

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No. SACR 09-0077 JVS Date October 13, 2009

Present: The Honorable James V. Selna

Interpreter Mandarin Interpreter: Samuel Chan

Karla J. Tunis
Deputy Clerk

Sharon Seffens
Court Reporter.

Douglas McCormick
Assistant U.S. Attorney

<u>U.S.A. v. Defendant(s):</u>		<u>Present</u>	<u>Cust.</u>	<u>Bond</u>	<u>Attorneys for Defendants:</u>	<u>Present</u>	<u>App.</u>	<u>Ret.</u>
1.	Stuart Carson	X		X	1. Nicola T. Hanna	X		X
2.	Hong Carson	X		X	2. Kimberly A. Dunne	X		X
3.	Paul Cosgrove	X		X	3. Kenneth Miller	X		X
4.	David Edmonds	X		X	4. David W. Weichert	X		X

Proceedings: IMI PLC and Control Components, Inc.’s Motion to Intervene (fld 9-14-09)

Cause called and counsel make their appearances. The Court’s tentative ruling is issued. Counsel make their arguments. The Court DENIES IN PART AND GRANTS IN PART the IMI PLC and Control Components, Inc.’s Motion to Intervene and rules in accordance with the tentative ruling as follows:

Third parties IMI plc and Control Components, Inc. (collectively “Control Components”) seek to intervene for the limited purpose of opposing a Motion to Compel brought by Stuart Carson *et al.* (“defendants”). (See Docket No. 101.) Control Components, Inc. pled guilty to a separate indictment for violation of the Foreign Corrupt Practices Act (“FCPA”) (United States v. Control Components, Inc. Case No. SACR 09-162, Docket Nos. 7, 22, 23 [hereinafter “CCI Case]). By virtue of the plea agreement in that case, Control Components, Inc. has agreed to cooperate with the Government in the prosecution of the present action.¹

Defendants oppose the motion to the extent Control Components seeks to litigate issues going beyond attorney-client and work product privileges. (Opposition, p. 2.) The Government has not made a filing, but has indicated to the parties informally that it does not oppose the motion.

For the reasons stated below, the motion is granted in part and denied in part.

¹“CCI agrees to continue to cooperate fully with the Department [of Justice] and the Federal Bureau of Investigation, in a manner consistent with the non-waiver agreement between the parties, dated October 18, 2007, and consistent with applicable law and regulations including labor, data protection, and privacy laws.” CCI Case, Docket No. 7, Plea Agreement, ¶ 6. Among other things, “CCI shall truthfully disclose . . . all non-privileged information . . . concerning all matters relating to corrupt payments to foreign official or to employees of private customers” in connection with its operations. (Id.)

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I. Initial Matters.

First, the Court rejects the contention that Rule 24 of the Federal Rules of Civil Procedure, governing intervention in civil actions, controls here. The right of intervention in a criminal proceeding is much more circumscribed, and is generally limited to attorney client issues. United States v. Bergonzi, 216 F.R.D. 487, 492-93 (N.D. Cal.). As the court in United States v. Carmichael, 342 F. Supp 2d 1070, 1072 (M.D. Al. 2004), summarized:

Intervention in criminal cases is generally limited to those instances in which a third party's constitutional or other federal rights are implicated by the resolution of a particular motion, request, or other issue during the course of a criminal case. For example, courts sometimes permit the press to intervene in a criminal case where a decision to close criminal proceedings to the public may affect its First Amendment rights. In addition, third parties are occasionally allowed to intervene in a criminal trial to challenge a request for the production of documents on the ground of privilege ,or to protect other rights implicated by a particular proceeding.

(Emphasis supplied; internal citations deleted.)

Second, the Court rejects Control Components's contention that the defendants' motion to compel amounts to an end-run around the more specific requirements for a third party subpoena under Rule 17 of the Federal Rules of Criminal Procedure. Fed. R. Crim P. 17(c). To the extent that the defendants seek documents within the custody and control of the Government, defendants' motion seeks no more than enforcement of their discovery rights against the Government, and falls squarely within Rule 16 of the Federal Rules of Criminal Procedure.² Fed. R. Crim. P. 16(a)(E)(i). Assuming that the Government has custody and control over some sphere of Control Component's documents by virtue of the contractual obligations under the Plea Agreement, such materials are no different than materials held by a Government agency to the extent that such documents are within the ambit of Rule 16.³

II. Scope of Intervention.

The real dispute here is the extent to which Control Components should be permitted intervention beyond challenges founded in the attorney client or work product doctrine. The case law makes clear that the circumstances are narrow. United States v. Carmichael, 342 F. Supp 2d at 1072; see, e.g., United States v. Briggs, 514 F.2d 794, 804 (5th Cir. 1975); Harrelson v. United States, 967 F.

²Obviously, the result is different if defendants seek Control Component's documents on some other basis. See Reply, pp. 7-8.)

³The Court find that any separate burden argument is subsumed with the custody and control issues. Whatever Control Components, Inc.'s obligations are under the Plea Agreement, Control Components cannot claim that they are burdensome, particularly given the sophisticated clients and counsel involved in negotiating the Plea Agreement.

