

ORIGINAL

FILED IN OPEN COURT
U.S.D.C ATLANTA

NOV 02 2010

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JAMES N. HATTEN, CLERK
By:  Deputy Clerk

UNITED STATES OF AMERICA)

Criminal No.:

v.)

Violation: 15 U.S.C. § 1

THOMAS E. CARR,)

Filed:

Defendant.)

1 10-CR-464

INDICTMENT

The Grand Jury charges that:

I.

DESCRIPTION OF THE OFFENSE

1. Thomas E. Carr is hereby indicted and made a defendant on the charge contained in this Indictment.

2. Beginning in or about early 2004 and continuing thereafter at least through December 2008, the exact dates being unknown to the Grand Jury, the defendant and co-conspirators entered into and engaged in a combination and conspiracy to suppress and eliminate competition by allocating customers for the sale of commercial and institutional food service equipment component hardware, including walk-in refrigeration equipment

(hereinafter referred to as "food service component hardware"), in the United States and elsewhere. The combination and conspiracy engaged in by the defendant and co-conspirators was an unreasonable restraint of interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

3. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant and co-conspirators, the substantial terms of which were to allocate customers for the sale of food service component hardware in the United States and elsewhere.

II.

MEANS AND METHODS OF THE CONSPIRACY

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

- (a) attended meetings and engaged in discussions by telephone, facsimile and electronic mail regarding the sale of food service component hardware;

- (b) agreed during those meetings and discussions to allocate customers of food service component hardware and to create and exchange protected customer lists in order to implement and monitor this agreement;
 - (c) agreed during those meetings and discussions not to compete for one another's protected customers either by not submitting prices or bids to certain customers, or by submitting intentionally high prices or bids to certain customers;
 - (d) discussed and exchanged prices to certain customers so as not to undercut one another's prices;
 - (e) quoted prices and submitted bids in accordance with the agreements reached;
 - (f) sold food service component hardware to customers in the United States and elsewhere at collusive and noncompetitive prices pursuant to the agreements reached;
- and

- (g) accepted payment for food service component hardware sold in the United States and elsewhere at collusive and noncompetitive prices.

III.

BACKGROUND

5. Defendant Carr's former employer and its corporate co-conspirator manufacture and distribute food service component hardware in the United States and elsewhere. Food service component hardware products include fabricated parts, such as cafeteria hardware, equipment legs and casters, and fabrication supplies, and walk-in refrigeration components, such as metal racks, door hinges, handles, latches and closers, and panel fasteners. Customers for food service component hardware include original equipment manufacturers and fabricators which purchase and incorporate food service component hardware into the final products they manufacture such as commercial kitchen equipment, coolers, freezers, ice-makers, ovens, and heated cabinets, and then distribute them to dealers for sale to commercial and institutional food service businesses.

IV.

DEFENDANT AND CO-CONSPIRATORS

6. During the period covered by this Indictment, Defendant Carr was the President and Chief Executive Officer of a corporate co-conspirator with overall responsibility for its performance in the sale of food service component hardware, among other products. During the period covered by this Indictment, the corporate co-conspirator was a corporation organized and existing under the laws of the State of Delaware with its principal place of business in Lakewood, New Jersey. During the period covered by this Indictment, the corporate co-conspirator was engaged in the business of manufacturing and selling food service component hardware to customers, i.e., original equipment manufacturers and fabricators, in the United States and elsewhere.

7. Various corporations and individuals, not made defendants in this Indictment, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof.

8. Whenever in this Indictment 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,

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

V.

TRADE AND COMMERCE

9. During the period covered by this Indictment, Defendant Carr and his co-conspirators shipped food service component hardware in a continuous and uninterrupted flow of interstate and foreign commerce to customers located in states and countries outside the place of origin of the shipments. In addition, payments for such food service component hardware traveled in interstate and foreign commerce.

10. During the period covered by this Indictment, the business activities of the defendant and his co-conspirators in connection with the manufacture and sale of food service component hardware that is the subject of this Indictment were within the flow of, and substantially affected, interstate and foreign trade and commerce.

VI.

JURISDICTION AND VENUE


11. The combination and conspiracy charged in this Indictment was formed and carried out, in part, within the Northern District of Georgia within the five years preceding the return of this Indictment.

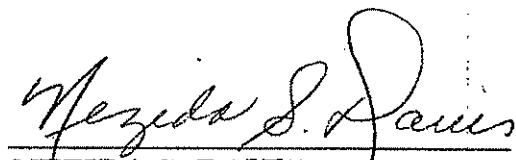
ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE,
SECTION 1.


Dated: Nov 2 2010

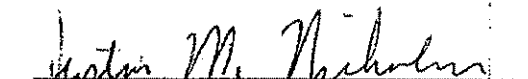
A TRUE BILL


FOREPERSON

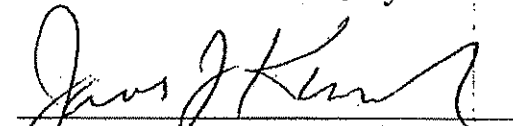

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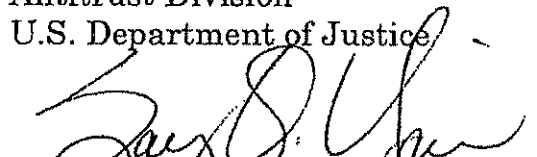

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