

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA)	CRIMINAL NO. 03-551-A
)	Filed November 13, 2003
)	Count 1: 15 U.S.C. § 1
v.)	(Conspiracy To
)	Restrain Trade)
)	
)	
GOSSELIN WORLD WIDE MOVING)	Count 2: 18 U.S.C § 371
N.V., and MARC SMET,)	(Conspiracy To
)	Defraud the
)	United States)
Defendants.)	

INDICTMENT

NOVEMBER 2003 TERM - AT ALEXANDRIA

I

COUNT ONE

CONSPIRACY TO RESTRAIN TRADE
(15 U.S.C. § 1)

THE GRAND JURY CHARGES THAT:

1. Beginning at least as early as October 2001 and continuing until on or about October 2002 ("the relevant period"), the exact dates being unknown to the Grand Jury, defendant GOSSELIN WORLD WIDE MOVING N.V. and defendant MARC SMET, acting on behalf of defendant GOSSELIN WORLD WIDE MOVING N.V., and their co-conspirators entered into and engaged in a combination and conspiracy to eliminate competition by fixing

rates submitted to the Department of Defense ("DOD") for the transportation of household goods owned by U.S. military and civilian DOD personnel ("military household goods") from Germany to the United States. The charged combination and conspiracy, engaged in by the defendants and their co-conspirators, in unreasonable restraint of interstate and foreign trade and commerce, violated Section 1 of the Sherman Act, 15 U.S.C. § 1.

2. The charged combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendants and their co-conspirators, the substantial term of which was to increase the rates paid by DOD for the transportation of military household goods.

DEFENDANTS AND CO-CONSPIRATORS

3. GOSSELIN WORLD WIDE MOVING N.V. ("GOSSELIN N.V.") is a Belgian company based in Antwerp, Belgium. During the relevant period, defendant GOSSELIN N.V. was in the business of providing services related to the transportation of military household goods.

4. During the relevant period, defendant MARC SMET ("SMET"), a Belgian national, was the Managing Director of GOSSELIN N.V. and had primary responsibility for GOSSELIN N.V.'s military household goods business.

5. Various corporations, partnerships and individuals, not made defendants in this Count, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance of the conspiracy.

BACKGROUND

6. The DOD administers and coordinates its International Through Government Bill of Lading ("ITGBL") program for the transportation of military household goods between the United States and other countries where U.S. military forces are stationed through the Military Traffic Management Command ("MTMC"). MTMC is headquartered in Alexandria, Virginia, in the Eastern District of Virginia.

7. Each ITGBL move is comprised of five discrete steps. In the case of Germany, a move to the U.S. would require: (1) German local agent services, (2) European port agent services, (3) ocean transport services, (4) U.S. port agent services and (5) U.S. local agent services. The "local German agents," i.e., firms that provide local agent services in Germany (whether or not they are owned by German nationals or are incorporated in Germany), provide services including general moving and storage services, such as packing "liftvans" (large wooden crates used for shipping household goods) at the German residence of the ultimate customers and "linehauling" (shipping by truck or train)

the liftvans to a port in Northern Europe (Antwerp, Belgium or Bremerhaven, Germany). At the port, European port agents load the liftvans onto U.S.-flagged, transoceanic vessels and handle customs and clearance matters. During the relevant period, GOSSELIN N.V., through various subsidiary and affiliated companies, including Gosselin World Wide Moving GmbH, a company 96% owned by GOSSELIN N.V., provided local German agent services in Germany and was among the largest local German agents.

8. Ocean transport services involve shipping the military household goods from the European port to the U.S. port location nearest to the ultimate destination. U.S. port agents unload the liftvans from the vessel and handle the shipments through customs. A U.S. local agent then linehauls the liftvans from the port to the destination location and unpacks the shipment.

9. "Freight forwarders," also referred to as "forwarders" or "carriers," are U.S. companies that shoulder the ultimate responsibility for ITGBL shipments. Freight forwarders file rates directly with MTMC.

10. For certain European countries, including Germany, landed rate providers offer U.S. freight forwarders a "landed rate." A landed rate combines or bundles the ocean transport services, foreign port agent services and foreign local agent services into a single product. Landed rates are offered to U.S.

freight forwarders for a flat fee per hundred pounds of freight (“\$/cwt”). During the relevant period, GOSSELIN N.V. was a landed rate provider.

11. Under the ITGBL program, freight forwarders file rates with MTMC twice a year in a two-step bidding process. The rates filed are expressed in U.S. dollars per hundredweight and are specific to particular “channels.” Channels are routes to or from a particular state, or portion of a state, and a specific foreign country (e.g., Germany-Virginia). Of the channels between Germany and the United States, a majority of military household goods “tonnage” moves to and from about a dozen “high-volume” states, including Virginia.

12. Each rate submission covers a six-month cycle. The summer cycle runs from April 1 through September 30, whereas the winter cycle runs from October 1 through March 31. The ITGBL cycles are referred to by the abbreviation, “IS” for International Summer or “IW” for International Winter, combined with the relevant year. Thus, “IS-02” is shorthand for the international summer cycle from April 1, 2002 through September 30, 2002.

13. To be eligible to file rates, freight forwarders must certify, in a Certificate of Independent Pricing, that their rates have been derived independently and that there has been no

communication, agreement, understanding or collusion with any other carrier, competitor or agent thereof.

14. For each rate cycle, MTMC receives two sets of prices from the U.S. freight forwarders. The first step of the rate filing process, "the initial filing," occurs about four months before a cycle begins, at which time the freight forwarders file initial rates in each channel eastbound and westbound.

15. After the initial filing, MTMC publishes the lowest five ("low-5") rates offered in each channel. The lowest rate initially bid for a channel is the "prime rate." The second lowest rate is the "second-level." Every forwarder that filed a rate in the initial filing has the opportunity to match or "meet" the prime rate or to file any rate higher than the prime rate.

MANNER AND MEANS OF THE CONSPIRACY

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

a. participating in meetings and conversations to discuss and agree upon a strategy to eliminate the prime rates set by a certain co-conspirator U.S. freight forwarder in specific channels from Germany to the United States for the

transportation of military household goods for the IS-02 cycle;

b. engaging in written exchanges and other communications to ensure that co-conspirator U.S. freight forwarders would not match or "me-too" the prime rates set by a certain co-conspirator U.S. freight forwarder in specific channels from Germany to the United States for the transportation of military household goods for the IS-02 cycle; and

c. engaging in written exchanges and other communications to ensure that the co-conspirator U.S. freight forwarders that filed a rate lower than the second level in specific channels from Germany to the United States for the transportation of military household goods for the IS-02 cycle would cancel those rates.

INTERSTATE AND FOREIGN TRADE AND COMMERCE

17. During the relevant period, rates, proposals, contracts, invoices for payment, payments and other documents essential to the provision of ITGBL services were transmitted in interstate and foreign trade and commerce between and among offices of the defendants and their co-conspirators located in various States and foreign countries.

18. During the relevant period, the defendants and their co-conspirators transported substantial quantities of military household goods, in a continuous and uninterrupted flow of

interstate and foreign commerce, from Germany to the United States, through various U.S. ports and States, and ultimately, to final destinations in various States.

19. During the relevant period, the DOD paid for ITGBL services by check, wire transfer and other monetary instruments transmitted to the bank accounts of co-conspirators in a continuous and uninterrupted flow of interstate commerce; and the defendants and their co-conspirators received payments in a continuous and uninterrupted flow of interstate and foreign trade and commerce for services provided as part of the ITGBL transportation of military household goods.

20. During the relevant period, the transportation services provided by the defendants and their co-conspirators for military household goods which are the subject of this Count One were in the flow of, and substantially affected, interstate and foreign trade and commerce.

JURISDICTION

21. The combination and conspiracy charged in this Count was carried out, in part, within the Eastern District of Virginia within the five years preceding the return of this Indictment.

(In violation of Title 15, United States Code, Section 1).

II
COUNT TWO
CONSPIRACY TO DEFRAUD THE UNITED STATES
(18 U.S.C. § 371)

THE GRAND JURY FURTHER CHARGES THAT:

22. Each and every allegation contained in paragraphs 3-15 of Count One of this Indictment is here realleged as if fully set forth in this Count Two.

23. Beginning at least as early as October 2001 and continuing until in or about October 2002, the exact dates being unknown to the Grand Jury, defendant GOSSELIN N.V. and defendant SMET, acting on behalf of defendant GOSSELIN N.V., and their co-conspirators did unlawfully, willfully and knowingly combine, conspire and agree to defraud the United States (a) by increasing the rates paid by DOD for the transportation of military household goods during the IS-02 cycle to levels higher than would have prevailed in the absence of their conspiracy; and (b) by impairing, obstructing and defeating the due administration of the ITGBL program. The charged conspiracy to defraud the United States engaged in by the defendants and their co-conspirators violated 18 U.S.C. § 371.

OBJECT OF THE CONSPIRACY

24. It was the object of the conspiracy for the defendants and their co-conspirators to increase the rates paid by DOD for

the transportation of military household goods during the IS-02 cycle.

MANNER AND MEANS OF THE CONSPIRACY

25. It was part of the conspiracy that defendants GOSSELIN N.V. and SMET and their co-conspirators discussed and agreed upon a strategy to eliminate the prime rates set by a certain co-conspirator U.S. freight forwarder in specific channels from Germany to the United States for the transportation of military household goods for the IS-02 cycle.

26. It was further a part of the conspiracy that defendants GOSSELIN N.V. and SMET and their co-conspirators engaged in written exchanges and other communications to ensure that co-conspirator U.S. freight forwarders would not match or "me-too" the prime rates set by a certain co-conspirator U.S. freight forwarder in specific channels from Germany to the United States for the transportation of military household goods for the IS-02 cycle.

27. It was further a part of the conspiracy that defendants GOSSELIN N.V. and SMET and their co-conspirators engaged in written exchanges and other communications to ensure that the co-conspirator U.S. freight forwarders that filed a rate lower than the second level in specific channels from Germany to the United States for the transportation of military household goods for the IS-02 cycle would cancel those rates.

OVERT ACTS

28. In furtherance of the conspiracy and to achieve the objects thereof, the defendants and co-conspirators committed or caused to be committed within the period of the conspiracy and within in the Eastern District of Virginia, and elsewhere, at least one of the following overt acts, among others:

a. Filed rates for the transportation of military household goods for the IS-02 cycle at artificial and inflated levels.

b. Cancelled prime rates in specific channels for the IS-02 cycle, including the channel from Germany to Virginia.

c. Cancelled "me-too" rates filed below the second level in specific channels during the IS-02 cycle, including the channel from Germany to Virginia.

d. Transported military household goods from Germany

to Virginia at a rate higher than would have prevailed in the absence of a conspiracy.

(In violation of Title 18, United States Code, Section 371).

A TRUE BILL

11/13/03 /s/
FOREPERSON

11/13/03 /s/
R. HEWITT PATE
Assistant Attorney General

11/13/03 /s/
LISA M. PHELAN
Chief, National Criminal
Enforcement Section

11/13/03 /s/
JAMES M. GRIFFIN
Deputy Assistant Attorney General

11/13/03 /s/
HAYS GOREY, JR.
DANIEL L. ZELENKO
MARK W. PLETCHER
Attorneys
U.S. Department of Justice
Antitrust Division
Suite 3700
1401 H Street, N.W.
Washington, D.C. 20530
(202) 307-0000

11/13/03 /s/
SCOTT D. HAMMOND
Director of Criminal Enforcement

Antitrust Division
U.S. Department of Justice

11/13/03 /s/
PAUL J. MCNULTY
United States Attorney

By: 11/13/03 /s/
Kevin V. DiGregory
Assistant United States Attorney
Acting Chief, Criminal Division