

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States District Court
Southern District of Texas
FILED

DEC 08 2008

Michael N. Milby
Clerk of Court

UNITED STATES OF AMERICA

§
§
§
§
§

v.

Criminal No.

MISAO HIOKI

08-08-795

CRIMINAL INFORMATION

The United States, through its attorneys, charges that:

BACKGROUND

1. Beginning at least as early as January 2004 and continuing until as late as May 2007 (the "Relevant Period"), the defendant MISAO HIOKI was the General Manager of the International Engineered Products Department ("IEP") of a firm located in Tokyo, Japan ("Company-1"). Company-1 is an entity organized and existing under the laws of Japan and with its principal place of business in Tokyo, Japan. During the Relevant Period, Company-1 was a manufacturer of marine hose and other products, including marine fenders, conveyor belts and rubber dams, and was engaged in the sale of marine hose and other products in the United States and elsewhere. Marine hose is a flexible rubber hose used to transfer oil between tankers and storage facilities and/or buoys.

2. As General Manager, the defendant oversaw Company-1's international sales of marine hose and other marine products, supervised sales employees in Japan and elsewhere, and, along with his supervisors and/or subordinates, approved Company-1's pricing decisions. During the Relevant Period, the staff in Company-1's IEP subsidiaries in Malaysia, England, and the United States also reported to the defendant. The U.S. subsidiary ("U.S. Subsidiary") of

Company-1, is headquartered in the United States and sells marine hose and other products in North, Central and South America. U.S. Subsidiary's Houston, Texas office sells marine hose and other products to customers in Latin America.

COUNT 1

Conspiracy to Violate the Sherman Act
(15 U.S.C. § 1)

DESCRIPTION OF THE OFFENSE

3. Paragraphs 1 and 2 are realleged and incorporated by reference as though fully set forth herein.

4. Beginning at least as early as 1999 and continuing until as late as May 2007, the exact dates being unknown to the United States, in Houston in the Southern District of Texas, and elsewhere, co-conspirators of the defendant,

MISAO HIOKI

did enter into and engage in a combination and conspiracy to suppress and eliminate competition by rigging bids, fixing prices and allocating market shares for sales of marine hose in the United States and elsewhere. The combination and conspiracy was in unreasonable restraint of interstate and foreign trade and commerce in violation of Section 1 of the Sherman Antitrust Act (15 U.S.C. § 1).

5. Defendant MISAO HIOKI joined and participated in this conspiracy from at least as early as January 2004 until as late as May 2007.

6. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial

terms of which were to rig bids, fix prices and allocate market shares for sales of marine hose in the United States and elsewhere.

MEANS AND METHODS OF THE CONSPIRACY

7. For the purpose of forming and carrying out the charged combination and conspiracy, the defendant and co-conspirators did those things that they combined and conspired to do, including, among other things:

- (a) attended meetings or otherwise engaged in discussions in the United States and elsewhere by telephone, facsimile and electronic mail regarding the sale of marine hose;
- (b) agreed during those meetings and discussions to allocate shares of the marine hose market among the conspirators;
- (c) agreed during those meetings and discussions to a price list for marine hose in order to implement and monitor the conspiracy;
- (d) agreed during those meetings and discussions not to compete for one another's customers either by not submitting prices or bids to certain customers or by submitting intentionally high prices or bids to certain customers;
- (e) submitted bids in accordance with the agreements reached;
- (f) provided information received from customers in the United States and elsewhere about upcoming marine hose jobs to a co-conspirator who was not an employee of any of the marine hose manufacturers, but who served as the coordinator of the conspiracy, acted as a clearinghouse for

information to be shared among the conspirators, and was paid by the manufacturers for coordinating the conspiracy;

- (g) received marine hose prices for customers in the United States and elsewhere from the co-conspirator coordinator of the conspiracy;
- (h) sold marine hose to customers in the United States and elsewhere at collusive and noncompetitive prices pursuant to the agreements reached;
- (i) accepted payment for marine hose sold in the United States and elsewhere at collusive and noncompetitive prices;
- (j) authorized or consented to the participation of subordinate employees in the conspiracy; and
- (k) concealed the conspiracy and conspiratorial contacts through various means, including code names and private email accounts and telephone numbers.

DEFENDANT AND CO-CONSPIRATORS

8. Various corporations and individuals, not made defendants in this Count, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof.

TRADE AND COMMERCE

9. During the period covered by this Count, the conspirator firms shipped marine hose in a continuous and uninterrupted flow of interstate and foreign commerce across state lines in the United States and from locations outside the United States to companies located in the United States. In addition, substantial quantities of related equipment, as well as payments for

marine hose, traveled in interstate and foreign commerce. The victims of this conspiracy included companies involved in the off-shore extraction and/or transportation of petroleum products, as well as the United States Department of Defense.

10. During the period covered by this Count, the business activities of the defendant and his co-conspirators in connection with the manufacture and/or sale of marine hose that are the subject of this Count were within the flow of, and substantially affected, interstate and foreign trade and commerce. During the conspiracy, the defendant and his co-conspirators sold hundreds of millions of dollars worth of marine hose and related products in the United States and elsewhere.

JURISDICTION AND VENUE

11. The combination and conspiracy charged in this Count was carried out, in part, within the Southern District of Texas within the five years preceding the filing of this Information.

All in violation of Title 15, United States Code, Section 1.

COUNT 2

Conspiracy to Violate the Foreign Corrupt Practices Act (18 U.S.C. § 371)

12. Paragraphs 1 and 2 are realleged and incorporated by reference as though fully set forth herein.

13. Congress enacted the Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. Sections 78dd-1, *et seq.* ("FCPA"), for the purpose of, among other things, prohibiting any person or agent of such person, while in the territory of the United States, from using any means or instrumentality of interstate or foreign commerce, including the United States mails, in

furtherance of an offer, promise, authorization or payment of money or anything else of value to a foreign government official to obtain or retain business for, or direct business to, any person.

14. From at least in or around January 2004, through in or around May 2007, in the Southern District of Texas and elsewhere, defendant

MISAO HIOKI

and others did unlawfully, willfully and knowingly combine, conspire, confederate, and agree to commit offenses against the United States, that is, being a person while in the territory of the United States, to willfully make use of the mails and means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, offer, gift, promise to give, and authorization of the giving of anything of value to any foreign official for purposes of: (1) influencing acts and decisions of such foreign officials in their official capacities; (2) inducing such foreign officials to do and omit to do acts in violation of the lawful duty of such officials; (3) securing an improper advantage; and (4) inducing such foreign officials to use their influence with a foreign government and instrumentalities thereof to assist the defendant and Company-1 in obtaining and retaining business, in violation of Title 15, United States Code, Section 78dd-3(a).

PURPOSE OF THE CONSPIRACY

15. The purpose and object of the conspiracy was to make corrupt payments to government officials in Latin America and elsewhere to obtain and retain Company-1's IEP business.

MEANS AND METHODS OF THE CONSPIRACY

16. The defendant and his co-conspirators employed various manner and means to carry out the conspiracy, including, but not limited to the following:
- (a) supervised the IEP employees both in Japan and in regional subsidiaries, including U.S. Subsidiary in the United States, who were responsible for selling Company-1's products in Latin America;
 - (b) contracted with local sales agents in many of the Latin American countries where Company-1 sought IEP sales;
 - (c) developed relationships with employees of the government-owned enterprises with which Company-1 sought to do business;
 - (d) negotiated with employees of government-owned businesses, who are foreign officials under the FCPA, in at least the following Latin American countries, Argentina, Brazil, Ecuador, Mexico, and Venezuela, to make corrupt payments to those foreign officials to secure business for Company-1 and U.S. Subsidiary;
 - (e) approved the making of corrupt payments to the foreign government officials through the local sales agents, to secure business for Company-1 and U.S. Subsidiary;
 - (f) paid the local sales agents a commission for each sale and, if a corrupt payment to the customer through the local sales agent was involved with the sale, concealed that payment within the commission payment made to the local sales agent; and

- (g) coordinated these corrupt payments in Latin America through U.S. Subsidiary's offices in the United States including Houston, Texas.

OVERT ACTS

17. In furtherance of the conspiracy and to achieve its purpose and object, at least one of the co-conspirators committed or caused to be committed, in the Southern District of Texas, and elsewhere, the following overt acts, among others:

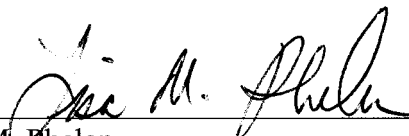
- (a) U.S. Subsidiary employees in Houston, Texas corresponded by facsimile with Company-1 IEP, identifying both the percentages of the corrupt payments and the ultimate government recipients (on occasion by name, position and/or initials) of those corrupt payments;
- (b) U.S. Subsidiary employees in Houston, Texas corresponded by email with the defendant and other employees in Company-1 IEP, discussing projects in which corrupt payments were made to government customers; and
- (c) U.S. Subsidiary employees in Houston, Texas communicated by telephone with Company-1 IEP, discussing and planning corrupt payments, including payments to government customers.

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

Dated:



Thomas O. Barnett
Assistant Attorney General



Lisa M. Phelan
Chief, National Criminal Enforcement
Section



Scott D. Hammond
Deputy Assistant Attorney General



J. Brady Dugan
Craig Y. Lee
Portia R. Brown
Mark C. Grundvig
Attorneys
United States Department of Justice
Antitrust Division
National Criminal Enforcement Section
450 Fifth St. NW, Room 11430
Washington, DC 20530
Tel: (202) 514-1953



Marc Siegel
Director of Criminal Enforcement
Antitrust Division
United States Department of Justice

Steven A. Tyrrell
Chief, Fraud Section

By:



Deputy Chief, Mark F. Mendelsohn
Trial Attorney, Brigham Q. Cannon
U.S. Department of Justice
1400 New York Avenue NW
Washington, DC 20530