

MONTOYA LAW, P.A. v. FBI

EXHIBIT 3

to

FOIA COMPLAINT



Edward Montoya
emontoya@montoyalawfirm.com
Alexander Rundlet
arundlet@montoyalawfirm.com

April 26, 2018

Director, Office of Information Policy (OIP)
United States Department of Justice, Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Re: Freedom of Information Act Appeals re FOIA Request Nos. CRM-300647480; 1393128-000; and EOUSA-2018-001767/NYE.

Dear Director OIP:

This is an appeal under the Freedom of Information Act.

On January 5, 2018, I requested documents under the Freedom of Information Act from the Criminal Division of the United States Department of Justice (the "Agency"). My request was assigned the following identification number: **CRM-300647480**.

On February 5, 2018, I received a response to my request to the above-named agency in a letter signed by Amanda Marchand Jones, Chief, FOIA/PA Unit.

On January 5, 2018, I requested documents under the Freedom of Information Act from the New York Field Office, the Miami Field Office, and Central Office of the Federal Bureau of Investigation (the "Agency"). My request was assigned the following identification number: **1393128-000**.

On January 29, 2017, I received a response to my request to the above-named agency in a letter signed by David M. Hardy, Section Chief, Record/Information Dissemination Section/Records Management Division.

On January 5, 2018, I requested documents under the Freedom of Information Act from the United States Attorney's Office for the Eastern District of New York. My request was assigned the following identification number: **EOUSA-2018-001767/NYE**.

On January 26, 2018, I received an acknowledgment of my request but no further response from Vinay Jolly, Executive Office for United States Attorneys.

A copy of my FOIA requests and the agency determination(s) which is the subject of this appeal are attached for your convenience.

**Documents re FOIA Request No. 1393128-000
(To FBI Field Offices)**



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

January 29, 2018

MR. ALEXANDER RUNDLET, ESQUIRE
MONTROYA LAW
DADELAND CENTRE I
SUITE 1200
9155 SOUTH DADELAND BOULEVARD
MIAMI, FL 33156

FOIPA Request No.: 1393128-000
Subject: US v. Odebrecht, S.A., No. 16-643 (RJD)

Dear Mr. Rundlet:

This responds to your Freedom of Information Act (FOIA) request.

The material you requested is located in an investigative file which is exempt from disclosure pursuant to 5 U.S.C. § 552(b)(7)(A). 5 U.S.C. § 552(b)(7)(A) exempts from disclosure:

records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information ... could reasonably be expected to interfere with enforcement proceedings...

The records responsive to your request are law enforcement records; there is a pending or prospective law enforcement proceeding relevant to these responsive records, and release of the information in these responsive records could reasonably be expected to interfere with enforcement proceedings. For a further explanation of this exemption, see the enclosed Explanation of Exemptions.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request Number listed above has been assigned to your request. Please use this number in all correspondence concerning your request. Your patience is appreciated.

You may file an appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIA online portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days from the date of this letter in order to be considered timely. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so that it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS) at 877-684-6448, or by emailing ogis@nara.gov. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so that it may be easily identified.

Sincerely,



David M. Hardy
Section Chief,
Record/Information
Dissemination Section
Records Management Division

Enclosure(s)



FBI FACT SHEET

- The primary functions of the FBI are national security and law enforcement.
- The FBI does not keep a file on every citizen of the United States.
- The FBI was not established until 1908 and we have very few records prior to the 1920s.
- FBI files generally contain reports of FBI investigations of a wide range of matters, including counterterrorism, counter-intelligence, cyber crime, public corruption, civil rights, organized crime, white collar crime, major thefts, violent crime, and applicants.
- The FBI does not issue clearances or non-clearances for anyone other than its own personnel or persons having access to FBI facilities. Background investigations for security clearances are conducted by many different Government agencies. Persons who received a clearance while in the military or employed with some other government agency should contact that entity. Most government agencies have websites which are accessible on the internet which have their contact information.
- An identity history summary check or "rap sheet" is NOT the same as an "FBI file." It is a listing of information taken from fingerprint cards and related documents submitted to the FBI in connection with arrests, federal employment, naturalization or military service. The subject of a "rap sheet" may obtain a copy by submitting a written request to FBI CJIS Division – Summary Request, 1000 Custer Hollow Road, Clarksburg, WV 26306. Along with a specific written request, the individual must submit a new full set of his/her fingerprints in order to locate the record, establish positive identification, and ensure that an individual's records are not disseminated to an unauthorized person. The fingerprint submission must include the subject's name, date and place of birth. There is a required fee of \$18 for this service, which must be submitted by money order or certified check made payable to the Treasury of the United States. A credit card payment option is also available. Forms for this option and additional directions may be obtained by accessing the FBI Web site at www.fbi.gov/about-us/cjis/identity-history-summary-checks.
- The National Name Check Program (NNCP) conducts a search of the FBI's Universal Index (UNI) to identify any information contained in FBI records that may be associated with an individual and provides the results of that search to a requesting federal, state or local agency. Names are searched in a multitude of combinations and phonetic spellings to ensure all records are located. The NNCP also searches for both "main" and "cross reference" files. A main file is an entry that carries the name corresponding to the subject of a file, while a cross reference is merely a mention of an individual contained in a file. The results from a search of this magnitude can result in several "hits" and "idents" on an individual. In each instance where UNI has identified a name variation or reference, information must be reviewed to determine if it is applicable to the individual in question.
- The Record/Information Dissemination Section (RIDS) searches for records and provides copies of FBI files responsive to Freedom of Information or Privacy Act (FOIPA) requests for information. RIDS provides responsive documents to requesters seeking "reasonably described information." For a FOIPA search, the subject's name, event, activity, or business is searched to determine whether there is an associated investigative file. This is called a "main file search" and differs from the NNCP search.

FOR GENERAL INFORMATION ABOUT THE FBI, VISIT OUR WEBSITE AT
www.fbi.gov

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.



Edward Montoya
emontoya@montoyalawfirm.com
Alexander Rundlet
arundlet@montoyalawfirm.com

January 5, 2018

Federal Bureau of Investigation
Attn: FOI/PA Request
Record/Information Dissemination Section
170 Marcel Drive
Winchester, VA 22602-4843

Re: FOIA Request re: *US v. Odebrecht, S.A.*, No. 16-643 (RJD); *US v. Branskem, S.A.*, No. 16-644 (RJD)

Dear FOIA Officer:

We write pursuant to the Freedom of Information Act to request the complete files in your possession regarding the investigation and prosecution of Odebrecht, S.A. and Branskem, S.A. which culminated in the Informations, Plea Agreements, and Judgments entered in the above-referenced criminal cases in the United States District Court for the Eastern District of New York.

For reference purposes, we attach the December 21, 2016 press release issued by the United States Department of Justice addressing these matters. The date range of the request is from the earliest date on which the subject investigation began until the date of the plea agreement on December 21, 2016.

This request is meant to address any and all materials not exempt from disclosure under FOIA relating to the above-referenced matters.

I am willing to pay up to \$100.00 for the processing of this request. I prefer documents in an electronic format. Please inform me if the estimated fees will exceed this limit before processing my request. I may be reached at (305) 445-9292 or arundlet@montoyalawfirm.com to address this Request.

Thank you in advance for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alexander Rundlet', written over a horizontal line.

Alexander Rundlet

attachments

JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Wednesday, December 21, 2016

Odebrecht and Braskem Plead Guilty and Agree to Pay at Least \$3.5 Billion in Global Penalties to Resolve Largest Foreign Bribery Case in History

Odebrecht S.A. (Odebrecht), a global construction conglomerate based in Brazil, and Braskem S.A. (Braskem), a Brazilian petrochemical company, pleaded guilty today and agreed to pay a combined total penalty of at least \$3.5 billion to resolve charges with authorities in the United States, Brazil and Switzerland arising out of their schemes to pay hundreds of millions of dollars in bribes to government officials around the world.

Deputy Assistant Attorney General Sung-Hee Suh of the Justice Department's Criminal Division, U.S. Attorney Robert L. Capers of the Eastern District of New York, Assistant Director Stephen Richardson of the FBI's Criminal Investigative Division and Assistant Director in Charge William F. Sweeney of the FBI's New York Field Office made the announcement.

"Odebrecht and Braskem used a hidden but fully functioning Odebrecht business unit—a 'Department of Bribery,' so to speak—that systematically paid hundreds of millions of dollars to corrupt government officials in countries on three continents," said Deputy Assistant Attorney General Suh. "Such brazen wrongdoing calls for a strong response from law enforcement, and through a strong effort with our colleagues in Brazil and Switzerland, we have seen just that. I hope that today's action will serve as a model for future efforts."

"These resolutions are the result of an extraordinary multinational effort to identify, investigate and prosecute a highly complex and long-lasting corruption scheme that resulted in the payment by the defendant companies of close to a billion dollars in bribes to officials at all levels of government in many countries," said U.S. Attorney Capers. "In an attempt to conceal their crimes, the defendants used the global financial system – including the banking system in the United States – to disguise the source and disbursement of the bribe payments by passing funds through a series of shell companies. The message sent by this prosecution is that the United States, working with its law enforcement partners abroad, will not hesitate to hold responsible those corporations and individuals who seek to enrich themselves through the corruption of the legitimate functions of government, no matter how sophisticated the scheme."

"This case illustrates the importance of our partnerships and the dedicated personnel who work to bring to justice those who are motivated by greed and act in their own best interest," said Assistant Director Richardson. "The FBI will not stand by idly while corrupt individuals threaten a fair and competitive economic system or fuel criminal enterprises. Our commitment to work alongside our foreign partners to root out corruption across the globe is unwavering and we thank our Brazilian and Swiss partners for their tireless work in this effort."

“No matter what the reason, when foreign officials receive bribes, they threaten our national security and the international free market system in which we trade,” said Assistant Director in Charge Sweeney. “Just because they’re out of our sight, doesn’t mean they’re beyond our reach. The FBI will use all available resources to put an end to this type of corrupt behavior.”

Odebrecht pleaded guilty to a one-count criminal information filed today by the Criminal Division’s Fraud Section and the U.S. Attorney’s Office in the U.S. District Court for the Eastern District of New York, charging the company with conspiracy to violate the anti-bribery provisions of the Foreign Corrupt Practices Act (FCPA). Odebrecht agreed that the appropriate criminal fine is \$4.5 billion, subject to further analysis of the company’s ability to pay the total global penalties. In related proceedings, Odebrecht also settled with the Ministerio Publico Federal in Brazil and the Office of the Attorney General in Switzerland.

Under the plea agreement, the United States will credit the amount that Odebrecht pays to Brazil and Switzerland over the full term of their respective agreements, with the United States and Switzerland receiving 10 percent each of the principal of the total criminal fine and Brazil receiving the remaining 80 percent. The fine is subject to an inability to pay analysis to be completed by the Department of Justice and Brazilian authorities on or before March 31, 2017, because Odebrecht has represented it is only able to pay approximately \$2.6 billion over the course of the respective agreements. Sentencing has been scheduled for April 17, 2017.

Braskem, whose American Depositary Receipts (ADRs) are publicly traded on the New York Stock Exchange, separately pleaded guilty to a one-count criminal information filed in the Eastern District of New York charging it with conspiracy to violate the anti-bribery provisions of the FCPA. Braskem agreed to pay a total criminal penalty of \$632 million. Sentencing has not yet been scheduled. In related proceedings, Braskem also settled with the U.S. Securities and Exchange Commission (SEC), the Ministerio Publico Federal in Brazil and the Office of the Attorney General in Switzerland. Under the terms of its resolution with the SEC, Braskem agreed to a total of \$325 million in disgorgement of profits. Braskem agreed to pay Brazilian authorities 70 percent of the total criminal penalty and agreed to pay the Swiss authorities 15 percent. The department has agreed to credit the criminal penalties paid to Brazilian and Swiss authorities as part of its agreement with the company. The United States will receive \$94.8 million, an amount equal to 15 percent of the total criminal fines paid by Braskem.

Under their respective plea agreements, Odebrecht and Braskem are required to continue their cooperation with law enforcement, including in connection with the investigations and prosecutions of individuals responsible for the criminal conduct. Odebrecht and Braskem also agreed to adopt enhanced compliance procedures and to retain independent compliance monitors for three years. The cases are assigned to U.S. District Judge Raymond J. Dearie of the Eastern District of New York.

The combined total amount of United States, Brazilian and Swiss criminal and regulatory penalties paid by Braskem will be approximately \$957 million. The combined total amount of penalties imposed against Odebrecht will be at least \$2.6 billion and up to \$4.5 billion. With a combined total of at least \$3.5 billion, today’s resolutions with Odebrecht and Braskem are the largest-ever global foreign bribery resolution.

The Bribery Schemes

According to its admissions, Odebrecht engaged in a massive and unparalleled bribery and bid-rigging scheme for more than a decade, beginning as early as 2001. During that time, Odebrecht paid approximately \$788 million in bribes to government officials, their representatives and political parties in a number of countries in order to win business in those countries. The criminal conduct was directed by the highest levels of the company, with the bribes paid through a complex network of shell companies, off-book transactions and off-shore bank accounts.

As part of the scheme, Odebrecht and its co-conspirators created and funded an elaborate, secret financial structure within the company that operated to account for and disburse bribe payments to foreign government officials and political parties. By 2006, the development and operation of this secret financial structure had evolved such that Odebrecht established the “Division of Structured Operations,” which effectively functioned as a stand-alone bribe department within Odebrecht and its related entities. Until approximately 2009, the head of the Division of Structured Operations reported to the highest levels within Odebrecht, including to obtain authorization to approve bribe payments. After 2009, this responsibility was delegated to certain company business leaders in Brazil and the other jurisdictions. To conceal its activities, the Division of Structured Operations utilized an entirely separate and off-book communications system, which allowed members of the Division of Structured Operations to communicate with one another and with outside financial operators and other co-conspirators about the bribes via secure emails and instant messages, using codenames and passwords.

The Division of Structured Operations managed the “shadow” budget for the Odebrecht bribery operation via a separate computer system that was used to request and process bribe payments as well as to generate and populate spreadsheets that tracked and internally accounted for the shadow budget. These funds for the company’s sophisticated bribery operation were generated by the Odebrecht Finance Department through a variety of methods, as well as by certain Odebrecht subsidiaries, including Braskem. The funds were then funneled by the Division of Structured Operations to a series of off-shore entities that were not included on Odebrecht’s balance sheet as related entities. The Division of Structured Operations then directed the disbursement of the funds from the off-shore entities to the bribe recipient, through the use of wire transfers through one or more of the off-shore entities, as well as through cash payments both inside and outside Brazil, which were sometimes delivered using packages or suitcases left at predetermined locations.

Odebrecht, its employees and agents took a number of steps while in the United States to further the scheme. For instance, in 2014 and 2015, while located in Miami, two Odebrecht employees engaged in conduct related to certain projects in furtherance of the scheme, including meetings with other co-conspirators to plan actions to be taken in connection with the Division of Structured Operations, the movement of criminal proceeds and other criminal conduct. In addition, some of the off-shore entities used by the Division of Structured Operations to hold and disburse unrecorded funds were established, owned and/or operated by individuals located in the United States. In all, this conduct resulted in corrupt payments and/or profits totaling approximately \$3.336 billion.

Braskem also admitted to engaging in a wide-ranging bribery scheme and acknowledged the pervasiveness of its conduct. Between 2006 and 2014, Braskem paid approximately \$250 million into Odebrecht’s secret, off-book bribe payment system. Using the Odebrecht system, Braskem authorized the payment of bribes to politicians and political parties in Brazil, as well as to an official at *Petróleo Brasileiro S.A. – Petrobras* (Petrobras), the state-controlled oil company of Brazil. In exchange, Braskem received various benefits, including: preferential rates from Petrobras for the purchase of raw materials used by the company; contracts with Petrobras; and favorable legislation and government programs that reduced the company’s tax liabilities in Brazil. This conduct resulted in corrupt payments and/or profits totaling approximately \$465 million.

The Corporate Resolutions

The department reached these resolutions with Odebrecht and Braskem based on a number of factors, including: the failure to voluntarily disclose the conduct that triggered the investigation; the nature and seriousness of the offense, which spanned many years, involved the highest levels of the companies, occurred in multiple countries and involved sophisticated schemes to bribe high-level government officials; the lack of an effective compliance and ethics program at the time of the conduct; and credit for each

company's respective cooperation. The companies also engaged in remedial measures, including terminating and disciplining individuals who participated in the misconduct, adopting heightened controls and anti-corruption compliance protocols and significantly increasing the resources devoted to compliance.

The criminal penalty for Odebrecht reflects a 25 percent reduction off the bottom of the U.S. Sentencing Guidelines fine range because of Odebrecht's full cooperation with the government's investigation, while the criminal penalty for Braskem reflects a 15 percent reduction off the bottom of the U.S. Sentencing Guidelines as a result of its partial cooperation.

Odebrecht has represented its ability to pay a maximum of \$2.6 billion of the total fine amount. The department and Brazilian authorities are engaged in further analysis regarding the company's claimed inability to pay, which will be completed on or before March 31, 2017.

* * *

The FBI's New York Field Office is investigating the case. Chief Dan Kahn and Trial Attorneys Christopher Cestaro, Sarah Edwards, David Fuhr, Kevin R. Gingras, Lorinda Laryea and David Last of the Criminal Division's Fraud Section and Assistant U.S. Attorneys Julia Nestor and Alixandra Smith of the Eastern District of New York are prosecuting the case.

The Criminal Division's Office of International Affairs also provided substantial assistance. The SEC and the Ministerio Publico Federal in Brazil the Departamento de Policia Federal and the Office of the Attorney General in Switzerland provided significant cooperation.

The Criminal Division's Fraud Section is responsible for investigating and prosecuting all FCPA matters. Additional information about the Justice Department's Fraud Section FCPA enforcement efforts can be found at www.justice.gov/criminal/fraud/fcpa.

Attachment(s):

[Download Braskem Information](#)

[Download Braskem Plea Agreement](#)

[Download Odebrecht Information](#)

[Download Odebrecht Plea Agreement](#)

Component(s):

[Criminal Division](#)

[Criminal - Criminal Fraud Section](#)

[USAO - New York, Eastern](#)

Press Release Number:

16-1515

Updated December 21, 2016



Edward Montoya
emontoya@montoyalawfirm.com
Alexander Rundlet
arundlet@montoyalawfirm.com

January 5, 2018

Federal Bureau of Investigation
Miami Field Office
2030 SW 145th Avenue
Miramar, FL 33027
Attn: FOIA Officer

Re: FOIA Request re: *US v. Odebrecht, S.A., No. 16-643 (RJD)*; *US v. Branskem, S.A., No. 16-644 (RJD)*

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Thank you in advance for your assistance.

Sincerely,

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Alexander Rundlet

attachments

JUSTICE NEWS

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Deputy Assistant Attorney General Sung-Hee Suh of the Justice Department's Criminal Division, U.S. Attorney Robert L. Capers of the Eastern District of New York, Assistant Director Stephen Richardson of the FBI's Criminal Investigative Division and Assistant Director in Charge William F. Sweeney of the FBI's New York Field Office made the announcement.

"Odebrecht and Braskem used a hidden but fully functioning Odebrecht business unit—a 'Department of Bribery,' so to speak—that systematically paid hundreds of millions of dollars to corrupt government officials in countries on three continents," said Deputy Assistant Attorney General Suh. "Such brazen wrongdoing calls for a strong response from law enforcement, and through a strong effort with our colleagues in Brazil and Switzerland, we have seen just that. I hope that today's action will serve as a model for future efforts."

"These resolutions are the result of an extraordinary multinational effort to identify, investigate and prosecute a highly complex and long-lasting corruption scheme that resulted in the payment by the defendant companies of close to a billion dollars in bribes to officials at all levels of government in many countries," said U.S. Attorney Capers. "In an attempt to conceal their crimes, the defendants used the global financial system – including the banking system in the United States – to disguise the source and disbursement of the bribe payments by passing funds through a series of shell companies. The message sent by this prosecution is that the United States, working with its law enforcement partners abroad, will not hesitate to hold responsible those corporations and individuals who seek to enrich themselves through the corruption of the legitimate functions of government, no matter how sophisticated the scheme."

"This case illustrates the importance of our partnerships and the dedicated personnel who work to bring to justice those who are motivated by greed and act in their own best interest," said Assistant Director Richardson. "The FBI will not stand by idly while corrupt individuals threaten a fair and competitive economic system or fuel criminal enterprises. Our commitment to work alongside our foreign partners to root out corruption across the globe is unwavering and we thank our Brazilian and Swiss partners for their tireless work in this effort."

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The combined total amount of United States, Brazilian and Swiss criminal and regulatory penalties paid by Braskem will be approximately \$957 million. The combined total amount of penalties imposed against Odebrecht will be at least \$2.6 billion and up to \$4.5 billion. With a combined total of at least \$3.5 billion, today’s resolutions with Odebrecht and Braskem are the largest-ever global foreign bribery resolution.

The Bribery Schemes

According to its admissions, Odebrecht engaged in a massive and unparalleled bribery and bid-rigging scheme for more than a decade, beginning as early as 2001. During that time, Odebrecht paid approximately \$788 million in bribes to government officials, their representatives and political parties in a number of countries in order to win business in those countries. The criminal conduct was directed by the highest levels of the company, with the bribes paid through a complex network of shell companies, off-book transactions and off-shore bank accounts.

As part of the scheme, Odebrecht and its co-conspirators created and funded an elaborate, secret financial structure within the company that operated to account for and disburse bribe payments to foreign government officials and political parties. By 2006, the development and operation of this secret financial structure had evolved such that Odebrecht established the “Division of Structured Operations,” which effectively functioned as a stand-alone bribe department within Odebrecht and its related entities. Until approximately 2009, the head of the Division of Structured Operations reported to the highest levels within Odebrecht, including to obtain authorization to approve bribe payments. After 2009, this responsibility was delegated to certain company business leaders in Brazil and the other jurisdictions. To conceal its activities, the Division of Structured Operations utilized an entirely separate and off-book communications system, which allowed members of the Division of Structured Operations to communicate with one another and with outside financial operators and other co-conspirators about the bribes via secure emails and instant messages, using codenames and passwords.

The Division of Structured Operations managed the “shadow” budget for the Odebrecht bribery operation via a separate computer system that was used to request and process bribe payments as well as to generate and populate spreadsheets that tracked and internally accounted for the shadow budget. These funds for the company’s sophisticated bribery operation were generated by the Odebrecht Finance Department through a variety of methods, as well as by certain Odebrecht subsidiaries, including Braskem. The funds were then funneled by the Division of Structured Operations to a series of off-shore entities that were not included on Odebrecht’s balance sheet as related entities. The Division of Structured Operations then directed the disbursement of the funds from the off-shore entities to the bribe recipient, through the use of wire transfers through one or more of the off-shore entities, as well as through cash payments both inside and outside Brazil, which were sometimes delivered using packages or suitcases left at predetermined locations.

Odebrecht, its employees and agents took a number of steps while in the United States to further the scheme. For instance, in 2014 and 2015, while located in Miami, two Odebrecht employees engaged in conduct related to certain projects in furtherance of the scheme, including meetings with other co-conspirators to plan actions to be taken in connection with the Division of Structured Operations, the movement of criminal proceeds and other criminal conduct. In addition, some of the off-shore entities used by the Division of Structured Operations to hold and disburse unrecorded funds were established, owned and/or operated by individuals located in the United States. In all, this conduct resulted in corrupt payments and/or profits totaling approximately \$3.336 billion.

Braskem also admitted to engaging in a wide-ranging bribery scheme and acknowledged the pervasiveness of its conduct. Between 2006 and 2014, Braskem paid approximately \$250 million into Odebrecht’s secret, off-book bribe payment system. Using the Odebrecht system, Braskem authorized the payment of bribes to politicians and political parties in Brazil, as well as to an official at *Petróleo Brasileiro S.A. – Petrobras* (Petrobras), the state-controlled oil company of Brazil. In exchange, Braskem received various benefits, including: preferential rates from Petrobras for the purchase of raw materials used by the company; contracts with Petrobras; and favorable legislation and government programs that reduced the company’s tax liabilities in Brazil. This conduct resulted in corrupt payments and/or profits totaling approximately \$465 million.

The Corporate Resolutions

The department reached these resolutions with Odebrecht and Braskem based on a number of factors, including: the failure to voluntarily disclose the conduct that triggered the investigation; the nature and seriousness of the offense, which spanned many years, involved the highest levels of the companies, occurred in multiple countries and involved sophisticated schemes to bribe high-level government officials; the lack of an effective compliance and ethics program at the time of the conduct; and credit for each

company's respective cooperation. The companies also engaged in remedial measures, including terminating and disciplining individuals who participated in the misconduct, adopting heightened controls and anti-corruption compliance protocols and significantly increasing the resources devoted to compliance.

The criminal penalty for Odebrecht reflects a 25 percent reduction off the bottom of the U.S. Sentencing Guidelines fine range because of Odebrecht's full cooperation with the government's investigation, while the criminal penalty for Braskem reflects a 15 percent reduction off the bottom of the U.S. Sentencing Guidelines as a result of its partial cooperation.

Odebrecht has represented its ability to pay a maximum of \$2.6 billion of the total fine amount. The department and Brazilian authorities are engaged in further analysis regarding the company's claimed inability to pay, which will be completed on or before March 31, 2017.

* * *

The FBI's New York Field Office is investigating the case. Chief Dan Kahn and Trial Attorneys Christopher Cestaro, Sarah Edwards, David Fuhr, Kevin R. Gingras, Lorinda Laryea and David Last of the Criminal Division's Fraud Section and Assistant U.S. Attorneys Julia Nestor and Alixandra Smith of the Eastern District of New York are prosecuting the case.

The Criminal Division's Office of International Affairs also provided substantial assistance. The SEC and the Ministerio Publico Federal in Brazil the Departamento de Policia Federal and the Office of the Attorney General in Switzerland provided significant cooperation.

The Criminal Division's Fraud Section is responsible for investigating and prosecuting all FCPA matters. Additional information about the Justice Department's Fraud Section FCPA enforcement efforts can be found at www.justice.gov/criminal/fraud/fcpa.

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[Download Odebrecht Information](#)

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Component(s):

[Criminal Division](#)

[Criminal - Criminal Fraud Section](#)

[USAO - New York, Eastern](#)

Press Release Number:

16-1515

Updated December 21, 2016



Edward Montoya
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Alexander Rundlet
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January 5, 2018

Federal Bureau of Investigation
New York Field Office
26 Federal Plaza, 23rd Floor
New York, NY 10278-0004
Attn: FOIA Officer

Re: FOIA Request re: *US v. Odebrecht, S.A.*, No. 16-643 (RJD); *US v. Branskem, S.A.*, No. 16-644 (RJD)

Dear FOIA Officer:

We write pursuant to the Freedom of Information Act to request the complete files in your possession regarding the investigation and prosecution of Odebrecht, S.A. and Branskem, S.A. which culminated in the Informations, Plea Agreements, and Judgments entered in the above-referenced criminal cases in the United States District Court for the Eastern District of New York.

For reference purposes, we attach the December 21, 2016 press release issued by the United States Department of Justice addressing these matters. The date range of the request is from the earliest date on which the subject investigation began until the date of the plea agreement on December 21, 2016.

This request is meant to address any and all materials not exempt from disclosure under FOIA relating to the above-referenced matters.

I am willing to pay up to \$100.00 for the processing of this request. I prefer documents in an electronic format. Please inform me if the estimated fees will exceed this limit before processing my request. I may be reached at (305) 445-9292 or arundlet@montoyalawfirm.com to address this Request.

Thank you in advance for your assistance.

Sincerely,

Alexander Rundlet

attachments

JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Wednesday, December 21, 2016

Odebrecht and Braskem Plead Guilty and Agree to Pay at Least \$3.5 Billion in Global Penalties to Resolve Largest Foreign Bribery Case in History

Odebrecht S.A. (Odebrecht), a global construction conglomerate based in Brazil, and Braskem S.A. (Braskem), a Brazilian petrochemical company, pleaded guilty today and agreed to pay a combined total penalty of at least \$3.5 billion to resolve charges with authorities in the United States, Brazil and Switzerland arising out of their schemes to pay hundreds of millions of dollars in bribes to government officials around the world.

Deputy Assistant Attorney General Sung-Hee Suh of the Justice Department's Criminal Division, U.S. Attorney Robert L. Capers of the Eastern District of New York, Assistant Director Stephen Richardson of the FBI's Criminal Investigative Division and Assistant Director in Charge William F. Sweeney of the FBI's New York Field Office made the announcement.

"Odebrecht and Braskem used a hidden but fully functioning Odebrecht business unit—a 'Department of Bribery,' so to speak—that systematically paid hundreds of millions of dollars to corrupt government officials in countries on three continents," said Deputy Assistant Attorney General Suh. "Such brazen wrongdoing calls for a strong response from law enforcement, and through a strong effort with our colleagues in Brazil and Switzerland, we have seen just that. I hope that today's action will serve as a model for future efforts."

"These resolutions are the result of an extraordinary multinational effort to identify, investigate and prosecute a highly complex and long-lasting corruption scheme that resulted in the payment by the defendant companies of close to a billion dollars in bribes to officials at all levels of government in many countries," said U.S. Attorney Capers. "In an attempt to conceal their crimes, the defendants used the global financial system – including the banking system in the United States – to disguise the source and disbursement of the bribe payments by passing funds through a series of shell companies. The message sent by this prosecution is that the United States, working with its law enforcement partners abroad, will not hesitate to hold responsible those corporations and individuals who seek to enrich themselves through the corruption of the legitimate functions of government, no matter how sophisticated the scheme."

"This case illustrates the importance of our partnerships and the dedicated personnel who work to bring to justice those who are motivated by greed and act in their own best interest," said Assistant Director Richardson. "The FBI will not stand by idly while corrupt individuals threaten a fair and competitive economic system or fuel criminal enterprises. Our commitment to work alongside our foreign partners to root out corruption across the globe is unwavering and we thank our Brazilian and Swiss partners for their tireless work in this effort."

“No matter what the reason, when foreign officials receive bribes, they threaten our national security and the international free market system in which we trade,” said Assistant Director in Charge Sweeney. “Just because they’re out of our sight, doesn’t mean they’re beyond our reach. The FBI will use all available resources to put an end to this type of corrupt behavior.”

Odebrecht pleaded guilty to a one-count criminal information filed today by the Criminal Division’s Fraud Section and the U.S. Attorney’s Office in the U.S. District Court for the Eastern District of New York, charging the company with conspiracy to violate the anti-bribery provisions of the Foreign Corrupt Practices Act (FCPA). Odebrecht agreed that the appropriate criminal fine is \$4.5 billion, subject to further analysis of the company’s ability to pay the total global penalties. In related proceedings, Odebrecht also settled with the Ministerio Publico Federal in Brazil and the Office of the Attorney General in Switzerland.

Under the plea agreement, the United States will credit the amount that Odebrecht pays to Brazil and Switzerland over the full term of their respective agreements, with the United States and Switzerland receiving 10 percent each of the principal of the total criminal fine and Brazil receiving the remaining 80 percent. The fine is subject to an inability to pay analysis to be completed by the Department of Justice and Brazilian authorities on or before March 31, 2017, because Odebrecht has represented it is only able to pay approximately \$2.6 billion over the course of the respective agreements. Sentencing has been scheduled for April 17, 2017.

Braskem, whose American Depositary Receipts (ADRs) are publicly traded on the New York Stock Exchange, separately pleaded guilty to a one-count criminal information filed in the Eastern District of New York charging it with conspiracy to violate the anti-bribery provisions of the FCPA. Braskem agreed to pay a total criminal penalty of \$632 million. Sentencing has not yet been scheduled. In related proceedings, Braskem also settled with the U.S. Securities and Exchange Commission (SEC), the Ministerio Publico Federal in Brazil and the Office of the Attorney General in Switzerland. Under the terms of its resolution with the SEC, Braskem agreed to a total of \$325 million in disgorgement of profits. Braskem agreed to pay Brazilian authorities 70 percent of the total criminal penalty and agreed to pay the Swiss authorities 15 percent. The department has agreed to credit the criminal penalties paid to Brazilian and Swiss authorities as part of its agreement with the company. The United States will receive \$94.8 million, an amount equal to 15 percent of the total criminal fines paid by Braskem.

Under their respective plea agreements, Odebrecht and Braskem are required to continue their cooperation with law enforcement, including in connection with the investigations and prosecutions of individuals responsible for the criminal conduct. Odebrecht and Braskem also agreed to adopt enhanced compliance procedures and to retain independent compliance monitors for three years. The cases are assigned to U.S. District Judge Raymond J. Dearie of the Eastern District of New York.

The combined total amount of United States, Brazilian and Swiss criminal and regulatory penalties paid by Braskem will be approximately \$957 million. The combined total amount of penalties imposed against Odebrecht will be at least \$2.6 billion and up to \$4.5 billion. With a combined total of at least \$3.5 billion, today’s resolutions with Odebrecht and Braskem are the largest-ever global foreign bribery resolution.

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