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JUL 15 2004

Michael N. Milby, Clerk

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

_____)	
UNITED STATES OF AMERICA)	CRIMINAL NO. 4-01-914
)	
v.)	15 U.S.C. §§ 78dd-1(a), 78dd-2(a)
)	(Foreign Corrupt Practices Act)
DAVID KAY,)	
)	18 U.S.C. § 371
and)	(Conspiracy)
)	
DOUGLAS MURPHY,)	18 U.S.C. § 1505
)	(Obstruction of Justice)
Defendants.)	
_____)	

INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

1. At all times material to this Indictment, the Foreign Corrupt Practices Act of 1977 (FCPA), as amended, 15 U.S.C. §§78dd-1, *et seq.*, was enacted by Congress for the purpose of, among other things, making it unlawful for United States persons, businesses and residents to use the United States mails, or any means or instrumentality of interstate or foreign commerce in furtherance of an offer, promise, authorization, or payment of money or anything of value to a foreign government official for the purpose of obtaining or retaining business for, or directing business to, any person.
2. At all times material to this Indictment:
 - a. American Rice, Inc. ("ARI") was a business incorporated under the laws of the State of Texas, and having its principal place of business in Houston, Texas. American Rice, Inc. had a class of securities registered pursuant to Section 15 of the Securities

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- Exchange Act of 1934 (15 U.S.C. § 78o) and was required to file reports with the U.S. Securities & Exchange Commission under Section 12 of the Securities Exchange Act (15 U.S.C. § 78l). As such, American Rice, Inc. was an “issuer” within the meaning of the Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-1.
- b. Rice Corporation of Haiti (“RCH”) was a subsidiary of defendant American Rice, Inc. that was incorporated in the Republic of Haiti. RCH was formed to act as a “service corporation” to represent American Rice, Inc.’s interest in Haiti. At all times prior to September 1999, American Rice, Inc. controlled all of RCH’s actions, paid all of RCH’s expenses, employed all of RCH’s management, retained title to all rice imported by RCH until sold to third parties and consolidated its financial statements with those of American Rice, Inc.
- c. Defendant DAVID KAY was an American citizen and a vice-president for marketing of American Rice, Inc. who was responsible for supervising sales and marketing in Haiti. As such, KAY was both (i) an officer of an “issuer” and (ii) a “domestic concern” within the meaning of the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, 78dd-2.
- d. Defendant DOUGLAS MURPHY was an American citizen and president of American Rice, Inc. As such, MURPHY was both (i) an officer of an “issuer” and (ii) a “domestic concern” within the meaning of the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, 78dd-2.
3. Beginning in or about 1995 and continuing to in or about August 1999, defendants KAY and MURPHY and other employees and officers of American Rice, Inc. paid bribes and

authorized the payment of bribes to induce customs officials in the Republic of Haiti to accept bills of lading and other documents which intentionally understated the true amount of rice that ARI shipped to Haiti for import, thus reducing the customs duties owed by American Rice, Inc. and RCH to the Haitian government. The defendants believed that if American Rice Inc. and Rice Corporation of Haiti were required to pay the full amount of duties and taxes that should have been paid on the imported rice they would not have been able to sell the rice at a competitive price, would have lost sales to competitors, and would not have realized an operating profit, thus putting at risk American Rice Inc.'s and Rice Corporation of Haiti's business operations in Haiti.

4. In addition, beginning in or about 1998 and continuing to in or about August 1999, defendants KAY and MURPHY and other employees and officers of American Rice, Inc. paid and authorized additional bribes to officials of other Haitian agencies to accept the false import documents and other documents which understated the true amount of rice being imported into and sold in Haiti, thereby reducing the amount of sales taxes paid by RCH to the Haitian government.
5. In furtherance of these bribes, defendant KAY directed employees of American Rice, Inc. to prepare two sets of shipping documents for each shipment of rice to Haiti, one that accurately reflected and another that falsely represented the weight and value of the rice being exported to Haiti.
6. In furtherance of these bribes, defendants KAY and MURPHY, acting on his own behalf and as an agent of American Rice, Inc., agreed to pay and authorized the payment of bribes, calculated as a percentage of the value of the rice not reported on the false documents or in

the form of a monthly retainer, to customs and tax officials of the Haitian government to induce these officials to accept the false documentation and to assess significantly lower customs duties and sales taxes than American Rice, Inc. would otherwise have been required to pay.

7. In furtherance of these bribes, defendants KAY and MURPHY authorized employees of American Rice, Inc. to withdraw funds from American Rice, Inc. bank accounts and to pay these funds to officials of the Haitian government, either directly or through intermediary brokers.
8. As a result of the bribes and the Haitian officials' acceptance of the false shipping documents, American Rice, Inc. reported only approximately 66% of the rice it actually imported into Haiti between January 1998 and August 1999 and thereby significantly reduced the amount of customs duties it was required to pay to the Haitian government.
9. As a further result of these bribes, American Rice, Inc., using official Haitian Customs documents reflecting the amounts reported on the false shipping documents, reported only approximately 66% of the rice it sold in Haiti and thereby significantly reduced the amount of sales taxes it was required to pay to the Haitian government.

COUNTS ONE - TWELVE

FOREIGN CORRUPT PRACTICES ACT (15 U.S.C. §78dd-1, 78dd-2))

10. The grand jury incorporates by reference the allegations set forth in paragraphs 1-9 above and charges that:

11. On or about the dates set forth below, in the Southern District of Texas and elsewhere, defendants DAVID KAY and DOUGLAS MURPHY, being domestic concerns and officers of an issuer, American Rice, Inc., as those terms are used in the Foreign Corrupt Practices Act, did use and cause to be used instrumentalities of interstate and foreign commerce, to wit, an overnight express service, facsimile transmissions, and an ocean-going barge, which were used to transport and transmit false shipping documents, corruptly in furtherance of an offer, payment, promise to pay and authorization of the payment of money to foreign officials, to wit, customs officials of the Government of the Republic of Haiti, directly and through third persons, for purposes of influencing acts and decisions of such foreign officials in their official capacities, inducing such foreign officials to do and omit to do acts in violation of their lawful duty, and to obtain an improper advantage, in order to assist American Rice, Inc. in obtaining and retaining business for, and directing business to, American Rice, Inc. and Rice Corporation of Haiti.

COUNT	DATE	BARGE
1	January 6, 1998	<i>LaurieKristie</i>
2	February 20, 1998	<i>Balsa 51</i>
3	April 20, 1998	<i>LaurieKristie</i>
4	June 4, 1998	<i>LaurieKristie</i>
5	June 27, 1998	<i>LaurieKristie</i>
6	October 7, 1998	<i>LaurieKristie</i>
7	December 7, 1998	<i>LaurieKristie</i>
8	February 16, 1999	<i>LaurieKristie</i>
9	April 14, 1999	<i>LaurieKristie</i>

10	May 27, 1999	<i>LaurieKristie</i>
11	June 30, 1999	<i>LaurieKristie</i>
12	August 3, 1999	<i>Blumarlin</i>

All in violation of Title 15, United States Code, Sections 78dd-1(a) and 78dd-2(a), and Title 18, United States Code, Section 2.

COUNT THIRTEEN

CONSPIRACY (18 U.S.C. § 371)

12. The grand jury incorporates by reference the allegations set forth in paragraphs 1-9 above and charges that:
13. From in or about 1992 through in or about September 1999, in the Southern District of Texas and elsewhere, the defendants, DAVID KAY and DOUGLAS MURPHY, and others known and unknown to the Grand Jury, unlawfully, willfully, and knowingly combined, conspired, confederated, and agreed together and with each other to commit offenses against the United States, to wit, violations of the Foreign Corrupt Practices Act, Title 15, United States Code, Sections 78dd-1 and 78dd-2.

OBJECT OF THE CONSPIRACY

14. The defendants engaged in a conspiracy to pay bribes to Haitian officials to induce them to accept false customs declaration and to take other actions, for the purpose of assisting American Rice Inc. in obtaining and retaining business with its customers in Haiti by reducing the duties and taxes American Rice Inc. would otherwise have had to pay. The defendants believed that if American Rice Inc. and Rice Corporation of Haiti were required to pay the full amount of duties and taxes that should have been paid on the imported rice they would not have been able to sell the rice at a competitive price, would have lost sales to competitors, and would not have realized an operating profit, thus putting at risk American Rice Inc.'s and Rice Corporation of Haiti's business operations in Haiti.

MANNER AND MEANS

15. It was a manner and means of the conspiracy that, beginning in or about 1991, defendant MURPHY caused American Rice Inc. to purchase "franchises" from the Haitian government that allowed American Rice Inc. to import rice into Haiti tax-free as a purported humanitarian non-governmental entity. To obtain these franchises, defendant MURPHY authorized payments to a senior Haitian official. Defendant MURPHY believed that obtaining these franchises was an economic necessity without which it could not do business in Haiti.
16. It was further a manner and means of the conspiracy that, beginning in or about 1994, after Haiti imposed an *ad valorem* tax on imports, defendants MURPHY and KAY sought ways to reduce the customs owed on rice imported by American Rice Inc. into Haiti. Defendant MURPHY believed that it would be nearly impossible to stay profitable if ARI paid the full customs duties, so defendants MURPHY and KAY instituted the under-invoicing scheme using third-party boats and caused customs officials to be paid to accept the false invoices.
17. It was further a manner and means of the conspiracy that, in or about 1995, defendants MURPHY and KAY continued the under-invoicing and bribery scheme using shipments carried upon the *M/V LauriKristie*, an ocean-going barge owned by American Rice Inc.
18. It was further a manner and means of the conspiracy that, in or about 1994, defendants MURPHY and KAY caused American Rice Inc. to begin paying commissions to Haitian tax officials to insure that American Rice Inc.'s Haitian subsidiary, Rice Corporation of Haiti, would continue to be treated as a service company that was not obligated to pay certain taxes rather than an importer/retail company.

19. It was further a manner and means of the conspiracy that, in or about 1996, after Haiti imposed a new sales tax system that entailed, among other things, collecting the sales tax on imported goods at the dock and then later filing tax returns reporting actual sales, defendant MURPHY and KAY authorized American Rice Inc. to pay Haitian tax officials to avoid questions into the disparities between the reported amount of imported rice and American Rice Inc.'s actual sales.
20. It was further a manner and means of the conspiracy that, in 1998 and 1999, defendants MURPHY and KAY authorized payments to Haitian customs officials to induce them to accept invoices that reported only a portion of the rice being imported in any individual shipment and to therefore impose lesser customs duties and sales taxes upon the imported rice.
21. It was further a manner and means of the conspiracy that, in or about September 1999, defendants MURPHY and KAY approved the payment of additional amounts to Haitian tax officials to "buy time" in the ongoing dispute between American Rice Inc. and the Haitian tax authority as to the status of American Rice Inc.'s Haitian subsidiary, Rice Corporation of Haiti.
22. It was a manner and means of the conspiracy to pay bribes to obtain a reduction in duties and taxes owed on the imported rice. Between 1998 and 1999, the total amount of duties and taxes owed upon importation equaled 18% of the value of the rice imported. During 1998 and 1999 alone, the defendants anticipated and realized gains, in the form of reduced duties and taxes, of approximately \$1,456,821.

OVERT ACTS

23. In furtherance of the conspiracy, in the Southern District of Texas and elsewhere, the defendants did and caused to be done the following overt acts:
- a. On or about January 6, 1998, the defendants caused 7,718.00 metric tons of rice to be imported into Haiti aboard the *LaurieKristie*, of which they caused American Rice Inc. to report only 6,218.64 metric tons to the Haitian authorities, resulting in a approximate savings of \$72,581 in duties and taxes.
 - b. On or about February 20, 1998, the defendants caused 4,320.19 metric tons of rice to be imported into Haiti aboard the *Balsa 51*, of which they caused American Rice Inc. to report only 3,024.13 metric tons to the Haitian authorities, resulting in a approximate savings of \$62,755 in duties and taxes.
 - c. On or about April 20, 1998, the defendants caused 7,725.35 metric tons of rice to be imported into Haiti aboard the *LaurieKristie*, of which they caused American Rice Inc. to report only 5,633.07 metric tons to the Haitian authorities, resulting in a approximate savings of \$101,308. in duties and taxes.
 - d. On or about June 4, 1998, the defendants caused 7,990.63 metric tons of rice to be imported into Haiti aboard the *LaurieKristie*, of which they caused American Rice Inc. to report only 5,593.44 metric tons to the Haitian authorities, resulting in a approximate savings of \$116,072 in duties and taxes.
 - e. On or about June 27, 1998, the defendants caused 5,494.28 metric tons of rice to be imported into Haiti aboard the *LaurieKristie*, of which they caused American Rice

- Inc. to report only 3,846.02 metric tons to the Haitian authorities, resulting in a approximate savings of \$79,809 in duties and taxes.
- f. On or about October 7, 1998, the defendants caused 8,061.55 metric tons of rice to be imported into Haiti aboard the *LaurieKristie*, of which they caused American Rice Inc. to report only 4,736.20 metric tons to the Haitian authorities, resulting in a approximate savings of \$140,275 in duties and taxes.
- g. On or about December 7, 1998, the defendants caused 8,039.41 metric tons of rice to be imported into Haiti aboard the *LaurieKristie*, of which they caused American Rice Inc. to report only 5,173.36 metric tons to the Haitian authorities, resulting in a approximate savings of \$138,774 in duties and taxes.
- h. On or about February 16, 1999, the defendants caused 7,973.13 metric tons of rice to be imported into Haiti aboard the *LaurieKristie*, of which they caused American Rice Inc. to report only 5,216.24 metric tons to the Haitian authorities, resulting in a approximate savings of \$133,537 in duties and taxes.
- i. On or about April 14, 1999, the defendants caused 7,990.02 metric tons of rice to be imported into Haiti aboard the *LaurieKristie*, of which they caused American Rice Inc. to report only 5,226.27 metric tons to the Haitian authorities, resulting in a approximate savings of \$133,821 in duties and taxes.
- j. On or about May 27, 1999, the defendants caused 7,998.97 metric tons of rice to be imported into Haiti aboard the *LaurieKristie*, of which they caused American Rice Inc. to report only 4,861.31 metric tons to the Haitian authorities, resulting in a approximate savings of \$149,596 in duties and taxes.

- k. On or about June 30, 1999, the defendants caused 6,707.42 metric tons of rice to be imported into Haiti aboard the *LaurieKristie*, of which they caused American Rice Inc. to report only 4,033.84 tons to the Haitian authorities, resulting in a approximate savings of \$129,455 in duties and taxes.
- l. On or about August 3, 1999, the defendants caused 8,300.01 metric tons of rice to be imported into Haiti aboard the *Blumarlin*, of which they caused American Rice Inc. to report only 4,400 metric tons to the Haitian authorities, resulting in a approximate savings of \$188,839 in duties and taxes.

All in violation of Title 18, United States Code, Section 371.

COUNT FOURTEEN

OBSTRUCTION OF JUSTICE (18 U.S.C. § 1505)

24. The grand jury incorporates by reference the allegations set forth in paragraphs 1-9 above and charges that:
25. The U.S. Securities and Exchange Commission is an agency of the United States charged with protecting investors and maintaining the integrity of the securities markets. As such, the Securities and Exchange Commission has regulatory and civil enforcement authority over companies such as American Rice, Inc., whose securities are traded on U.S. stock exchanges, as well as the officers, directors, and employees of such companies, such as defendants MURPHY and KAY.
26. Among other statutes, the Securities and Exchange Commission is charged with enforcing the federal securities laws and related statutes, including the Securities Exchange Act of 1934, 15 U.S.C. § 78, *et seq.*, which requires issuers, among other things, to keep and maintain accurate books and records and to maintain a system of adequate internal controls. In addition, the Securities and Exchange Commission is charged with civil enforcement responsibility over issuers under the Foreign Corrupt Practices Act of 1977, 15 U.S.C. § 78dd-1, *et seq.*, which statute prohibits unlawful payments to foreign public officials and others.
27. Beginning in or about 2001, the Securities and Exchange Commission commenced a proceeding and directed its staff to investigate the actions of American Rice, Inc. and its officers, directors, and employees, including defendants MURPHY and KAY, with respect

to unlawful payments to Haitian officials, making and maintaining false books and records, failing to institute and maintain an adequate system of internal controls, and other matters.

28. On or about October 18, 2001, in Houston, Texas, in the Southern District of Texas, the defendant, DOUGLAS MURPHY, did corruptly influence, obstruct, and impede, and endeavor to influence, obstruct, and impede, the due and proper administration of Securities Exchange Act of 1934, 15 U.S.C. § 78, *et seq.*, the Foreign Corrupt Practices Act of 1977, 15 U.S.C. § 78dd-1, *et seq.*, and other statutes, rules, and regulations, under which a pending proceeding, *i.e.*, *In re American Rice, Inc.* (File No. C-3501-A), was being had before the United States Securities and Exchange Commission, an agency of the United States, by making false and misleading statements concerning the involvement of American Rice, Inc. and its officers and employees in violations of said laws and by denying his own knowledge of the payments to the Haitian officials.

All in violation of Title 18, United States Code, Section 1505.

SENTENCING ALLEGATIONS

29. With respect to each count of the Indictment:
- a. Defendant MURPHY was a leader and organizer and
 - b. Defendant KAY was a manager and supervisor
- of a criminal activity that involved five or more participants and was otherwise extensive.
30. With respect to Counts 1-12 of the Indictment, the anticipated gain for each count from the bribes paid to the Haitian officials, *i.e.*, the resulting reduction in duties and taxes, measured by multiplying the amount of undeclared product by 18%, the aggregate amount of duties and sales taxes that would otherwise have been paid on that product, was as follows:

Count 1:	18% of \$403,228	=	\$ 72,581
Count 2:	18% of \$348,640	=	\$ 62,755
Count 3:	18% of \$562,823	=	\$101,308
Count 4:	18% of \$644,844	=	\$116,072
Count 5:	18% of \$443,382	=	\$ 79,809
Count 6:	18% of \$834,861	=	\$150,275
Count 7:	18% of \$770,967	=	\$138,774
Count 8:	18% of \$741,872	=	\$133,534
Count 9:	18% of \$743,448	=	\$133,821
Count 10:	18% of \$831,088	=	\$149,596
Count 11:	18% of \$719,193	=	\$129,455
Count 12:	18% of 1,049,103	=	\$188,839

31. With respect to Counts 1-13 of the Indictment, the total anticipated gain from the bribes paid to the Haitian officials, measured by the resulting reduction in duties and taxes, was not less than \$1,456,821.
32. With respect to Counts 1-13 of the Indictment, the amounts of bribes paid, or authorized to be paid, by defendants MURPHY and KAY was not less than \$350,000.
33. With respect to Counts 1-13 of the Indictment, defendant MURPHY willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice during the course of the investigation of such offenses by falsely denying on October 18, 2001 knowledge of the payments to the Haitian officials in sworn testimony before officers of the U.S. Securities & Exchange Commission and in the presence of a prosecutor from the Department of Justice and a special agent and analyst of the Federal Bureau of Investigation.

A TRUE BILL:

Date: Houston, Texas
July 15, 2004

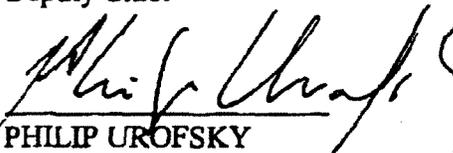
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July 14, 2004 (5:45pm)