

March 16, 2010



**International Compliance Professionals Association  
2010 Conference, Orlando, Florida**

# Case Studies & Consequences in Cultures Of Trade Compliance & Non-Compliance

**Presented by: John P. Priecko**  
Chief Executive Officer and President  
Trade Compliance Solutions

**Wendy L. Wysong**  
Partner  
Clifford Chance LLP



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**Dr. John Reece Roth and  
the Co-Conspirators Impact & Implications**

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# The US Department of Justice Case Against Dr. John Reece Roth



## CASE SUMMARY / HISTORY

***“On Wednesday, September 3, 2008, a Federal Jury convicted retired University of Tennessee Professor Dr. J. Reece Roth, after a seven day trial, of illegally exporting military technical information relating to plasma technology designed to be deployed on the wings of drones operating as a weapons or surveillance systems.”***

[Reference: US Department of Justice (DOJ) Press Release (PR), 9/3/2008]

**Dr. Roth was sentenced July 1, 2009.**



# The US Department of Justice Case Against Dr. John Reece Roth



## DOJ QUOTES OF NOTE



***“Today’s guilty verdict should serve as a warning to anyone who knowingly discloses restricted military data to foreign nationals.”*** (Patrick Rowan, Assistant US Attorney for National Security, DOJ PR, 3/8/2008)

***“This verdict, by a jury of Dr. Roth’s peers, demonstrates that our citizens and the United States will not tolerate such international conduct to undermine the security and the economy of our country. Our scientific and educational communities must take precautions to insure that technology and research are protected....”***  
(Russ Dedrick, US Attorney, DOJ PR, 3/8/2008)

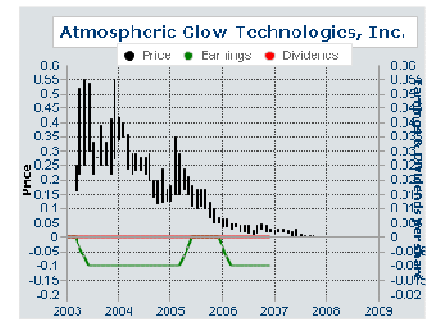


# The US Department of Justice Case Against Dr. John Reece Roth



## INDICTMENT & CONVICTION (All “Knowingly” & “Willfully”)

- One count of conspiracy with Atmospheric Glow Technologies, Inc. (AGT) to unlawfully export in 2005-06 fifteen defense articles/services to foreign nationals [i.e. People’s Republic of China & Iran in violation of the Arms Export Control Act (AECA)]
- Fifteen counts of violating the AECA
- One count of wire fraud related to defrauding the University of Tennessee (UT) of honest services by illegally exporting sensitive military technology relating to the subject US Air Force Contract



**A-GTECH.COM**



(Reference, DOJ PR, 9/3/2008)





# Dr. Roth Case - Related Documentation

**PROJECT PLAN**  
for  
**Exploratory Research and Development of Electrohydrodynamic Plasma Actuators and Ducts using Paraelectric and Peristaltic Flow Acceleration Based on the One Atmosphere Uniform Glow Discharge Plasma (OAUGDP)**

J. Reece Roth, Ph.D., UT Plasma Sciences Laboratory

We propose to conduct development aimed at increasing electrohydrodynamic (EHD) sing parallel array of such electrodes actuators that are driven by paras measure the total power flowing, dissipated by dielectric heating delivered to the plasma in these e measured simultaneously with th from Pitot tube data, and the th neutral gas by Lorentzian collision

We will conduct our expt Atmospheric Glow Technologies velocity, RF voltage, and RF fre and software. After checkout and measure the performance (flow v the input electrical power (a depe voltage, RF frequency, and act electrode dimensions, gap distan optimum values of the RF voltage flow velocity and thrust for a give

When a single plasma actu second year applying this actuator

1.) A parallel array of N such on a flat paraelectric panel, in whic induced by a single actuator. We want to see how far we can g induced velocity.

2.) A parallel array of N such advancing phase of a polyphase panel, and peristaltic flow accelera

3.) A proprietary paraelectric duct consisting of two paraelectric panels, as in (1) above, facing each other and accelerating the neutral gas between them. We will determine the maximum flow velocity and thrust achievable with this configuration, and compare the electrical power input necessary to achieve a given flow velocity and thrust with configurations (1) and (2) above.

4.) A proprietary peristaltic duct consisting of two peristaltic panels, as in (2) above, facing each other and accelerating the neutral gas between them. We will determine the maximum flow velocity and thrust achievable with this configuration, and compare the electrical power input necessary to achieve a given flow velocity and thrust with configurations (1) to (3) above.

5.) A proprietary paraelectric duct similar to (3) above, with the electrodes that face each other across the inside of the duct connected to a separate, lower frequency power supply designed to produce a bulk plasma in the duct volume. The maximum velocity and thrust achievable with a given power input will be compared to (1) to (4) above.

6.) A proprietary peristaltic duct similar to (4) above, with the electrodes that face each other across the inside of the duct connected to a separate, lower frequency polyphase power supply designed to produce a bulk plasma in the duct volume. The maximum velocity and thrust achievable with a given power input will be compared to (1) to (5) above.

Two half-time Graduate Research Assistants (GRAs) affiliated with the UT Plasma Sciences Laboratory will be used; one will spend much of his/her time at AGT applying the portion of the above research program relating to paraelectric actuators and panels (Nos. 1, 3, and 5) to configurations that are subject to export controls and that are of interest to Boeing and the Air Force. The second GRA will work at the UT Plasma Sciences Laboratory exclusively, and will conduct exploratory studies on all the items above, including all actuator and panel configurations, including the peristaltic panel. Duplication will be avoided in the AGT/UT efforts as a general rule, but enough similar or identical work will be done in both locations to serve as a check on each other's data. When required to meet deadlines, independently check results, etc., the facilities and GRA staff of the UT Plasma Sciences Laboratory will be available

**5352.227-9000 "EXPORT CONTROLLED DATA RESTRICTIONS" (AFMC)(JUL 1997)**

252.247-7024 NOTIFICATION OF TRANSPORTATION OF SUPPLIES B ' SEA (MAR 2000)  
5352.215-9005 INCORPORATION OF CONTRACTOR'S TECHNICAL PROPOSAL (AFMC) (AUG 1998) (TAILORED)  
5352.227-9000 EXPORT-CONTROLLED DATA RESTRICTIONS (AFMC) (JUL 1997)  
5352.247-9008 CONTRACTOR COMMERCIAL PACKAGING (AFMC) (SEP 1998)

**Signed by AGT's President on 05/05/05**

**12. Other flow down provisions.**  
none

and

**13. other terms as may be agreed to by the parties.**  
none

**AGREED TO BY THE AUTHORIZED REPRESENTATIVES OF THE PARTIES**

<p>UNIVERSITY The University of Tennessee Knoxville TN</p> <p>By: <u><i>J. Reece Roth</i></u> (Signature of Authorized Representative) Print Name: <u>Issue Vice Chancellor</u> Title: _____ Date: <u>MAY 05 2005</u></p>	<p>AGT Atmospheric Glow Technologies, Inc. 924 Corridor Park Blvd. Knoxville, TN 37932</p> <p>By: <u><i>Kimberly Kelly-Winterberg</i></u> (Signature of Authorized Representative) Print Name: <u>Kimberly Kelly-Winterberg</u> Title: <u>President</u> Date: <u>05/05/05</u></p>
---	---

The Project Manager while not a party to this Agreement or this Task Order, acknowledges that he has read the Agreement and Task Order and understands his obligations hereunder as a University employee.

By: *J. Reece Roth*  
Print Name: J. Reece Roth  
Title: Professor Emeritus  
Date: April 29, 2005

**Signed by J. Reece Roth on April 29, 2005.**

**"Two half-time Graduate Research Assistants (GRAs) affiliated with the UT Plasma Sciences Laboratory will be used; one will spend much of his/her time at AGT applying the portion of the above research program relating to paraelectric actuators and panels (Nos. 1, 3, and 5) to configurations that are subject to export controls and that are of interest to Boeing and the Air Force."**

**Project Plan**

**Task Order 102**

# The US Department of Justice Case Against Dr. John Reece Roth



## MAXIMUM PUNISHMENT

- On the conspiracy conviction:  
5 years in prison and a fine of \$250,000
- On the 15 AECA convictions:  
Ten years in prison for each offense and a criminal fine of \$1,000,000 for each offense
- On the wire fraud conviction:  
20 years in prison and a fine of \$250,000
- Mandatory Special Assessment:  
\$100 for each offense
- WORST CASE TOTAL: \$15,501,700 in fines & 175 years in prison



(Reference, DOJ PR, 9/3/2008)



# The US Department of Justice Case Against Dr. John Reece Roth



## SENTENCING

(US Federal Sentencing Guidelines)

Some of what the Judge considered:

- Characteristics, circumstances, nature and seriousness of the case
- Knowing, willful, reckless intent/nature & obstruction of justice
- Self-reporting, cooperation and acceptance of responsibility
- Providing just punishment & affording adequate deterrence
- Protecting the public interest & national security
- Promoting respect & abiding by the law
- Aggravating & mitigating circumstances
- Prior history / misconduct
- Ability to pay restitution
- Collateral consequences
- Evidence

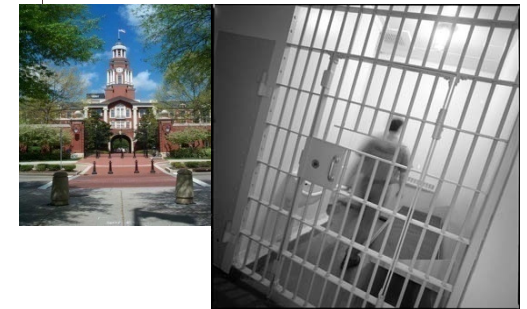


# The US Department of Justice Case Against Dr. John Reece Roth



## ACTUAL PUNISHMENT

- Four years in jail followed by 2 years of Supervised Release
  - That's 15 months less than the minimum suggested by the Probation Officer's Report and 30 months less than the minimum sought by the US Government (USG).
- Only monetary fine was the \$1,700 Special Assessment which the judge waived.



(Reference, DOJ PR, 9/3/2008, other related Knoxville News Sentinel articles)



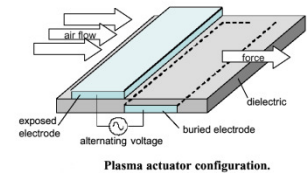
# The US Department of Justice Case Against Dr. John Reece Roth



## CO-CONSPIRATOR DANIEL MAX SHERMAN



- Educated & Trained as a UT Physicist
- Graduate Student under Dr. Roth's supervision
- AGT's Director, Founder and the Program Manager and Lead Scientist on the contract with Dr. Roth
- Guilty on 1 count of knowingly & willfully conspiring to commit the offenses specified in the Indictment
- SENTENCE: Worst Case: 5 years in jail and a \$250,000 fine - Actual: 14 months in prison
- Prosecution sought 28 months due to Sherman's cooperation as he provided extensive information and documents to investigators that led to Dr. Roth's conviction.



(Reference, the related Knoxville News Sentinel article, 8/10/2009, and Jeff Theodore, Assistant US Attorney, Knoxville TN)

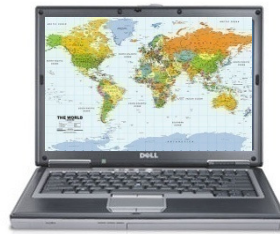


# The US Department of Justice Case Against Dr. John Reece Roth



## IMPLICATIONS / LESSONS LEARNED

- The USG is always willing to take aggressive measures to prevent unauthorized exports, particularly to certain countries.
- Academic & research institutions as well as defense contractors are NOT immune from such prosecutions.
- NOT everything that's perceived as "fundamental research" qualifies as exempt from USG licensing requirements.
- When working on USG or defense-related projects review policies, processes and procedures on research & collaborative projects to make sure they are thoroughly screened for export control issues before being undertaken and on an ongoing bases to ensure compliance.
- Providing export-controlled technology to a foreign national / person by any means is an export.



**DR. JOHN REECE ROTH (JRR)** [Conviction Date: 090308]  
**United States Department of Justice (DOJ) - Indictment Summary** (As of 021210)

*Trade compliance professionals are encouraged to read the entire Indictment at <http://web.knoxnews.com/pdf/roth-indictment.pdf>.*

Counts	Charges	Fines & Penalties
General	Eighteen counts of <b>knowingly, willfully and illegally</b> exporting military technical information relating to plasma technology designed to be deployed on the wings of drones operating as a weapons or surveillance systems	* JRR ACTUAL PUNISHMENT
1	- JRR & Atmospheric Glow Technologies, Inc. (AGT) did <b>knowingly &amp; willfully</b> combine, conspire, confederate, and agree together & with other persons known & unknown to the Grand Jury to export & attempt to export, defense articles & services to one or more foreign nationals, including a citizen of the People's Republic of China (PRC), an arms embargoed country, without the written approval of the US Department of State (DOS).	<b>Four years in prison followed by 2 years of Supervised Release</b>
2	- AGT did <b>knowingly &amp; willfully</b> export Arms Export Control Act (AECA) in a report containing restricted technical data (TD) to a foreign national through a coconspirator to a PRC citizen on specific research results on development of a refined plasma actuator technology US Air Force (USAF) aviation munitions project.	<b>Only monetary fine was the \$1,700 Special Assessment which was waived by the judge</b>
3-14	- JRR & AGT did <b>knowingly &amp; willfully</b> export, cause to be exported, and attempt to export AECA restricted TD to a PRC citizen regarding specific research results on the development of a refined plasma actuator technology for a specific USAF aviation munitions project.	JRR MAXIMUM PUNISHMENT
15	- JRR & AGT did <b>knowingly &amp; willfully</b> export, cause to be exported, and attempt to export AECA restricted defense services to a PRC citizen and authorized, directed, instructed, and otherwise furnished assistance, gave training, allowed unrestricted access and provided related technical information regarding equipment designed, developed, engineered, manufactured, produced, assembled, tested and operated involving the development of a refined plasma actuator technology for a specific USAF aviation munitions project.	Conspiracy Conviction (1): Five years in prison & \$250,000
16-17	- JRR AGT did <b>knowingly &amp; willfully</b> export, cause to be exported, and attempt to export AECA restricted defense services to a citizen of Iran, a prohibited country, regarding specific research results on the development of a refined plasma actuator technology USAF aviation munitions project.	15 AECA Convictions (3-17): Ten years in prison for each offense and a criminal fine of \$1,000,000 for each offense
18	- JRR devised/intended to devise a scheme & artifice to defraud & deprive the University of Tennessee (UT) its intangible right to the honest services of its employees, performed free from deceit, craft, trickery and dishonest means and used his position to <b>knowingly &amp; willfully</b> export, cause to be exported and attempt to export AECA restricted TD to foreign persons for his benefit & to the actual economic detriment of & loss to the UT.	Wire Fraud Conviction (18): Twenty years in prison & \$250,000
		Mandatory Special Assessment of \$100 for each of his offenses
		<b>WORST CASE TOTAL</b> Fines: \$15,501,700 Prison: 175 years

**DR. JRR's BACKGROUND:** A Professor at the UT since 1978 who worked at the Knoxville, Tennessee Campus in the Department of Electrical Engineering & Computer Science, College of Engineering. He taught, lectured and published extensively and was a recognized expert. He served as the Director of the UT Plasma Sciences Laboratory. Beginning in 1989, he traveled on multiple occasions as a UT faculty member to the PRC to visit with and lecture regarding plasma research & technology at certain PRC state operated academic organizations & universities. Dr. JRR's UT Website: <https://www.eecs.utk.edu/faculty/roth/main>

**NOTABLE INDICTMENT QUOTES:** *"As embodied in a Code of Conduct then in effect, UT specifically prohibited actions or activities of its employees that violated federal government security regulations as outlined in any applicable contracts and required employees to report violations of State or Federal laws or regulations. For the time period relevant to this Indictment, UT had in force and effect specific policies that required all employees to comply with all federal export control laws and regulations. Under these policies, each employee was responsible for understanding any export control requirements related to the employee's work and ensuring that no exports were made contrary to these requirements."* (See, Page 2, Paragraph 2., Sentences 5 & 6)

**NOTABLE DOJ QUOTES:** *"Today's guilty verdict should serve as a warning to anyone who knowingly discloses restricted military data to foreign nationals."* (Patrick Rowan, Assistant US Attorney for National Security, DOJ) *"This verdict, by a jury of Dr. Roth's peers, demonstrates that our citizens and the United States will not tolerate such international conduct to undermine the security and the economy of our country. Our scientific and educational communities must take precautions to insure that technology and research are protected, when required, from disclosure to foreign governments."* (Russ Detric, US Attorney, DOJ). [See, Page 1 of the 090308 DOJ Press Release and various media news articles in that same timeframe regarding this case]

\* OTHER FACTS: This is the first US Government (USG) conviction of a university professor for unauthorized exports of defense articles/services. Dr. Roth's subsequent motions for acquittal & retrial were denied. At sentencing, the 72-year old Dr. Roth did not concede guilt or express remorse. He did appeal for leniency & mercy noting his wife's bad health and his heart-related medical problems. The sentence was 15 months less than the Probation's Officer's suggested minimum and 30 months less than the minimum sought by the USG. Daniel Sherman, AGT's Director/Founder, is serving 14 months in prison. AGT was fined \$25,000 with a \$4,000 Special Assessment.

# The US Department of Justice Case Against Dr. John Reece Roth



## WHAT DOES IT ALL MEAN?

### *Questions to Consider:*

- *Do the consequences and sentences fit the crimes?*
- *Was justice served to the appropriate degree?*
- *What's the impact on the trade compliance community?*
- *How many others are making similar transfers?*
- *Who's providing education and training in this arena?*
- *What message does the outcome send?*



**Remember:**

***“The AECA has a very long reach.”***



## **Dr. John Reece Roth and the Co-Conspirators Impact & Implications**

**JOHN P. PRIECKO**

**Chief Executive Officer and President**

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**Trade Compliance Solutions**

**C L I F F O R D  
C H A N C E**

March 2010



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# **The Consequences of Foreign Corrupt Practices Act (FCPA) Non-Compliance**

**Presented by: Wendy L. Wysong  
Partner  
Clifford Chance LLP**



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# The Two Prongs of the Foreign Corrupt Practices Act

## Anti-Bribery Provisions

- Prohibits bribery of foreign government or political officials
- For the purpose of obtaining or retaining business or securing an improper business advantage



## Books & Records Provisions

- Requires Securities and Exchange Commission (SEC) registered or reporting issuers to make and maintain accurate books & records and
- To implement adequate accounting controls.





## Books & Records Provisions: Issuers Only

Prevent misuse of company assets concealed through falsification of payment documents or mischaracterization of accounts.

Company **MUST** devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:

- Expenditures have management's general or specific authorization
- Transactions are recorded in conformity with generally accepted accounting principles
- Records are audited regularly to ensure existing assets match
- Requirements are not limited to "material" transactions or to those over a specific amount
- Affirmative obligation to ensure compliance by subsidiaries ,even if the subsidiary is not otherwise directly subject to the FCPA
- Accounts must, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer



# Antibribery Provisions

## It is unlawful for:

- An issuer, domestic concern or anyone acting within the jurisdiction of the US
- With corrupt intent
- To directly or indirectly
- Offer, pay, promise to pay, authorize payment
- Of “anything of value”
- To a “foreign official”
- For the purpose of obtaining, retaining business or securing an improper business advantage.



# Who is Covered by the FCPA

- **US “Issuer:”** Any company, wherever located, that has either registered securities (including American Depositary Receipts/ADRs) or is required to report to the SEC
  - Officer, director, employee, or agent acting on issuer’s behalf
  - Parent company may be responsible for subsidiaries, including non-US subsidiaries
- **“Domestic Concern”** US citizens and residents, wherever located - even outside the US.
  - Any corporation, etc. which has its principal place of business in the US or is organized under the laws of US state, territory, or possession
  - Officers, directors, employees, agents when acting on its behalf
  - U.S. parent corporations may be held liable for the acts of their foreign subsidiaries if they authorized, directed, or controlled the activity
- **Subject to US Jurisdiction:** an act in furtherance of a prohibited bribe is committed in the US



## “Anything of Value”

An offer or promise to confer or conferring any benefit to a foreign official may be prohibited

Not just money - anything “of value:”

- Cash
- Reimbursements
- Excessive hosted travel
- Scholarships
- Charitable contributions in the name of an official
- Benefit to a private individual at the behest of an official
- Non-monetary gifts



That would cause the official to do something, to refrain from doing something, or to use his or her influence



# Facilitating Payments Exception

To “expedite or secure the performance of routine governmental action”

Only non-discretionary acts, i.e., ministerial acts, to expedite an official function, not to convince an official to make a different decision

“Routine governmental action:” an action which is ordinarily and commonly performed by a foreign official, including:

- Obtaining permits, licenses, or other official documents
- Processing governmental papers (such as visas)
- Providing police protection, mail pick-up and delivery
- Scheduling inspections
- Providing telephone service, power and water supply, loading and unloading cargo, or protecting perishable products or commodities from deterioration



There is no similar exception in the books and records provisions; a facilitation payment cannot be described as another type of payment



# Charitable Contributions

## Can community contributions to engender good will violate the FCPA?



How much due diligence is expected of companies with respect to their overseas charitable donations? (most often asked FCPA question)

**Mark Mendelsohn**: “Each donation has to be considered on its merits, but there are always commonsense guidelines that help determine if donations could violate the FCPA.”

### SEC v. Schering-Plough Corporation:



- Polish subsidiary made improper payments (approx. \$76,000) to a charitable organization
- The organization was headed by the Director of the Silesian Health Fund (governmental body)
- Silesian Health fund purchased defendant’s pharmaceutical products in return
- None of the payments were accurately reflected on the subsidiary’s books and records and internal accounting controls were inadequate to prevent/detect improper payments
- \$500,000 civil penalty



# Foreign Official



Very broadly defined at all levels:

- **Employees, officers, or representatives of:**
  - National or local government, political subdivision thereof
  - Government agency, instrumentality
  - A government-owned/government-controlled association, organization or enterprise: (central banks, state-run hospitals or universities)
- **A legislative, administrative, or judicial official, elected or appointed**
- **An officer or individual who holds a position in a political party**
- **A candidate for political office**
- **Royal family, official, ceremonial, or other positions with a government or any of its agencies**
- **An officer or employee of a supra-national organization (e.g., World Bank, United Nations, International Monetary Fund, Organisation for Economic Cooperation & Development)**

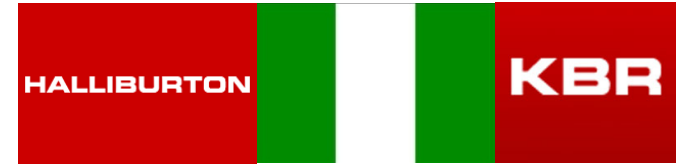


## Two Affirmative Defenses

- Payment of a gift or thing of value is expressly made lawful under the written laws or regulations of the country
  - Note that it is the law of the country that controls rather than the customary business practices/customs or enforcement outlook
- Payment or gift is a reasonable and bona fide expenditure, such as travel and lodging expenses that are directly related to:
  - Promotion, demonstration or explanation of products or services; or
  - Execution or performance of a contract with the country's government or agency thereof



# Halliburton/KBR



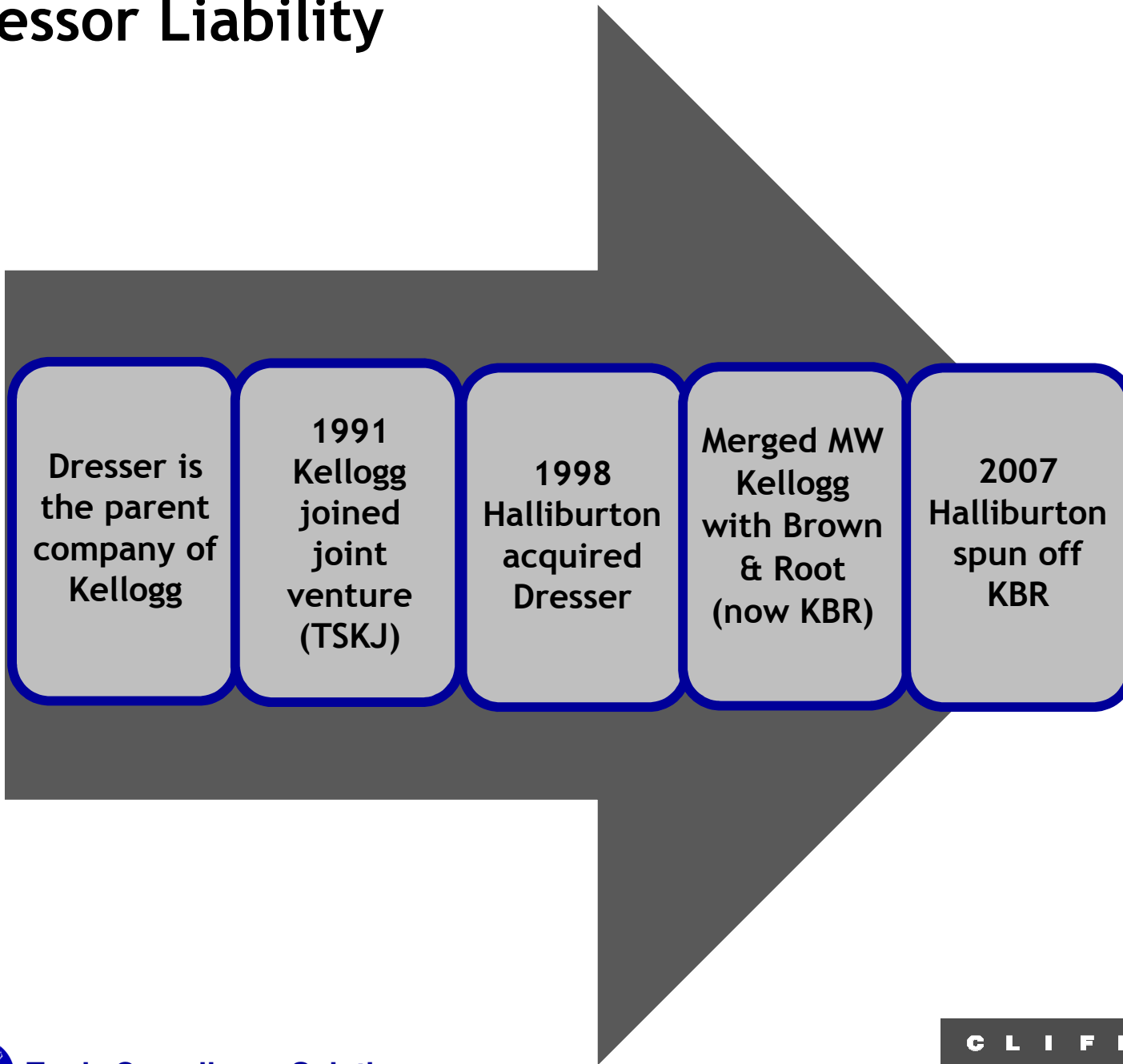
- Individual liability
- Successor liability
- Joint venture liability
- Inadequate controls & deliberate attempt to evade the FCPA
- “Cultural Committee”
- Sham consulting contracts
- High risk country/oil and gas sector
- International assistance in investigation & foreign prosecution
- Parallel civil and criminal prosecutions

## Facts:

- KBR’s predecessor, Dresser Ind., was consortium member with Japanese, French & Dutch companies (TSKJ) in 1991 to bid on contracts for trains for Nigeria LNG Ltd., partially owned by Nigerian Government.
- Halliburton acquired Dresser in 1998, merged its subsidiary Kellogg with Brown & Root to create KBR, successor to Dresser’s interest in TSKJ.

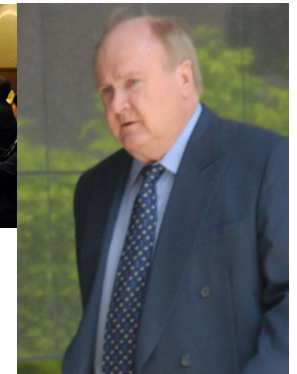


# Successor Liability



# Bribery Scheme

- TSKJ formed “cultural committee” to discuss bribery as strategy
- TSKJ entered into sham consulting & services agreements with agents.
  - UK agent transmitted bribes to high-level Nigerian officials
  - Japanese agent paid lower-level Nigerian officials
- Three shell companies in Portugal funneled \$180M thru these two agents, 1994-2002
- Wire transfers, suitcases & cars filled with cash used to pay bribes
- TSKJ obtained \$6B for construction & expansion contracts
- KBR Chairman & CEO Jack Stanley authorized KBR’s participation in scheme & met with government officials to discuss illicit payments
- Halliburton controlled & supervised KBR
  - Senior officials on the Board of Directors managed KBR’s performance
  - Insufficient or no due diligence on agents
- Halliburton reported KBR’s profits as its own and recorded bribes as “consulting” or “services” fees.



# Potential Penalties

## Anti-Bribery Provisions

- Criminal: Up to \$2M per violation or twice gross gain for companies
- Criminal: Up to \$250K per violation for individuals  
Imprisonment of up to 5 years
- Civil: Up to \$10K for individuals or companies



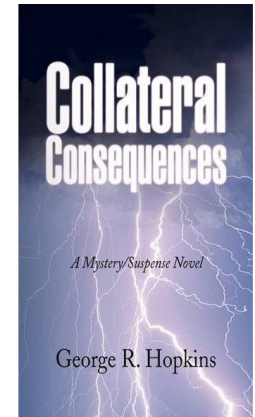
## Books and Records Provisions

- Criminal: Up to \$25M per violation for companies
- Criminal: Up to \$5M per violation for individuals  
Imprisonment of up to 20 years for willful violation
- Civil: Up to \$500K for companies
- Civil: Up to \$100K per violation for individuals



## Collateral Costs

- Disgorgement of profits plus interest
- Suspension by the SEC from securities business
- Multiple investigations in multiple countries
- Parallel civil & criminal proceedings
- Compliance monitors at company cost
  - Deferred Prosecution Agreements (DPA), Non-Prosecution Agreements (NPA)
- Civil litigation by shareholders
- Back taxes & prejudgment interest
- Reputational harm, loss of business relationships
- Diversion of management, operational disruption
- Debarment and denial of export privileges



# Halliburton/KBR Resolution

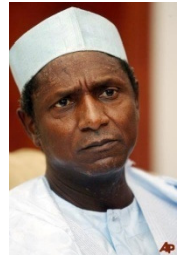


- 6/2004** Jack Stanley was fired for Code of Business Conduct violations & kickbacks, agreed to cooperate with US government investigation.
- 2007** Halliburton spun off KBR but agreed to indemnification
- 9/2008** Stanley pleaded guilty to conspiracy to violate the FCPA; facing 7 years imprisonment, \$10.8M forfeiture .
- 2/6/09** KBR pleaded guilty in Texas to 5 counts of conspiracy and FCPA anti-bribery violations. Halliburton entered into NPA.
  - Criminal fine \$402M; Halliburton to indemnify \$382M
  - KBR & Halliburton entered into final order with SEC
  - Civil fine \$177M disgorgement to SEC; Halliburton will pay.
  - Independent monitor appointed for KBR for 3 years.
  - Independent consultant for Halliburton for 60-day audit



## Significance of the Halliburton/KBR Case

- Highest penalty paid by a US company
- Systematic violations & attempts to evade the FCPA (creation of shell companies)
- 49% state-ownership plus indicia of control sufficient for liability
- On-going investigations in France, Nigeria, UK.
- \$150M of the \$180M KBR bribes surfaced in a Swiss bank account, growing speculation that a number of bribe recipients may soon be named. Nigerian President Umaru Yar'Adua has set up a special panel to investigate the scandal and reveal who pocketed the cash.
- Extradition hearings have begun against indicted British attorney Jeffrey Tesler, thought to be the UK agent, who was arrested in London, and a second Briton, 71-year-old Wojciech Chodan.



# Enforcement Trends

- Robust approach
  - Ten-fold increase in prosecutions since 2004
  - Over 140 pending investigations
- Multi-million fines are the norm
- Routinely target individuals for imprisonment
- Big and small firms on radar screen
- Focus on State-Owned Entities
- Increasing coordination with overseas investigators
  - 23 multi-jurisdictional cases in 2008
- Increasing foreign prosecution
- Overlapping prosecutions: export controls, antitrust

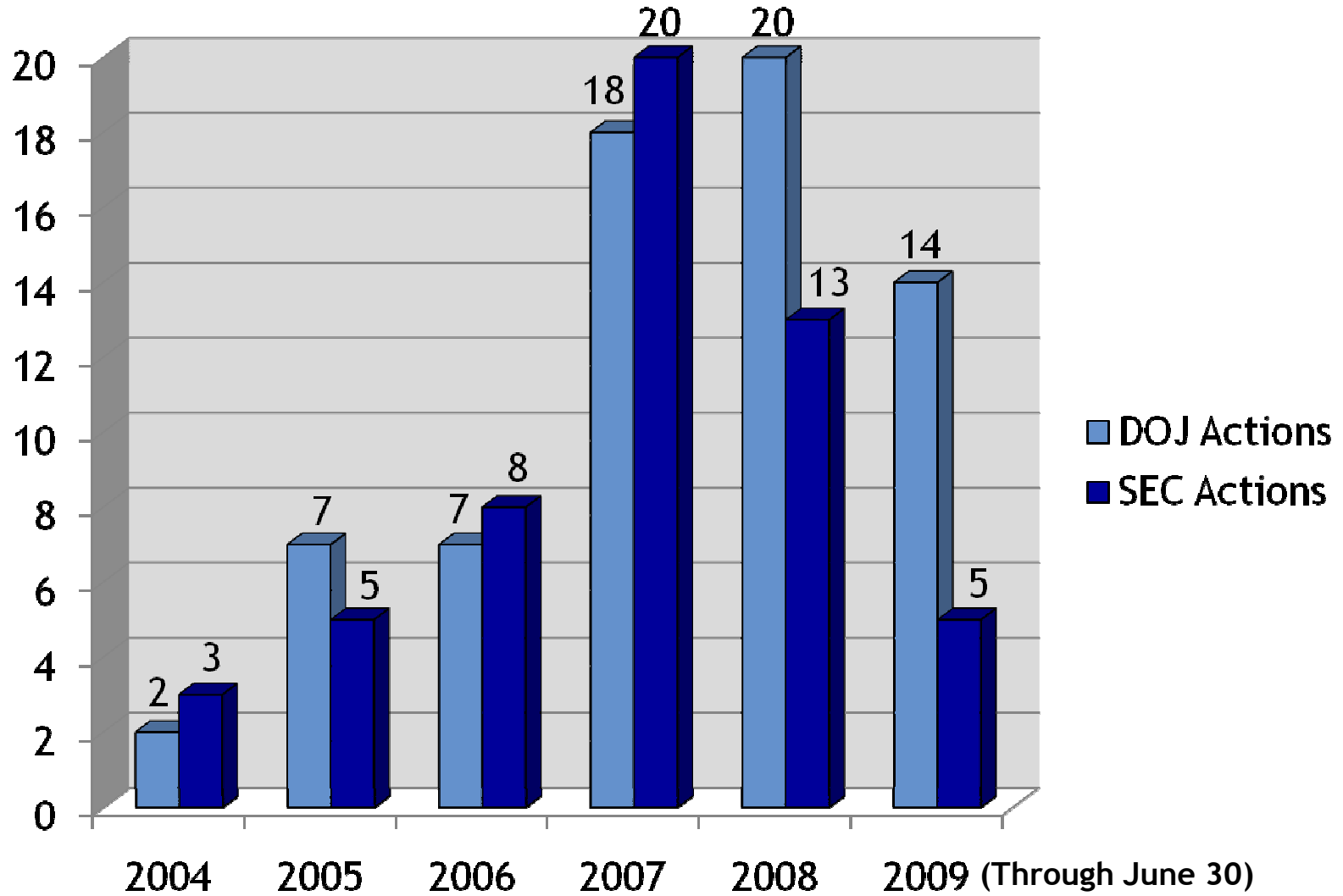


# Does Your Compliance Program Address FCPA Risks?

- Customer base of the company (government contracts)
- Interactions with government agencies and officials
- Jurisdictions in which the company operates and anticipated company expansions
- Use of agents and third-parties and method of compensation
- Overlap between company directors/officers and positions on other governmental agencies
- Joint venture partners
- Extent of government interactions (including licensing, etc.)
- Corporate culture
- Past history of violations



# Rise in Enforcement





## Does Your Compliance Program Address Gifts & Hospitality?

**Hospitality and Client Entertainment - Company employees and third parties should not provide or accept hospitality:**



- That constitutes, or reasonably could be perceived as constituting, an improper inducement
- That would violate the law, regulation or the policies of the company or its customers
- That could be perceived as creating a conflict of interest
- That could reflect negatively on the company's reputation



# Does Your Compliance Program Address Agents?



Before retaining a consultant, entering into a joint venture, or other transaction with a third party, assess:

The reputation of the third party, through public information and reference checks

- Do government officials have a direct or indirect beneficial interest in, or relevant relationship with, the third party
- The professional capability and experience of the third party
- The adequacy of the third party's internal controls
- The third party's financial standing and credibility
- The third party's past compliance with anti-bribery laws and other relevant laws and regulations





***“Expect to see anti-corruption enforcement on steroids in the next few years.”***

**(General Electric, General Counsel, 2009)**

## **The Consequences of Foreign Corrupt Practices Act (FCPA) Non-Compliance**

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*“Proactive trade compliance has consistently proven to be a far better and less costly approach than mandated corrective action.”*



## Case Studies & Consequences in Cultures of Trade Compliance & Non-Compliance

**IN CONCLUSION:**  
**Questions,**  
**Comments,**  
**Other ...**

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