

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA

Hon.

v.

RICHARD HIRSCH

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Crim. No. 15- 358(MLC)

18 U.S.C. § 371

15 U.S.C. §§ 78dd-2(a) & 2(j)

18 U.S.C. § 2

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INFORMATION

The defendant having waived in open court prosecution by indictment, the United States Department of Justice, Criminal Division, Fraud Section; and the United States Attorney for the District of New Jersey charge:

At times relevant to this Information:

COUNT ONE

(Conspiracy to Violate the Foreign Corrupt Practices Act)

Relevant Statutory Background

1. The Foreign Corrupt Practices Act of 1977, as amended, Title 15, United States Code, Sections 78dd-1, *et seq.* (the "FCPA"), was enacted by Congress for the purpose of, among other things, making it unlawful for certain classes of persons and entities to act corruptly in furtherance of an offer, promise, authorization, or payment of money or anything of value to a foreign government official for the purpose of assisting in obtaining or retaining business for, or directing business to, any person.

Relevant Entities and Individuals

2. Berger Group Holdings, Inc. ("BGH"), was a privately held Delaware corporation that controlled a group of companies that provided consulting services in global infrastructure engineering, environmental science, and economic development, and was thus a "domestic concern" as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(1)(B).

3. Louis Berger International, Inc. ("LBI"), was a company incorporated under the laws of New Jersey and, thus, was a "domestic concern" as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(1)(B). LBI was a wholly-owned subsidiary of BGH, and as part of a corporate restructuring assumed responsibility for all international operations and liabilities of BGH previously conducted by other BGH subsidiaries or affiliates (hereinafter collectively referred to as "the Company"). The Company was a privately-held consulting firm that provided engineering, architecture, program and construction management services.

3. The defendant, RICHARD HIRSCH, was a citizen and national of the United States who was employed by the Company as Senior Vice President, Asia, and was thus a "domestic concern" as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(1)(A), and an employee and agent of a domestic concern, as those terms are used in the FCPA, Title 15, United States Code, Sections 78dd-2(a) and 78dd-2(h)(1)(B), and a "United States person" as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(i). Defendant HIRSCH maintained a residence in Manila, Philippines.

4. James McClung ("McClung") was a citizen and national of the United States who was employed by the Company as a Senior Vice President.

5. "Employee 1" and "Employee 2" were citizens and nationals of Indonesia employed by the Company in Jakarta, Indonesia.

7. "The Foundation" was a non-government organization which the Company engaged as its local sponsor in Vietnam and which served as a key source for local labor and operational support in Vietnam, as well as a conduit for bribe payments to Vietnamese government officials.

The Conspiracy

8. Beginning in or before 2000, and continuing through and after April 2010, in the District of New Jersey and elsewhere, the defendant,

RICHARD HIRSCH,

did willfully, that is, with the intent to further the object of the conspiracy, and knowingly conspire, confederate, and agree with others to commit offenses against the United States, that is, being a domestic concern and an employee and agent of the Company, a domestic concern, 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 a foreign official and to a person, while knowing that all or a portion of such money and thing of value would be and had been offered, given, and promised to a foreign official, for purposes of (i) influencing acts and decisions of such foreign official in his or her official capacity; (ii)

inducing such foreign official to do and omit to do acts in violation of the lawful duty of such official; (iii) securing an improper advantage; and (iv) inducing such foreign official to use his or her influence with a foreign government and agencies and instrumentalities thereof to affect and influence acts and decisions of such government and agencies and instrumentalities, in order to assist defendant HIRSCH, the Company, and others in obtaining and retaining business for and with, and directing business to, the Company and others, contrary to Title 15, United States Code, Section 78dd-2(a).

Object of the Conspiracy

9. The object of the conspiracy was to make and conceal corrupt payments to foreign officials in Indonesia and Vietnam in order to obtain and retain contracts with government entities in those countries and thus to enrich the Company and the co-conspirators, including defendant HIRSCH, with the full economic benefits anticipated from such contracts.

Manner and Means of the Conspiracy

10. The manner and means by which defendant HIRSCH and his co-conspirators sought to accomplish the object of the conspiracy included, among other things, the following:

a. Defendant HIRSCH, together with others, while in the District of New Jersey and elsewhere, would and did discuss in person, via telephone, and via electronic mail ("email") making bribe payments to foreign government officials, including foreign government officials in Indonesia and Vietnam to secure their assistance in awarding business to the Company.

b. Defendant HIRSCH, together with others, while in the District of New Jersey and elsewhere, would and did offer to pay, promise to pay, and authorize the payment of bribes, directly and indirectly, to and for the benefit of foreign government officials, including foreign government officials in Indonesia and Vietnam, to secure their assistance in awarding business to the Company.

c. Defendant HIRSCH, together with others, while in the District of New Jersey and elsewhere, would and did discuss in person, via telephone, and via email the manner and means by which the bribe payments were to be paid.

d. Defendant HIRSCH, together with others, while in the District of New Jersey and elsewhere, would and did use terms like "commitment fee," "counterpart per diem," and "marketing fee" as code words to conceal the true nature of the bribe payments and by utilizing cash disbursement forms and invoices which did not truthfully describe the services provided or the purpose of the payment.

e. Defendant HIRSCH, together with others, while in the District of New Jersey and elsewhere, would and did use the Foundation as a conduit for the payment of bribes to foreign government officials in Vietnam to conceal the bribe payments.

f. Defendant HIRSCH, together with others, while in the District of New Jersey and elsewhere, would and did cause to be wired certain funds from the bank accounts of the Company in New Jersey for the purpose

of making payments to foreign government officials in exchange for the officials' assistance in awarding business to the Company.

g. Defendant HIRSCH, together with others, would and did make and cause to be made bribe payments directly and indirectly to foreign government officials, including to foreign government officials in Indonesia and Vietnam.

h. Members of the conspiracy, while in the District of New Jersey and elsewhere, would and did create ostensibly legitimate but ultimately illicit accounts, or "slush funds," for the payment of bribes through third parties.

Overt Acts

11. In furtherance of the conspiracy and to achieve the object thereof, at least one of the co-conspirators committed or caused to be committed, in the District of New Jersey and elsewhere, at least one of the following overt acts, among others:

Bribery of Indonesian Officials

(1) In or about August 2003, an agent of the Company sent an email to defendant HIRSCH regarding projects in Indonesia, stating,

Commitment fee is the misnomer for bribe money. The fee ranges from 3.5 percent to 20 percent. It is based on foreign and local currency remuneration. It is estimated that the balance on commitment fee payable for existing projects stands at about \$210,000. A percentage of the commitment fee is initially paid after the mobilization advance is received, and the balance is spread out during the life of the contract.

(2) On or about May 18, 2004, an employee of the Company sent an email to defendant HIRSCH stating, “[Employee 2] called me about the ‘counterpart’ per diem for our subcontractors. Apparently, [Employee 1] has not received them in her account.”

(3) On or about May 18, 2004, defendant HIRSCH responded to the email from an employee of the Company referenced in Overt Act (2) above, stating, “That’s surprising. I’ll check with [the Company’s home office in New Jersey] today and advise.”

(4) On or about November 15, 2006, an agent of the Company sent an email to defendant HIRSCH stating, “If the commitment fee issue can’t be avoided, what if we went in as a sub and got a few choice slots and let the selected lead firm deal with any fees? Perhaps even [a] firm upstairs of me might be appropriate” to use as a prime contractor so that the Company would not directly be responsible for the bribe payment.

(5) On or about November 15, 2006, defendant HIRSCH responded to the email from an employee of the Company referenced in Overt Act (4) above, stating,

Excellent idea to sub to another firm as the lead which would be responsible for client relations. I am not willing to pay any commitment fees, however we could agree to a ‘management fee’ taken from our invoices by the lead firm. Go ahead and speak with [a consultant with whom we have worked] if you can and see if he’s interested. I’m not sure what we could bring to the table that he could not bring himself, but that’s a separate question, I guess.

(6) On or about November 15, 2006, an agent of the Company responded to the email from defendant HIRSCH referenced in Overt Act (5)

above, stating, “[the consultant with whom we have worked] seems warm to the idea and he will think it over and discuss with his partners.”

(7) On or about November 15, 2006, an agent of the Company responded to the e-mail from defendant HIRSCH referenced in Overt Act (5) above, stating “[the consultant] seemed happy for the news and open to the association.

(8) On or about September 15, 2008, in anticipation of an interview by the Company’s lawyers of Employee 1 in connection with the bribery scheme, an agent of the Company sent an e-mail to Employee 1 with a draft language for an email Employee 1 to defendant HIRSCH for the purpose of passing on to the Company’s lawyers, stating, “I do not wish that the [Company] lawyers call me regarding their on-going internal reviews due to the long time that I have not worked with [the Company] and my current age, health and memory problems.”

(9) On or about September 16, 2008, Employee 1 sent an e-mail to one of the Company’s outside lawyers, adopting the language of the letter referenced in Overt Act (8) above.

(10) On or about February 9, 2009, defendant HIRSCH sent an email from his personal email account to an employee of the Company stating,

[P]lease don’t send any other emails about evaluation committees and commitment expectations. I know you’re trying to say this properly but really there is no way to do so and if our emails are audited or intercepted these words are real red flags which forensic auditors will definitely understand. Fortunately your message and my reply was on Mozcom and not on the [the Company] server so this is not a problem in this case, but please don’t ever forget this.

(11) On or about April 6, 2010, defendant HIRSCH sent an email to Employee 1 stating,

As it turns out the lawyers and US govt are still asking questions about our old books and invoices in Indonesia. So we do not to create [sic] the impression you are working for us now, and thus subject to inquiry by the lawyers, I have been advised to stop all payments to you, however small an amount, for your expenses. I hope you will understand this and not be upset. At some point these questions will end and we can get back to a normal relationship. In the meantime, thanks for your patience.

(12) On or about April 7, 2010, an employee of the Company sent an email to defendant HIRSCH stating, "To keep [Employee 1] happy and cover some of her expenses, is there any way to increase my current \$40 / day per diem rate and give the per diem rate increase to her? Just an idea."

(13) On or about April 7, 2010, defendant HIRSCH responded to the email from the Company's agent referenced in Overt Act (12) above, stating, "No, not possible. We have to cut her off right now. We'll move through this but its [sic] for her own good."

Bribery of Vietnamese Officials

(14) On or about August 1, 2003, a draft invoice to the Company was created on the computer used by defendant HIRSCH's assistant, which purported to invoice the Company for an amount due of \$18,000.

(15) On or about August 1, 2003, an identical invoice to the one described in Overt Act (14) above, in the same amount of \$18,000, but on the letterhead of the Foundation, was submitted and approved by defendant HIRSCH for the purpose of passing on bribe money to government officials in Vietnam.

(16) In or around 2005, as McClung assumed responsibility for Vietnam, defendant HIRSCH explained to McClung that McClung would need to find a new way to generate bribe money for foreign officials, because the Foundation would soon cease operations.

(17) On or about March 10, 2005, an agent of the Company sent a memorandum to another agent of the Company stating, "my personal observation is that the members of the Evaluation Committee is [sic] giving [the Company] a hard time at this point in time, to force [the Company] to a 'commitment fee', which was customary in our old Vietnam projects, like [a prior project] for instance."

(18) On or about April 20, 2010, an employee of the Company sent an email to McClung describing a meeting with another the Company employee regarding several projects, stating,

[The Company's agent] stated that he agreed to \$200,000 for [the previous director of the government customer], wants to pay \$15,000 to [a government official] in Hanoi, wants to pay \$10,000 to [another government official. . . . He explained that he had discussed these figures of \$200,000 for [the government customer] only, with [McClung] and [McClung] had agreed to it. I told him that I will discuss with [McClung] and will get back to him about the total costs. [. . .] The new [government agency] director and some other [agency] staff is [sic] already asking for money.

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

COUNT TWO
(Violation of the Foreign Corrupt Practices Act)

1. Paragraphs 1 through 7 and 9 through 11 of Count One are realleged and incorporated by reference as though fully set forth herein.

2. On or about February 9, 2009, in the District of New Jersey and elsewhere, the defendant,

RICHARD HIRSCH,

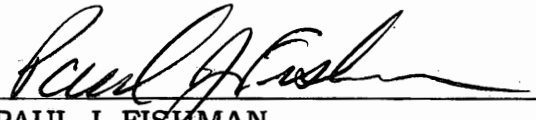
being a domestic concern, an employee and agent of a domestic concern, and a United States person, did willfully do an act outside the United States corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of money, offer, gift, promise to give, and authorization of the giving of anything of value to a foreign official, and to a person, while knowing that all or a portion of such money and thing of value would be and had been offered, given, and promised to a foreign official, for purposes of (i) influencing acts and decisions of such foreign official in his or her official capacity; (ii) inducing such foreign official to do and omit to do acts in violation of the lawful duty of such official; (iii) securing an improper advantage; and (iv) inducing such foreign official to use his or her influence with a foreign government and agencies and instrumentalities thereof to affect and influence acts and decisions of such government and agencies and instrumentalities, in order to assist defendant HIRSCH, the Company and others in obtaining and retaining business for and with, and directing business to, the Company and others, to wit, sending an email approving payments to an Indonesian firm for the purpose of making

payments to an Indonesian government official in order to secure a port development contract with the Indonesian government.

All in violation of Title 15, United States Code, Sections 78dd-2(a) and 78dd-2(i), and Title 18, United States Code, Section 2.



ANDREW WEISSMANN
CHIEF, FRAUD SECTION
CRIMINAL DIVISION
U.S. DEPARTMENT OF JUSTICE



PAUL J. FISHMAN
UNITED STATES ATTORNEY
DISTRICT OF NEW JERSEY