penalties.

23. On or about June 24, 2002, ABB Near East caused approximately 7,200 CHF to be delivered to the Iraqi government in kickbacks, pursuant to Contract 800584, delivered by Employee A and documented in a receipt for ASSF issued by the government of Iraq.

Contract 800846

24. On or about September 11, 2000, **ABB LTD - JORDAN** through ABB Near East executed a purchase order with GEEP for switch yard equipment, accessories, and spares for 246,004 CHF (“Contract 800846”), which included approximately an extra 10% to be used to pay kickbacks to the Iraqi government.

25. On or about December 30, 2001, the inspection company sent an international wire communication from Iraq to the U.N. in New York, New York notifying the U.N. that the products purchased pursuant to Contract 800846 had been received and inspected upon entry into Iraq; this notification, in turn, triggered payment by the U.N. to ABB Near East for Contract 800846.

26. On or about March 25, 2002, ABB Near East caused approximately 22,364 CHF to be delivered to the Iraqi government in kickbacks, pursuant to Contract 800846, delivered by Employee A and documented in receipts for ASSF issued by the government of Iraq.

Contract 801160

27. On or about December 11, 2000, **ABB LTD - JORDAN** through ABB Near East executed a purchase order with GEEP for switch yard equipment and accessories for €183,883 EUR (“Contract 801160”), which included approximately an extra 10% to be used to pay kickbacks to the Iraqi government and which was listed as “consultation fees” on the order calculation model.

28. On or about November 11, 2001, the inspection company sent an international wire communication from Iraq to the U.N. in New York, New York notifying the U.N. that the products purchased pursuant to Contract 801160 had been received and inspected upon entry into Iraq; this notification, in turn, triggered payment by the U.N. to ABB Near East for Contract 801160, minus applicable late penalties.

29. On or about December 5, 2001, ABB Near East caused approximately \$14,030 USD to be delivered to the Iraqi government in kickbacks, pursuant to Contract 801160, delivered by Employee A and documented in a receipt for ASSF issued by the government of Iraq.

Contract 801200

30. On or about December 7, 2000, **ABB LTD - JORDAN** through ABB Near East executed a purchase order with GEEP for a boiler auxiliary system for

€386,893 EUR (“Contract 801200”), which included approximately an extra 10% to be used to pay kickbacks to the Iraqi government and which was listed as “consultation fees” on the cost calculation model.

31. On or about June 1, 2001, the inspection company sent an international wire communication from Iraq to the U.N. in New York, New York notifying the U.N. that the products purchased pursuant to Contract 801200 had been received and inspected upon entry into Iraq; this notification, in turn, triggered payment by the U.N. to ABB Near East for Contract 801200.

32. On or about July 17, 2002, ABB Near East caused approximately €35,172 EUR to be delivered to the Iraqi government in kickbacks, pursuant to Contract 801200, delivered by Employee A and documented in receipts for ASSF issued by the government of Iraq.

Contract 801562

33. On or about January 13, 2001, **ABB LTD - JORDAN** through ABB Near East executed a purchase order with GEEP for transmission line spares for 1,088,133 CHF (“Contract 801562”), which included approximately an extra 10% to be used to pay kickbacks to the Iraqi government and which was listed as “consultation fees” on the cost calculation model.

34. On or about December 28, 2002, the inspection company sent an international wire communication from Iraq to the U.N. in New York, New York notifying the U.N. that pursuant to Contract 801562 site commissioning and on-site supervision had occurred in Iraq; this notification, in turn, triggered partial payment by the U.N. to ABB Near East for Contract 801562.

35. On or about March 28, 2002, the inspection company sent an international wire communication from Iraq to the U.N. in New York, New York notifying the U.N. that the products purchased pursuant to Contract 801562 had been received and inspected upon entry into Iraq; this notification, in turn, triggered additional payment by the U.N. to ABB Near East for Purchase Order 801562.

36. On or about April 13, 2002, ABB Near East caused approximately 98,922 CHF to be delivered to the Iraqi government in kickbacks, pursuant to Contract 801562, documented in a receipt for ASSF issued by the government of Iraq.

Contract 801820

37. On or about January 16, 2001, **ABB LTD - JORDAN** through ABB Near East executed a purchase order with GEEP for transmission line spares for 1,031,949 CHF (“Contract 801820”). On the cost calculation model for this

purchase order, the extra 10% was listed as “consultation fees.” In fact, the extra 10% was to be used to pay kickbacks to the Iraqi government.

38. On or about May 5, 2002, the inspection company sent an international wire communication from Iraq to the U.N. in New York, New York notifying the U.N. that the products purchased pursuant to Contract 801820 had been received and inspected upon entry into Iraq; this notification, in turn, triggered payment by the U.N. to ABB Near East for Contract 801820.

39. On or about April 13, 2002, ABB Near East caused approximately 1,078 CHF to be delivered to the Iraqi government in kickbacks, pursuant to Contract 801820, delivered by Employee A and documented in a receipt for ASSF issued by the government of Iraq.

40. On or about May 28, 2002, ABB Near East caused approximately 92,730 CHF to be delivered to the Iraqi government in kickbacks, pursuant to Contract 801820, delivered by Employee A and documented in a receipt for ASSF issued by the government of Iraq.

Contract 901362

41. On or about June 20, 2001, **ABB LTD - JORDAN** through ABB Near East executed a purchase order with Baghdad Mayoralty for electrical transformers for €965,525 EUR (“Contract 901362”), which included

approximately an extra 10% to be used to pay kickbacks to the Iraqi government and which was listed as “consultation fees” on the cost calculation model.

42. On or about May 5, 2002, the inspection company sent an international wire communication from Iraq to the U.N. in New York, New York notifying the U.N. that the products purchased pursuant to Contract 901362 had been received and inspected upon entry into Iraq; this notification, in turn, triggered payment by the U.N. to ABB Near East for Contract 901362.

43. On or about August 14, 2001, ABB Near East caused approximately €87,775 EUR to be delivered to the Iraqi government in kickbacks, pursuant to Contract 901362, through a bank guarantee with Cairo Amman Bank.

Contract 901008

44. On or about June 3, 2001, **ABB LTD - JORDAN** through ABB Near East executed a purchase order with Baghdad Mayoralty for circuit breakers for motor starter protection for €373,105 EUR (“Contract 901008”), which included approximately an extra 10% to be used to pay kickbacks to the Iraqi government and which was listed as “consultation fees” on the cost calculation model.

45. On or about August 14, 2001, ABB Near East caused approximately €33,919 EUR to be delivered to the Iraqi government in kickbacks, pursuant to Contract 901008, through a bank guarantee with Cairo Amman Bank.

46. On or about December 3, 2001, the inspection company sent an international wire communication from Iraq to the U.N. in New York, New York notifying the U.N. that the products purchased pursuant to Contract 901008 had been received and inspected upon entry into Iraq; this notification, in turn, triggered payment by the U.N. to ABB Near East for Contract 901008.

Contract 1102008

47. On or about November 7, 2001, **ABB LTD - JORDAN** through ABB Near East executed a purchase order with GEEP for transducer and metering equipment for €547,947 EUR (“Contract 1102008”), which included approximately an extra 10% to be used to pay kickbacks to the Iraqi government.

48. On or about March 2, 2002, ABB Near East caused approximately €5,000 EUR to be delivered to the Iraqi government in kickbacks, pursuant to Contract 1102008, documented in a receipt for ASSF issued by the government of Iraq.

49. On or about January 27, 2004, the inspection company sent an international wire communication from Iraq to the U.N. in New York, New York notifying the U.N. that the products purchased pursuant to Contract 1102008 had been received and inspected upon entry into Iraq; this notification, in turn, triggered payment by the U.N. to ABB Near East for Contract 1102008.

Contract 1102001

50. In or around December 15, 2001, **ABB LTD - JORDAN** executed a purchase order with State Company Baghdad Electricity Distribution for substation equipment and materials for €1,692,205.75 EUR (“Contract 1102001”), which included approximately an extra 10% to be used to pay kickbacks to the Iraqi government that was disguised as payment for “spare parts” on the purchase order and as “AFTER SALES SERVIC[.]” on the cost calculation model.

51. On or about February 24, 2002, **ABB NEAR EAST** caused approximately \$10,000 USD to be delivered to the Iraqi government in kickbacks, pursuant to Contract 1102001, delivered by Employee A and documented in a receipt for ASSF issued by the government of Iraq.

52. On or about April 6, 2004, the inspection company sent an international wire communication from Iraq to the U.N. in New York, New York notifying the U.N. that the products purchased pursuant to Contract 1102001 had been received and inspected upon entry into Iraq; this notification, in turn, triggered payment by the U.N. to **ABB LTD - JORDAN** for Contract 1102001, the letter of credit for which had been reduced by 10% by the U.N.

Contract 1101993

53. On or about January 18, 2001, **ABB LTD - JORDAN** through ABB Near East executed a purchase order with GEEP for transducer and metering equipment for 648,707 Swedish krona (SEK) (“Contract 1101993”), which included approximately an extra 10% to be used to pay kickbacks to the Iraqi government and which was listed as “consultation fees” on the cost calculation model.

54. On or about March 20, 2002, ABB Near East caused approximately \$2,000 USD to be delivered to the Iraqi government in kickbacks, pursuant to Contract 1101993, documented in a receipt for ASSF issued by the government of Iraq, before this contract was terminated.

Books and Records

55. In or about 2002, in order to conceal on its corporate books and records the approximately 98,922 CHF kickback payment made to the Iraqi government in connection with Contract 801562, ABB Near East improperly characterized the payment as “consultation fees.”

56. At the end of ABB Ltd’s fiscal year 2002, the books and records of **ABB LTD - JORDAN** and ABB Near East, including those containing false characterizations of the payments made to the Iraqi government, were incorporated

into the books and records of ABB Ltd for purposes of preparing ABB Ltd's year-end financial statements.

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

JOSÉ ANGEL MORENO
UNITED STATES ATTORNEY

DENIS J. McINERNEY, CHIEF
FRAUD SECTION, CRIMINAL DIVISION
U.S. DEPARTMENT OF JUSTICE


By: Nicola J. Mrazek
Senior Trial Attorney