

United States District Court

SOUTHERN

DISTRICT OF

FLORIDA

UNITED STATES OF AMERICA

VS.

CRIMINAL COMPLAINT

PETER WHITTLE,
DAVID BRAMMAR,
BRYAN ALLISON, and
JACQUES COGNARD.

CASE NUMBER: 07-2553-PRP

I, the undersigned complainant being duly sworn state the following is true and correct to the best of my knowledge and belief. From at least 1999 through at least 2006, in Broward and Monroe Counties, in the Southern District of Florida and elsewhere in the United States, the defendants did

engage in a conspiracy to suppress and eliminate competition by rigging bids, fixing prices and allocating market shares for sales of marine hose sold in the United States in unreasonable restraint of foreign and interstate trade and commerce

in violation of Title 15 United States Code, Section 1

I further state that I am a Special Agent, DCIS, U.S. Dept. of Defense and that this complaint is based on the following facts:

Please see attached affidavit.

Continued on the attached and made a part hereof: ☒ Yes ☐ No

Thomas H. Errion, II
Signature of Complainant
THOMAS H. ERRION, II, Special Agent
Defense Criminal Investigative Service
United States Department of Defense

Sworn to before me, and subscribed in my presence,

April 24, 2007
Date

at Fort Lauderdale, Florida
City and State

PETER R. PALERMO
UNITED STATES MAGISTRATE JUDGE
Name and Title of Judicial Officer

Peter R. Palermo
Signature of Judicial Officer

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT AND ARREST WARRANTS

I, Thomas H. Errion, II, being duly sworn, depose and state as follows:

1. I am a Special Agent with the Defense Criminal Investigative Service ("DCIS"), Office of Inspector General, United States Department of Defense ("DoD"), Fort Lauderdale, Florida. I have been a Special Agent with DCIS since 1988. DCIS is the investigative arm of DoD. As a DCIS Special Agent, my duties and responsibilities include investigating white collar crime, including procurement fraud, public corruption, money laundering and antitrust conspiracies. I have completed numerous specialized training courses, including the following courses at the Federal Law Enforcement Training Center in Glynco, Georgia: the Criminal Investigator Training Program; the DCIS Basic Course and Basic Criminal Investigator Training Program; the Advanced Fraud Course; Money Laundering and Banking; and the Reid Interview and Interrogation.

2. I am a case agent in an investigation by a grand jury in the Southern District of Florida, conducted by DCIS, the Naval Criminal Investigative Service ("NCIS") and the United States Department of Justice, Antitrust Division, of price fixing, bid rigging, market allocation and related offenses by companies and other entities involved in the manufacture and/or sale of marine hose.

3. I submit this affidavit in support of a complaint and arrest warrants for defendants PETER WHITTLE, DAVID BRAMMAR and BRYAN ALLISON, all United Kingdom nationals, and JACQUES COGNARD, a French national. The proposed complaint charges the defendants with engaging in a conspiracy to suppress and eliminate competition by rigging bids, fixing prices and allocating market shares for marine hose sold in the United States in unreasonable restraint of foreign and interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

4. The information contained in this affidavit is based on my personal knowledge and observations accumulated during the course of this investigation, on information I obtained during interviews, on information conveyed to me by other law enforcement personnel, on my review of documents and interview reports, and on physical evidence. I submit the affidavit for the limited purpose of establishing probable cause in support of this application for a complaint and arrest warrants, and thus, it does not contain every fact known by me or the United States. Additionally, unless otherwise noted, wherever in this affidavit I assert that an individual made a statement, that statement is described in substance, and in part, and is not intended to be a verbatim recitation of the entire statement.

I. Evidence Establishing Probable Cause of a Violation of 15 U.S.C. § 1

A. Overview

5. The United States Department of Justice, DCIS and NCIS are investigating a bid-rigging, price-fixing and allocation conspiracy among six manufacturers of marine hose and a consultant who has acted as the coordinator of the cartel. Marine hose is a flexible rubber hose used to transfer oil between tankers and storage facilities and/or buoys. Marine hose is between six inches and twenty-four inches in diameter and comes in two basic types: floating, which sits above the water, and submarine, which extends beneath the water's surface. Companies involved in the off-shore extraction and/or transportation of petroleum products, including major oil companies such as Shell, Exxon and Chevron, purchase marine hose. DoD also purchases marine hose, including for use at military bases.

6. Manufacturers and/or sellers of marine hose and the consultant coordinator have been conspiring to rig bids, fix prices and allocate market shares for sales of marine hose from at least 1999 through at least 2006 in Broward and Monroe Counties within the Southern District of Florida and elsewhere in the United States. Such an agreement among competitors restricting price competition for goods or services sold violates the law. Bid rigging is a way for conspirators to raise prices

effectively where purchasers acquire goods or services by soliciting competing bids. Essentially, conspirators agree in advance who will submit the winning bid on a contract being let through the competitive bidding process. Conspirators, as they have here, may submit bids but take turns being the low bidder. Conspirators may also agree to submit bids that either are too high to be accepted or contain special terms that will not be acceptable to the buyer. Such bids are not intended to secure the buyer's acceptance, but are merely designed to give the appearance of genuine competitive bidding. Conspirators, as they have here, may also agree not to compete against other competitors for customers in certain geographic areas. All such agreements are criminal violations of the Sherman Act.

7. From at least 1999 through at least 2006, marine hose manufactured and/or sold by one or more of the conspirator firms, and related ancillary equipment and special order products, as well as payments for marine hose, traveled in interstate and foreign commerce. During this period, the business activities of defendants and their co-conspirators in connection with the manufacture and/or sale of marine hose that are the subject of this complaint were within the flow of, and substantially affected, interstate and foreign trade and commerce. During the conspiracy, the defendants and their co-conspirators sold

hundreds of millions of dollars worth of marine hose and related products.

B. Evidence of the Conspiracy

1. The Cooperating Co-Conspirator

8. A foreign-based manufacturer of marine hose has admitted to the United States its involvement in the bid-rigging, price-fixing and allocation conspiracy. This company (hereinafter "cooperating company") has agreed to cooperate with the investigation and is negotiating a cooperation agreement with the Antitrust Division. If the cooperating company receives a cooperation agreement and abides by the terms of its cooperation agreement, the Antitrust Division will not prosecute it or its cooperating employees for any involvement they may have had in the marine hose cartel. However, the cooperation agreement will not absolve the cooperating company of restitution obligations it may have to its victims.

9. The cooperating company has produced numerous documents to the Antitrust Division detailing the conspiracy. According to its records, from at least 1999 through at least 2006, the cartel rigged bids, fixed prices and allocated market shares for marine hose sales around the world, including jobs in the United States and at U.S. military bases in Turkey and Japan.

10. The DCIS has interviewed executives with the cooperating company, including two confidential sources who were

members of the conspiracy (hereinafter "CS1" and "CS2"). For many years, CS1 was the cooperating company's primary point of contact with the cartel. During interviews, CS1, CS2 and other employees confirmed the cooperating company's involvement in the cartel from at least 1999 through 2006. CS1 and CS2 sold marine hose for the company overseas, including in the United States. They had responsibility for marine hose pricing and reviewed and submitted prices in bids to customers. I have corroborated much of the information they have provided with documents obtained during the investigation. In my opinion, they are credible witnesses.

11. CS1 and CS2 described a conspiracy involving the cooperating company, a consultant and five other manufacturers of marine hose, including Dunlop Oil & Marine, Ltd. (hereinafter "Dunlop"), a marine hose manufacturer based in the United Kingdom, and defendants DAVID BRAMMAR and BRYAN ALLISON, both Dunlop executives. Trelleborg Industrie S.A. (hereinafter "Trelleborg"), a French subsidiary of the Swedish corporation Trelleborg AB, which manufactures marine hose in France and sells it throughout the world, and defendant JACQUES COGNARD, a Trelleborg executive, also belonged to the conspiracy. A third member of the conspiracy was a marine hose manufacturer with operations in Broward County, within the Southern District of Florida. One or more employees of this manufacturer that

participated in the conspiracy also reside in the Southern District of Florida, including in Broward County. According to CS1 and CS2, the conspirators reached illegal agreements to rig bids, fix prices and allocate market shares on virtually all sales of marine hose from at least 1999 through at least 2006, including those in the United States.

2. Defendant PETER WHITTLE

12. According to CS1 and CS2, to implement their illegal scheme, the conspirators paid defendant PETER WHITTLE to coordinate the conspiracy. Defendant WHITTLE is a former Dunlop executive and, according to CS2, has been a member of the cartel since at least 1999. WHITTLE owns PW Consulting (Oil & Marine) Limited ("PWC"), a United Kingdom-based consulting company. CS1 and CS2 explained that it was part of the illegal agreement reached by the conspirators that each of the conspiring manufacturers provide WHITTLE with the information they received about upcoming marine hose jobs. Defendant WHITTLE then designated, based on rules agreed to by the conspirators, which of the conspiring manufacturers would win the job. In emails I have reviewed, WHITTLE referred to the winning conspirator as the "champion." WHITTLE attempted to maintain market shares agreed to by the conspirators when designating which manufacturer would be the champion. The conspirators adjusted these market shares as needed. After designating the champion, WHITTLE calculated

how much other cartel members should bid to ensure that the designated champion would win the job.

13. According to CS1, defendant WHITTLE sent the conspirators regular reports discussing allocations of previous jobs, pending jobs and the status of current jobs. The cooperating company has produced a large number of documents corroborating WHITTLE's role in the conspiracy. I have reviewed documents evidencing communications by email and facsimile between WHITTLE and other members of the cartel in which WHITTLE provided bidding instructions on marine hose jobs as well as regular reports of the job allocations.

14. Although PWC does not sell or manufacture marine hose, and the cooperating company conducts no legitimate business with WHITTLE or PWC, from at least 2001 to at least 2004, the cooperating company and other cartel members paid WHITTLE approximately \$50,000 a year to coordinate the cartel, for a total of approximately \$300,000 a year. I have reviewed documents produced by the cooperating company that show defendant WHITTLE sent invoices to the cooperating company totaling approximately \$140,000 between October 2001 and April 2004.

3. Defendants DAVID BRAMMAR and BRYAN ALLISON

15. According to CS1 and CS2, and corroborated by documents I have reviewed from the cooperating company, Dunlop has been a corporate member of the conspiracy since at least 1999.

Defendants DAVID BRAMMAR and BRYAN ALLISON are Dunlop executives involved in the sale of marine hose and are members of the conspiracy.

16. Defendant DAVID BRAMMAR is Dunlop's Sales and Marketing Director. According to CS1, BRAMMAR has been a member of the conspiracy since at least 2000 when he attended a meeting of the conspirators in Bangkok, Thailand, described below, at which illegal agreements were reached. Defendant BRAMMAR also attended meetings of the conspirators in June 2001 in the Southern District of Florida and in July 2002 in London, England.

17. Defendant BRYAN ALLISON is the Managing Director for Dunlop's marine hose business. CS1 believes that ALLISON is BRAMMAR's supervisor. According to CS1, ALLISON has been a member of the conspiracy since at least 2002 when he attended a meeting of the conspirators in London, England, described below, at which illegal agreements were reached or re-affirmed.

4. Defendant JACQUES COGNARD

18. According to CS2, and corroborated by documents I have reviewed from the cooperating company, Trelleborg has been a corporate member of the conspiracy since at least 1999. Defendant JACQUES COGNARD is Trelleborg's Oil and Marine Manager and is involved in the sale of marine hose. According to CS2, defendant COGNARD has been a member of the conspiracy since at least 1999. COGNARD attended a meeting of the conspirators in

London, England, in late 1999, at which illegal agreements were reached. According to CS1 and CS2, COGNARD also attended meetings of the conspirators in late 2000 in Bangkok, Thailand; in June 2001 in the Southern District of Florida; and in July 2002 in London, England. As described below, the conspirators reached or re-affirmed bid-rigging, price-fixing and/or allocation agreements at each of these meetings.

C. Cartel Meetings

19. In addition to communicating with each other by email and facsimile, CS1 and CS2 have said, and the evidence I have reviewed confirms, that the conspirators met in person to set prices and discuss the cartel's operation. This evidence, which includes agendas and detailed "minutes" of several of the meetings prepared contemporaneously with the meetings, indicates that from 1999 to 2002, the conspirators held at least four "general meetings," at which representatives from the conspiring corporations were present, including one meeting in Key Largo, Florida, within the Southern District of Florida. At these meetings, the conspirators discussed and agreed to the rules for implementing their bid-rigging, price-fixing and allocation scheme. They agreed to divide the world market for marine hose among the conspiring manufacturers.

20. CS2 and his co-conspirators, including defendants WHITTLE and COGNARD, met in December 1999 in London, England, and

agreed to rules for their illegal scheme. According to CS1, the conspirators' next general meeting was in December 2000 in Bangkok, Thailand. Defendants WHITTLE, BRAMMAR and COGNARD, as well as the conspirator living in Broward County, attended this meeting, at which the conspirators discussed how to keep the cartel running smoothly. They reviewed and agreed to the market shares allotted to each conspiring manufacturer and discussed and agreed to price lists for marine hose and related equipment, including those for use in the United States.

21. According to CS1, and confirmed by documents I have reviewed, in June 2001, defendants WHITTLE, BRAMMAR and COGNARD attended another general meeting of the conspiracy in Key Largo, Florida, within the Southern District of Florida. The conspirator based in Broward County, also within the Southern District of Florida, hosted the meeting. As at the December 2000 meeting in Bangkok, the conspirators reviewed and agreed to the market share allocations and price lists for marine hose and related equipment, including those for use in the United States.

22. In July 2002, CS1 and his co-conspirators, including defendants WHITTLE, BRAMMAR, ALLISON and COGNARD, as well as the conspirator living in Broward County, attended another general meeting of the cartel in London, England. At this meeting, the conspirators reviewed and agreed to the market shares allocated to each of the conspirator firms.

23. The conspirators took steps to conceal their communications with each other and their involvement in the conspiracy. For example, according to CS1 and CS2, and confirmed in numerous documents I have reviewed from the cooperating company, the conspirators devised code designations to refer to each other in written communications. For example, Dunlop was designated "B1" and Trelleborg was designated "B2." In addition, during their communications, confirmed by documents I have reviewed, the conspirators attempted to conceal their actions by referring to the cartel as the "club" or the "Technical Committee - Marine Hose."

D. Actions in Furtherance of the Conspiracy after July 2002

24. I have reviewed numerous emails and facsimiles from WHITTLE to the cooperating company through at least 2006, in which WHITTLE, acting as coordinator, provided bidding instructions to the cooperating company regarding upcoming jobs. Moreover, these documents make clear that Dunlop and Trelleborg were members of the conspiracy through at least 2006. In addition, publicly available documents that I have reviewed indicate that defendants BRAMMAR and ALLISON retained their positions at Dunlop, described above, through at least 2006 and 2007, respectively. I have also reviewed publicly available documents indicating that defendant COGNARD retained his position as Trelleborg's Oil & Marine Manager through at least 2007.

25. Based upon the foregoing facts, I believe probable cause exists to assert that defendants PETER WHITTLE, DAVID BRAMMAR, BRYAN ALLISON and JACQUES COGNARD, from at least 1999 through at least 2006, in Broward and Monroe Counties, in the Southern District of Florida and elsewhere, did engage in a conspiracy to suppress and eliminate competition by rigging bids, fixing prices and allocating market shares on contracts for marine hose sold in the United States in unreasonable restraint of foreign and interstate trade and commerce in violation of the Sherman Act, 15 U.S.C. § 1.

II. Additional Information for Execution of Arrest Warrants

26. The United States is seeking warrants in the Southern District of Texas to search the defendants and their hotel rooms, and to seize items, including records, documents and materials relating to marine hose bids and prices, during the defendants' anticipated upcoming stay in Houston, Texas, for the Offshore Technology Conference ("OTC"). The OTC is an annual worldwide conference of engineers, scientists and managers associated with the ocean resources industry. This year, the OTC is scheduled for April 30 to May 3, 2007. Corporate members of the conspiracy are regularly represented at the OTC, and documents I have reviewed suggest that defendants WHITTLE, BRAMMAR, ALLISON and COGNARD each have attended the OTC at least once from at least 2001 through 2006. I have reviewed emails between WHITTLE and

other cartel members in which WHITTLE has tried to organize in-person meetings during or immediately after the OTC to discuss the marine hose conspiracy, including with co-conspirators from Dunlop, Trelleborg and the marine hose manufacturer with operations in Broward County. At these meetings, according to documents I have reviewed, WHITTLE planned to discuss with these co-conspirators, among other things, upcoming prices to quote for marine hose.

27. DCIS has learned through its investigation that the defendants will be staying in hotels in Houston during the time of this year's OTC. A private meeting including WHITTLE, BRAMMAR, ALLISON, COGNARD and other co-conspirators is planned during the OTC. Documents I have reviewed show that WHITTLE intends to discuss future understandings about the marine hose conspiracy during this meeting.

28. The United States plans to arrest the defendants on the requested warrants soon after this meeting in the Southern District of Texas. The United States anticipates executing these arrest warrants simultaneously with the execution of the search warrants. The United States is coordinating the execution of its planned searches with the execution of warrants and/or other searches in locations across the United States and in several foreign countries. The foreign jurisdictions have determined that they must begin their searches as early as 5:00 a.m. Central

Daylight Time in the United States. Once the searches begin abroad, there is a risk that individuals in foreign locations will contact the defendants in the United States. This would give the defendants an opportunity to flee and/or destroy or remove evidence sought before daylight or otherwise obstruct the investigation before warrants can be executed in the United States. Due to these potential exigent circumstances, and given the difficulty of coordinating execution with foreign law enforcement, the United States may need to execute these arrest warrants as early as 5:00 a.m. Central Daylight Time.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Thomas H. Errion, II
Thomas H. Errion, II, Special Agent
DCIS, Department of Defense

Sworn to and subscribed before me
this 24th day of April, 2007.

Peter R. Palermo
The Honorable Peter R. Palermo
United States Magistrate Judge