

Oct 24, 2016

STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. - FT. LAUD.

16-60294-CR-COHN/SELTZER

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

CASE NO. _____

18 U.S.C. § 371
15 U.S.C. § 78m(b)(2)(B)
15 U.S.C. § 78m(b)(5)
15 U.S.C. § 78ff(a)
18 U.S.C. § 2

UNITED STATES OF AMERICA

v.

EMBRAER S.A.,

Defendant.

_____ /

INFORMATION

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

GENERAL ALLEGATIONS

Relevant Statutory Background

1. The Foreign Corrupt Practices Act of 1977, as amended, Title 15, United States Code, Sections 78dd-1, *et seq.* ("FCPA"), 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. The FCPA's accounting provisions, among other things, require that any issuer make and keep books, records, and accounts that accurately and fairly reflect the transactions and

disposition of the company's assets, prohibit the knowing and willful falsification of an issuer's books, records, or accounts, and prohibit the knowing and willful failure to implement an adequate system of internal accounting controls. 15 U.S.C. §§ 78m(b)(2), 78m(b)(5), and 78ff(a).

Relevant Entities and Individuals

2. EMBRAER S.A. ("EMBRAER") was an aircraft manufacturing company incorporated and headquartered in Brazil. EMBRAER manufactured commercial, executive, and defense aircraft and sold them to governmental and private customers throughout the world. Shares of EMBRAER's stock traded on the New York Stock Exchange ("NYSE") as American depositary receipts ("ADRs"), and EMBRAER was required to file periodic reports with the Securities and Exchange Commission ("SEC") under Section 15(d) of the Securities Exchange Act, 15 U.S.C. § 78o(d). Accordingly, EMBRAER was an issuer within the meaning of the Foreign Corrupt Practices Act ("FCPA"), Title 15, United States Code, Sections 78dd-1 and 78m.

3. Embraer Representations LLC ("Embraer RL") was a subsidiary wholly owned by EMBRAER, and incorporated in Delaware. Embraer RL's financial statements were consolidated into EMBRAER's financial statements. Embraer RL held and maintained a bank account in New York from which EMBRAER made improper payments during the relevant time.

4. "Embraer Executive A," an individual whose identity is known to the United States and EMBRAER, was an executive in EMBRAER's Defense and Government Markets Division.

5. “Embraer Executive B,” an individual whose identity is known to the United States and EMBRAER, was an executive in EMBRAER’s Executive Jets Division.

6. “Embraer Executive C,” an individual whose identity is known to the United States and EMBRAER, was an executive in EMBRAER’s Commercial Jets Division.

7. “Embraer Executive D,” an individual whose identity is known to the United States and EMBRAER, was an executive in EMBRAER’s Commercial Jets Division.

8. “Dominican Official,” an individual whose identity is known to the United States and EMBRAER, was an official in a high-level decision-making position in the government of the Dominican Republic. Dominican Official had influence over decisions made by the Fuerza Aérea de República Dominicana (“FAD”), which was the Dominican Republic’s Air Force and which was a “department” and “agency” of a foreign government, as those terms are defined in the FCPA, Title 15, United States Code, Section 78dd-1(f)(1). Beginning at least by May 2007, EMBRAER referred to Dominican Official as the “General Manager” or “Managing Director of the Project.” Dominican Official was a “foreign official” as that term is used in the FCPA, Title 15, United States Code, Section 78dd-1(f)(1) (“foreign official”).

9. “Saudi Arabia Official,” an individual whose identity is known to the United States and EMBRAER, was an official in a high-level decision-making position in a state-owned and controlled company in Saudi Arabia that performed a government function. Saudi Arabia Official had influence over decisions made by the instrumentality (“Saudi Arabia Instrumentality”), which was an “instrumentality” of a foreign government, as that term is defined in the FCPA, Title 15, United States Code, Section 78dd-1(f)(1) (“instrumentality”). Saudi Arabia Official was a foreign official.

10. “Mozambique Official,” an individual whose identity is known to the United States and EMBRAER, was an official in a high-level decision-making position in the government of Mozambique. Mozambique Official had influence over decisions made by Linhas Aéreas de Moçambique, S. A. (“LAM”), the state-owned commercial airline in Mozambique that performed a government function, and which was an instrumentality. Mozambique Official was a foreign official.

11. “Agent A,” an individual whose identity is known to the United States and EMBRAER, purportedly provided legitimate agency services to EMBRAER in connection with the sale of aircraft to the government of Jordan. In reality, Agent A was retained for the purpose of funneling bribes to Dominican Official to obtain or retain business in the Dominican Republic.

12. “Agent B,” a company, the identity of which is known to the United States and EMBRAER, purportedly provided legitimate agency services to EMBRAER in connection with the sale of aircraft to Saudi Arabia Instrumentality. In reality, Agent B was retained for the purposes of funneling bribes to Saudi Arabia Official to obtain or retain business in connection with the sale.

13. “Agent C,” an individual whose identity is known to the United States and EMBRAER, purportedly provided legitimate agency services to EMBRAER in connection with the sale of aircraft to the government of Mozambique. In reality, Agent C was retained for the purposes of funneling bribes to Mozambican officials, including Mozambique Official, to obtain or retain business in Mozambique.

14. “Agent D,” an individual whose identity is known to the United States and EMBRAER, purportedly provided legitimate agency services to EMBRAER pursuant to two separate agency agreements in connection with the sale of aircraft to the government of India.

The Unlawful Schemes

The Dominican Republic

15. From in or around August 2008 through at least in or around October 2010, EMBRAER, through its employees and agents, agreed to pay and did pay Dominican Official approximately \$3.52 million to obtain a defense contract valued at approximately \$96.4 million.

16. Beginning in or around June 2007, EMBRAER began efforts to sell the Super Tucano aircraft, a turbine-driven military aircraft typically used for missions to fight drug trafficking, counter insurgence missions, and training, to the FAD. There was no public bid or tender for this sale. Rather, EMBRAER developed and negotiated the sale directly with representatives of the FAD, and Dominican Official was EMBRAER’s primary point of contact at the FAD.

17. By mid-2008, many of the terms of the sale had been negotiated but the Dominican Republic Senate (“Dominican Senate”) had not yet approved the deal’s financing or the purchase agreement, which were necessary steps for the completion of the sale. EMBRAER employees and Dominican Official began discussing how they could influence the Dominican Senate to provide the necessary approvals.

18. On or about August 25, 2008, an EMBRAER executive informed Embraer Executive A by email that Dominican Official would be talking to a Dominican Senator about compensation for the Senator but that Dominican Official wanted to talk to Embraer Executive A

before having that conversation. Embraer Executive A informed the other EMBRAER executive that Embraer Executive A and Dominican Official had already spoken.

19. On or about September 1, 2008, Embraer Executive A agreed to pay Dominican Official 3.7% of the value of the contract (which ultimately came to approximately \$3.52 million) if the sale was completed. That same day, Embraer Executive A emailed another EMBRAER executive that the Dominican Senate's meeting to approve financing of the transaction would soon take place and that "they want to have the agent agreement doc signed before the meeting."

20. In or around early September 2008, Dominican Official and Embraer Executive A agreed that the payment referred to in Paragraph 19 would be paid to three separate Dominican shell entities: one would receive \$2.5 million, a second would receive \$920,000, and a third would receive \$100,000.

21. In or around August 2008, Dominican Official promoted the Super Tucano contract before the Dominican Senate Finance Committee and presented the terms of the deal to the Dominican Senate. The following month, on or about September 16, 2008, the Dominican Senate approved the financing for the deal.

22. On or about December 24, 2008, the Dominican Senate approved the sale and financing contracts for the eight Super Tucano airplanes, agreeing to purchase the aircraft for approximately \$96.4 million. Shortly before it did so, the Secretary of the FAD issued a letter to EMBRAER authorizing Dominican Official to sign, on behalf of the Dominican Republic, invoices and certificates called for by the sales contract.

23. On or about January 9, 2009, EMBRAER publicly announced its sale of eight Super Tucano aircraft to the Dominican Republic.

24. Beginning at least when EMBRAER publicly announced the sale, Dominican Official repeatedly contacted EMBRAER requesting the payments that had been promised. For example, on or about March 16, 2009, Dominican Official emailed an EMBRAER employee demanding that EMBRAER begin making the agreed-upon payments, noting that “interested and compromised parties” were exerting pressure.

25. Based on these repeated requests, on or about April 24, 2009, Embraer RL wired \$100,000 to one of the shell companies referenced in Paragraph 20 from Embraer RL’s bank account in New York to a bank account in the Dominican Republic.

26. Following the \$100,000 payment referenced in Paragraph 25, Dominican Official persisted with efforts to collect the promised payments, and an executive in EMBRAER’s legal department provided senior EMBRAER managers with guidance on how to make those payments in a manner that would conceal their true purpose.

27. For example, on or about September 30, 2009, an EMBRAER employee sent an email to an EMBRAER executive detailing how an executive in EMBRAER’s legal department had advised using a third-party agent, “Agent A,” who had previously provided agency services to EMBRAER, to remit the remaining two payments to Dominican Official instead of directly paying the shell companies that Dominican Official had identified.

28. On or about October 16, 2009, an EMBRAER executive emailed the same executive in EMBRAER’s legal department asking for additional guidance on how to proceed,

adding that EMBRAER feared pressure at any moment from “four stars,” which was a reference to Dominican government officials.

29. On or about November 5, 2009, Embraer Executive A emailed Agent A to say that Dominican Official would be Agent A’s point of contact in the Dominican Republic, that Dominican Official was an “FAD colonel but the classmate of 4 star generals,” that Dominican Official had provided a “safe” phone number to use, and that Dominican Official had been designated as the intermediary between EMBRAER and the groups “involved on the other side.”

30. On or about November 16, 2009, Dominican Official emailed Embraer Executive A to confirm that Dominican Official had spoken with Agent A, and expressed satisfaction over Agent A’s cooperation, but warned that at least one of the outstanding payments needed to be made by the end of the month.

31. On or about March 12, 2010, Embraer RL and Agent A’s company entered into a purported agency agreement, pursuant to which Embraer RL would pay Agent A’s company an 8% commission on any successful sales of aircraft to the Jordanian Air Force. The agreement called for Embraer RL to make advance payments to Agent A’s company of \$2.5 million and \$920,000, which, when totaled, equaled the \$3,420,000 that EMBRAER had promised to Dominican Official.

32. On or about April 6, 2010, Agent A’s company submitted to Embraer RL two invoices for “sales promotion services” in the amounts of \$2.5 million and \$920,000. An internal EMBRAER memorandum indicated that the payments were related to the commission owed for the Super Tucano aircrafts sold to the government of the Dominican Republic, not potential sales to the Jordanian Air Force. Indeed, EMBRAER never sold any aircraft to the

Jordanian Air Force, Agent A rendered no services in connection with any attempted sale to the Jordanian Air Force, and Agent A rendered no legitimate services to EMBRAER related to the sale of Super Tucanos to the FAD.

33. On or about May 24 and June 25, 2010, Embraer RL wired \$2.5 million and \$920,000, respectively, from its New York bank account to Agent A's company's bank account in Uruguay.

34. On or about October 21, 2010, Dominican Official sent an email to Agent A from an email account in the United States that contained wiring instructions for a Panamanian bank account. Agent A transferred more than \$3 million to Dominican Official, including more than €1 million to the Panamanian bank account identified in the October 21, 2010, email.

35. The payments to Agent A's company were falsely booked as sales commissions in Embraer RL's internal accounting records and as selling expenses in EMBRAER's consolidated 2010 financial statement. The April 24, 2009, payment of \$100,000 to one of the Dominican shell companies was likewise falsely booked as a selling expense in EMBRAER's consolidated 2010 statement.

Saudi Arabia

36. From in or around November 2009 through February 2011, EMBRAER agreed to pay and did pay Saudi Arabia Official more than \$1.5 million to obtain a contract for the sale of three business jets, valued at approximately \$93 million, to Saudi Arabia Instrumentality.

37. In or around 2007, EMBRAER learned that Saudi Arabia Instrumentality was interested in purchasing executive jets. By 2009, Saudi Arabia Instrumentality had narrowed its interest to purchasing aircraft from EMBRAER and one other manufacturer.

38. In or around early December 2009, Embraer Executive B met with Saudi Arabia Official in London. Saudi Arabia Official offered to help EMBRAER win the aircraft contract and to change the terms of the deal from the sale of used jets to new jets, which would be a more lucrative transaction for EMBRAER, if EMBRAER compensated Saudi Arabia Official. Embraer Executive B knew that Saudi Arabia Official was a high-level official at Saudi Arabia Instrumentality and believed that Saudi Arabia Official could deliver on the promise.

39. Saudi Arabia Official and Embraer Executive B negotiated the amount of Saudi Arabia Official's payment. Saudi Arabia Official rejected an initial offer of \$200,000 per aircraft. Embraer Executive B sent an email to Embraer Executive B's supervisor and another EMBRAER executive on or about December 10, 2009, indicating that Saudi Arabia Official had justified the request for a higher payment on the grounds that "[h]e has budget for used only and will have to lobby for more funds to take new [aircraft] over used." Embraer Executive B added, "[t]here is more to come to replace the entire fleet they have with 170,s [sic] [Saudi Arabia Official] sees this as long term." Embraer Executive B's supervisor approved offering a per-aircraft payment of \$550,000.

40. On or about December 28, 2009, Embraer Executive B and Saudi Arabia Official agreed on a per-aircraft payment of \$550,000, for a total amount of \$1.65 million. Two days later, on or about December 30, 2009, Embraer Executive B told another EMBRAER executive that Saudi Arabia Instrumentality had opted to purchase three new jets.

41. Embraer Executive B devised a plan to conceal the payments to Saudi Arabia Official by funneling them through Agent B, which had no experience in the aircraft industry or in Saudi Arabia.

42. On or about January 5, 2010, Embraer Executive B sent an email about the transaction with Saudi Arabia Instrumentality to a number of EMBRAER employees summarizing “where we are based on our latest talks today[] with [] senior mngt [for Saudi Arabia Instrumentality] and the party driving this deal through who[m] we are working with on an [agency] basis.” Embraer Executive B reported in the email about a meeting between “the head of [Saudi Arabia Instrumentality’s] Aviation Dept (who is helping us with this deal),” and the committee that allocated funds for the purchase, and stated that “our contact on the transaction (head of the dept) has advised that we must hold our price during the negotiation on the basis we have put forward our best offer for the basic aircraft and therefore[] cannot negotiate further on this.” Embraer Executive B explained that it “ha[d] been made extremely clear and agreed with our contact[] that should any additional funds be required to cover any other concession that exceeds our \$120k limit, this would be from the [agency commission] amount in reserve.”

43. On or about February 26, 2010, pursuant to Embraer Executive B’s request, EMBRAER executives, including one in EMBRAER’s legal department, approved the agency arrangement with Agent B, pursuant to which Agent B would purportedly serve as EMBRAER’s sales agent for the deal with Saudi Arabia Instrumentality.

44. On or about March 5, 2010, Embraer RL executed an agency contract with Agent B signed by EMBRAER executives, pursuant to which Agent B was to “promote sales of . . . aircraft manufactured by Embraer . . . solely and specifically to” a subsidiary of Saudi Arabia Instrumentality.

45. Less than two weeks later, on or about March 15, 2010, EMBRAER and a U.S.-based subsidiary of Saudi Arabia Instrumentality entered into an aircraft purchase agreement, pursuant to which the subsidiary agreed to purchase three new aircraft for approximately \$93 million. The aircraft were delivered in or around November and December of 2010.

46. In or around December 2010, Agent B submitted three invoices, each in the amount of \$550,000, for its purported commission, even though Agent B had not rendered any services to EMBRAER in connection with the sale. Executives at EMBRAER approved paying the invoices. The payments were made through two wire transfers from Embraer RL's bank account in New York to Agent B's bank account in South Africa: \$550,000 on or about December 22, 2010, and \$1.1 million on or about February 18, 2011. Embraer RL booked the payments as "sales commissions" and the payments were consolidated into the parent's financial statements.

47. Agent B subsequently transferred more than \$1.4 million of the \$1.65 million it received from Embraer RL to bank accounts held by Saudi Arabia Official's longtime acquaintance, who in turn kept a portion of the monies and transferred the remainder to Saudi Arabia Official.

Mozambique

48. From in or around May 2008 through at least September 2008, EMBRAER negotiated the sale of two commercial aircraft to LAM.

49. EMBRAER submitted a formal proposal to LAM on or about May 21, 2008, for the sale of two commercial aircraft for approximately \$32 million each, with an option for LAM

to buy two more aircraft at the same price. The proposal followed nearly three years of work by Embraer Executive D to convince LAM to purchase from EMBRAER rather than competitors.

50. In mid-August 2008, during negotiations between EMBRAER and LAM, Agent C, who had not previously worked or had any contact with EMBRAER, contacted Embraer Executive D and said that Agent C would be serving as a consultant on the deal referenced in Paragraph 49.

51. Rather than reject Agent C's solicitation, on or about August 11, 2008, Embraer Executive D sent an email to two EMBRAER executives and proposed that they "create some margins for the commissions" for Agent C in the pricing of the two optional aircraft LAM could buy after purchasing the first two.

52. On or about August 13, 2008, Embraer Executive C sent an email to several EMBRAER executives recounting a conversation with Agent C, in which Agent C told Embraer Executive C that, even though EMBRAER had not been prepared to have a consultant, "we'd like to have a 'gesture' when delivering the first plane." Embraer Executive C proposed in the email that "we have to show some gesture and maybe the value mentioned by [another EMBRAER executive] (50K to 80K) would fit the actual need" Embraer Executive C had advised Agent C how to set up a company to which EMBRAER could make purported consultancy payments, telling Agent C that in order to receive a payment from EMBRAER, Agent C "needs to have a company, names, address and not be established in a tax-heaven [sic] country"

53. In response, an EMBRAER executive who had received the email referenced in Paragraph 52, agreed that they could offer to pay Agent C \$50,000 for each of the first two

planes sold, and go up to \$80,000 per plane if necessary, while also agreeing to a payment of somewhere between 2 and 2.5% of the purchase price of the two optional planes, should LAM purchase them.

54. On or about August 18, 2008, Embraer Executive C conveyed the \$50,000 offer to Agent C. Embraer Executive C reported afterward in an email to other EMBRAER executives that it appeared that Agent C was “expecting [a] much higher fee,” and, indeed, after hearing the amount, Agent C intimated that LAM may award the contract to a competitor instead.

55. On or about August 25, 2008, Mozambique Official called Embraer Executive D. In an email the same day to other EMBRAER executives, Embraer Executive D recounted the conversation, noting that Mozambique Official had “highlighted that [Mozambique Official] had received very nasty comments from some individuals, in relation to Embraer’s commission proposal to [Agent C].” Mozambique Official further “indicated that some individuals felt that Embraer’s proposal was an insult, and in a sense, it would have been less insulting to give nothing, even if this was not an acceptable solution.” Embraer Executive D asked Mozambique Official “what would [Agent C] expect from Embraer.” Mozambique Official responded that, “in the current circumstances, [Mozambique Official] thought about one million USD.” After some pushback from Embraer Executive D, Mozambique Official “finally suggested that we might get away with 800,000 USD (2 x400,000).” When Embraer Executive D told Mozambique Official that EMBRAER “had no budget for such consultancy fee,” Mozambique Official suggested taking it from the profit margin on the two optional aircraft and also “asked if [EMBRAER] could increase the aircraft price”

56. On or about September 15, 2008, EMBRAER and LAM executed the purchase agreement for the sale of two E190 aircraft at approximately \$32,690,000 each with a \$312,000 down payment for a third aircraft. Mozambique Official was one of three LAM executives that signed the purchase agreement on behalf of LAM.

57. On or about April 22, 2009, seven months after the execution of the purchase agreement but before delivery of the first aircraft, Embraer RL entered into an agency agreement with a company Agent C had recently formed in the Democratic Republic of São Tomé and Príncipe. Two EMBRAER executives signed the agency agreement on EMBRAER's behalf. The agency agreement authorized Agent C's company to promote sales of the E190 "solely and specifically" to LAM, even though the sale of such aircraft had already been completed seven months prior to the execution of the agreement, Agent C's company did not exist at the time the purchase agreement was signed, and Agent C's company did not perform any legitimate work in connection with the purchase agreement. The agreement with Agent C's company falsely stated that the sales promotion efforts identified therein had begun in or around March 2008.

58. Pursuant to the agency agreement described in Paragraph 57, Embraer RL agreed to pay Agent C's company \$400,000 per aircraft (the exact amount Mozambique Official had previously said EMBRAER could "get away" with paying). However, neither Agent C nor Agent C's company ever provided any legitimate services to EMBRAER.

59. EMBRAER delivered the two aircraft to LAM on or about July 30, 2009, and September 2, 2009. Following the delivery of each aircraft, Agent C's company submitted two invoices to EMBRAER for \$400,000 each, one dated August 15, 2009, and one dated September 24, 2009. An EMBRAER executive signed and approved both invoices for payment. On or

about August 31, 2009, Embraer RL wired \$400,000, from its U.S.-based bank account to an account at a bank in São Tomé and Príncipe, for further credit to the an account at a bank in Portugal, which was held by Agent C's company. On or about October 2, 2009, Embraer RL wired an additional \$400,000 from its U.S.-based bank account to Agent C's company's Portugal-based bank account. Embraer RL recorded these payments as "Sales Commission" and they were consolidated into EMBRAER's books under "Net Operating (expenses) income" as a "Selling" expense, specifically, "Sales Commission."

India

60. On or about July 3, 2008, EMBRAER executed a contract to provide three highly specialized military aircraft to the Indian Air Force for approximately \$208 million. In connection with the deal, EMBRAER retained the services of Agent D pursuant to a 2005 agency agreement. It later paid \$5.76 million to Agent D pursuant to a false agency agreement signed in or around 2008.

61. In or around January 2005, EMBRAER executed an agency agreement with a shell company domiciled in the United Kingdom and affiliated with Agent D (although Agent D's name never appeared in the agreement). Under the agency agreement, EMBRAER agreed to pay the shell company a commission of 9% of the value of any defense contracts EMBRAER obtained in India because EMBRAER believed Agent D could help ensure that any contract would be awarded on a single-source, rather than competitive, basis. EMBRAER personnel thought the agreement with Agent D was illegal under Indian law and thus took steps to conceal its existence, including secreting the sole fully-executed version of the agreement in a safe

deposit box in London that could be opened only when both an EMBRAER employee and Agent D or an associate of Agent D were present.

62. Less than a month after executing the agency agreement with the shell company, on or about February 8, 2005, EMBRAER announced that it had signed a memorandum of understanding (“MOU”) with India’s Defence Research and Development Organisation to support the development of a new early warning radar system for the Indian Air Force, which EMBRAER believed could ultimately result in EMBRAER securing a contract for the sale of three Embraer 145 aircraft.

63. On or about July 3, 2008, nearly three years after signing the MOU, the Indian Air Force agreed to purchase three aircraft from EMBRAER for approximately \$208 million (the “India contract”). The next day, on or about July 4, 2008, Agent D contacted EMBRAER employees and demanded payment of the commission pursuant to the contract referenced in Paragraph 61.

64. Agent D continued making demands for payment and, in or around February and March 2009, an EMBRAER executive met with lawyers representing Agent D to discuss Agent D’s payment demands. Following these discussions, EMBRAER executives agreed to pay \$5.76 million to Agent D to settle the claim.

65. To conceal the payment referenced in Paragraph 64, EMBRAER created a false agency agreement. On or about November 21, 2009, more than a year after EMBRAER was awarded the India contract, EMBRAER, through its wholly owned subsidiary, ECC Investment Switzerland AG (“ECC”), executed an agency agreement with a shell company domiciled in Singapore and affiliated with Agent D for its purported services as an agent in a sale EMBRAER

had made to an unrelated customer in another country that had purchased an EMBRAER aircraft more than a year earlier, in or around July 2008. The Singaporean shell company never performed any services related to that sale or to the sale to the Indian Air Force.

66. The same day that the agency agreement was executed, the Singaporean shell company delivered three invoices to ECC, each for \$1.92 million. EMBRAER, through ECC, remitted three payments to the shell company shortly thereafter. EMBRAER's books and records did not reflect that this transaction was related to its arrangement with Agent D.

Profits

67. From the unlawful conduct described above, Embraer's total profits were \$83,816,476.

EMBRAER's Internal Accounting Controls

68. During the relevant period, EMBRAER knowingly and willfully failed to devise and maintain an adequate system of internal accounting controls. In particular, and as relevant here, EMBRAER had no internal accounting controls that, among other things, (a) required adequate due diligence for the retention of third-party consultants and agent; (b) required a fully executed contract with a third-party before payment could be made to it; (c) required documentation or other proof that services had been rendered by a third-party before payment could be made to it; or (d) implemented oversight of the payment process to ensure that payments were made pursuant to appropriate controls, including those described above.

69. For example, in connection with the Dominican Republic bribery scheme, EMBRAER made payments to one of the shell companies identified by Dominican Official, even though a foreign official had told EMBRAER to which company to make agency payments,

and EMBRAER had conducted no diligence on the shell company, did not have a signed contract with the shell company, and knew that the shell company had not performed any legitimate services in exchange for the payment.

70. Also in connection with the Dominican Republic bribery scheme, EMBRAER made payments to Agent A for services purportedly rendered in connection with an aircraft sale to the Jordanian Air Force, even though EMBRAER never sold any aircraft to the Jordanian Air Force, and EMBRAER knew that Agent A had rendered no services in connection with any attempted sale to the Jordanian Air Force, and even though an internal EMBRAER memorandum indicated that the payments were related to the commission owed for the Super Tucano aircrafts sold to the government of the Dominican Republic, not potential sales to the Jordanian Air Force.

71. Further, in connection with the Saudi Arabia bribery scheme, EMBRAER made payments to Agent B, even though it had conducted minimal due diligence on Agent B, did so almost exclusively on the basis of information Embraer Executive B personally provided to its contracts and legal departments, and did not require any proof of services from Agent B before making payment.

72. Similarly, in connection with the Mozambique scheme, the only due diligence that EMBRAER conducted on Agent C's company was limited to collecting the company's registration documents, corporate by-laws, and board minutes from Agent C himself, and EMBRAER did not require any proof of services from Agent C before making payment.

73. Numerous high-level EMBRAER executives knew that the various agency agreements referenced above falsely represented that payments were being made for legitimate

agency services, and that the true purpose of the payments made to the agents was to funnel bribes to foreign officials. Many of the high-level executives who knew about the false nature of the agreements and the improper purpose of the payments had the authority and responsibility to ensure that EMBRAER devised and maintained an adequate system of internal accounting controls, knew that EMBRAER's then-existing internal accounting controls failed to prevent EMBRAER from entering into false agency agreements and making improper payments, and knowingly and willfully failed to implement adequate internal accounting controls to address the known weaknesses, in part to permit EMBRAER to enter into false agency agreements and funnel bribes to foreign officials.

COUNT ONE
(Conspiracy to Violate the FCPA)

74. Paragraphs 1 through 73 are realleged and incorporated by reference as though fully set forth herein.

75. From at least in or around 2005 through at least in or around 2011, in the Southern District of Florida and elsewhere, EMBRAER, the defendant, together with Embraer Executive A, Embraer Executive B, Embraer Executive C, Embraer Executive D, Agent A, Agent B, Agent C, Agent D, and others known and unknown to the United States, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States, that is,

a. as an issuer, to make use of the mails and means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, offer, gift, promise to give, and authorization of the giving of anything of value to 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, directly and indirectly, to a foreign official, for purposes of: (i) influencing acts and decisions of such foreign official in his or her official capacity; (ii) inducing such foreign official to do and omit to do acts in violation of the lawful duty of such official; (iii) securing an improper advantage; and (iv) inducing such foreign official to use his or her 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 EMBRAER in obtaining and retaining business for and with, and directing business to, EMBRAER and others, in violation of Title 15, United States Code, Section 78dd-1(a);

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

Object of the Conspiracy

76. The object of the conspiracy was to obtain and retain business with foreign governments and state-owned entities, including the FAD, Saudi Arabia Instrumentality, and LAM, by making payments and giving other things of value to foreign officials employed by such customers and to other persons associated with such foreign officials; and to conceal and disguise such payments, and other payments to third parties, by falsifying EMBRAER's books and records.

Manner and Means of the Conspiracy

77. The manner and means by which EMBRAER and its coconspirators sought to accomplish the purposes of the conspiracy included, among other things, the following:

a. EMBRAER, through its executives and employees, together with others, paid or caused to be paid \$3.42 million to Agent A intending that some or all of the monies be given to Dominican Official and others.

b. EMBRAER, through its executives and employees, together with others, paid or caused to be paid \$100,000 to a Dominican shell company, intending that some or all of the monies be given to Dominican Official and others.

c. EMBRAER, through its executives and employees, together with others, paid or caused to be paid \$1.65 million to Agent B, intending that some or all of the monies be given to Saudi Arabia Official and others.

d. EMBRAER, through its executives and employees, together with others, paid or caused to be paid \$800,000 to Agent C, intending that some or all of the payments be given to Mozambique Official and others.

e. EMBRAER, through its executives and employees, together with others, paid or caused to be paid \$5.76 million to shell companies associated with Agent D, intending that some or all of the payments be given to Agent D, which EMBRAER executives and employees believed to be illegal under Indian law.

f. EMBRAER, through its executives and employees, together with others, knowingly and willfully failed to properly account for payments to Agent A, the Dominican shell company, Agent B, Agent C, shell companies associated with Agent D, and others, and

knowingly and willfully failed to describe accurately the transactions in its books and records so as to hide the true purpose of the payments.

Overt Acts

78. In furtherance of the conspiracy and to achieve its purpose and object, at least one of the coconspirators committed, and caused to be committed, in the Southern District of Florida, and elsewhere, the following overt acts, among others:

- a. On or about September 1, 2008, Embraer Executive A agreed to pay Dominican Official 3.7% of the value of the contract with the FAD if the sale was completed.
- b. On or about April 24, 2009, Embraer RL wired \$100,000 from Embraer RL's bank account in New York to a bank account in the Dominican Republic controlled by one of the shell companies Embraer Executive A and Dominican Official had agreed to use for the payments referred to in Paragraph 78(a).
- c. On or about September 30, 2009, an EMBRAER employee sent an email to an EMBRAER executive detailing how an executive in EMBRAER's legal department had advised using a third-party agent, "Agent A," to remit the remaining two payments to Dominican Official.
- d. On or about May 24 and June 25, 2010, Embraer RL wired \$2.5 million and \$920,000, respectively, from its New York bank account to Agent A's company's bank account in Uruguay.
- e. In or around early December 2009, Embraer Executive B met with Saudi Arabia Official in London to discuss EMBRAER compensating Saudi Arabia Official in

exchange for him assisting EMBRAER with winning a contract to sell aircraft to Saudi Arabia Instrumentality and changing the terms of the deal from the sale of used jets to new jets.

f. On or about December 28, 2009, Embraer Executive B and Saudi Arabia Official agreed on a per-aircraft payment of \$550,000, for a total amount of \$1.65 million.

g. In or around mid-August 2008, during negotiations between EMBRAER and LAM, Agent C, who had not previously worked for or had any contact with EMBRAER, contacted Embraer Executive D and said that he would be serving as EMBRAER's consultant on the deal referenced in Paragraph 78(f).

h. On or about August 13, 2008, Embraer Executive C sent an email to several EMBRAER executives recounting a conversation he had with Agent C, in which Agent C told Embraer Executive C that, even though EMBRAER had not been prepared to have a consultant, "we'd like to have a 'gesture' when delivering the first plane." Embraer Executive C stated in the email that "we have to show some gesture and maybe the value mentioned by [another EMBRAER executive] (50K to 80K) would fit the actual need"

i. On or about August 25, 2008, Embraer Executive D sent an email recounting to other EMBRAER executives a telephone conversation he had had with Mozambique Official in which Mozambique Official expressed his displeasure with EMBRAER's offer to pay Agent C \$50,000 for each of the first two planes sold and suggested that \$800,000 might be acceptable.

j. On or about September 15, 2008, EMBRAER and LAM executed the purchase agreement for the sale of two E190 aircraft at approximately \$32,690,000 each with a

\$312,000 down payment for a third aircraft. Mozambique Official was one of three LAM executives that signed the purchase agreement on behalf of LAM.

k. On or about April 22, 2009, Embraer RL entered into an agency agreement with a company Agent C had recently formed in the Democratic Republic of São Tomé and Príncipe, pursuant to which Embraer RL agreed to pay Agent C's company \$400,000 per aircraft.

l. In or around January 2005, EMBRAER executed an agency agreement with a shell company domiciled in the United Kingdom and affiliated with Agent D (although Agent D's name never appeared in the agreement). Under the agency agreement, EMBRAER agreed to pay the shell company a commission of 9% of the value of any defense contracts EMBRAER obtained in India.

m. On or about July 4, 2008, the day after EMBRAER signed an approximately \$208 million contract with the Indian Air Force, Agent D contacted EMBRAER employees and demanded payment pursuant to the contract referenced in Paragraph 78(l).

n. In or around March 2009, EMBRAER executives agreed to pay \$5.76 million to Agent D to settle his claim.

o. On or about November 21, 2009, EMBRAER, through its wholly owned subsidiary, ECC Investment Switzerland AG ("ECC"), executed an agency agreement with a shell company domiciled in Singapore and affiliated with Agent D for its purported services as an agent in a sale EMBRAER had made to an unrelated customer that had purchased an EMBRAER aircraft more than a year earlier.

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

COUNT TWO
(Violation of the Internal Controls Provisions of the FCPA)

14. Paragraphs 1 through 73 and 76 through 78 are realleged and incorporated by reference as though fully set forth herein.

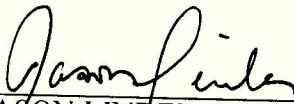
15. From in or around 2005, and continuing through in or around 2011, in the Southern District of Florida and elsewhere, the defendant,

EMBRAER S.A.,

knowingly and willfully failed to implement a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions were executed in accordance with management's general or specific authorization; (ii) transactions were recorded as necessary to (A) permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (B) maintain accountability for assets; (iii) access to assets was permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets was compared with the existing assets at reasonable intervals, and appropriate action is taken with respect to any differences, to wit: the defendant knowingly and willfully failed to implement, among other internal accounting controls, controls that: (a) required adequate due diligence for the retention of third-party consultants and agent; (b) required a fully executed contract with a third-party before payment could be made to it; (c) required documentation or other proof that services had been rendered by a third-party before payment could be made to it; or (d) implemented oversight of the payment process to ensure that payments were made pursuant to appropriate controls, including those described above.

All in violation of Title 15, United States Code, Section 78m(b)(2)(B), 78m(b)(5), and 78ff(a), and Title 18, United States Code, Section 2.

ANDREW WEISSMANN
Chief, Fraud Section

BY: 

JASON LINDER, Senior Trial Attorney
JOHN-ALEX ROMANO, Trial Attorney
Fraud Section, Criminal Division
United States Department of Justice
1400 New York Ave., N.W.
Washington, D.C. 20005
(202) 514-3740

UNITED STATES OF AMERICA

CASE NO. _____

vs.

EMBRAER S.A.,

CERTIFICATE OF TRIAL ATTORNEY*

Defendant.

Superseding Case Information:

Court Division: (Select One)

X Miami FTL ___ Key West WPB ___ FTP

New Defendant(s) Yes ___ No ___
 Number of New Defendants ___
 Total number of counts ___

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.
3. Interpreter: (Yes or No) No
 List language and/or dialect _____
4. This case will take 0 days for the parties to try.
5. Please check appropriate category and type of offense listed below:

(Check only one)	(Check only one)
I 0 to 5 days	<u>X</u> Petty
II 6 to 10 days	Minor
III 11 to 20 days	Misdem.
IV 21 to 60 days	Felony
V 61 days and over	<u>X</u>

6. Has this case been previously filed in this District Court? (Yes or No) No

If yes: Judge: Case No. _____

(Attach copy of dispositive order) Has a complaint been filed in this matter? (Yes or No) No

If yes: Magistrate Case No. _____

Related Miscellaneous numbers: _____

Defendant(s) in federal custody as of _____

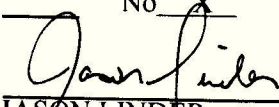
Defendant(s) in state custody as of _____

Rule 20 from the District of _____

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? Yes ___ No X

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? Yes ___ No X



 JASON LINDER
 SENIOR TRIAL ATTORNEY, DEPT OF JUSTICE
 DISTRICT COURT NO. A5501149

*Penalty Sheet(s) attached

AO 455 (Rev. 01/09) Waiver of an Indictment

UNITED STATES DISTRICT COURT

for the
Southern District of Florida

United States of America

v.

Embraer S.A.

Defendant

)
)
)
)
)

Case No.

WAIVER OF AN 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: _____

*St. Koleschizina - Vice President
AND General Counsel*

Defendant's signature

John T. Rowley

Signature of defendant's attorney

John Rowley

Printed name of defendant's attorney

Judge's signature

Judge's printed name and title