

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

10-765

UNITED STATES OF AMERICA

v.

PANALPINA, INC.

Defendant.

§ CRIMINAL NO.:
§
§ Violations
§ 18 U.S.C. § 371;
§ 15 U.S.C. §§ 78m(b)(2)(A),
§ 78m(b)(5) and 78ff(a)
§
§

United States District Court
Southern District of Texas
FILED

NOV 4 2010

David J. Bradley, Clerk of Court

INFORMATION

The United States charges:

GENERAL ALLEGATIONS

At all times material to this Information, unless otherwise stated:

The Foreign Corrupt Practices Act

1. The Foreign Corrupt Practices Act of 1977 ("FCPA"), as amended, Title 15, United States Code, Sections 78dd-l, *et seq.*, prohibited certain classes of persons and entities from corruptly making payments to foreign government officials in order to assist such persons and entities in obtaining or retaining business for or with, or directing business to, any person, as well as required certain entities to maintain accurate books and records and adequate internal controls.

2. Pertinent to the charges herein, the FCPA's accounting provisions

required, among other things, that any issuer of publicly traded securities pursuant to Section 12(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), Title 15, United States Code, Section 78l, or required to file periodic reports with the United States Securities and Exchange Commission (the “SEC”) under Section 15(d) of the Exchange Act, Title 15, United States Code, Section 78o(d) (“issuer”) make and keep books, records, and accounts that, in reasonable detail, accurately and fairly reflect transactions and dispositions of the company’s assets and prohibited the knowing falsification of such books, records, or accounts, Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5), and 78ff(a).

Relevant Panalpina Entities

3. Panalpina World Transport (Holding) Ltd. (“PWT”) was a Swiss corporation headquartered in Basel, Switzerland.

4. Defendant PANALPINA, INC. (“PANALPINA U.S.”) was a New York corporation, with its principal place of business in Morristown, New Jersey. PANALPINA U.S. was a wholly-owned subsidiary and agent of PWT. PANALPINA U.S. had 38 branches in several states, including Texas, and was engaged in the business of providing international freight forwarding and logistics services. PANALPINA U.S.’s Houston, Texas office was the hub for its oil and gas industry customers. Panalpina U.S. was a “domestic concern” within the meaning of the FCPA, Title 15, United States Code, Section 78dd-2(h)(1).

5. Panalpina World Transport (Nigeria) Limited (“Panalpina Nigeria”), a Nigerian corporation, with its principal place of business in Lagos, Nigeria, was a majority-owned subsidiary of PWT until in or around 2008. Panalpina Nigeria was an affiliate and agent of PANALPINA U.S. and provided a wide variety of services for PANALPINA U.S.’s customers.

Panalpina U.S. Customers

6. Customer A was a global energy and petrochemical company with its headquarters in The Hague, The Netherlands. Customer A operated throughout the world through a number of subsidiaries and affiliates. Customer A and its subsidiaries and affiliates, including its Nigerian subsidiary, are collectively referred to herein as “Customer A.” Customer A’s American Depository Receipts were registered with the SEC pursuant to Section 12(b) of the Exchange Act, Title 15, United States Code, Section 78l and were publicly traded on the New York Stock Exchange. Accordingly, Customer A was an “issuer” within the meaning of the FCPA, Title 15, United States Code, Section 78dd-1(a). By virtue of its status as an issuer within the meaning of the FCPA, Customer A was required to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflected the transactions and disposition of its assets.

7. Customer B was an operator of offshore service and supply vessels designed to support all phases of offshore energy exploration, development and

production throughout the world. Customer B was a Delaware corporation with its headquarters in New Orleans, Louisiana. Customer B operated throughout the world through a number of subsidiaries and affiliates. Customer B and its subsidiaries and affiliates, including its Nigerian subsidiary, are collectively referred to herein as “Customer B.” Customer B issued and maintained a class of publicly traded securities that were registered pursuant to Section 12(b) of the Exchange Act, Title 15, United States Code, Section 78l, and publicly traded on the New York Stock Exchange. Accordingly, Customer B was an “issuer” within the meaning of the FCPA, Title 15, United States Code, Section 78dd-1(a). By virtue of its status as an issuer within the meaning of the FCPA, Customer B was required to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflected the transactions and disposition of its assets.

Panalpina’s Operations

8. PWT provided global freight forwarding and logistics services in approximately 160 jurisdictions, through a network of local subsidiaries, including PANALPINA U.S. and affiliated companies (collectively referred to as “Panalpina”), each of which was responsible for providing the freight forwarding and logistics services to customers and for coordinating with other Panalpina affiliated companies with respect to the importation of cargo shipped from abroad.

9. PWT operated in the United States through its wholly-owned

subsidiary, PANALPINA U.S. PANALPINA U.S. provided air freight, ocean freight and supply chain management services primarily to customers in the oil and gas, healthcare, technology, retail, telecommunications and chemical industries.

10. Many of PANALPINA U.S.'s customers had a class of securities registered under Section 12 of the Exchange Act, Title 15, United States Code, Section 78l, or were required to file reports under Section 15(d) of the Exchange Act, Title 15, United States Code, Section 78o(d). As such, certain of PANALPINA U.S.'s customers (collectively referred to as "issuer-customers") were "issuers" for purposes of the anti-bribery and the books and records and internal controls provisions of the FCPA.

11. PANALPINA U.S. provided its issuer-customers with shipping, freight forwarding and logistics services, including customs clearance and importation services. PANALPINA U.S.'s issuer-customers shipped products located in the United States and elsewhere to other jurisdictions including Nigeria. PANALPINA U.S. or an affiliated entity invoiced the issuer-customers for these freight forwarding services and the issuer-customers typically remitted payment to PANALPINA U.S. or an affiliated Panalpina entity.

***PANALPINA U.S.'s Actions to Conceal Bribes on Behalf of
Its Issuer-Customers in Nigeria***

12. PANALPINA U.S. had a substantial number of oil and gas issuer-customers that shipped items to Nigeria. The goods shipped by PANALPINA U.S. into Nigeria could only be imported into the jurisdiction if they satisfied local statutory and regulatory requirements, which required product inspection, submission of satisfactory paperwork and payment of customs duties and other taxes. Furthermore, once the items had been imported, they remained subject to local laws or regulations.

13. Some of the issuer-customers sought to avoid local customs and import laws and processes by seeking to import goods without sufficient documentation, without being inspected or without paying the required taxes, duties or fees.

14. In order to assist some of its issuer-customers in circumventing these legal requirements, Panalpina Nigeria, with the assistance of PANALPINA U.S., used a portion of the revenue generated from the issuer-customer's business to make payments to Nigerian customs officials in exchange for circumventing the local legal or regulatory requirements. The Nigerian Customs Service ("NCS") was a Nigerian government agency within the Ministry of Finance of the Federal Republic of Nigeria responsible for assessing and collecting duties and tariffs on goods imported into Nigeria. The NCS was an agency and instrumentality of the

Government of Nigeria and its officers and employees were “foreign officials” within the meaning of the FCPA, Title 15, United States Code, Section 78dd-2(h)(2)(A).

15. Panalpina Nigeria made the improper payments to the NCS officials in the course of providing a variety of services on behalf of PANALPINA U.S. and its issuer-customers, including “express courier service” and temporary importations.

16. Certain employees and customers of PANALPINA U.S. understood that Panalpina Nigeria employees paid bribes to Nigerian government officials in order to secure the preferential customs treatment requested by the issuer-customers.

17. The charges for the improper payments made by Panalpina Nigeria were later invoiced to the issuer-customers with descriptions intended to aid the issuer-customers in concealing the nature of the improper payments in their books, records, and accounts. For example, the improper payments were described as “local processing fees,” “interventions,” “special handling” and “administration/transport charges,” among other terms, when, in truth and fact, certain PANALPINA U.S. employees and the issuer-customers knew that the charges were bribes paid to Nigerian government officials.

Pancourier Express Courier Payments

18. PANALPINA U.S. provided its customers with an express courier service to Nigeria, which was referred to as Pancourier. PANALPINA U.S.'s issuer-customers that wanted preferential treatment by the NCS or sought to import goods or contraband into Nigeria without following Nigerian customs law routinely shipped commercial products into Nigeria using the Pancourier service instead of the normal shipping process.

19. PANALPINA U.S., through Panalpina Nigeria, charged its issuer-customers a premium for this service and explained that no government receipt or paperwork would be available from the NCS for the goods that were imported. Further, Panalpina typically billed its customers for two separate charges. The first charge was based on the weight of the shipment and the second charge was a "special fee." Typically, the "special fee" was characterized on the invoices as a "local processing fee" and/or "administrative/transport fees." Such "special fees" consisted of the improper payments made to NCS officials for the purpose of securing an improper advantage for the issuer-customers.

Temporary Importation Payments

20. Another service offered by PANALPINA U.S., through Panalpina Nigeria, involved obtaining Temporary Import Permits ("TIPs"). Under Nigerian law, an initial TIP allowed a party to import high-value, specialized equipment,

such as rigs and other large vessels, into Nigerian waters. The TIP could be extended through two six-month extensions (known as “TIP extensions”). Vessels imported under a TIP (and TIP extensions) could not remain in Nigeria longer than the period allowed for by the TIP and TIP extensions. Upon expiration, the vessel was required to be exported from Nigeria and, if appropriate, the customer could apply for a new TIP and start the process anew.

21. Panalpina Nigeria made improper payments to Nigerian government officials in order to assist some of PANALPINA U.S.’s issuer-customers in circumventing the TIP regime. Specifically, Panalpina Nigeria made payments to NCS officials, on behalf of the issuer-customers, in exchange for TIP extensions that were not permitted by Nigerian TIP regulations. As a result, the issuer-customers avoided the time and cost of removing their vessels upon the expiration of the TIP as required by Nigerian law.

22. PANALPINA U.S., through Panalpina Nigeria, created false documentation stating that the issuer-customers had exported and re-imported their vessels into Nigeria, when in reality they remained in Nigeria without the payment of duties or otherwise complying with Nigerian law.

23. PANALPINA U.S. invoiced the issuer-customers for the bribe payments and characterized the payments as “TI interventions” or “TI recycling” costs.

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

24. Paragraphs 1 through 23 of this Information are re-alleged and incorporated by reference as if fully set forth herein.

25. From in or around January 2002 through in or around July 2007, in the Southern District of Texas and elsewhere, defendant PANALPINA U.S. did unlawfully, willfully, and knowingly combine, conspire, confederate, and agree with Customer A, Customer B, and others, known and unknown, to commit an offense against the United States, *to wit*: to knowingly falsify and cause to be falsified books, records, and accounts which were required, in reasonable detail, to accurately and fairly reflect the transactions and dispositions of the assets of Customer A, Customer B, and other issuers within the meaning of the FCPA, in violation of Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5) and 78ff(a).

PURPOSE OF THE CONSPIRACY

26. The purpose of the conspiracy was for PANALPINA U.S. to conceal improper payments, for the benefit of and with the knowledge of its issuer-customers, paid by Panalpina Nigeria to NCS officials to induce them to provide preferential treatment to PANALPINA U.S.'s customers and to aid the issuer-customers in concealing the nature of the payments in the customers' books,

records, and accounts, by describing the improper payments on invoices as legitimate customs clearance costs.

MANNER AND MEANS OF THE CONSPIRACY

27. PANALPINA U.S. and its co-conspirators employed various manner and means to carry out the conspiracy, including but not limited to the following:

a. It was part of the conspiracy that PANALPINA U.S. coordinated shipments for its issuer-customers to be sent to Nigeria with the knowledge that improper payments would be paid by Panalpina Nigeria on behalf of the customers.

b. It was part of the conspiracy that PANALPINA U.S. approved of or did not contest the improper payments that were paid to NCS officials on behalf of its issuer-customers with the intent of securing favorable treatment for the customers.

c. PANALPINA U.S. created invoices with false entries for legitimate customs services in order to conceal the true nature of the bribe payments made to NCS officials.

OVERT ACTS

28. In furtherance of the conspiracy and to accomplish its unlawful object, at least one of the co-conspirators committed or caused to be committed, within the Southern District of Texas and elsewhere, the following overt acts, among others:

Customer A – Pancourier Payments

a. On or about February 27, 2004, one of Customer A’s subcontractors that employed Panalpina Nigeria, on Customer A’s behalf, sent a letter to Customer A advising Customer A that the Pancourier “local processing fees” were charges for materials shipped to Nigeria that were “not inspected by customs.”

b. On or about August 25, 2004, a Customer A employee met with its subcontractor, Panalpina Nigeria employees, and others in Nigeria and told them that if the invoices that contained the bribes paid to the NCS officials were changed from “local processing fees” to “administration/transport charges,” Customer A would pay for the charges.

c. From in or around August 2004, to in or around December 2004, Panalpina Nigeria invoiced Customer A’s subcontractor on at least fifteen occasions for bribes paid to NCS officials, describing the bribes on the invoices as “administration/transport” charges as follows:

	Date of Invoice	Approx. Amount of “Administration/Transport” Charges
i.	8/24/04	\$12,824
ii.	8/27/04	\$743
iii.	8/27/04	\$991
iv.	9/07/04	\$5,838

	Date of Invoice	Approx. Amount of "Administration/Transport" Charges
v.	9/20/04	\$162,941
vi.	9/21/04	\$47,916
vii.	9/21/04	\$6,306
viii.	9/21/04	\$3,050
ix.	9/24/04	\$2,198
x.	9/28/04	\$57,992
xi.	10/08/04	\$4,336
xii.	10/19/04	\$3,860
xiii.	10/30/04	\$42,229
xiv.	12/03/04	\$3,952
xv.	12/09/04	\$7,774

d. Between in or around August 2004 to in or around December 2004, Customer A reimbursed its subcontractor for all of the "administration/transport" charges some or all of which consisted of payments paid through Panalpina Nigeria to NCS officials.

e. On or about March 30, 2005, one of Customer A's subcontractors, located in Nigeria, sent an email to Customer A, located in Houston, Texas, advising that Pancourier was "illegal."

f. On or about March 31, 2005, Customer A recorded the bribe payments as legitimate customs costs in its books, records, and accounts.

g. On or about March 31, 2005, Customer A used the false books and records, including the false characterizations of the improper payments to its subcontractor that were intended to be paid to the NCS officials, to prepare Customer A's consolidated year-end financial statements.

Customer B – TI Payments

h. On or about April 7, 2006, a Panalpina Nigeria employee sent an email to a Customer B employee advising that an “intervention” was provided to customs because there were no “TI papers” in place when Customer B's vessel arrived in Nigeria.

i. On or about the dates listed below, Panalpina Nigeria invoiced Customer B on at least fifteen occasions for bribes paid to NCS officials to circumvent the TIP regulations, describing the bribes on the invoices as “TI interventions” and/or “TI recycling” charges:

	Invoice Date	Approximate Amount of TI Intervention and/or TI Recycling Invoice
i.	12/3/2004	\$3,490
ii.	1/20/2005	\$11,370
iii.	5/26/2005	\$6,243
iv.	11/10/2005	\$6,930
v.	12/27/2005	\$6,930

	Invoice Date	Approximate Amount of TI Intervention and/or TI Recycling Invoice
vi.	12/27/2005	\$6,930
vii.	1/3/2006	\$6,930
viii.	3/6/2006	\$15,060
ix.	3/8/2006	\$15,410
x.	7/6/2006	\$20,920
xi.	11/30/2006	\$19,450
xii.	12/15/2006	\$19,450
xiii.	12/22/2006	\$19,450
xiv.	12/22/2006	\$19,450
xv.	3/31/2007	\$29,000

j. From in or around December 2004, through in or around 2007, Customer B recorded the bribe payments as agent costs in its books, records, and accounts.

k. From in or around December 2004, through in or around 2007, Customer B incorporated the books, records and accounts that falsely characterized the payments to Panalpina to prepare Customer B's consolidated year-end financial statements filed with the SEC.

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

COUNT 2

**Aiding and Abetting False Books and Records Violation
(15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(5) and 78ff(a), and 18 U.S.C. § 2)**

29. Paragraphs 1 through 23 and 26 through 28 above are re-alleged and incorporated by reference as if fully set forth herein.

30. From in or around August 2004, through in or around November 2005, in the Southern District of Texas, and elsewhere, the defendant, PANALPINA U.S., did knowingly and willfully aid, abet, and assist and cause the commission of an offense against the United States, that is, the knowing falsification of books, records, and accounts required to, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Customer A, *to wit*: defendant PANALPINA U.S. aided, abetted, and assisted Customer A in mischaracterizing payments for freight forwarding costs as “administration/transport charges” in Customer A’s books and records when, in truth and in fact, Customer A knew that these payments were bribes, paid through Panalpina Nigeria, intended to be transferred to NCS officials.

31. At the end of fiscal years 2004 and 2005, Customer A incorporated the books, records and accounts that falsely characterized payments to NCS officials to prepare Customer A’s consolidated year-end financial statements filed with the SEC.

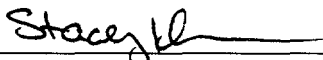
All in violation of Title 15, United States Code, Sections 78m(b)(2)(A),


78m(b)(5) and 78ff(a), and Title 18, United States Code, Section 2.

DATED: November 4, 2010

JOSÉ ANGEL MORENO
United States Attorney

DENIS J. McINERNEY
Chief, Fraud Section, Criminal Division

By: 
Stacey K. Luck
Senior Trial Attorney


Adam G. Safwat
Assistant Chief

Fraud Section
Criminal Division
U.S. Department of Justice
1400 New York Avenue, N.W.
Washington, D.C. 20005
(202) 514-5650