

United States District Court
Southern District of Texas
FILED

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DEC 16 2008

Michael N. Milby, Clerk

UNITED STATES OF AMERICA

v.

MISAO HIOKI

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CRIMINAL NO. H-08- 795

**MOTION FOR THIRD POINT OF ACCEPTANCE
OF RESPONSIBILITY AND DOWNWARD DEPARTURE FOR
SUBSTANTIAL ASSISTANCE OF AUTHORITIES BY MISAO HIOKI**

To enable the Court to sentence the defendant consistent with the plea agreement reached between the United States and the defendant in this matter, the United States moves this Court to grant defendant **MISAO HIOKI**: (1) a one level decrease in the defendant's offense level pursuant to United States Sentencing Commission Guidelines Manual ("USSCGM") §3E1.1(b); and (2) a downward departure for substantial assistance to authorities within the meaning of USSCGM §5K1.1. Defendant **HIOKI** has agreed, pursuant to a Plea Agreement, to enter a plea of guilty to the charges he is facing on December 10, 2008. If the Court accepts the plea, sentencing may be immediate. In an effort to present the Court with all the relevant information that might impact the Court's decision whether to accept the plea, the United States has decided to file this motion now. This motion is contingent upon the Court's accepting the defendant's plea of guilty; if the Court does not accept the plea of guilty, the United States will withdraw this motion.

Defendant's status/history: **MISAO HIOKI** was charged by criminal information on December 8, 2008 with one count of conspiracy to suppress and eliminate competition by rigging bids, fixing prices and allocating market shares [15 U.S.C. § 1], and one count of conspiracy to make corrupt payments to foreign government officials to secure or retain business [18 U.S.C. § 371, 15

U.S.C. § 78dd-3(a)] . On December 10, 2008, Defendant **HIOKI** intends to enter a plea of guilty to both charges.

Availability of a Decrease Pursuant to USSCGM §3E1.1(b): The Plea Agreement between the parties anticipates a reduction in the Defendant's guideline offense level pursuant to §3E1.1(b). A decrease by one additional level in the defendant's guideline offense level is available to the Court, upon the motion of the United States, pursuant to §3E1.1(b). Defendant **HIOKI** has assisted authorities in the investigation and prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the United States to avoid preparing for trial and permitting it and the Court to allocate their resources efficiently.

Availability of a Downward Departure: The Plea Agreement between the parties anticipates a downward departure from the Defendant's guideline offense level pursuant to §5K1.1. Upon the motion of the United States, a downward departure is available to the Court, USSCGM, §5K1.1.

Timeliness of Cooperation/Assistance: Shortly after his arrest on May 2, 2007, Defendant **HIOKI** agreed to cooperate with the investigation and provided information that incriminated himself and his co-conspirators.

Truthfulness, Completeness, and Reliability of Information: Defendant **HIOKI** has provided truthful, complete and reliable information through several interviews with the United States. The information he provided has been corroborated by documents and by information from other witnesses.

Nature and Extent of Cooperation/Assistance: Defendant **HIOKI** agreed to be interviewed by the United States on several occasions and provided information which incriminated

himself and his co-conspirators. He has also committed to assist in the ongoing investigation of the marine hose cartel and the foreign corrupt payments conspiracy as detailed in the plea agreement.

Significance and Usefulness of Cooperation/Assistance: Information provided by Defendant **HIOKI** has been instrumental in building cases against his co-conspirators, many of whom have also agreed to cooperate with the investigation. Defendant **HIOKI** was the General Manager for one of the companies in the marine hose cartel. Defendant **HIOKI** is a potential witness against co-conspirators in the marine hose cartel investigation as well as others in the foreign corrupt payments investigation. He has provided useful information regarding several individuals and corporations who may be charged for their roles in both conspiracies.

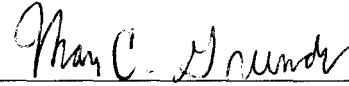
Risk of Harm from Cooperation/Assistance: None.

Government's Evaluation of Cooperation/Assistance: Defendant **HIOKI** has substantially assisted the United States by providing key information that the United States has used in building cases in both the marine hose and foreign corrupt payments investigations.

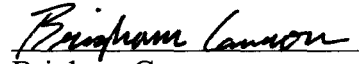
Based on Defendant **HIOKI's** clear demonstration of acceptance of responsibility and timely notification of his intent to enter a guilty plea, the United States requests a reduction of one additional level in his guideline sentence pursuant to USSCGM §3E1.1(b). Further, based on the substantial assistance that the Defendant has provided, the United States requests a downward departure from his sentencing guideline range. Specifically, the United States requests a downward

departure from the minimum of the USSCGM range of 70 to 87 months to 24 months as set forth in the Plea Agreement.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that on December 8, 2008, a copy of the foregoing Motion was delivered by fax and certified mail to James Mutchnik, counsel for the above-listed defendant.



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CRIMINAL NO. H-08-

[Proposed] ORDER

The United States' motion for a decrease in the defendant's sentencing guideline calculation pursuant to §3E1.1 and for a downward departure pursuant to §5K1.1 is hereby GRANTED.

UNITED STATES DISTRICT JUDGE