

United States District Court
Southern District of Texas
FILED

NOV 21 2017

David J. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA

v.

SBM OFFSHORE USA, INC.

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CRIMINAL NO.
SEALED

17 CR 685

INFORMATION

THE UNITED STATES CHARGES:

Introduction

At all relevant times, unless otherwise specified:

1. The Foreign Corrupt Practices Act of 1977 (“FCPA”), as amended, Title 15, United States Code, Section 78dd-1, *et seq.*, was enacted by Congress for the purpose of, among other things, making it unlawful to act corruptly in furtherance of an offer, promise, authorization, or payment of money or anything of value, directly or indirectly, to a foreign official for the purpose of obtaining or retaining business for, or directing business to, any person.

Relevant Entities and Individuals

SBM Offshore USA, Inc. and Related Entities and Individuals

2. Defendant **SBM Offshore USA, Inc.** (“**SBM USA**”) was a Texas-incorporated, Houston, Texas-based oil and gas services company that was a

wholly-owned subsidiary of SBM Offshore N.V. (“SBM Offshore”). Defendant **SBM USA** is the successor corporation to Atlantia Corporation, a/k/a SBM Atlantia, Inc., a/k/a Atlantia Offshore Limited (“SBM Atlantia”), and SBM-Imodco, Inc., a/k/a Imodco, Inc. (“SBM Imodco”), all of which were “domestic concerns” as that term is used in the Foreign Corrupt Practices Act (“FCPA”), 15 U.S.C. § 78dd-2.

3. SBM Offshore was a publicly-traded company in the Netherlands, with offices in Amsterdam, Monaco, Switzerland and Houston, Texas. SBM Offshore was a holding company with major business operations specialized in designing, constructing, and providing offshore oil and gas drilling equipment such as Floating Production Storage and Offloading (“FPSO”) vessels, Single-Point Mooring (“SPM”) buoys, and Catenary Anchor Leg Mooring (“CALM”) terminals. SBM Offshore operated through its various subsidiaries (collectively, “SBM”).

4. “Executive 1,” an individual whose identity is known to SBM USA and the United States, was a French citizen and high-level executive of SBM from in or around 2004 until in or around April 2008. From in or around 2000 until in or around 2008 Executive 1 was, at various times, also a member of the Board of Directors of SBM Imodco and SBM Atlantia and thus was a “director,” “employee,” and “agent” of a “domestic concern” as those terms are used in the

FCPA.

5. Anthony Mace (“Mace”) was a U.K. citizen and high-level executive of SBM from in or about April 2008 until in or about December 2011. From in or around 2000 until in or around 2011, Mace was, at various times, a member of the Board of Directors and an executive of SBM Imodco and a member of the Board of Directors of SBM Atlantia, and thus was an “officer,” “director,” “employee,” and “agent” of a “domestic concern” as those terms are used in the FCPA.

6. Robert Zubiato (“Zubiato”) was a U.S. citizen, an employee of SBM, and an executive of, at various times, Defendant **SBM USA**, SBM Atlantia and SBM Imodco. Zubiato worked on SBM’s sales and marketing efforts in Latin America, which from between at least in or around 1990 until at least in or around the second quarter of 2008 included Brazil. Zubiato continued his employment with Defendant **SBM USA** until February 2016. Zubiato was a “domestic concern” and an “employee” and “agent” of a “domestic concern” as those terms are used in the FCPA.

7. “Intermediary 1,” an individual whose identity is known to SBM USA and the United States, was a Brazilian citizen, who provided sales and marketing services to SBM and SBM USA in Brazil. Intermediary 1 was, alone and together with others, the owner of several Brazil-based oil and gas services intermediary companies, and British Virgin Islands-based shell companies.

8. Petróleo Brasileiro S.A. (“Petrobras”) was a corporation in the petroleum industry headquartered in Rio de Janeiro, Brazil, and operated to refine, produce and distribute oil, oil products, gas, biofuels and energy. The Brazilian government directly owned a majority of Petrobras’s common shares with voting rights, while additional shares were controlled by the Brazilian Development Bank and Brazil’s Sovereign Wealth Fund. Petrobras was controlled by the Brazilian government and performed a function that the Brazilian government treated as its own, and thus was an “instrumentality” of the government as that term is used in the FCPA.

Overview

9. Beginning by at least in or around 1996 and continuing until in or around 2012, Defendant **SBM USA** and its co-conspirators, including SBM Offshore, Executive 1, Mace, and Zubiarte, knowingly and willfully conspired with each other and others known and unknown, to cause SBM to make corrupt “commission” payments to sales intermediaries and others, knowing that a portion of those “commission” payments would be used to bribe foreign officials in Brazil and elsewhere to influence those foreign officials for the purpose of securing improper advantages and obtaining and retaining business with Petrobras and other state-owned oil companies.

10. Defendant **SBM USA** and SBM executed the bribery scheme by and through Executive 1, Mace, and certain of Defendant **SBM USA**'s and SBM sales and marketing executives and employees, including Zubiato. While SBM maintained a sales and marketing team based out of its offices in Monaco, that team was, at times, supported by Defendant **SBM USA**'s Houston, Texas-based sales and marketing staff. For example, SBM's sales and marketing efforts in Brazil were supported by, among others, Zubiato.

11. From at least in or around 1996 through in or around 2012, Defendant **SBM USA** and SBM knowingly paid bribes through Intermediary 1, and Intermediary 1's companies, to officials within the Brazilian government for the purpose of securing an improper advantage and assisting Defendant **SBM USA** and SBM in their business with Petrobras. Defendant **SBM USA** and SBM, through Intermediary 1, and Intermediary 1's companies, paid bribes to at least three Petrobras officials.

12. Defendant **SBM USA** and SBM retained Intermediary 1 as its sales agent in Brazil and agreed to pay Intermediary 1 "commissions" on projects that Petrobras successfully awarded SBM. SBM paid Intermediary 1 out of several of its bank accounts, including at least one in the United States. SBM knew that Intermediary 1 would use part of these "commissions" as bribes to Petrobras officials. At Intermediary 1's request, SBM typically split its "commission"

payments to Intermediary 1 into two accounts, transferring one portion to bank accounts in Brazil held in the name of Intermediary 1's oil and gas services companies, and another, larger, portion of its "commission" to bank accounts in Switzerland held in the names of Intermediary 1's shell companies. Intermediary 1 then wired a portion of the Swiss-based funds to bank accounts under the control of Petrobras officials as bribes.

13. For example, on or about January 18, 2007, in connection with an SBM Imodco project, Zubiate submitted a memorandum to Executive 1 requesting that Executive 1 authorize a "commission" payment of approximately \$668,134, \$601,321 of which was earmarked for a bank account in Switzerland, held in the name of one of Intermediary 1's shell companies, and controlled by Intermediary 1. On or about January 23, 2007, Executive 1 authorized this payment.

14. On or about February 15, 2007, SBM wired \$601,321 to a bank account in Switzerland held in the name of one of Intermediary 1's shell companies and controlled by Intermediary 1.

15. On or about March 9, 2007, Intermediary 1 wired a bribe of approximately \$507,480 of the \$601,321 payment to a bank account in Switzerland under the control of a Petrobras official.

16. In addition, on or about November 24, 2008, SBM wired \$1,756,650 to Intermediary 1's bank account in Brazil. The same day, November 24, 2008, SBM wired \$3,513,300 to a bank account in Switzerland held in the name of one of Intermediary 1's shell companies and controlled by Intermediary 1, believing that Intermediary 1 would transfer a portion of such payment to Petrobras officials as a bribe payment. Intermediary 1 then transferred a portion of this money to a bank account in Switzerland under the control of a Petrobras official as a bribe.

17. Defendant **SBM USA** understood that the purpose of splitting payments to Intermediary 1 was to facilitate the payment of bribes. For example, in or about February 2007, Executive 1, an SBM executive, and Intermediary 1 met to try to reduce Intermediary 1's commission below 3% on a project in Brazil with Petrobras. In response, Intermediary 1 explained that Intermediary 1 had already promised 2% to Petrobras officials, and so needed the full 3%. Executive 1 and the other SBM executive then agreed to keep Intermediary 1's commission at 3% for the project, and signed an agency agreement reflecting this arrangement.

18. Intermediary 1 continued paying bribes until 2012. For example, on or about January 19, 2012, Intermediary 1 wired \$156,000 from a bank account held in the name of one of Intermediary 1's shell companies and under Intermediary 1's control in Switzerland to a bank account in Switzerland under the control of a Petrobras official.

19. Defendant **SBM USA** and SBM also obtained confidential information from Petrobras officials through Intermediary 1 in its efforts to obtain or retain business.

20. For example, on or about February 26, 2005, Intermediary 1 passed along confidential Petrobras information to Zubiarte. Thereafter, Zubiarte forwarded the confidential information by email to others including Executive 1 and Mace, stating “[Intermediary 1] has requested that this information be kept confidential.”

21. In addition, executives and employees at SBM used personal email accounts to receive this confidential information. For example, on or about June 11, 2009, Intermediary 1 emailed an SBM executive to a personal email account with information from a Petrobras board meeting, stating, “This is very confidential information at this stage and has very serious implications if anything about that leaks . . . I hope you can pass to the management the result of this action” At times the executives and employees deleted the confidential information after reviewing it.

22. In connection with **SBM USA**’s and SBM’s bribery scheme, Defendant **SBM USA** obtained or benefitted from at least \$13,200,000 in proceeds from one or more projects with Petrobras.

COUNT ONE
(18 U.S.C. § 371 – Conspiracy)

23. The allegations set forth in paragraphs 1 through 22 of this Information are repeated and realleged as if fully set forth herein.

24. Beginning by at least in or around 1996 and continuing through at least in or around 2012, in the Southern District of Texas and elsewhere, the Defendant,

SBM OFFSHORE USA, INC.,

did, knowingly and willfully, that is, with the intent to further the objects of the conspiracy, and knowingly conspire, confederate, and agree with others, including SBM OFFSHORE, EXECUTIVE 1, ANTHONY MACE, ROBERT ZUBIATE, and others known and unknown, to commit offenses against the United States, that is:

- (a) being a domestic concern, and together with domestic concerns and directors and agents of domestic concerns, 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 a foreign official and to a person, while knowing that all or a portion of such money and thing of value would be and had been offered, given, and promised to a 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 any improper advantage; and (iv) inducing such foreign official to use his influence with a foreign government and agencies and instrumentalities thereof to affect and influence acts and decisions of such government and agencies and instrumentalities, in order to assist Defendant **SBM USA**, and others known and unknown, in obtaining and retaining business for and with, and directing business to, Defendant **SBM USA**, SBM, and others known and unknown, in violation of the FCPA, Title 15, United States Code, Section 78dd-2;

- (b) while in the territory of the United States, through and together with its officers, directors, employees, or agents, 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 a foreign official and to a person, while knowing that all or a portion of such money and thing of value would be and had been offered, given, and promised to a 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 any improper advantage; and (iv) inducing such foreign official to use his influence with a foreign government and agencies and instrumentalities thereof to affect and influence acts and decisions of such government and agencies and instrumentalities, in order to assist Defendant **SBM USA**, SBM, and others known and unknown, in obtaining and retaining business for and with, and directing business to, Defendant **SBM USA**, SBM, and others known and unknown, in violation of the FCPA, Title 15, United States Code, Section 78dd-3.

Purpose of the Conspiracy

25. The purpose of the conspiracy was for the co-conspirators, including Defendant **SBM USA** and its co-conspirators to enrich themselves by, among other things, making corrupt bribe payments to Petrobras officials and other foreign officials, so that Defendant **SBM USA** and SBM would obtain and retain lucrative contracts with Petrobras and other state-owned instrumentalities.

Manner and Means of the Conspiracy

26. The manner and means by which Defendant **SBM USA** and its co-conspirators sought to accomplish the purpose of the conspiracy included, among other things, the following, while in the Southern District of Texas and elsewhere:

27. Defendant **SBM USA**, through its executives, employees, and agents, and through SBM and SBM's executives, employees, and agents, and together with others, discussed in person, and through email, making bribe payments to foreign officials for the purpose of securing an improper advantage and assisting Defendant **SBM USA** and SBM in its business with state-owned oil companies in Brazil and elsewhere.

28. Defendant **SBM USA**, through its executives, employees, and agents, and through SBM and SBM's executives, employees, and agents, and together with others, offered to pay, promised to pay, and caused corrupt commission payments to be made by SBM to intermediaries, including Intermediary 1 knowing that such commission payments, or portions thereof, would be used to bribe foreign officials, for the purpose of securing an improper advantage and assisting Defendant **SBM USA** and SBM in their business with state-owned oil companies in Brazil and elsewhere.

29. Defendant **SBM USA**, through its executives, employees, and agents, and through SBM and SBM's executives, employees, and agents, and together with others, obtained, disseminated, and discussed confidential bidding information, which it obtained in its efforts to obtain business with state-owned oil companies in Brazil, Angola, Equatorial Guinea, Kazakhstan, and Iraq.

30. Defendant **SBM USA**, through its executives, employees, and agents, and through SBM and SBM's executives, employees, and agents, and together with others, undertook acts to conceal the bribery scheme, such as using codes to refer to foreign officials who received bribes, communicating using methods of communications, such as personal email accounts and faxes, which would leave no trace on SBM's servers, and destroying confidential information.

Overt Acts

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

32. In or before 1996, Defendant **SBM USA**, by and through its executives and employees, including Zubiato, agreed that Intermediary 1 would pay bribes to Petrobras officials.

33. On or about February 26, 2005, Intermediary 1 passed along confidential Petrobras information to Zubiato. Thereafter, Zubiato forwarded the confidential information by email to others including Executive 1 and Mace, stating "[Intermediary 1] has requested that this information be kept confidential."

34. On or about January 18, 2007, in connection with an SBM Imodco project, Zubiato submitted a memorandum to Executive 1 requesting that

Executive 1 authorize a “commission” payment of approximately \$668,134, \$601,321 of which was earmarked for a bank account in Switzerland, held in the name of one of Intermediary 1’s shell companies, and controlled by Intermediary 1.

35. On or about January 23, 2007, Executive 1 authorized the payment referenced in paragraph 34.

36. On or about February 15, 2007, SBM wired \$601,321 to a bank account in Switzerland held in the name of one of Intermediary 1’s shell companies and controlled by Intermediary 1.

37. On or about March 9, 2007, Intermediary 1 wired a bribe of approximately \$507,480 of the \$601,321 payment to a bank account in Switzerland under the control of a Petrobras official.

38. On or about November 24, 2008, SBM wired \$1,756,650 to Intermediary 1’s bank account in Brazil.

39. November 24, 2008, SBM wired \$3,513,300 to a bank account in Switzerland held in the name of one of Intermediary 1’s shell companies and controlled by Intermediary 1, believing that Intermediary 1 would transfer a portion of such payment to Petrobras officials as a bribe payment. Intermediary 1 then transferred a portion of this money to a bank account in Switzerland under the control of a Petrobras official as a bribe.

40. On or about June 11, 2009, Intermediary 1 emailed an SBM executive to a personal email account with information from a Petrobras board meeting, stating, “This is very confidential information at this stage and has very serious implications if anything about that leaks . . . I hope you can pass to the management the result of this action”

41. In or around 2010, Defendant **SBM USA** hired the son of a Sonangol official as an administrative intern, a position he kept until 2014, despite the fact that he did not satisfactorily perform in that position.

42. On or about January 19, 2012, Intermediary 1 wired \$156,000.00 from a bank account held in the name of one of Intermediary 1’s shell companies and under Intermediary 1’s control in Switzerland to a bank account in Switzerland under the control of a Petrobras official.

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

NOTICE OF CRIMINAL FORFEITURE
(28 U.S.C. § 2461(c); 18 U.S.C. § 981(a)(1)(C))

43. Pursuant to Title 28, United States Code, Section 2461(c) and Title 18, United States Code, Section 981(a)(1)(C), the United States gives notice to the Defendant,

SBM OFFSHORE USA, INC.,


that in the event of conviction of the offense charged in Count 1 of this Information, the United States intends to seek forfeiture of all property, real or personal, which constitutes or is derived from proceeds traceable to such offenses.


PROPERTY IN SUBSTITUTION

44. In the event that a condition listed in Title 21, United States Code, Section 853(p) exists, the United States may seek to forfeit any other property of the defendants in substitution up to the total value of the property subject to forfeiture. The United States may seek the imposition of a money judgment against the Defendant.

ABE MARTINEZ
Acting United States Attorney
Southern District of Texas

SANDRA MOSER
Acting Chief, Fraud Section
Criminal Division
Department of Justice

BY: 
SUZANNE ELMILADY
Assistant United States Attorney

BY: 
DENNIS R. KIHM
Trial Attorney

AO 455 (Rev. 1/09) Waiver of an Indictment

UNITED STATES DISTRICT COURT

for the

Southern

DISTRICT OF

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United States of America
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SBM OFFSHORE USA, INC.

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Case No:

SEALED

17 CR 685

WAIVER OF INDICTMENT

I understand that I have been accused of one or more offenses punishable by imprisonment for more than one year. I was advised in open court of my rights and the nature of the proposed charges against me.

After receiving this advice, I waive my right to prosecution by indictment and consent to prosecution by information.

Date: _____

Defendant's signature

Signature of defendant's attorney

Printed name of defendant's attorney

Judge's signature

Judge's printed name and title