

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

_____)	
UNITED STATES OF AMERICA)	
)	Criminal No.: CR-00-N-0285S
v.)	
)	Filed: August 18, 2000
PHILIPP HOLZMANN)	
AKTIENGESELLSCHAFT,)	Violation: 15 U.S.C. § 1
)	
Defendant.)	
_____)	

PLEA AGREEMENT

The United States of America and Philipp Holzmann Aktiengesellschaft (“Philipp Holzmann AG”) hereby enter into the following Plea Agreement pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure (“Fed. R. Crim. P.”):

RIGHTS OF DEFENDANT

1. Philipp Holzmann AG understands its rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by indictment;
 - (c) to plead not guilty to any criminal charge brought against it;
 - (d) to have a trial by jury, at which it would be presumed not guilty of the charge and the United States would have to prove it guilty beyond a reasonable doubt;

- (e) to confront and cross-examine witnesses against it and to subpoena witnesses in its defense at trial;
- (f) to appeal its conviction if it is found guilty at trial; and
- (g) to appeal the imposition of sentence against it.

**AGREEMENT TO PLEAD GUILTY
AND WAIVE CERTAIN RIGHTS**

2. Philipp Holzmann AG waives the rights set out in Paragraph 1(b)-(f) above. Philipp Holzmann AG also waives the right to appeal the imposition of the sentence against it, so long as the sentence imposed is consistent with the recommendation in Paragraph 8 of this Plea Agreement. Pursuant to Fed. R. Crim. P. 7(b), Philipp Holzmann AG will waive indictment and plead guilty under Fed. R. Crim. P. 11(e)(1)(C) to a one-count Information to be filed in the United States District Court for the Northern District of Alabama. The Information will charge Philipp Holzmann AG with participating in a conspiracy to suppress and eliminate competition by rigging the bids on certain United States-funded wastewater construction projects in the Arab Republic of Egypt, beginning at least as early as June 1988 and continuing at least through January 18, 1995, in violation of 15 U.S.C. § 1.

3. Pursuant to the terms of this Plea Agreement, Philipp Holzmann AG will plead guilty at arraignment to the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

FACTUAL BASIS FOR OFFENSE CHARGED

4. Had this case gone to trial, the United States would have presented evidence to prove the following facts.

(a) For purposes of this Plea Agreement, the “relevant period” is that period beginning at least as early as June 1988 and continuing at least through January 18, 1995. Throughout the relevant period, Philipp Holzmann AG was an entity organized and existing under the laws of Germany, with its principal place of business in Frankfurt, Germany. During the relevant period, Philipp Holzmann AG owned J.A. Jones Construction Company, a United States corporation prequalified to bid on numerous construction projects funded by the United States Agency for International Development (“USAID”), an agency of the United States. During the relevant period, J.A. Jones Construction Company was involved in a joint venture with Harbert International, Inc., and its successor, Bill Harbert International Construction, Inc. The Harbert-Jones joint venture participated in several tenders for wastewater construction contracts funded by USAID in the Arab Republic of Egypt.

(b) During the relevant period, Philipp Holzmann AG, through its officers and employees, participated in a conspiracy to rig bids on certain USAID-funded construction contracts in Egypt. In furtherance of the conspiracy, Philipp Holzmann AG, through its officers and employees,

engaged in conversations and attended meetings with other members of the bid-rigging conspiracy. During those meetings and conversations, the conspirators reached agreements relating to the bids on Contract 20A and Contract 07, two USAID-funded wastewater construction contracts in Egypt, in an effort to reduce or suppress competition on those contracts.

(c) During the relevant period, the equipment, materials, and supplies necessary to the bidding and performance of these contracts and the payments made by the United States under the contracts moved in interstate and foreign commerce. The business activities of Philipp Holzmann AG and co-conspirators in connection with the bidding and performance of these contracts were within the flow of, and substantially affected, interstate and foreign trade and commerce.

(d) Substantial activities in furtherance of the conspiracy occurred within the Southern Division of the Northern District of Alabama.

POSSIBLE MAXIMUM SENTENCE

5. Philipp Holzmann AG understands that the maximum penalty that may be imposed against it upon conviction for a violation of the Sherman Antitrust Act is a fine in an amount equal to the largest of:

- (a) \$10 million (15 U.S.C. § 1);
- (b) twice the gross pecuniary gain derived from the offense (18 U.S.C. § 3571(d)); or

(c) twice the gross pecuniary loss caused to the victims of the offense (18 U.S.C. § 3571(d)).

6. In addition, Philipp Holzmann AG understands that:

(a) pursuant to § 8B1.1(a)(2) of the United States Sentencing Commission Guidelines ("U.S.S.G."), the Court may order it to pay restitution to the victims of the offense;

(b) pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1, the Court is required to order Philipp Holzmann AG to pay a two hundred dollar (\$200.00) special assessment upon conviction for the charged offense; and

(c) a term of probation of at least one year, but not more than five years, may be imposed (18 U.S.C. § 3561(c)(1)).

SENTENCING GUIDELINES

7. Sentencing for the offense to be charged will be conducted pursuant to the Federal Sentencing Guidelines Manual in effect on the day of sentencing.

Pursuant to U.S.S.G. § 1B1.8, self-incriminating information provided to the United States pursuant to this Plea Agreement will not be used to increase the volume of affected commerce attributable to Philipp Holzmann AG or to determine the applicable Guidelines range, except to the extent provided for in U.S.S.G.

§ 1B1.8(b). For purposes of calculating the volume of commerce in U.S.S.G. § 2R1.1,

forty percent of the value of Contract 20A and Contract 07, two USAID-funded contracts awarded to the Harbert-Jones joint venture, is attributable to Philipp Holzmann AG.

SENTENCING AGREEMENT

8. Pursuant to Fed. R. Crim. P. 11(e)(1)(C), the United States and Philipp Holzmann AG agree that the appropriate disposition of the case is, and agree jointly to recommend that the Court impose a sentence requiring Philipp Holzmann AG to pay, a fine to the United States in the amount of thirty million dollars (\$30,000,000) pursuant to 18 U.S.C. § 3571(d), without interest, in accordance with 18 U.S.C. § 3612(h).

(a) The recommended fine of thirty million dollars shall be payable as follows: a payment of one million dollars (\$1,000,000) will be due ninety days from the date of sentencing; a payment of two million dollars (\$2,000,000) will be due on the first anniversary of the date of sentencing; a payment of three million dollars (\$3,000,000) will be due on the second anniversary of the date of sentencing; a payment of four million dollars (\$4,000,000) will be due on the third anniversary of the date of sentencing; a payment of ten million dollars (\$10,000,000) will be due on the fourth anniversary of the date of sentencing; and a payment of ten million dollars (\$10,000,000) will be due on the fifth anniversary of the date of sentencing.

(b) Philipp Holzmann AG understands that the Court will order it to pay a two hundred dollar (\$200.00) special assessment pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1 in addition to any fine imposed.

(c) The United States and Philipp Holzmann AG understand that the Court retains complete discretion to accept or reject the agreed-upon recommendation provided for in this Plea Agreement. If the Court does not accept the recommended sentence, this Plea Agreement will be void and Philipp Holzmann AG will be free to withdraw its guilty plea (Fed. R. Crim. P. 11(e)(4)). If Philipp Holzmann AG does withdraw its plea of guilty, this Plea Agreement, the guilty plea, and any statements made in connection with or in furtherance of the plea or this Plea Agreement, or in the course of discussions leading to the plea or the Plea Agreement, shall not be admissible against Philipp Holzmann AG or the following subsidiaries: Philipp Holzmann Anlagen GmbH Group; HSG Group; J.A. Jones, Inc.; J.A. Jones Construction Company; and Lockwood Greene Engineers, Inc. (hereinafter collectively referred to as “subsidiaries”) or any current officer, or employee thereof, in any criminal or civil proceeding (Fed. R. Crim. P. 11(e)(6)).

9. The United States and Philipp Holzmann AG jointly submit that this Plea Agreement, together with the record that will be created by the United States and Philipp Holzmann AG at sentencing and the further disclosure described in

Paragraph 10 of this Plea Agreement, provides sufficient information concerning Philipp Holzmann AG, the offense charged in this case, and Philipp Holzmann AG's role in the offense to enable the meaningful exercise of sentencing authority by the Court under 18 U.S.C. § 3553. The United States and Philipp Holzmann AG will jointly request that the Court accept Philipp Holzmann AG's guilty plea and immediately impose sentence on the day of arraignment pursuant to the provisions of Fed. R. Crim. P. 32(b)(1) and U.S.S.G. § 6A1.1. The Court's denial of the request to impose sentence immediately based upon the record provided by Philipp Holzmann AG and the United States will not void this Plea Agreement.

10. The United States, prior to the sentencing in this case, will fully advise the Court of: all facts relating to Philipp Holzmann AG's involvement in the charged offense; all other relevant conduct; the fact, manner, and extent of Philipp Holzmann AG's ongoing cooperation pursuant to Paragraph 12 of this Plea Agreement; and its commitment to prospective cooperation with the United States' investigation and prosecutions.

11. The United States and Philipp Holzmann AG agree that a thirty million dollar fine, without interest, in accordance with 18 U.S.C. § 3612(h), paid over five years, pursuant to U.S.S.G. § 8C3.2, is the appropriate disposition in this case, given Philipp Holzmann AG's role in the offense, the amount of profits derived therefrom, and its financial condition.

PHILIPP HOLZMANN AG'S COOPERATION

12. Philipp Holzmann AG and its subsidiaries will provide full and truthful continuing cooperation to the United States in the prosecution of this case, the conduct of the current federal criminal investigation of violations of the federal antitrust and related criminal laws in the international construction industry in the Arab Republic of Egypt, any other federal criminal investigation resulting therefrom, and any criminal litigation or other criminal proceedings arising or resulting from any such investigation to which the United States is a party ("Federal Proceeding"). Such cooperation in any Federal Proceeding shall include, but not be limited to:

(a) immediately producing to the United States all documents, information, and other materials not privileged under United States law, wherever located, in the possession, custody, or control of Philipp Holzmann AG or its subsidiaries, requested by the United States in connection with any Federal Proceeding;

(b) immediately producing to the United States all non-privileged documents, information, and other materials subject to the Letter Rogatory request dated December 19, 1997, and filed in the Federal Republic of Germany, in the possession, custody, or control of Philipp Holzmann AG or its subsidiaries, and withdrawing from all litigation in the Federal Republic

of Germany concerning the production of such documents, information, and materials;

(c) immediately producing to the United States all documents created prior to January 1, 1996, that refer or relate to any dealings with Charles C. Adams, Jr., and waiving any attorney-client or work-product privilege held by Philipp Holzmann AG or its subsidiaries with respect to such documents; and

(d) using its best efforts to secure the ongoing, full, and truthful cooperation, as defined in Paragraph 13 of this Plea Agreement, of the current and former directors, officers, or employees of Philipp Holzmann AG or its subsidiaries, as may be requested by the United States, including making such persons available in the United States and at other mutually agreed-upon locations, at Philipp Holzmann AG's expense, for interviews and the provision of testimony in grand jury, trial, and other judicial proceedings in connection with any Federal Proceeding.

13. The ongoing, full, and truthful cooperation of each person described in Paragraph 12(d) above will be subject to the procedures and protections of this paragraph, and shall include, but not be limited to:

(a) producing in the United States and at other mutually agreed-upon locations all documents (including claimed personal documents) and

other materials requested by attorneys and agents of the United States, except for documents privileged under United States law;

(b) agreeing to waive any attorney-client privilege or work-product privilege over all documents and other materials created prior to January 1, 1996, that evidence or refer or relate to any dealings or discussions with Charles C. Adams, Jr. and producing such documents and materials in accordance with the procedures in Paragraph 13(a) above;

(c) making himself or herself available on reasonable notice for interviews, not at the expense of the United States, in the United States and at other mutually agreed-upon locations, upon the request of attorneys and agents of the United States;

(d) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information;

(e) otherwise voluntarily providing the United States with any materials or information, not requested in Paragraphs 13(a)-(d) above, that he or she may have related to any such Federal Proceeding; and

(f) when called upon to do so by the United States, testifying in trial and grand jury or other proceedings in the United States, fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court

proceedings (18 U.S.C. § 1623), obstruction of justice (18 U.S.C. § 1503), and contempt (18 U.S.C. §§ 401-402), in connection with any such Federal Proceeding.

GOVERNMENT'S AGREEMENT

14. The United States agrees to the following:

(a) Subject to the exceptions noted in Paragraph 14(c), the United States will not bring further criminal charges against any current or former director, officer, or employee of Philipp Holzmann AG or its subsidiaries (except for Peter W. Schmidt, former member of the management board of Philipp Holzmann AG, who is specifically excluded from each and every term of Paragraphs 12(d), 13, and 14 of this Plea Agreement) for any act or offense committed prior to the date of this Plea Agreement while such person was a director, officer, or employee of Philipp Holzmann AG or any of its subsidiaries that was undertaken in furtherance of or in connection with any attempted or completed violation of the federal antitrust and related criminal laws in the international construction industry in the Arab Republic of Egypt, or arising out of any investigation thereof ("Relevant Offense").

(b) Should the United States determine that any current or former director, officer, or employee of Philipp Holzmann AG or any of its subsidiaries may have information relevant to any Federal Proceeding, the United States may request such person's cooperation pursuant to the terms

of this Plea Agreement by written request delivered to counsel for the individual (with a copy to the undersigned counsel for Philipp Holzmann AG) or, if the individual is not known by the United States to be represented, to the undersigned counsel for Philipp Holzmann AG.

(c) In the event that any person requested to provide cooperation pursuant to Paragraph 14(b) fails to comply with his or her obligations under Paragraph 13 of this Plea Agreement, then the terms of this Plea Agreement as they pertain to such person shall be rendered null and void, and the agreement not to prosecute such person granted in this Plea Agreement shall be void.

(d) Except as provided in Paragraph 14(e), information provided to the United States pursuant to the terms of this Plea Agreement pertaining to any Relevant Offense committed while the person providing the information was a director, officer, or employee of Philipp Holzmann AG or any of its subsidiaries, or any information directly or indirectly derived from such information, may not be used against such person in a criminal case, except a prosecution for perjury (18 U.S.C. § 1621), making a false statement or declaration in grand jury or court proceedings (18 U.S.C. § 1623), obstruction of justice (18 U.S.C. § 1503), or contempt (18 U.S.C. §§ 401-402) for acts committed subsequent to the date of this Plea Agreement.

(e) In the event a person who provides information to the United States pursuant to this Plea Agreement fails to comply fully with his or her

obligations under Paragraph 13 of this Plea Agreement, the agreement in Paragraph 14(d) not to use such information, or any information directly or indirectly derived from such information, against such person in a criminal case shall be void.

(f) The non-prosecution terms of this paragraph do not apply to any civil liability to the United States, to any violation of the federal tax or securities laws, or to any crime of violence.

15. Upon tender of the guilty plea called for by this Plea Agreement and imposition of the agreed-upon sentence, and subject to the cooperation requirements of Paragraph 12 of this Plea Agreement, the United States agrees that it will not bring further criminal charges against Philipp Holzmann AG or its subsidiaries for any Relevant Offense. The non-prosecution terms of this paragraph do not apply to any civil liability to the United States, to any violation of the federal tax or securities laws, or to any crime of violence.

16. The United States agrees that when any person travels to the United States for interviews, court appearances, or grand jury appearances pursuant to this Plea Agreement, or for meetings with counsel in preparation for such interviews or appearances, the United States will take no action, based upon any Relevant Offense, to subject such person to arrest or service of process, or to prevent such person from departing the United States. This paragraph does not apply to an individual's commission of perjury (18 U.S.C. § 1621), making a false statement or declaration in grand jury or court proceedings (18 U.S.C. § 1623), obstruction of

justice (18 U.S.C. § 1503), or contempt (18 U.S.C. §§ 401-402) in connection with any testimony provided in trial, grand jury, or other judicial proceedings in the United States.

17. Philipp Holzmann AG understands that it may be subject to administrative or other action by federal or state agencies other than the United States Department of Justice, Antitrust Division, based upon any conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, such other agencies may take. However, the United States Department of Justice, Antitrust Division, agrees that, if requested, it will advise the appropriate officials of any government agency considering administrative or other action against Philipp Holzmann AG and its subsidiaries, based upon any conviction resulting from this Plea Agreement, of the fact, manner, and extent of Philipp Holzmann AG's cooperation, as a matter for such agency to consider before determining what administrative action, if any, to take with regard to Philipp Holzmann AG.

REPRESENTATION BY COUNSEL

18. Philipp Holzmann AG has been represented by counsel and is fully satisfied that its attorneys have provided competent legal representation. Philipp Holzmann AG has thoroughly reviewed this Plea Agreement and acknowledges that its attorneys have advised it of the nature of the charges, any possible defenses to the charges, and the nature and range of possible sentences.

VOLUNTARY PLEA

19. Philipp Holzmann AG's decision to enter into this Plea Agreement and Philipp Holzmann AG's decision to tender a plea of guilty are freely and voluntarily made and are not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. The United States has made no promises or representations to Philipp Holzmann AG as to whether the Court will accept or reject this Plea Agreement.

VIOLATION OF PLEA AGREEMENT

20. Philipp Holzmann AG agrees that, should the United States determine in good faith, while any Federal Proceeding is pending, that Philipp Holzmann AG has failed to provide full cooperation (as described in Paragraph 12 of this Plea Agreement) or otherwise has violated any other provision of this Plea Agreement, the United States shall notify counsel for Philipp Holzmann AG in writing by personal or overnight delivery or facsimile transmission of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and Philipp Holzmann AG and its subsidiaries shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. Phillip Holzmann AG may seek Court review of any determination by the United States of violation of the Plea Agreement.

ENTIRETY OF AGREEMENT

21. This Plea Agreement constitutes the entire agreement between the United States and Philipp Holzmann AG concerning the disposition of the criminal charges in this case. This Plea Agreement cannot be modified except in writing signed by the United States and Philipp Holzmann AG.

22. The undersigned, Prof. Konrad Hinrichs, Chairman of the Board of Management of Philipp Holzmann AG, and Dr. Michael Pant, General Counsel of Philipp Holzmann AG, are authorized to enter this Plea Agreement on behalf of Philipp Holzmann AG as evidenced by the Resolution of the Board of Directors of Philipp Holzmann AG, attached hereto, and incorporated herein by reference.

23. A facsimile signature shall be deemed an original signature for the purpose of executing this Plea Agreement.

24. The undersigned attorneys for the United States have been authorized by the Assistant Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

Dated:

Respectfully submitted,

/S/
PROF. KONRAD HINRICHS
Chairman of the Board of Management
Philipp Holzmann AG

/S/
DR. MICHAEL PANT
General Counsel
Philipp Holzmann AG

/S/
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