

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	Civil No.: 91-2034-H-A
	)	
v.	)	Filed: January 8, 1991
	)	
OLIN CORPORATION and	)	TRIAL BY JURY
HODGDON POWDER COMPANY, INC.,	)	<u>DEMANDED</u>
	)	
Defendants.	)	

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, represents as follows:

INTRODUCTION

1. This is an action by plaintiff the United States of America ("United States") for damages and civil penalties under the False Claims Act, 31 U.S.C. §§ 3729-3732, the Federal Property and Administrative Services Act, 40 U.S.C. § 489, the Clayton Act, 15 U.S.C. § 15a, and the common law of unjust enrichment.

2. Both of the defendants committed overt acts in furtherance of the violations within the jurisdiction of this Court.

3. As a direct result of the violations, the United States was damaged, in an amount which is presently undetermined.

THE DEFENDANTS AND CO-CONSPIRATORS

4. Olin Corporation ("Olin") is made a defendant herein. Olin is a corporation organized and existing under the laws of the Commonwealth of Virginia and is headquartered in Stamford, Connecticut. During the period covered by this complaint, Olin's St. Marks, Florida plant manufactured smokeless small arms ammunition propellant which it sold to purchasers throughout the country. During the period covered by this complaint, Olin was found in, had an agent in, and transacted business in the State of Tennessee, including the Western District of Tennessee.

5. Hodgdon Powder Company, Inc. ("Hodgdon Powder") is made a defendant herein. Hodgdon Powder is a corporation organized and existing under the laws of the State of Kansas and is headquartered in Shawnee Mission, Kansas. During the period covered by this complaint, Hodgdon Powder sold smokeless small arms ammunition propellant to purchasers throughout the country. During the period covered by this complaint, Hodgdon Powder was found in and transacted business in the State of Tennessee, including the Western District of Tennessee.

6. Various persons, not made defendants herein, participated as co-conspirators in the offenses alleged herein and performed acts and made statements in furtherance thereof.

7. Whenever in this complaint reference is made to any act, deed, or transaction of any corporation, the allegation means that the corporation engaged in the act, deed or transaction by or through its officers, directors, employees,

agents, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

#### ELIMINATION OF COMPETITION

8. As used in this complaint, the term "surplus powder" means smokeless small arms ammunition propellant for which the Department of Defense ("DOD") no longer has any use. The Defense Reutilization and Marketing Service ("DRMS") is the agency responsible for disposing of surplus DOD property. DRMS disposes of all surplus powder through the Defense Reutilization and Marketing Region in Memphis, Tennessee ("DRMR-Memphis"). DOD, DRMS and DRMR-Memphis are agencies of the United States.

9. DRMR-Memphis generally disposes of surplus powder through a competitive sealed bid process. The initial step in the process is the publication and distribution to potential bidders of a sales catalog with such information as the bid opening date, conditions on bidding, and descriptions of the property being offered for sale. Awards generally are made to the highest, responsible bidder for each of the items.

10. The bid forms used by DRMR-Memphis incorporate by reference a Certification of Independent Price Determination ("CIPD"), which states:

(1) the prices in this bid or proposal have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices, with any other bidder or offeror or with any competitor;

(2) unless otherwise required by law, the prices which have been quoted in this bid or proposal have not been knowingly disclosed by the Bidder or Offeror and will not knowingly be disclosed by the Bidder or Offeror prior to opening, in the case of a bid, or prior to award, in the case of a proposal, directly or indirectly to any other bidder or offeror or to any competitor; and

(3) no attempt has been made or will be made by the Bidder or Offeror to induce any other person or firm to submit or not to submit a bid or proposal for the purpose of restricting competition.

11. On August 29, 1986, DRMR-Memphis accepted and opened sealed bids for surplus powder offered in Sale 31-6608. Among the property offered in Sale 31-6608 were the following items:

<u>Item Number</u>	<u>Powder Type</u>	<u>Gross Weight</u>	<u>Net Weight</u>
Item 17	WC 852	21,054	16,194
Item 18	WC 852	97,474	74,974
Item 19	WC 852	97,494	74,994
Item 20	WC 852	97,494	74,994
Item 21	IMR 8208M	13,584	12,695
Item 22	IMR 8208M	51,354	47,994
Item 23	WC 852	97,494	74,994
Item 24	WC 852	97,494	74,994
Item 25	WC 852	97,494	74,994
Item 26	WC 852	97,494	74,994
Item 27	WC 852	97,494	74,994
Item 28	WC 852	97,494	74,994
Item 29	IMR 8208M	34,475	32,213
Item 30	IMR 8208M	37,625	35,161
Item 31	IMR 8208M	21,706	20,285
Item 32	IMR 8208M	37,542	35,085

All of the above items of surplus powder were stored at the Sunflower Army Ammunition Plant ("SAAP") in Desoto, Kansas.

12. Prior to the submission of bids on Sale 31-6608, Olin representatives and a representative of Hodgdon Powder engaged

in telephone conversations about the sale, in which they discussed bidding strategy and bid prices. They agreed that Olin would submit an "all-or-none" bid of twenty-five cents per pound for all of the WC 852 powder, and that if Olin won it would sell Item 25 to Hodgdon Powder at a price of fifty cents per pound. Olin and Hodgdon Powder understood that Hodgdon Powder would not submit a bid for any of the WC 852 powder. Additionally, Olin advised Hodgdon Powder that it would not bid for any of the IMR 8208M powder.

13. On or about August 27, 1986, Olin submitted to DRMR-Memphis an "all-or-none" bid on Sale 31-6608 of twenty-five cents per pound (net) for Items 17 through 21 and 23 through 28. Olin's bid incorporated by reference a CIPD making the certifications set out in paragraph 10 above. Olin Vice President A. A. Catani, signed Olin's bid form.

14. On or about August 26, 1986, Hodgdon Powder submitted to DRMR-Memphis a bid on Sale 31-6608 for Items 21, 22, and 29 through 32. It did not bid for any of the items of WC 852 powder. Hodgdon Powder's bid incorporated by reference a CIPD making the certifications set out in paragraph 10 above. Hodgdon Powder President Robert E. Hodgdon signed Hodgdon Powder's bid form.

15. Neither Olin nor Hodgdon Powder disclosed to DRMR-Memphis that their representatives had engaged in pre-bid discussions about Sale 31-6608, neither advised DRMR-Memphis of the agreement they had reached concerning the bids on Sale 31-6608, and neither revealed to DRMR-Memphis that they

had agreed that if Olin won the powder on which it was bidding it would sell some of that powder to Hodgdon Powder. At the time the bids on Sale 31-6608 were opened, DRMR-Memphis was totally unaware of the pre-bid discussions and agreements between representatives of Olin and Hodgdon Powder.

16. On the basis of Olin's bid, and in reliance on its CIPD, DRMR-Memphis awarded Olin all of the items for which it bid, for \$175,953.75.

17. On the basis of Hodgdon Powder's bid, and in reliance on its CIPD, DRMR-Memphis awarded Hodgdon Powder Items 22, 29, 30 and 32, for \$150,938.41.

18. After the bids were opened, Olin discovered that it accidentally had included in its "all-or-none" bid one item of IMR 8208M powder, Item 21. Olin then agreed to sell Item 21 to Hodgdon Powder.

19. As agreed, Olin sold Items 21 and 25 to Hodgdon Powder, for \$43,844.50 (fifty cents per pound net).

20. The DOD requires that a Requisition and Invoice/ Shipping Document ("form DD-1149") be signed each time anyone claims and removes from DOD custody any surplus powder sold through DRMS.

21. Between November 12, 1986, and December 8, 1986, inclusive, Olin claimed and removed from SAAP Items 17 through 20, 23, 24, and 26 through 28. During that period, Olin signed and presented or caused to be signed and presented to the DOD

at SAAP nineteen forms DD-1149 for those items, one for each receipt of surplus powder.

22. Between November 3, 1986, and November 7, 1986, inclusive, Hodgdon Powder claimed and removed from SAAP Items 21 and 25. During that period, Hodgdon Powder signed and presented or caused to be signed and presented to the DOD at SAAP four forms DD-1149, one for each receipt of the surplus powder.

23. Olin caused the surplus powder it acquired through Sale 31-6608, except for Items 21 and 25, to be transported to its facility in St. Marks, Florida, where nitrocellulose was extracted from the powder and used in the manufacture of new smokeless small arms ammunition propellant, which was sold to purchasers throughout the country.

24. Hodgdon Powder caused the surplus powder contained in Items 21 and 25 to be transported to its facilities in Kansas, where the powder was repackaged and sold to purchasers throughout the country.

**COUNT ONE - FALSE CLAIMS ACT**  
**31 U.S.C. §§ 3729-3732**

25. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1345 and 31 U.S.C. §§ 3730(a) and 3732(a). Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c), 1395(a) and 31 U.S.C. § 3732(a).

26. Paragraphs 2 through 24 of this Complaint are repeated and realleged as though they were fully set forth herein.

27. Defendants Olin and Hodgdon Powder conspired to defraud plaintiff the United States by getting false or fraudulent claims for government property approved, in violation of 31 U.S.C. § 3729.

28. For the purpose of getting false or fraudulent claims for government property approved by plaintiff the United States, defendants Olin and Hodgdon Powder knowingly made or used, or caused to be made or used, two bid forms incorporating by reference false CIPDs, which were submitted to DRMR-Memphis in violation of 31 U.S.C. § 3729.

29. Defendants Olin and Hodgdon Powder knowingly presented or caused to be presented for approval by plaintiff the United States twenty-two forms DD-1149, signed and presented to the DOD at SAAP, each of which constituted a false or fraudulent claim for government property, in violation of 31 U.S.C. § 3729.

30. Plaintiff the United States, unaware of the foregoing circumstances and conduct of the defendants, and in reliance on the purportedly competitive bids and honest certifications of the defendants and their seemingly proper claims, approved their claims and released government property to them, which resulted in plaintiff the United States being damaged in an amount which is presently undetermined.

31. Defendants Olin and Hodgdon Powder are jointly and severally liable to plaintiff the United States for damages incurred as a result of the violations of the False Claims Act, trebled according to law, for a \$10,000 civil penalty for each

of the twenty-five acts in violation of 31 U.S.C. § 3729, and for interest and costs.

**COUNT TWO - FEDERAL PROPERTY AND  
ADMINISTRATIVE SERVICES ACT OF 1949  
40 U.S.C. § 489**

32. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1345 and 40 U.S.C. § 489(c). Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c), 1395(a) and 40 U.S.C. § 489(c).

33. Paragraphs 2 through 24 of this Complaint are repeated and realleged as though they were fully set forth herein.

34. For the purpose of securing or obtaining property from plaintiff the United States, defendants Olin and Hodgdon Powder agreed and conspired to use and engage in fraudulent tricks, schemes or devices in connection with the disposition of surplus property by plaintiff the United States, pursuant to the contract arising out of Sale 31-6608, and defendants Olin and Hodgdon Powder did those things which they agreed and conspired to do, in violation of 40 U.S.C. § 489(b).

35. For the purpose of securing or obtaining property from plaintiff the United States, defendants Olin and Hodgdon Powder knowingly used or caused to be used two bid forms incorporating by reference false CIPDs, which were submitted to DRMR-Memphis, each of which constituted a fraudulent trick, scheme or device in connection with the disposition of surplus property by plaintiff the United States, pursuant to the contract arising out of Sale 31-6608, in violation of 40 U.S.C. § 489(b).

36. For the purpose of securing or obtaining property from plaintiff the United States, pursuant to the contract that arose out of Sale 31-6608, defendants Olin and Hodgdon Powder knowingly used or caused to be used twenty-two forms DD-1149, which were signed and presented to the DOD at SAAP for the purpose of claiming government property, each of which constituted a fraudulent trick, scheme or device in connection with the disposition of surplus property by plaintiff the United States, in violation of 40 U.S.C. § 489(b).

37. Plaintiff the United States, unaware of the foregoing circumstances and conduct of the defendants, and in reliance on the purportedly competitive bids and honest certifications of the defendants and their seemingly proper claims, pursuant to the contract that arose out of Sale 31-6608, permitted them to secure and obtain government property, which resulted in plaintiff the United States being damaged.

38. Defendants Olin and Hodgdon Powder are jointly and severally liable to plaintiff the United States for twice the consideration agreed to be paid for the government property fraudulently obtained (\$175,953.75), for a total of \$351,807.50.

39. Plaintiff the United States had no knowledge of the conspiracy between and fraudulent acts of defendants Olin and Hodgdon Powder, as described in paragraphs 34 through 36, and had no knowledge which might have led to its discovery of the defendants' conspiracy and fraudulent acts, until some time within three years of the filing of this complaint. Plaintiff

first became aware of the defendants' conspiracy and fraudulent acts during the course of grand jury proceedings. Plaintiff could not have discovered the conspiracy and fraudulent acts earlier by the use of due diligence, because the defendants fraudulently concealed their conspiracy and fraudulent acts by, among other things, engaging in secret telephone conversations to effectuate the conspiracy, submitting to DRMR-Memphis two bid forms incorporating by reference false CIPDs, and offering false innocent explanations of their activity.

**COUNT THREE - CLAYTON ACT**  
**15 U.S.C. § 15a**

40. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1345 and 15 U.S.C. § 15a. Venue is proper in this District under 28 U.S.C. § 1391(b)-(c) and 15 U.S.C. § 15a.

41. Paragraphs 2 through 24 of this Complaint are repeated and realleged as though they were fully set forth herein.

42. Beginning at least as early as April 1986 and continuing thereafter at least through March 1987, the exact dates being unknown to the United States, the defendants Olin and Hodgdon Powder and others entered into a combination and conspiracy to suppress and restrict competition for the surplus powder offered for sale by plaintiff the United States in Sale 31-6608, and defendants Olin and Hodgdon Powder did those things which they agreed to do, including submitting rigged bids to DRMR-Memphis, submitting two bid forms incorporating by

reference false CIPDs, and signing and presenting to the DOD at SAAP twenty-two forms DD-1149 for the purpose of claiming government property, all of which constituted a combination, conspiracy and agreement in unreasonable restraint of interstate trade and commerce, in violation of 15 U.S.C. §§ 1, 15a.

43. The combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators, the substantial terms of which were to:

- (a) allocate among the defendants certain of the items of surplus powder offered in Sale 31-6608;
- (b) refrain from submitting bids or to submit collusive, noncompetitive and rigged bids to DRMR-Memphis relative to Sale 31-6608; and
- (c) ensure that certain of the items of surplus powder offered in Sale 31-6608 did not reach the market for resale to prospective purchasers.

44. For the purpose of forming and carrying out the charged combination and conspiracy, the defendants and co-conspirators did those things that they combined and conspired to do, including, among other things:

- (a) discussing among themselves the submission of prospective bids to DRMR-Memphis relative to Sale 31-6608;

- (b) agreeing that Olin would submit an "all-or-none" bid for the WC 852 powder, and that if Olin won, it would sell Item 25 to Hogdon Powder;
- (c) reaching an understanding that Hodgdon Powder would not submit a bid for any of the WC 852 offered at Sale 31-6608;
- (d) submitting bid forms incorporating by reference false CIPDs to DRMR-Memphis; and
- (e) signing and presenting to DOD at SAAP twenty-two forms DD-1149 for the purpose of claiming government property.

45. The business activities of defendants Olin and Hodgdon Powder and co-conspirators that are the subject of this Complaint, were within the flow of, and substantially affected, interstate trade and commerce.

46. Plaintiff the United States, unaware of the foregoing circumstances and conduct of the defendants, and in reliance on the purportedly competitive bids and honest certifications of the defendants and their seemingly proper claims, permitted them to secure and obtain government property, which resulted in plaintiff the United States being damaged in an amount yet to be determined.

47. Defendants Olin and Hodgdon Powder are jointly and severally liable to plaintiff the United States for the damages sustained, trebled according to law, together with interest and costs.

COUNT FOUR - UNJUST ENRICHMENT

48. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1345. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c), 1395(a).

49. Paragraphs 2 through 24 of this Complaint are repeated and realleged as though they were fully set forth herein.

50. Plaintiff the United States, unaware of the foregoing circumstances and conduct of the defendants, and in reliance on the purportedly competitive bids and honest certifications of the defendants and their seemingly proper claims, pursuant to the contract that arose out of Sale 31-6608, permitted them to secure and obtain government property, which resulted in the defendants being unjustly enriched and in plaintiff the United States being damaged in an amount yet to be determined.

51. Defendants Olin and Hodgdon Powder are jointly and severally liable to plaintiff the United States for damages, in the amount which they were unjustly enriched, with interest and costs.

PRAYER

WHEREFORE, plaintiff the United States of America demands and prays that judgment be entered in its favor and against defendants Olin and Hodgdon Powder, jointly and severally, as follows:

(a) on Count One the amount of the damages sustained by the government, trebled according to law, plus a \$10,000 civil

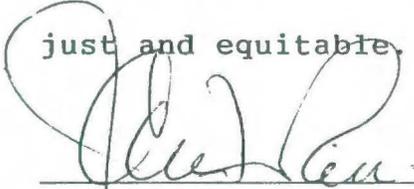
penalty for each of the twenty-five acts in violation of 31 U.S.C. § 3729, together with interest and costs; or

(b) on Count Two the amount of double the consideration agreed to be paid for the surplus powder, for a total of \$351,807.50; or

(c) on Count Three the amount of damages sustained by the government, trebled according to law, together with interest and costs; or

(d) on Count Four the amount of damages sustained by the government, as the result of the unjust enrichment that accrued to the defendants, together with interest and costs; and

(e) such other and further relief as this Court may deem just and equitable.

  
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