

RECEIVED

MAR 20 2008

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

VOLVO CONSTRUCTION
EQUIPMENT, AB,

Defendant.

CRIMINAL NO. _____

VIOLATION: 18 U.S.C. § 371

INFORMATION

1. The United States Department of Justice, Criminal Division, Fraud Section, charges that at all times material to this Information (unless otherwise specified):

GENERAL ALLEGATIONS

Relevant Entities and Individuals

2. VOLVO CONSTRUCTION EQUIPMENT, AB ("VCE"), the defendant, is the successor to Volvo Construction Equipment International, AB ("VCEI"). VCEI was headquartered in Eskilstuna, Sweden and was an international seller of heavy commercial construction equipment, including but not limited to excavators, haulers, wheel loaders, and motor graders.

3. VCEI was a wholly-owned subsidiary of Aktiebolaget Volvo ("AB Volvo"), a company that had American Depositary Receipts ("ADRs") publicly traded on the National Association of Securities Dealers Automated Quotations ("NASDAQ"). AB Volvo issued and maintained a class of publicly-traded securities registered pursuant to Section 12(g) of the

Securities Exchange Act of 1934 (15 U.S.C. § 781), and was required to file periodic reports with the United States Securities and Exchange Commission under Section 13 of the Securities Exchange Act (15 U.S.C. § 78m). Accordingly, AB Volvo was an “issuer” within the meaning of the Foreign Corrupt Practices Act (“FCPA”), 15 U.S.C. § 78dd-1(a). By virtue of its status as an issuer within the meaning of the FCPA, AB Volvo was required to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflected the transactions and disposition of assets of AB Volvo and its subsidiaries, including those of VCEI which were incorporated into the books of AB Volvo.

4. “Employee A,” a citizen of Sweden, was employed as VCEI’s Vice-President of Project Sales.

5. “Company X” was a Jordanian company that acted as both an agent and distributor for VCEI in connection with sales made through the United Nations Oil-for-Food Program (“OFFP”).

6. “Company Y” was a Tunisian company that acted as a distributor for VCEI in connection with sales made through the OFFP.

The United Nations Oil-for-Food Program

7. On or about August 6, 1990, days after Iraq’s invasion of Kuwait, the United Nations (“U.N.”) adopted Security Council Resolution 661, which prohibited U.N. member-states from transacting business with Iraq, except for the purchase and sale of humanitarian supplies. Resolution 661 prohibited virtually all direct financial transactions with the government of Iraq.

8. On or about April 15, 1995, the U.N. adopted Security Council Resolution 986, which served as a limited exception to the Iraq sanctions regime in that it allowed Iraq to sell its oil. However, Resolution 986 required that the proceeds from oil sales be used by the Iraqi government to purchase humanitarian supplies, including but not limited to food, for the Iraqi people. Hence, this program became known as the Oil for Food Program. Payments made to the Iraqi government which were not approved by the U.N. and which were outside the strict contours of the OFFP were prohibited.

9. The rules of the OFFP required that the proceeds from all sales of Iraqi oil be deposited into a U.N.-controlled escrow account at the New York branch of Banque Nationale de Paris ("BNP-Paribas"). That escrow account funded the purchase of humanitarian goods by the Iraqi government.

10 Under the rules of the OFFP, a supplier of humanitarian goods contracted with a ministry or other department of the Iraqi government to sell goods to the government. Once that contract was finalized, the contract was submitted to a U.N. Committee ("the 661 Committee") which reviewed the contracts to ensure that their terms complied with all U.N. OFFP and Iraqi sanction regulations. The 661 Committee accepted the contracts, rejected them or asked the supplier to provide additional information upon which the committee could make a decision.

11. If a contract was approved by the 661 Committee, a letter of credit was issued by the New York branch of BNP-Paribas to the supplier's bank stating that the supplier would be paid by the OFFP for the relevant goods once certain conditions were met, including delivery of the goods to Iraq and inspection of the goods by a U.N. contractor. Once those conditions were deemed by the U.N. to have been met, the U.N. would direct BNP-Paribas to release payment to the supplier.

12. On or about December 10, 1996, the first Iraqi oil exports under the U.N. OFFP began. The OFFP continued from in or about December 1996 until the United States invasion of Iraq on or about March 19, 2003. From in or about December 1996 through March 2003, the United States government prohibited United States companies and individuals from engaging in transactions with the government of Iraq, unless such transactions were authorized by the U.N. pursuant to the OFFP.

13. Beginning in approximately August 2000, the Iraqi government demanded that suppliers of humanitarian goods pay a kickback, usually valued at 10% of the contract price, to the Iraqi government in order to be awarded a contract by the government. These kickbacks violated U.N. OFFP regulations and U.N. sanctions which prohibited payments to the Iraqi government which were not expressly approved by the U.N. and which were not contemplated by the guidelines of the OFFP.

14. Often, these kickbacks were termed "after sales service fees" ("ASSFs"), but did not represent any actual service being performed by the supplier. These ASSFs were usually included in the contract price submitted by the supplier to the U.N. without disclosing to the U.N. that the contract contained an extra 10% which would be returned to the Iraqi government. Including the 10% in the contract price allowed the supplier to avoid paying the 10% out of its profits; instead, the suppliers caused the U.N., unknowingly, to fund the kickbacks to the Iraqi government.

15. Some suppliers labeled the ASSFs as such, thereby leading the U.N. to believe that actual after-sales services were being provided by the supplier. Other suppliers disguised the ASSFs by inserting fictitious line items into the contracts for goods or services that were not being provided. Still other suppliers simply inflated their contract prices by 10% to account for the payments they would make, or cause to be made, to the Iraqi government.

VCEI's Kickback Scheme

16. From in or about December 2000 through in or about January 2003, VCEI and its distributors, Company X and Company Y, were awarded a total of approximately \$13.8 million worth of contracts to supply various VCEI construction vehicles to the government of Iraq, pursuant to the OFFP. To obtain these contracts, VCEI, Company X and Company Y paid approximately \$1.3 million in kickbacks to the government of Iraq.

17. VCEI entered into a direct contract with the Iraqi Ministry of Housing & Construction in December 2000 to provide wheel loaders to that ministry, and also entered into sales agreements with Company X and Company Y, knowing that Company X and Company Y would: (i) contract with the Iraqi government for the further sale of VCEI products; and (ii) pay kickbacks to the Iraqi government in exchange for those contracts.

18. In order to generate the funds to pay the kickbacks to the Iraqi government and to conceal those payments, VCEI, Company X and Company Y each inflated the price of their contracts with the Iraqi government by 10% before submitting the contracts to the U.N. for approval.

19. After the U.N. approved the contracts, BNP-Paribas issued letters of credit, via international wire communication, to banks used by VCEI, Company X and Company Y, in the amount of the contract price. These letters of credit authorized VCEI, Company X and Company Y to be paid the amounts specified in the contracts, which included the 10% kickbacks to be paid to the Iraqi government.

COUNT ONE
(Conspiracy)

THE CONSPIRACY AND ITS OBJECTS

20. Paragraphs 1 through 19 of this Information are re-alleged and incorporated by reference as if set out in full.

21. From in or about December 2000 through in or about January 2003, within the territory of the United States and elsewhere, VCEI, Employee A, Company X, Company Y, and others known and unknown, did unlawfully and knowingly combine, conspire, confederate and agree together to commit the following offenses against the United States:

a. to knowingly devise, and intend to devise a scheme and artifice to defraud the U.N. and the Oil-for-Food Program, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, through the use of interstate and foreign wire communications, in violation of Title 18, United States Code, Section 1343; and

b. to knowingly falsify and cause to be falsified books, records, and accounts required to, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of AB Volvo, an issuer 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), and Title 18, United States Code, Section 2.

PURPOSE OF THE CONSPIRACY

22. The primary purpose of the conspiracy was to obtain and retain lucrative business with the Iraqi government through the payment of kickbacks to the Iraqi government which were concealed from the U.N. and portrayed as legitimate charges.

MANNER AND MEANS OF THE CONSPIRACY

23. To achieve the objects of the conspiracy, VCEI and others used the following manner and means, among others:

a. It was part of the conspiracy that VCEI agreed to pay kickbacks, and cause kickbacks to be paid, to the government of Iraq in exchange for contracts being awarded by the Iraqi government to VCEI, Company X and Company Y.

b. It was a further part of the conspiracy that VCEI entered into sales agreements with Company X and Company Y while aware that Company X and Company Y would pay and conceal the kickbacks.

c. It was a further part of the conspiracy that VCEI, Company X and Company Y submitted contracts to the U.N. for approval which failed to disclose, and concealed, the fact that the prices of the contracts had been inflated by 10% in order to generate money to pay the kickbacks to the Iraqi government.

d. It was a further part of the conspiracy that VCEI, Company X and Company Y caused the transmission of international wire communications, to and from the United States: (i) to provide notice to the U.N. that VCEI goods had been shipped to, and inspected in, Iraq and (ii) to provide notice to banks used by VCEI, Company X and Company Y that the U.N. was authorizing payments pursuant to the contracts.

e. It was a further part of the conspiracy that VCEI falsely described at least one of the kickbacks paid to the Iraqi government in its corporate books and records as “commission” payments.

OVERT ACTS

24. In furtherance of the conspiracy and to accomplish its unlawful objects, the following overt acts, among others, were committed within the territory of the United States and elsewhere:

Contract 901216

a. On or about December 19, 2000, Employee A, on behalf of VCEI, executed a contract, referenced by the U.N. as Contract 901216, with the Iraqi Ministry of Housing & Construction to supply 35 VCEI wheel loaders and various spare parts for €6,665,315.30, which included an extra 10% to be used to pay a kickback to the Iraqi government through Company X.

b. On or about January 19, 2001, VCEI sent a facsimile from Sweden to the 661 Committee in New York providing technical specifications regarding the VCEI wheel loaders which the Ministry of Housing & Construction had contracted to purchase.

c. On or about November 22, 2001, with funds paid to Company X by VCEI, Company X made a kickback payment of \$145,200 by wire transfer from Company X’s bank account to the account of the Iraqi Ministry of Housing & Construction in Baghdad, related to the first 10 wheel loaders purchased by the Iraqi government pursuant to Contract 901216.

d. On or about February 3, 2002, with funds paid to Company X by VCEI, Company X made a kickback payment of €86,562 by wire transfer from its bank to the account for the Iraqi Ministry of Housing & Construction in Baghdad, related to the next 5 wheel loaders purchased pursuant to Contract 901216.

e. On or about March 8, 2002, VCEI caused 22 wheel loaders to be delivered to Iraq, prompting a company based in Geneva, Switzerland, that provided commercial inspection services on behalf of the U.N. in Iraq (“the inspection company”) to send a facsimile from Iraq to the U.N. in New York notifying the U.N. that VCEI products purchased pursuant to Contract 901216 had been received and inspected upon entry into Iraq; these notifications, in turn, triggered payment by the U.N. to VCEI for Contract 901216.

f. On or about April 4 and April 7, 2002, with funds paid to Company X by VCEI, Company X made kickback payments totaling €346,248 by wire transfer from its bank account to the account of the Iraqi Ministry of Housing & Construction in Baghdad, related to the remaining wheel loaders purchased pursuant to Contract 901216.

Contract 901289

g. On or about January 1, 2001, VCEI issued an “Authorization Announcement” stating that Company X was “authorized to bid and submit offers on our behalf, enter into contracts with Iraqi purchasers, supply spare parts to Iraq as well as handle all aftersales services.”

h. On or about May 28, 2001, Company X entered into a contract, referenced by the U.N. as Contract 901289, with the Iraqi Ministry of Transport & Communication General Establishment of Civil Aviation to supply 3 VCEI motor graders with spare parts for €478,523,

which included an extra 10% to be used to pay a kickback to the Iraqi government by Company X.

i. On or about March 24, 2002, Company X agreed to pay the Iraqi government \$46,810 in kickbacks, falsely described as “after sale services,” in connection with Contract 901289.

j. On or about August 29, 2002, Company X caused VCEI products purchased pursuant to Contract 901289 to be delivered to Iraq, prompting the inspection company to send a facsimile from Iraq to the U.N. in New York notifying the U.N. that the VCEI products had been received and inspected upon entry into Iraq; this notification, in turn, triggered payment by the U.N. to Company X for Contract 901289.

Contract 1000400

k. On or about May 31, 2001, Company X entered into a contract, referenced by the U.N. as Contract 1000400, with the Iraqi Ministry of Housing & Construction Planning and Pursuance Office to supply 10 VCEI wheel loaders and spare parts for €2,103,996.90, which included an extra 10% to be used to pay a kickback to the Iraqi government by Company X.

l. In or about March 2002, Company X paid the Iraqi government \$163,884 in kickbacks in connection with Contract 1000400.

m. On or about April 8, 2002, Company X caused VCEI products purchased pursuant to Contract 100400 to be delivered to Iraq, prompting the inspection company to send a facsimile from Iraq to the U.N. in New York notifying the U.N. that the VCEI products had been received and inspected upon entry into Iraq; this notification, in turn, triggered payment by the U.N. to Company X for Contract 1000400.

Contract 1200002

n. On or about June 1, 2002, Company Y executed a contract, referenced by the U.N. as Contract 1200002, with the Iraqi Ministry of Irrigation to supply 40 VCEI motor graders with spare parts for €5,817,166.00, which included an extra 10% to be used to pay a kickback to the Iraqi government by Company Y.

o. In or about November 2002, Company Y paid the Iraqi government \$567,142 in kickbacks in connection with Contract 1200002.

p. On or about January 22, 2003, Company Y caused VCEI products purchased pursuant to Contract 1200002 to be delivered to Iraq, prompting the inspection company to send a facsimile from Iraq to the U.N. in New York notifying the U.N. that the VCEI products had been received and inspected upon entry into Iraq; this notification, in turn, triggered payment by the U.N. to Company Y for Contract 1200002.

Books and Records

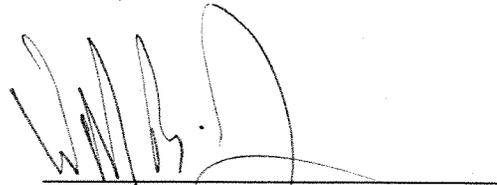
q. In or about 2002, in order to conceal on its corporate books and records the €346,248 kickback payment made to the Iraqi government in connection with Contract 901216, VCEI improperly characterized the payment to Company X, part of which was to be paid to the Iraqi government, as a “commission” payment.

r. At the end of AB Volvo's fiscal year 2002, the books and records of VCEI, including those containing false characterizations of the payments made to the Iraqi government, were incorporated into the books of AB Volvo for purposes of preparing AB Volvo's year-end financial statements.

(All in violation of Title 18 U.S.C. §371).

STEVEN A. TYRRELL
Chief, Fraud Section

By:



William B. Jacobson
Assistant Chief, Fraud Section
Criminal Division
U.S. Department of Justice
1400 New York Avenue, N.W.
Washington, D.C. 20005
(202) 514-7023