

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

Alexandria Division

UNITED STATES OF AMERICA)	CRIMINAL NO. 1:06CR57
)	
v.)	Count I: 15 U.S.C. § 1
)	Count II: 15 U.S.C. § 1
ALLIED FREIGHT FORWARDING, INC.,)	
)	Filed: 2/24/06
Defendant.)	

CRIMINAL INFORMATION

Allied Freight Forwarding, Inc. ("ALLIED") is made a defendant on the charges herein.

THE UNITED STATES CHARGES THAT:

Defendant and Co-Conspirators

1. Defendant ALLIED is, and was during the relevant period, a U.S. company, organized under the laws of the State of Delaware and headquartered in Westmont, IL. Defendant ALLIED is a wholly-owned subsidiary of SIRVA, Inc., a corporation also headquartered in Westmont, IL. During the relevant period, defendant ALLIED was in the business of providing freight forwarding services, as described in paragraph 5, related to the transportation of military household goods.

2. Various companies, 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.

3. Whenever this Count refers to any act, deed, or transaction of any company, it means that the company 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, or control of its affairs.

Background

4. 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 through the Military Traffic Management Command (“MTMC”). MTMC, recently renamed Surface Distribution and Deployment Command (“SDDC”), is headquartered in Alexandria in the Eastern District of Virginia. Shipments of military household goods under the ITGBL program are known as “ITGBL traffic.”

5. “Freight Forwarders,” also known as “forwarders” or “carriers,” are U.S. companies that submit ITGBL rates, contract with MTMC, and ultimately shoulder the responsibility for ITGBL shipments.

6. Each ITGBL move is comprised of five steps. A move from Germany to the United States, for example, requires the following: (1) local German agent services, (2) European port agent services, (3) ocean transport services, (4) U.S. port agent services, and (5) U.S. destination agent services. Freight forwarders generally hire subcontractors to perform some of these steps for them.

7. “Landed rate providers” act as one type of subcontractor, bundling the foreign inland service, foreign port service, and ocean transport for sale to freight forwarders for a unitary “landed rate.”

8. Under the ITGBL program, freight forwarders file “through rates” with MTMC (now SDDC) twice a year in a two-step bidding process. “Through rates,”

expressed in dollars per hundredweight (“\$/cwt”), are the rates bid to DOD by U.S. freight forwarders and paid by DOD for all the moving and transportation services provided in the door-to-door move between a foreign country and the United States. The through rates are specific to “channels,” or routes, to or from a particular state, or portion of a state, and a foreign country (e.g., Germany-Virginia). Of the channels between Europe and the United States, a majority of military household goods tonnage moves to and from approximately twenty high-volume states, including the Commonwealth of Virginia.

9. Each rate filing covers a six-month period, or “cycle.” The summer cycle runs from April 1 through September 30; 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, the “IS-01 cycle” is shorthand for the International Summer cycle that ran from April 1, 2001 through September 30, 2001.

10. In the first step of the rate filing process, the “initial filing,” which occurs about six months before the cycle begins, freight forwarders file rates in each channel, eastbound and westbound. In the initial filing, the forwarders may either file a low rate or an “administrative high” rate in order to preserve their right to bid again in the second phase of the bidding process. After the initial filing, MTMC publishes the lowest five (“low-5”) rates offered in each channel and the identities of the freight forwarders filing those rates. The lowest rate bid for a channel is termed the “prime through rate.” MTMC guarantees to the freight forwarder that sets the prime through rate in a given channel a certain percentage of the shipments in that channel as an incentive to set the

prime through rate. In the second, or "me-too," phase of the bidding process, every forwarder that filed any rate in the initial filing has the opportunity to match, or "me-too," the prime through rate or to file any rate higher than the prime through rate in each channel.

11. MTMC requires that each freight forwarder certify or affirm in a Certificate of Independent Pricing, incorporated in the Tender of Service which governs the bidding process, that each bid submitted was derived independently, without communication, agreement, understanding, collusion, or any other action in respect to rates or fares with any carrier, competitor, or agent thereof.

12. The freight forwarder that bids the prime through rate is guaranteed a fixed percentage of the traffic in a given channel. The remaining traffic is then awarded seriatim to each forwarder that matched, or "me-tooled," the prime through rate. In this way, over the course of the cycle, the vast majority of shipments in each channel move at the prime through rate. Thus, a forwarder typically must me-too the prime through rate in order to be awarded shipments.

13. For the IW-00 cycle, U.S. freight forwarders were required to file their initial rates by May 23, 2000. Me-too bids were due by August 1, 2000. For the IS-01 cycle, U.S. freight forwarders were required to file their initial rates by November 28, 2000. Me-too bids were due by January 16, 2001.

**Count One - Conspiracy To Restrain Trade
(15 U.S.C. § 1)**

14. Beginning in or about November 2000 and continuing until in or about October 2001 ("the relevant period"), the exact dates being unknown to the United

States, defendant ALLIED and co-conspirators, including a corporate, freight forwarder co-conspirator ("FF-1"), entered into and engaged in a combination and conspiracy to suppress and eliminate competition by allocating channels for the transportation of household goods owned by U.S. military and civilian Department of Defense ("DOD") personnel ("military household goods") from Germany and Italy to the United States. The charged combination and conspiracy engaged in by the defendant and co-conspirators in unreasonable restraint of interstate and foreign trade and commerce violated 15 U.S.C. § 1.

15. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendant ALLIED and its co-conspirators, the substantial term of which was to increase the rates paid by DOD for the transportation of military household goods between Germany and the United States and between Italy and the United States.

16. Each and every allegation contained in paragraphs 1-13 of this Information is here re-alleged as if fully set forth in this Count.

Manner and Means of the Conspiracy

17. For purposes of forming and carrying out the charged combination and conspiracy, defendant ALLIED and co-conspirators did the following things among others with respect to ITGBL traffic for the IS-01 cycle:

a. agreed to jointly seek preferential landed rates to advantage them in being able to set prime through rates in the initial filing;

b. agreed to allocate between them the high-volume channels between Germany and the United States and Italy and the United States; and

c. agreed not to compete against each other in any of the allocated channels.

18. For purposes of executing the charged combination and conspiracy, defendant ALLIED and co-conspirators carried out each and every activity and agreement described in paragraph 17 for the IS-01 cycle.

19. These agreements and activities undertaken by defendant ALLIED and co-conspirators reduced competition and restrained trade in the market for the transportation of military household goods during the IS-01 cycle.

Interstate and Foreign Trade and Commerce

20. 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 defendant ALLIED, co-conspirator FF-1, and MTMC, located in various States and foreign countries.

21. During the relevant period, defendant ALLIED and co-conspirator FF-1 transported, or arranged for the transportation of, substantial quantities of military household goods, in a continuous and uninterrupted flow of interstate and foreign commerce, between Germany and Italy and the United States, through various U.S. ports and States to final destinations in various States.

22. During the relevant period, MTMC received bids for ITGBL services by wire and mail from the offices of defendant ALLIED and co-conspirator FF-1.

23. During the relevant period, DOD paid for ITGBL services by check, wire transfer, and other monetary instruments transmitted to the bank accounts of defendant

ALLIED and co-conspirator FF-1 in a continuous and uninterrupted flow of interstate commerce.

24. The activities of defendant ALLIED and co-conspirator FF-1 in connection with the transportation of military household goods were within the flow of, and substantially affected, interstate and foreign trade and commerce.

Jurisdiction and Venue

25. During the relevant period, MTMC received bids for ITGBL services by interstate wire and mail at its offices in the Eastern District of Virginia originating from the offices of defendant ALLIED and co-conspirator FF-1.

26. The combination and conspiracy charged in this Count was formed and carried out, in part, within the Eastern District of Virginia within the five years preceding the filing of this Criminal Information.

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

Count Two – Conspiracy to Restrain Trade (15 U.S.C. § 1)

THE UNITED STATES FURTHER CHARGES THAT:

27. Beginning in or about May 2000 and continuing until in or about September 2001 (“the relevant period”), the exact dates being unknown to the United States, defendant ALLIED and co-conspirators entered into and engaged in a combination and conspiracy to suppress and eliminate competition and restrain trade in the market for the transportation of military household goods, by agreeing on the rates in particular channels that the corporate co-conspirators would file with MTMC, with the understanding that defendant ALLIED would service any ITGBL or Hawaii traffic

tendered by MTMC to its corporate co-conspirators. The charged combination and conspiracy engaged in by defendant ALLIED and co-conspirators in unreasonable restraint of interstate and foreign trade and commerce violated Section 1 of the Sherman Antitrust Act.

28. “Hawaii traffic” is military household goods traffic which moves between the United States mainland and the State of Hawaii. Hawaii traffic is governed under the same MTMC rules and regulations as ITGBL traffic.

29. The charged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among defendant ALLIED and co-conspirators, the substantial term of which was to suppress and eliminate competition between defendant ALLIED and co-conspirators for ITGBL and Hawaii traffic.

30. Each and every allegation contained in paragraphs 1-13 of Count One of this Information is here re-alleged as if fully set forth in this Count.

Manner and Means of the Conspiracy

31. For purposes of forming and carrying out the charged combination and conspiracy, defendant ALLIED and co-conspirators did the following things, among others, with respect to the IW-00 and IS-01 cycles:

a. agreed that defendant ALLIED would direct each corporate co-conspirator to file rates for ITGBL and Hawaii traffic at particular levels in specific channels;

b. agreed that defendant ALLIED would service all ITGBL and Hawaii traffic tendered by MTMC to each corporate co-conspirator;

c. agreed that defendant ALLIED would pay all subcontractors for

services provided to shipments tendered to each corporate co-conspirator;

d. agreed that defendant ALLIED would assume the risk of profit or loss on shipments tendered to each corporate co-conspirator;

e. agreed that defendant ALLIED would ultimately receive all payments from DOD for shipments tendered to each corporate co-conspirator;

f. agreed that defendant ALLIED would pay its corporate co-conspirators a flat rate of \$1/cwt to service ITGBL traffic tendered to them by MTMC and serviced by defendant; and

g. agreed that defendant ALLIED would pay its corporate co-conspirators a flat rate of \$4/cwt to service Hawaii traffic tendered to them by MTMC and serviced by defendant.

32. For purposes of executing the charged combination and conspiracy, defendant ALLIED and co-conspirators made and carried out each and every agreement and activity described in paragraph 31 for the IW-00 cycle.

33. For the IS-01 cycle, for the purposes of executing the charged combination and conspiracy, defendant ALLIED and co-conspirators made each and every agreement described in paragraph 31 and took acts in furtherance thereof.

Interstate and Foreign Trade and Commerce

34. During the relevant period, rates, proposals, contracts, invoices for payment, payments, and other documents essential to the provision of the transportation of military household goods were transmitted in interstate and foreign trade and commerce between and among offices of defendant ALLIED, corporate co-conspirators, and MTMC, located in various States and foreign countries.

35. During the relevant period, defendant ALLIED and corporate co-conspirators transported, or arranged for the transportation of, substantial quantities of military household goods, in a continuous and uninterrupted flow of interstate and foreign commerce between Europe and the United States and between the State of Hawaii and the United States mainland, through various U.S. ports and States to final destinations in various States, including a substantial amount of traffic into and out of the Commonwealth of Virginia.

36. During the relevant period, MTMC received bids for the transportation of military household goods by interstate wire and mail from the offices of defendant ALLIED and corporate co-conspirators.

37. During the relevant period, DOD paid for the transportation of military household goods by check, wire transfer, and other monetary instruments transmitted to the bank accounts of defendant ALLIED and corporate co-conspirators in a continuous and uninterrupted flow of interstate commerce.

38. The activities of defendant ALLIED and corporate co-conspirators in connection with the transportation of military household goods were within the flow of, and substantially affected, interstate and foreign trade and commerce.

Jurisdiction and Venue

39. During the relevant period, MTMC received bids to perform the transportation of military household goods by interstate wire and mail at its offices in Alexandria in the Eastern District of Virginia initiated by or originating from defendant ALLIED and corporate co-conspirators or those working at their behest.

40. The combination and conspiracy charged in this Count was formed and carried out, in part, within the Eastern District of Virginia within the five years preceding the filing of this Criminal Information.

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

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