decisions for nuclear medicine departments, including hospitals owned by the legal authorities in Taiwan, for the purpose of obtaining or retaining business. The cash payments were authorized by the Chairman of the Board of Syncor Taiwan while he was traveling in the United States. The payments were recorded as promotional and advertising expenses.

While conducting due diligence for a merger, Cardinal Health, Inc. uncovered improper payments by Syncor Taiwan. Cardinal Health brought the problem to the attention of Syncor. After being notified by Cardinal Health, Syncor promptly disclosed the improper payments to the Department of Justice and engaged outside counsel to conduct a very thorough investigation.

As part of its plea agreement, the Taiwanese subsidiary agreed to pay a fine of $2 million. Syncor also settled with the SEC by consenting to a cease and desist order preventing future violations of the FCPA as well as a civil penalty of $500,000. Syncor's board of directors was also required to appoint an independent consultant to review and reorganize Syncor's internal controls for record keeping and financial reporting purposes.

3. United States v. Giffen[209]

In April 2003, James H. Giffen, the Chairman and principal shareholder of Mercator, Inc., a small merchant bank with offices in New York and the Republic of Kazakhstan, was charged with conspiracy to violate the FCPA in a scheme that awarded oil and gas rights contracts in Kazakhstan, and with money laundering. Mercator and the Kazakh Ministry of Oil and Gas Industries entered into an agreement to help develop a strategy for foreign investment in the oil and gas sector in 1994. The strategy included coordinating and negotiating several oil and gas transactions with foreign parties. Mercator would only receive success fees if the transactions closed. In 1995 the president of Kazakhstan named Giffen his Counselor, a position which enabled him to influence matters of gas and oil transactions involving Mobil Oil, Texaco and Phillips Petroleum. Mercator received $67 million in success fees from 1995 to 2000. Giffen allegedly diverted $70 million of various oil companies money to secret Swiss bank accounts which he controlled. From these two sources, the indictment charged Giffen paid more than $78 million to two Kazahk government senior officials who had the power to determine if Giffen and Mercator would retain their positions. The indictment further alleged that Giffen himself kept millions of dollars from the oil transactions to buy jewelry and a speedboat and to pay for a daughter's tuition.

As a result of the alleged money laundering charge, Giffen will, if convicted, forfeit to the United States all property, real and personal, involved in the money laundering offenses and all property traceable to such property. Giffen awaits trial in the Southern District of New York in 2006.

4. United States v. Bodmer[210]

In August 2003, Hans Bodmer, a Swiss citizen and lawyer with the law firm von Meiss Blum & Partners, was charged with conspiracy to violate the FCPA in connection with a plan to bribe Azerbaijan officials to be able to invest in the privatization of oil enterprises. Bodmer acted as an agent for Oily Rock Group, Ltd., a British Virgin Islands corporation with its primary place of business in Baku, Azerbaijan; Minaret Group, Ltd., another BVI corporation based in Baku; and

Omega Advisors, Inc., a Delaware corporation with its principal place of business in New York; and various other members of the investment consortium. As an agent for the consortium, Bodmer paid bribes and authorized payments of bribes to Azeri officials in an attempt to convince the officials to allow the investment consortium to participate in the privatization auctions of the State Oil Company of the Azerbaijan Republic (SOCAR) and to acquire a controlling interest in SOCAR. In October 2004 Bodmer pled guilty to a money laundering conspiracy charge.[211]

5. United States v. ABB[212]

In July 2004, ABB Vetco Gray Inc., a U.S. subsidiary, and ABB Vetco Gray U.K. Ltd., a U.K. subsidiary, of the Swiss company ABB Ltd. each pled guilty to a two count information in connection with commissions and referral payments made to officials in Nigeria, Angola, and Kazakhstan. ABB Vetco Gray US and ABB Vetco Gray UK, from 1998 through 2001, paid bribes and authorized the payment of bribes to Nigerian officials in the government program known as National Petroleum Investment Management Services (NAPIMS). NAPIMS was responsible for reviewing and awarding bids to potential contractors for oil exploration projects in Nigeria. ABB Vetco Gray UK hired a Nigerian agent to perform consulting work such as marketing and goodwill. ABB Vetco Gray UK used this agent to pay some of the bribes to NAPIMS officials. The bribes were in exchange for information regarding competitors' bids and to help secure contract awards. Six contract bids won by ABB had bribes attached to them, including automobiles, shopping excursions, country club memberships, housing expenses, as well as cash payments. Pursuant to the plea agreement, each subsidiary agreed to pay a criminal fine of $5,250,000.

In a separate action, the SEC, which had conducted a parallel investigation, filed a complaint against the Swiss parent company ABB Ltd., the stock of which is traded in the U.S. through American Depository Receipts. Pursuant to a settlement, the SEC enjoined ABB Ltd. from future violations of the FCPA, and ABB Ltd. agreed to pay $5.9 million in disgorgement of profits and prejudgment interest and a $10.5 million civil penalty. The latter penalty was deemed satisfied by the payment of the ABB subsidiaries' criminal fines totaling the same amount. ABB Ltd. also agreed to retain an independent consultant to review its FCPA compliance policies and procedures.

United States Attorney
Southern District of New York

FOR IMMEDIATE RELEASE
OCTOBER 6, 2005

CONTACT: U.S. ATTORNEY'S OFFICE
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U.S. ANNOUNCES CHARGES IN MASSIVE SCHEME TO BRIBE SENIOR GOVERNMENT OFFICIALS IN THE REPUBLIC OF AZERBAIJAN

MICHAEL J. GARCIA, the United States Attorney for the Southern District of New York, ALICE S. FISHER, Assistant Attorney General in Charge of the Criminal Division, and MARK J. MERSHON, the Assistant Director In Charge of the New York Field Office of the FBI, announced that VIKTOR KOZENY, FREDERIC BOURKE, JR. and DAVID PINKERTON have been indicted by a federal grand jury in Manhattan for allegedly participating in a massive scheme to bribe senior government officials in Azerbaijan to ensure that those officials would privatize the State Oil Company of the Azerbaijan Republic ("SOCAR") and allow KOZENY, BOURKE, PINKERTON, and others to share in the anticipated profits arising from that privatization. Each of the defendants is charged with conspiracy to violate the Foreign Corrupt Practices Act ("FCPA"), which makes it a crime to offer to pay, or to pay, foreign government officials in order to obtain or retain business. The defendants are also charged with related crimes, including money laundering.

KOZENY was arrested yesterday by law enforcement authorities in The Bahamas, where he resides, pursuant to a provisional arrest request made by the U.S. government. He will appear today before Bahamian court. The U.S. government intends to make a formal request for KOZENY's extradition under the Extradition Treaty Between the Government of the United States of America and the Government of the Commonwealth of The Bahamas.

BOURKE and PINKERTON, meanwhile, voluntarily surrendered to the FBI's offices in Manhattan this morning and are scheduled to be arraigned today in front of United States District Judge RICHARD C. CASEY at 1:00pm.

Mr. GARCIA, Ms. FISHER, and Mr. MERSHON also announced that three other individuals, THOMAS FARRELL, CLAYTON LEWIS and HANS BODMER, previously pleaded guilty in connection with their participation in this bribery scheme.

Background

According to the twenty-seven count Indictment unsealed today (the "Indictment"), VIKTOR KOZENY controlled two companies, Oily Rock Ltd. ("Oily Rock") and Minaret Ltd. ("Minaret"), which participated in a privatization program in Azerbaijan. Under that privatization program, Azeri citizens could use free government-issued vouchers to bid for shares of state-owned industries that were to be privatized. Privatization vouchers were bearer instruments that were freely tradable, and they

typically were bought and sold using United States currency. Foreigners could also participate in Azerbaijan's privatization program and own vouchers, but only if they purchased a government-issued "option" for each voucher they held.

The Indictment alleges that beginning in July 1997, KOZENY directed others to purchase vouchers and options on behalf of Oily Rock and Minaret. According to the Indictment, these vouchers and options were purchased using millions of dollars of cash that was flown into Azerbaijan on KOZENY's private jet and on planes he chartered.

The Indictment further alleges that various individuals and institutions invested together with KOZENY in privatization vouchers and options. Among the individual investors was FREDERIC BOURKE, JR., who made two investments in Oily Rock totaling approximately $8 million, on behalf of himself and family members and friends. The institutional investors included American International Group ("AIG"), which invested approximately $15 million under a co-investment agreement with Oily Rock and Minaret. DAVID PINKERTON, a Managing Director of AIG in charge of AIG's private equity group, was responsible for supervising AIG's investment in Azeri privatization. In addition to AIG, other institutional investors in this privatization venture included the Wall Street hedge fund Omega Advisors, Inc. ("Omega") and its affiliated investment fund Pharos Capital

Management, L.P. ("Pharos"), which together purchased approximately $151 million in vouchers and options.

The Indictment alleges that KOZENY and the individual and institutional investors (collectively, "the investment consortium") made their investments with the intent to acquire a controlling interest in SOCAR upon its anticipated privatization. The Indictment further alleges that, beginning in August 1997 and continuing until 1999, KOZENY, BOURKE, PINKERTON, and others paid or caused to be paid millions of dollars worth of bribes to Azeri government officials to ensure that the investment consortium would gain a controlling interest in SOCAR and be able to reap huge profits from its ultimate resale in the market.

The Bribery Scheme

The Indictment charges that KOZENY, acting on his own behalf and as an agent of BOURKE, PINKERTON, and other members of the investment consortium, made a series of corrupt payments and promises to pay to a senior official of the Government of Azerbaijan (the "Senior Azeri Official"); a senior official of SOCAR (the "SOCAR Official"); and two senior officials of the State Property Committee or "SPC" (the "SPC Officials"), the agency that was responsible for administering the privatization program. Collectively, the four officials alleged to have been bribed are referred to as the "Azeri Officials."

According to the Indictment, the corrupt promises and

payments to the Azeri Officials took a number of forms. For example, in August 1997, KOZENY is alleged to have promised to transfer to the Azeri Officials two-thirds of the vouchers and options Oily Rock purchased, and to give the Azeri Officials two-thirds of all of the profits arising from the investment consortium's participation in SOCAR's privatization. In return for this "two-thirds transfer," the Indictment alleges that the Azeri Officials agreed to permit the investment consortium to acquire a controlling interest in SOCAR upon its privatization.

In addition to this "two-thirds transfer," the Indictment alleges that in June 1998, Oily Rock's shareholders approved an increase in Oily Rock's authorized share capital from $150 million to $450 million, and that the additional $300 million worth of Oily Rock shares was transferred to one or more of the Azeri Officials as a further bribe payment.

The Indictment further charges that a number of other bribes were paid to the Azeri Officials. KOZENY and others acting under his direction allegedly paid more than $11 million in total to the Azeri Officials in May and June 1998, of which approximately $6.9 million was wire transferred to accounts held for the benefit of certain of the Azeri Officials and their family members, and millions of additional dollars in cash were hand-delivered to one of the SPC Officials in his government office.

KOZENY is also alleged to have arranged for a representative of the London jeweler Asprey & Garrard to travel to Azerbaijan in May 1998 to deliver several gifts of jewelry and other luxury items to the SPC Officials, who in turn selected the gifts to present to the Senior Azeri Official on his birthday. According to the Indictment, the total value of these gifts was more than $600,000, which Minaret paid.

KOZENY and BOURKE are also charged with arranging for both of the SPC Officials to travel to New York City on different occasions in 1998 to receive medical treatment, for which Oily Rock and Minaret paid. KOZENY, through Oily Rock and Minaret, also paid for the SPC Officials' hotel, meal and other expenses on these trips, as well as shopping expenses for one of the SPC Officials at a high-end department store in the New York area.

The Charges in the Indictment

The Indictment contains a total of twenty-seven counts. All three defendants are charged with conspiracy to violate the FCPA and the Travel Act. As stated above, the FCPA makes it illegal to offer to pay or to pay money or anything of value to a foreign government official to obtain or retain business. The Travel Act makes it illegal to travel or use the mails or other interstate facilities to carry on certain unlawful activity, including violations of the FCPA's anti-bribery provisions.

The Indictment also contains twelve separate counts of

violations of the FCPA, of which KOZENY is charged in all twelve, BOURKE in five, and PINKERTON in one. There are also seven counts of violations of the Travel Act, of which KOZENY is charged in six, and BOURKE and PINKERTON in one count each.

Each of the defendants is further charged with money laundering conspiracy, based on wire transfers of millions of dollars to purchase Azeri vouchers and options, which in turn promoted violations of the FCPA. There are also four separate substantive money laundering violations, of which KOZENY is charged in all four, BOURKE in two, and PINKERTON in one.

BOURKE and PINKERTON are also each charged with making false statements in interviews with the FBI. The false statement charge against BOURKE alleges that, in an interview conducted in April and May 2002, he falsely stated that he was not aware that KOZENY had made payments to the Azeri Officials, when BOURKE knew that KOZENY had paid bribes to those officials. The false statements count against PINKERTON alleges that, in an interview conducted in February and March 2002, he falsely claimed that he was not aware that the Senior Azeri Official had a financial interest in KOZENY's investment in Azeri privatization, when PINKERTON knew that the Senior Azeri Official had such a financial interest.

The conspiracy to violate the FCPA and Travel Act count, the substantive counts of violations of the FCPA and the

Travel Act, and the false statements counts each carry a maximum penalty of five years in prison and a maximum fine of $250,000 or twice the gross gain or loss resulting from the alleged violations. The money laundering conspiracy and substantive counts each carry a maximum penalty of 20 years in prison and a maximum fine of $500,000 or twice the value of the laundered funds. Finally, the Indictment contains a Forfeiture Allegation seeking the forfeiture by the defendants of $174 million that was involved in the charged money laundering offenses.

KOZENY, 42, resides in Lyford Cay, The Bahamas.

BOURKE, 59, resides in Greenwich, Connecticut.

PINKERTON, 44, resides in Bernardsville, New Jersey.

Mr. GARCIA praised the investigative efforts of the FBI, and he said the investigation is continuing.

Mr. GARCIA added, "Corrupt payments to foreign officials, such as the ones charged in this Indictment, are a global threat to democratic institutions and fair competition. We will vigorously prosecute those who make illegal payments to corrupt foreign officials."

Ms. FISHER stated, "Representatives of American businesses overseas cannot be allowed to bribe their way into lucrative contracts or illegally purchase the favor of foreign government officials. Business conducted abroad must be done with honesty and integrity. Those who violate U.S. law in their

financial dealings, here or in other countries, will face serious consequences."

Announcement Concerning Related Cases

As stated above, THOMAS FARRELL, CLAYTON LEWIS and HANS BODMER have pleaded guilty in connection with their participation in this bribery scheme. FARRELL, who directed voucher purchases for Oily Rock, pleaded guilty before United States District Judge RICHARD M. BERMAN on March 10, 2003 to two-counts charging him with conspiracy to violate the FCPA and violating the FCPA.

LEWIS, who was a principal of Omega and Pharos and who oversaw Omega's and Pharos's investments with Oily Rock and Minaret, pleaded guilty before United States District Judge NAOMI REICE BUCHWALD on February 10, 2004 to the same two charges.

Finally, BODMER, a Swiss lawyer who represented Oily Rock, Minaret, Omega and other investors in connection with their investments in Azeri privatization, pleaded guilty before United States Magistrate Judge FRANK MAAS on October 8, 2004 to a charge of money laundering conspiracy.

The case against KOZENY, BOURKE and PINKERTON and the related cases against FARRELL, LEWIS and BODMER are being handled jointly by the United States Attorney's Office for the Southern District of New York and the Fraud Section of the United States Department of Justice. Assistant United States Attorney JONATHAN S. ABERNETHY, Fraud Section Deputy Chief MARK F. MENDELSOHN, and

Fraud Section Assistant Chief ROBERTSON PARK are in charge of the prosecution.

The charges contained in the Indictment are merely accusations, and the defendants are presumed innocent unless and until proven guilty.

05-217 ###

Original

UNITED STATES OF AMERICA
-against- HANS BODMER, Defendants.

03 CR 947 (SAS) UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

2004 U.S. Dist. LEXIS 959
January 28, 2004, Decided
January 28, 2004, Filed

DISPOSITION: Defendant conditionally released pending trial.

COUNSEL: [*1] For Defendant: Robert S. Bennett, Esq., Saul M. Pilchen, Esq., Michael P. Kelly, Esq., Skadden Arps Slate Meagher & Flom, LLP, Washington, D.C.

For Government: Mark F. Mendelsohn, Special Assistant United States Attorney, United States Department of Justice, Washington, D.C.

JUDGES: SHIRA A. SCHEINDLIN, U.S.D.J.
OPINIONBY: SHIRA A. SCHEINDLIN
OPINION: MEMORANDUM OPINION AND ORDER
SHIRA A. SCHEINDLIN, U.S.D.J.:

Hans Bodmer is a Swiss national who was arrested while in South Korea on business. His arrest stemmed from a sealed United States indictment charging him with conspiring to violate the Foreign Corrupt Practices Act, 18 U.S.C. ? 371, and the Money Laundering Control Act, 18 U.S.C. ? 1956(h). Following his arrest, Bodmer was incarcerated in South Korea for five months, where he was unable to meet with his United States counsel. Ultimately, Bodmer consented to extradition to the United States, arriving on January 16, 2004. Bodmer now seeks bail pending trial.

I. BACKGROUND

A. The Indictment

The charges in this case stem from Bodmer's alleged involvement in financial transactions relating to the privatization of the [*2] Azerbaijani national oil company. In sum, the Government alleges that as counsel to various entities, some of which are based in the United States, Bodmer paid bribes and authorized the payment of bribes to various government officials of the Republic of Azerbaijan in order to secure investments in the oil privatization. The Government further alleges than in an effort to conceal the nature of the bribery payments, Bodmer laundered money through various bank accounts.

B. The Proposed Conditions of Release

Bodmer submits, through his family accountant, that he has a net worth of approximately $ 2.4 million. He has proposed the following conditions for his release:

(1) a bond in the amount of $ 1 million, in the form of an irrevocable standby letter of credit; n1
(2) Bodmer will live in the Washington D.C. area with family friends;
(3) as security for the bond, the friends with whom Bodmer will reside will post their home as surety;
(3) Bodmer will surrender his passport;
(4) Bodmer will execute a waiver of extradition from Switzerland agreeing to forego any rights he may have in Switzerland to fight return to the United States;
(5) Bodmer will [*3] agree to the Court's reporting obligations, and will wear an electronic monitor;
(6) in the event that Bodmer flees, the unused portion of his attorneys' retainer will not be returned to Bodmer or the payor of the retainer, and instead will be forfeited to the Government. n2

n1 At the bail hearing, the Court modified the bond to $ 1.5 million, secured by a letter of credit and a house. See Transcript of 1/26/04 bail hearing ("1/26/04 Tr.").

n2 At the bail hearing on January 26, 2004, Bodmer's counsel acknowledged that the retainer has been paid by an unidentified third-party, and constitutes a loan to Bodmer. See 1/26/04 Tr.

II. LEGAL STANDARD

The Eight Amendment counsels that "excessive bail shall not be required." U.S. Const. amend. VIII. The release or detention of a defendant pending trial is governed by 18 U.S.C. ? 3142. Pursuant to this statute, the court is required to order the pretrial release of a defendant on a bond, "unless the [court] determines [*4] that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community." 18 U.S.C. ? 3142(b). If the court determines that release on an appearance bond is not sufficient, the court shall order pretrial release "subject to the least restrictive further condition, or combination of conditions, that [the court] determines will reasonably assure the appearance of the person as required and the safety of any other person and the community ...." 18 U.S.C. ?

3142(c)(1)(B). "If after a [detention] hearing ... the [court] finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, [the court] shall order the detention of the person before trial." 18 U.S.C. ? 3142(e).

In considering an application for bail, the court must first determine whether the Government has established "by a preponderance of the evidence that the defendant ... presents a risk of flight." United States v. Friedman, 837 F.2d 48, 49 (2d Cir. 1988) [*5] (citation omitted). If the government satisfies this burden, the court must then decide "whether there are conditions or a combination of conditions which reasonably will assure the presence of the defendant at trial if he is released." United States v. Shakur, 817 F.2d 189, 195 (2d Cir. 1987)

(citing United States v. Berrios-Berrios, 791 F.2d 246, 250 (2d Cir. 1986)). Moreover, "it is only a 'limited group of offenders' who should be denied bail pending trial." Id. at 195 (quoting S. Rep. No. 98-225 at 7 (1984), reprinted in 1984 U.S.C.C.A.N. 3182, 3189); see also United States v. Mercedes, 254 F.3d 433, 436 (2d Cir. 2001) (the government bears the ultimate burden of proving risk of flight by a preponderance of the evidence).

III. DISCUSSION

The Government submits that Bodmer is a flight risk, and that the collateral he has offered will not assure his presence at trial. n3 In particular, the Government believes that Bodmer's net worth exceeds $ 2.4 million. As a result, the prospect of forfeiting the posted collateral will not deter Bodmer from fleeing. This argument is premised on the Government's belief that [*6] the unsworn statements of Bodmer's family accountant, as well as Bodmer's Swiss tax returns, are inaccurate because they do not disclose the full extent of his assets, and do not reveal any bank accounts outside of Switzerland. The Government speculates that an accomplished Swiss attorney who specializes in offshore accounts and complicated financial transactions likely has offshore accounts himself. Yet, the Government's argument is mere speculation because it provides no evidence that Bodmer has any bank ccounts outside of Switzerland, or any assets not disclosed in the tax returns and accountant statement.

n3 The Government concedes that Bodmer does not present a risk to any person or the community. See 1/26/04 Tr.

The Government further argues that Bodmer has a strong incentive to flee because pursuant to Swiss law, the Swiss government will not extradite Swiss nationals. Moreover, the Swiss government will not recognize Bodmer's written waiver of his right to avoid extradition. Even if this is so, [*7] this argument alone cannot be a basis for denying bail because if taken to its logical conclusion, no Swiss national would ever be eligible for bail. Moreover, even if Bodmer does flee and cannot be extradited from Switzerland, he and his family friends in Washington, D.C. will forfeit a substantial amount of money, and he will forever be unable to travel outside of Switzerland without risking extradition.

Finally, Bodmer submits that if he flees to Switzerland as a fugitive, he will be unable to return to his career as a lawyer and judge. According to affidavits submitted by Judge Suzanne Thur Brechbuhl, chairwoman of an administrative tax court in the Canton of Thurgau, Switzerland, and Thomas Zweidler, President of the highest appellate court in Thurgau, if Bodmer flees while on bail and returns to Switzerland, his professional reputation will be destroyed
and he will risk losing his license to practice law.

Whenever a court grants bail to a defendant, there is a risk that the defendant will flee. Yet, our judicial system favors bail, and requires the Government to prove by a preponderance of the evidence that there are no conditions or combination of conditions that will reasonably [*8] assure the presence of the defendant at trial. The Government has failed to meet its burden. Its argument is based, in large part, on speculation; without any evidence to support the Government's claim, there is no support for the conclusion that Bodmer has vast financial resources in undisclosed offshore accounts. The fact that Bodmer is experienced in establishing such accounts for his clients does not necessarily mean that he employs such accounts for his own use. Moreover, while fleeing to
Switzerland may allow Bodmer to forever avoid facing the Government's hrages, such an act would likely ruin him professionally inally, in the event that Bodmer does flee, he will lose

substantial assets, and will cause serious financial harm to longtime family friends who reside in Washington, D.C.

Bodmer faces serious criminal charges, and pretrial detention may "hinder [] his ability to gather evidence, contact witnesses, or otherwise prepare for his defense." Barker v. Wingo, 407 U.S. 514, 533, 33 L. Ed. 2d 101, 92 S. Ct. 2182 (1972). Because of the nature of the charges, the Government expects discovery to be voluminous. See Transcript of 1/21/04 arraignment. It will be far easier [*9] for Bodmer to assist his counsel in reviewing and responding to discovery if counsel has regular, uninterrupted access to him. Moreover, Bodmer will undoubtedly be crucial to his lawyers' understanding of the complicated financial transactions that are the subject of the indictment.

IV. CONCLUSION

Under these circumstances, I conclude that the proposed conditions of release, as modified by the Court, are sufficient to reasonably assure Bodmer's presence at trial. Bodmer is therefore released pursuant to the conditions set forth above. His reporting obligations will include weekly in-person reports to pre-trial services and daily telephone calls. Finally, Bodmer will required to wear an electronic bracelet that will only allow him to leave the house for trial preparation, court appearances, or medical attention.

SO ORDERED: Shira A. Scheindlin
U.S.D.J. Dated: January 28, 2004