

continue to cooperate with the United States, and have its compliance program and procedures reviewed by an independent consultant. *Id.* at 2, 9-11.

3. Ingersoll paid the \$2.5 million penalty on or about November 1, 2007. Ingersoll also met fully its obligation of cooperating with the United States.

4. With regard to having its compliance program reviewed by an independent consultant, in November 2007, Ingersoll retained an independent compliance consultant (“Consultant”). On June 30, 2008, the Consultant issued his Report, setting forth the results of his review and making recommendations as to how the compliance policies and procedures of Ingersoll might be improved to ensure compliance with the FCPA and other applicable anti-corruption laws.

5. In the Report, the Consultant concluded that since the signing of the DPA, “[Ingersoll’s] FCPA Compliance Program is appropriately designed and implemented to ensure compliance with the FCPA and other applicable anti-corruption laws. This conclusion and certification is based upon a) the present state of the Program, and b) the steps that are being taken to respond to the Firm’s recommendations in this Report.” The Consultant noted, “[T]he Program has many well conceived and well executed elements, such as risk assessment, training and auditing, all of which exemplify best practices (as do other aspects of the Program). Additionally, based on their words and deeds, the Company’s senior management seems very dedicated to making the Program successful, as are personnel with key Program-related responsibilities. [Ingersoll’s] FCPA program is, in short, being developed and implemented with a sincere desire to achieve real results.”

6. The Consultant certified, in accordance with the requirements of the DPA, that the anti-bribery compliance program of Ingersoll is appropriately designed and implemented to ensure compliance with the FCPA and other applicable anti-corruption laws.

7. Pursuant to the DPA, if Ingersoll fully complied with all of its obligations under the DPA, including its obligations to adopt the recommendations of the Consultant, the United States would not continue the criminal prosecution against Ingersoll and would move to dismiss the criminal information. Dkt. Entry No. 2 at 12.

8. Given that Ingersoll has paid a \$2.5 million penalty, fully cooperated with the United States, met its obligations regarding improving its compliance policies and procedures to ensure compliance with the FCPA and other applicable anti-corruption laws, as certified by the Consultant, and has not otherwise breached the DPA, the United States believes that dismissal is appropriate under the circumstances and pursuant to the agreement of the United States and Ingersoll contained in the DPA.

WHEREFORE, pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure and by leave of Court endorsed hereon, the United States hereby moves to dismiss the criminal information filed in the instant case. A proposed order is attached.

Respectfully submitted,

DENIS J. McINERNEY
CHIEF, FRAUD SECTION
Criminal Division
United States Department of Justice

DATED: February 16, 2011
Washington, D.C.

By: */s/ Kathleen M Hamann*
Kathleen M Hamann
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CERTIFICATE OF SERVICE

I certify that on February 16, 2011, I served a copy of the foregoing motion using the CM/ECF system to:

Casey Cooper, Esq.
Baker Botts LLP
The Warner Building
1299 Pennsylvania Ave. NW
Washington, DC 20004

Counsel for Defendant

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA)
)
 v.)
)
THERMO KING IRELAND LTD.,)
)
 Defendant.)
_____)

No. 1:07-CR-00295-RJL

ORDER

Presently pending before this Court is the Government’s February 16, 2011 Motion to Dismiss in the above-captioned case filed pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure. Having carefully considered this request, it is hereby

ORDERED that the Government’s Motion is granted and the criminal information in the above-captioned case is hereby dismissed with prejudice.

DONE AND ORDERED in chambers in Washington, D.C., on February ____, 2011.

RICHARD J. LEON
UNITED STATES DISTRICT COURT JUDGE

cc: United States Marshals Service
Chief Probation Officer

Casey Cooper, Esq.
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Counsel for the Government

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

<u>UNITED STATES OF AMERICA</u>)	
)	
v.)	No. 1:07-CR-00296-RJL
)	
<u>THERMO KING IRELAND LTD.,</u>)	
)	
Defendant.)	
)	

**GOVERNMENT’S MOTION TO
DISMISS CRIMINAL INFORMATION**

Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure, the United States of America, by and through undersigned counsel, hereby moves to dismiss the criminal information filed in the above-captioned case against the defendant, Thermo King Ireland Ltd. (“TKI”). As grounds therefore, the government states as follows:

1. On or about October 31, 2007, the United States filed a criminal information charging TKI with conspiring to commit wire fraud and to violate the books and records provisions of the Foreign Corrupt Practices Act (“FCPA”), in violation of Title 18, United States Code, Section 371. Dkt. Entry No. 1.

2. On the same date, the United States and Ingersoll-Rand Company Ltd. (“Ingersoll”), TKI’s parent, entered into a three-year deferred prosecution agreement (“DPA”), which was filed with the Court on October 31, 2007. Dkt. Entry No. 2. The DPA required, among other things, that Ingersoll acknowledge responsibility for the actions of three of its subsidiaries, including TKI, whose employees and agents paid kickbacks to the Iraqi government in order to obtain contracts with Iraqi ministries during the United Nations Oil for Food Program. *Id.* at Appendix A, 5-10. As part of the DPA, Ingersoll also agreed to pay a \$2.5 million penalty,

continue to cooperate with the United States, and have its compliance program and procedures reviewed by an independent consultant. *Id.* at 2, 9-11.

3. Ingersoll paid the \$2.5 million penalty on or about November 1, 2007. Ingersoll also met fully its obligation of cooperating with the United States.

4. With regard to having its compliance program reviewed by an independent consultant, in November 2007, Ingersoll retained an independent compliance consultant (“Consultant”). On June 30, 2008, the Consultant issued his Report, setting forth the results of his review and making recommendations as to how the compliance policies and procedures of Ingersoll might be improved to ensure compliance with the FCPA and other applicable anti-corruption laws.

5. In the Report, the Consultant concluded that since the signing of the DPA, “[Ingersoll’s] FCPA Compliance Program is appropriately designed and implemented to ensure compliance with the FCPA and other applicable anti-corruption laws. This conclusion and certification is based upon a) the present state of the Program, and b) the steps that are being taken to respond to the Firm’s recommendations in this Report.” The Consultant noted, “[T]he Program has many well conceived and well executed elements, such as risk assessment, training and auditing, all of which exemplify best practices (as do other aspects of the Program). Additionally, based on their words and deeds, the Company’s senior management seems very dedicated to making the Program successful, as are personnel with key Program-related responsibilities. [Ingersoll’s] FCPA program is, in short, being developed and implemented with a sincere desire to achieve real results.”

6. The Consultant certified, in accordance with the requirements of the DPA, that the anti-bribery compliance program of Ingersoll is appropriately designed and implemented to ensure compliance with the FCPA and other applicable anti-corruption laws.

7. Pursuant to the DPA, if Ingersoll fully complied with all of its obligations under the DPA, including its obligations to adopt the recommendations of the Consultant, the United States would not continue the criminal prosecution against Ingersoll and would move to dismiss the criminal information. Dkt. Entry No. 2 at 12.

8. Given that Ingersoll has paid a \$2.5 million penalty, fully cooperated with the United States, met its obligations regarding improving its compliance policies and procedures to ensure compliance with the FCPA and other applicable anti-corruption laws, as certified by the Consultant, and has not otherwise breached the DPA, the United States believes that dismissal is appropriate under the circumstances and pursuant to the agreement of the United States and Ingersoll contained in the DPA.

WHEREFORE, pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure and by leave of Court endorsed hereon, the United States hereby moves to dismiss the criminal information filed in the instant case. A proposed order is attached.

Respectfully submitted,

DENIS J. McINERNEY
CHIEF, FRAUD SECTION
Criminal Division
United States Department of Justice

DATED: February 16, 2011
Washington, D.C.

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