representing the overall ''best value'' in terms of risk. While price was not the sole factor considered, the joint venture of Tompkins/Grunley-Walsh did submit the lowest price.

Tompkins Builders, an American company established in the District of Columbia in 1911, is the third largest general contractor in the Washington Metropolitan area. The company has earned a reputation for quality construction.

Tompkins is owned by J.A. Jones Construction Company, a subsidiary of J.A. Jones, Inc., which is an American company founded in 1890 in Charlotte, North Carolina.

J.A. Jones, Inc., in turn, is owned by the Philipp Holzmann Company, a large German construction firm. In today's global economy, international ownership relationships are common. Three of the five largest construction companies in America are foreign-owned.

Neither ABMC nor GSA has the authority to discriminate against American firms based upon the nationality of parent or grandparent corporations. Moreover, such discrimination would be inconsistent with the principles for which the WWII generation sacrificed.

[From the New York Times, Apr. 13, 2001]

GLOBAL CONSPIRACY ON CONSTRUCTION BIDS DEFRAUDED U.S.

(By Kurt Eichenwald)

A group of international construction companies defrauded the American government out of tens of millions of dollars earmarked for Egyptian water projects undertaken as part of the Camp David peace accords, according to government officials and court documents.

One participant in the wide-ranging conspiracy, a unit of ABB Ltd., the Swiss engineering giant, pleaded guilty yesterday to its role in the scheme, agreeing to pay $63 million in fines and restitution.

The conspiracy, which lasted more than seven years, involved the rigging of contract bids submitted in the late 1980's and early 1990's to the United States Agency for International Development, which was financing Egyptian water projects that resulted from the Middle East peace accords reached during the Carter administration.

Contracts were supposed to be awarded through competitive bidding. But the construction companies subverted the process through payments of bribes and kickbacks to other possible bidders, fraudulent billing to the government and the laundering of cash through Swiss bank accounts, court records in related cases show.

The conspirators included at least six international construction companies, which collectively referred to themselves as the Frankfurt Group, according to people briefed on the case. At the time of the bidding, the companies were either American or American subsidiaries of European concerns. The name of the group came from the fact that some of the largest companies were based in Frankfurt.

The investigation of the conspiracy began almost six years ago, after a top financial officer at one company noticed a series of improper wire transfers and other transactions. That executive then brought those matters to the attention of the Justice Department, which has been investigating ever since.

According to court records, companies involved in the conspiracy were able to obtain profits of as much as 60 percent on the Egyptian water projects—a return that would be almost certainly impossible to obtain under competitive bidding. Indeed, some of the companies went to great lengths to hide their profits, charging fictitious expenses from related companies to decrease the returns shown on their books.

All told, about a dozen contracts have been awarded under the program, totaling more than $1 billion. To date, three contracts have been found to involve fraud, and the others remain under investigation.

The investigation has already resulted in two other guilty pleas, entered last fall by other construction companies. But until yesterday the full scope and implications of the criminal investigation were not publicly known.

In the plea entered yesterday in Federal District Court in Birmingham, Ala., ABB Middle East and Africa Participations A.G., a Milan-based subsidiary of the engineering company, admitted to taking part in a conspiracy to rig the bid for a project known as Contract 29. The original participant in the conspiracy was SAE Sadelmi USA, another ABB subsidiary, which was based in North Brunswick, N.J., and later became part of the Milan subsidiary.

Under the terms of the illegal agreement, the ABB unit met with other potential bidders on Contract 29 and agreed to pay them $3.4 million to submit inflated bids for the project. The ABB unit was then able to inflate its own bid on the project, knowing the offer would still beat other submissions. The value of the awarded contract, which was to pay for building a wastewater treatment plant in Abu Rawash, Egypt, was about $135 million.

''Although the construction work that is the subject of this case was performed on foreign shores, the U.S. government paid the bill and the U.S. taxpayers were the victims of the scheme,'' John M. Nannes, acting assistant attorney general in charge of the Justice Department's Antitrust Division, said in a statement.

An ABB spokesman, William Kelly, said the company had been cooperating with investigators since 1996, and first learned that it was a target of the inquiry last fall. He said the crimes were conducted by a small group of employees, all of whom have since left the company for reasons unrelated to the case.

''We deplore and deeply regret the behavior that led to these charges,'' Mr. Kelly said. ''It stands in sharp contrast to the high standard of business ethics practiced by the great majority of ABB employees.'' He added that in the year since the bid rigging occurred, ABB has expanded internal compliance programs ''to let employees at all levels know that ABB has zero tolerance for illegal or unethical business behavior.''

According to court records in related civil cases, the $3.4 million payment was made to an unincorporated joint venture formed by Bill Harbert International Construction, based in Birmingham, and the J.A. Jones Construction Company, a Charlotte, N.C., subsidiary of Philipp Holzman A.G. of Frankfurt.

Phillipp Holzman pleaded guilty to a criminal complaint filed under seal last August. A spokesman for Harbert did not return a telephone call.

According to court filings by the government in related cases, the Jones-Harbert venture was at the center of other bid-rigging efforts involving the Egyptian water projects. For example, American International Contractors Inc., a construction company based in Arlington, Va., and owned by the Archirodon Group of Geneva, pleaded guilty last September to accepting payments in exchange for a commitment not to bid on a project known as Contract 20A. That contract was awarded to the Jones-Harbert joint venture, court records show.

Indeed, irregularities in Contract 20A led to the discovery of the broader bid-rigging scheme. The irregularities were first discovered by Richard F. Miller, who worked first as a controller and then as treasurer of Jones from 1986 through 1996.

During the course of his work, Mr. Miller discovered a series of improper transactions involving the joint venture with Harbert, and pieced together that a bid-rigging scheme had been used in Contract 20A, a $107 million sewer project in Cairo.

Among the evidence eventually discovered by Mr. Miller, according to court records from a federal whistle-blower suit he filed, were wire transfers for $3.35 million from the joint venture to a related company for fictitious ''preconstruction costs.''

The most complex transaction, according to the court records, was a bogus ''sale-lease-back'' arrangement involving a Jones-related company called Sabbia. Under the terms of the deal, Sabbia was to purchase the construction equipment for the project, then lease it back to the joint venture.

Yet while $14.4 million in lease payments were sent to Sabbia, the $4 million to purchase the equipment was never paid by that company. Instead, according to court records and lawyers involved in the case, that money remained in a Swiss bank account and was used as a fund to disburse payments to other co-conspirators.

''This was an example of a transaction that was done to reduce the apparent profitability of Contract 20A,'' said Robert Bell, a lawyer from Wilmer, Cutler & Pickering who is representing Mr. Miller in his whistle-blower suit. ''If you skim almost $15 million off the top, it's easier to make it look like the joint venture wasn't making all that much money.''

The PRESIDING OFFICER. The Senator from Pennsylvania.

THE PATIENTS' BILL OF RIGHTS

Mr. SPECTER. Mr. President, I have sought recognition to comment about the legislation which is due to come to this Chamber tomorrow. I thought it might be useful to focus on a Dear Colleague letter which I sent out last week, which reads as follows:

A key point of controversy on legislation now pending in the Senate is whether patients will be permitted to collect damages from insurance companies without a statutory limitation. Under more than 200 years of common law precedents, a harmed plaintiff has been able to recover compensation as set by a jury for economic losses and pain and suffering when a defendant is negligent and punitive damages for gross, malicious or intentional misconduct.

The McCain-Edwards-Kennedy Bill, of which I am a co-sponsor, provides for Federal court jurisdiction on the issue of whether a claim is covered by the contractual provisions of a health care plan and for state court jurisdiction on medical malpractice claims.

Serious concerns have been raised to that bill because of a history of very high verdicts in state courts on personal injury claims which could significantly raise the cost of health care in the United States. There is substantial experience that Federal court trials result in a more reasoned and judicious result in malpractice cases.

I intend to offer a compromise amendment which would maintain Federal court jurisdiction under McCain-Edwards-Kennedy for coverage claims (which have also been referred to as quantity or eligibility decisions) and extend Federal court jurisdiction, excluding state court jurisdiction, on medical

malpractice claims (which have also been referred to as quality or treatment decisions) which would preserve plaintiffs' traditional common law remedies in a more reasoned judicial setting.

The consequences of ERISA have been extremely complicated. Enacted in the early 1970s, it has been held in many, many cases to bar plaintiffs from recovering for personal injuries. Cases brought under ERISA, section 502, are governed by the doctrine of complete preemption, which applies when Congress so completely preempts a particular area of law that any civil complaint raising this select group of claims is necessarily Federal in character.

Under section 514, a plaintiff's claim is barred if the claim relates to an employee benefit plan. If a plaintiff's claim does not relate to an employee benefit plan, then the claim is not barred and is heard in State courts. There is a growing line of cases finding that State causes of action, States' Patients' Bill of Rights, do not relate to an employee benefit plan and, therefore, are not preempted if they address the quality of services to be provided.

There have been many cases in this complicated field, and they are referred to by the Court of Appeals for the Fifth Circuit in a case decided slightly less than a year ago on June 20, 2000, in a case captioned Aetna Health Plans of Texas, Inc., v. the Texas Department of Insurance. There the Fifth Circuit noted that the courts have ''repeatedly struggled with the open-ended character of the preemption provisions of ERISA'' and also the Federal Employees Health Benefits Act.

The Fifth Circuit goes on to say:

> The courts have faithfully followed the Supreme Court's broad reading of ''relate to'' preemption under 502(a), in its opinions decided during the first twenty years after ERISA's enactment. Since then, in a trilogy of cases, the [Supreme] Court has confronted the reality that if ''relate to'' is taken to the furthest stretch of its indeterminacy, preemption will never run its course, ''for really universal relations stop nowhere.''

There has been a succinct summary of the key issues raised by ERISA preemption in a case decided earlier this year on March 27, 2001, by the United States Court of Appeals for the Third Circuit, captioned Pryzbowski v. United States Health Care Incorporated. In Pryzbowski, the court noted prior Third Circuit opinions where the court distinguished between claims directed to the quality of the benefits the plaintiff received versus claims that the plans erroneously withheld benefits, that is, claims that seek to enforce plaintiff's rights under the terms of their respective plans or to clarify their rights to future benefits. In Pryzbowski the Third Circuit went on to say that:

> We stated that claims that merely attack the quality of benefits do not fall within the scope of section 502(a)'s enforcement provisions and are not completely preempted, whereas claims challenging the quantum of benefits due under an ERISA-regulated plan are completely preempted under section 502(a)'s civil enforcement scheme.

The Third Circuit then went on to note:

> Though the quality-quantity distinction was helpful in those cases, we have acknowledged that the distinction would not always be clear.

From Pryzbowski and other cases, it is apparent that if a Patients' Bill of Rights is enacted which gives the Federal courts jurisdiction over the scope of the plan, or the so-called quantity decision, and the State courts jurisdiction over the quality or the treatment decision, then there will be a plethora of nearly endless litigation as to what belongs in which court. The court decisions are replete with cases where the facts have been analyzed. It is frequently very difficult to distinguish between the two categories, quantity or quality, and it often ends up with the case remanded for other facts to be determined.

It is my suggestion that the Federal court retain total jurisdiction over both category of cases, whether they are the quantity decisions, which relate to eligibility decisions, or the quality decisions, which relate to treatment decisions. My suggestion is that it would be much preferable to have exclusive jurisdiction vested in the Federal courts.

There is considerable concern about excessive verdicts in State courts when contrasted with the more judicious decisions in the Federal courts. What my compromise suggests is that by giving exclusive jurisdiction to the Federal courts, traditional plaintiff's damage claims could be retained without so-called caps or limitations.

There has been enormous concern about what would happen if the Patients' Bill of Rights refers to the State courts these medical malpractice cases without any limitation on damages.

Last year, the Judiciary Committee considered amending diversity jurisdiction in class action cases because diversity jurisdiction was so easily defeated when a class of plaintiffs would sue a defendant. If there was a single plaintiff residing in the same State as the defendant, then diversity was defeated.

This legislation, which amended diversity jurisdiction and was passed out of the Judiciary Committee, was sought by so many defendants who felt unfairly treated by State court decisions. The report of the Judiciary Committee on the Class Action Fairness Act of 2000 (S.R. 106–420) contains some statements which are relevant to consideration of having medical malpractice cases tried solely in the Federal courts rather than the State courts.

This is what the Judiciary Committee report said at page 15:

> The ability of plaintiffs' lawyers to evade Federal diversity jurisdiction has helped spur a dramatic increase in the number of class actions litigated in State courts—an increase that is stretching the resources of the State court systems.

Then on page 16, the Judiciary Committee majority report goes on to point out the concern of unfairness in State court actions saying:

> The Committee finds, however, that one reason for the dramatic explosion of class actions in State courts is that some State court judges are less careful than their Federal court counterparts about applying the procedural requirements that govern class actions. Many State court judges are lax about following the strict requirements of rule 23 (or the State's governing rule), which are intended to protect the due process rights of both unnamed class members and defendants. In contrast, Federal courts generally do scrutinize proposed settlements much more carefully and pay closer attention to the procedural requirements for certifying a matter for class treatment.

Then the Judiciary Committee majority report goes on at page 17 to point out:

> A second abuse that is common in State courts class actions is the use of the class device as ''judicial blackmail.'' Because class actions are such a powerful tool, they can give a class attorney unbounded leverage. Such leverage can essentially force corporate defendants to pay ransom to class attorneys by settling—rather than litigating—frivolous lawsuits.

The majority report then goes on to say:

> State court judges often are inclined to certify cases for class action treatment not because they believe a class trial would be more efficient than an individual trial, but because they believe class certification will simply induce the defendant to settle the case without trial.

Now, in citing these references to the Judiciary Committee report, I do not seek to impugn all State court judges because most State court judges are careful and judicious and follow settled principles. But there have been a considerable number of these certifications of class actions, and there have been many cases which involve forum shopping, judge shopping, which seek to go to specific counties or specific States where there are excessive verdicts.

By contrast, the Federal courts have an established reputation where there is different selection of judges. In many States, judges are elected—my own State of Pennsylvania. Here, again, I am not intending any broad condemnation, but in the Federal courts, where judges are selected for life tenure, it is fair to say that the caliber of the judiciary is superior. That, again, is a generalization.

Again, there are many fine State court judges. But the experience in the State courts, as illustrated by this class action report, gives grave concern to many who are worried that if the Patients' Bill of Rights is enacted and there are unlimited damages possible in State court (medical malpractice cases), which is now the provision under the McCain-Edwards-Kennedy bill, that there will be widespread abuses. Those same concerns are not found with respect to these malpractice cases in the Federal courts.

We are about to enter on to a difficult and protracted debate on a Patients' Bill of Rights. It is my view, and has been, as reflected in the votes I have cast on the Senate floor for several years now, that America needs a Patients' Bill of Rights and that the traditional remedies not be capped or limited. But a good tradeoff, in my judgment, would be that exclusive jurisdiction would be vested in the Federal courts. This is not really a problem for plaintiffs of ''forum non conveniens''—the Latin phrase which means an inconvenient court—because there are underlying Federal questions on ERISA. And even when cases are brought in the State court, invariably, they end up on removal actions in the Federal court. When you start to try to make distinctions under ERISA 502, ERISA 514, trying to distinguish between the quantity of coverage versus the quality of coverage, they necessarily overlap; and it will be a saving of judicial resources if all of those cases are heard in the Federal court. I ask my colleagues to consider this.

I ask unanimous consent at this time that the full text of my Dear Colleague letter, dated June 13, be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

JUNE 13, 2001.

DEAR COLLEAGUE: A key point of controversy on legislation now pending in the Senate is whether patients will be permitted to collect damages from insurance companies without a statutory limitation. Under more than 200 years of common law precedents, a harmed plaintiff has been able to recover compensation as set by a jury for economic losses and pain and suffering when a defendant is negligent and punitive damages for gross, malicious or intentional misconduct.

The McCain-Edwards-Kennedy Bill, of which I am a co-sponsor, provides for Federal court jurisdiction on the issue of whether a claim is covered by the contractual provisions of a health care plan and for state court jurisdiction on medical malpractice claims.

Serious concerns have been raised to that bill because of a history of very high verdicts in state courts on personal injury claims which could significantly raise the cost of health care in the United States. There is substantial experience that Federal court trials result in a more reasoned and judicious result in malpractice cases.

I intend to offer a compromise amendment which would maintain Federal court jurisdiction under McCain-Edwards-Kennedy for coverage claims and extend Federal court jurisdiction, excluding state court jurisdiction, on medical malpractice claims which would preserve plaintiffs' traditional common law remedies in a more reasoned judicial setting.

Since the Patients' Bill of Rights will be on the Senate floor next week, I thought it useful to call this proposal to your attention so that you may consider it. My staff and I are available to respond to questions and to amplify the details of this proposed compromise since this is a simplified statement on complex legal issues.

Sincerely,

ARLEN SPECTER.

Mr. SPECTER. I thank the Chair for sitting late. It is not easy to come in on a Monday afternoon. The distinguished Senator from Utah, a senior Republican on the Judiciary Committee, has performed extraordinary service. I thought it not unfitting that I should cite his report on class action cases since he was the author of those pearls of wisdom I quoted.

I believe that concludes our business.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 10 a.m. tomorrow.

Thereupon, the Senate, at 4:03 p.m., adjourned until Tuesday, June 19, 2001, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate June 18, 2001:

THE JUDICIARY

TERRY L. WOOTEN, OF SOUTH CAROLINA, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF SOUTH CAROLINA, VICE A NEW POSITION CREATED BY PUBLIC LAW 106–553, APPROVED DECEMBER 21, 2000.

IN THE AIR FORCE

THE FOLLOWING NAMED AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12212:

To be colonel

STEVEN L ADAMS, 0000
JOSEPH P ANELLO, 0000
AMOS BAGDASARIAN, 0000
MICHAEL E BATES, 0000
JAMES A BUNTYN, 0000
KEVIN M BURMAN, 0000
ROBERT B BURNS, 0000
WILLIAM J BURNS, 0000
DAVID N BURTON, 0000
WILLIAM S BUSBY III, 0000
IWAN B CLONTZ, 0000
MICHAEL G COSBY, 0000
MICHAEL J DORNBUSH, 0000
ARTHUR B EISENBREY, 0000
DENNIS C ELVIN, 0000
MICHAEL L FLOOD, 0000
LOREN W FLOSSMAN, 0000
TERRY L FRITZ, 0000
FLORIAN J GIES IV, 0000
TIMOTHY G GRAVEN, 0000
ERNEST D GREEN, 0000
MICHAEL E HILLESTAD, 0000
ELWOOD H HIPPEL JR., 0000
DAVID E HOLMAN, 0000
ROBERT H JOHNSTON, 0000
LARRY R KAUFFMAN, 0000
MARY J KIGHT, 0000
BRADLEY A LIVINGSTON, 0000
THOMAS E LYTLE III, 0000
GARY T MAGONIGLE, 0000
DAVID B MANSFIELD, 0000
BRUCE A MARSHALL, 0000
MICHAEL J MCDONALD, 0000
MARK F MEYER, 0000
RICHARD O MIDDLETON II, 0000
MICHAEL S MILLER, 0000
ARNE E MOE, 0000
NICHOLAS M MONTGOMERY JR., 0000
YAFEU A NANTWI, 0000
ROBERT D NORTH, 0000
THOMAS A PERARO, 0000
DANA A RAWL, 0000
JEFFREY E SAWYER, 0000
THOMAS C SCHULTZ, 0000
GARY SHICK, 0000
STEPHEN M SISCHO, 0000
LAWRENCE W SMITH JR., 0000
ROBERT D SMITH JR., 0000
WILLIAM J STRANDELL, 0000
T JOHN STROM BROCK, 0000
ERNEST G TALBERT, 0000
STEVEN L VANEVERY, 0000
MICHAEL J VANLEUVEN, 0000
EDWIN A VINCENT JR., 0000
CHARLES E WEST JR., 0000
JOHN D WOOTTEN JR., 0000
SALLIE K WORCESTER, 0000
ROBERT J YAPLE, 0000
JANNETTE YOUNG, 0000

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

ROBERT E ELLIOTT, 0000
DAVID L GRAY, 0000
BERNIE R HUNSTAD, 0000
MARK H JACKSON, 0000
EDWARD S KAPRON, 0000
RICHARD A LEXVOLD, 0000
CHARLES E LYKES JR., 0000
GERALD L MEYER, 0000
JAMES K OBRIEN JR., 0000
CHARLES E PICKENS, 0000
PETER G SMITH, 0000

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

BRUCE M. BENNETT, 0000
DONALD C. BRITTEN, 0000
LINWOOD D. BUCKALEW, 0000
MARK A. CLINK, 0000
JOSEPH P. KELLY, 0000
JOHN T. LINDSAY, 0000
FERDINAND F. PETERS, 0000
ROY P. PIPKIN, 0000
GRANT E. ZACHARY JR., 0000

DEPARTMENT OF COMMERCE

SAMUEL W. BODMAN, OF MASSACHUSETTS, TO BE DEPUTY SECRETARY OF COMMERCE, VICE ROBERT L. MALLETT, RESIGNED.

MICHAEL J. GARCIA, OF NEW YORK, TO BE AN ASSISTANT SECRETARY OF COMMERCE, VICE F. AMANDA DEBUSK, RESIGNED.

DEPARTMENT OF DEFENSE

JOSEPH E. SCHMITZ, OF MARYLAND, TO BE INSPECTOR GENERAL, DEPARTMENT OF DEFENSE, VICE ELEANOR HILL.