

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION,
100 F Street, NE
Washington, D.C. 20549-5533

Plaintiff,

v.

THOMAS WURZEL,

Defendant.

Case: 1:09-cv-01005
Assigned To : Roberts, Richard W.
Assign. Date : 5/29/2009
Description: General Civil

COMPLAINT

Plaintiff, Securities and Exchange Commission ("Commission"), alleges that:

SUMMARY

1. In late 2001 and throughout 2002, Thomas Wurzel ("Wurzel"), a U.S. citizen and resident, was President of California-based ACL Technologies, Inc. ("ACL"), an indirect, wholly-owned subsidiary of United Industrial Corporation ("UIC"). During that time, Wurzel authorized multiple payments to an ACL foreign agent in connection with a military aircraft depot ACL was building for the Egyptian Air Force ("EAF") in Cairo, Egypt, while he knew or consciously disregarded the high probability that the agent would offer, provide or promise at least a portion of such payments to active EAF officials for the purpose of influencing such officials to obtain or retain business for UIC through ACL. As a result, ACL was awarded a Contract Engineering Technical Services ("CETS") contract with gross revenues and net profit to ACL of approximately \$5.3 million and \$267,571, respectively.

2. By authorizing and directing these payments, Wurzel violated, and aided and abetted violations of, the anti-bribery provision of the Foreign Corrupt Practices Act of 1977 (the

“Foreign Corrupt Practices Act” or “FCPA”) and the internal controls and books and records provisions of the federal securities laws as described below, and unless restrained and enjoined by the Court will again violate such provisions. By this Complaint, the Commission respectfully requests that the Court permanently enjoin Wurzel from committing, and from aiding and abetting, violations of the federal securities laws as alleged in this Complaint and ordering him to pay a civil monetary penalty.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e) and 27 of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d), 78u(e) and 78aa].

4. Venue in the District of Columbia is proper pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa].

5. In connection with the conduct described herein, Wurzel made use of the mails or the means or instrumentalities of interstate commerce.

DEFENDANT

6. Wurzel, age 62, is a United States citizen and resides in Bend, Oregon. From 1992 to 2004, Wurzel served as the President of ACL and maintained an office in Brea, California. Wurzel is currently retired and living in Oregon.

OTHER RELEVANT ENTITIES

7. UIC, a Delaware corporation headquartered in Hunt Valley, Maryland, focuses on the design and production of defense, training, transportation and energy systems for the U.S. Department of Defense and domestic and international customers. At the time of the conduct described below, UIC’s common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act, and was listed on the New York Stock Exchange. On December 18,

2007, UIC was acquired by an affiliate of Textron Inc. ("Textron"). Textron's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on the New York Stock Exchange. Following the acquisition, UIC filed a Form 15 Notice of Termination of Registration of its common stock under Exchange Act Section 12(g). UIC survived the acquisition as an indirect wholly-owned subsidiary of Textron. All of the conduct described in this Complaint occurred prior to the acquisition of UIC by Textron.

8. ACL, an indirect, wholly-owned subsidiary of UIC during the relevant period, was formerly headquartered in Brea, California. ACL's parent corporation was AAI Corporation, a direct, wholly owned subsidiary of UIC. ACL developed, operated and maintained stationary and mobile test equipment in support of hydraulics, pneumatics, electrical, mechanical and fuel requirements of commercial and military aircraft.

FACTS

A. Background

9. In October 1999, the U.S. Air Force awarded ACL a project by to build a F-16 combat aircraft depot for the EAF, and to provide, operate and train Egyptian labor to use the associated testing equipment for the depot (the "Egyptian F-16 Depot Project"). ACL was awarded the Egyptian F-16 Depot Project as part of the U.S. Department of Defense's foreign military sale ("FMS") program. FMS contracts generally are purchases by foreign governments from the U.S. Government of weapons and other defense items, services and military training, which the U.S. Government fulfills by entering into contracts with private-sector defense contractors. Accordingly, as the purchaser and ultimate end-user for the F-16 depot facility that would be built, the EAF directed when, to what extent and how money would be spent on the

project.¹ Moreover, the EAF could select a particular contractor for a project it desired through its use of "sole source" requests. A sole source request, if approved by the U.S. Department of Defense and the U.S. Air Force, would avoid the competitive bidding process.

10. In connection with the Egyptian F-16 Depot Project, the EAF submitted a "sole source" request for ACL's services, and ACL in 1999 was awarded the contract for the Project. The original 1999 award included initial funding to ACL of \$14 million under the primary contract for development of the F-16 depot (called the "integration" contract), with an estimated total contract value of \$28 million. In subsequent years, ACL was awarded "add-on" contracts and contract modifications that supplemented its revenues following ACL's initial award of the integration contract. These additional revenues included supplemental funding for the integration contract of approximately \$29.6 million, a separate contract to build a surface treatment facility (or "STF" contract) valued at approximately \$2.7 million, and in April 2002, a new contract to help train Egyptian military personnel to operate the F-16 depot, known as a Contract Engineering Technical Services (or "CETS" contract) ultimately valued at approximately \$5.3 million. In total, the Egyptian F-16 Depot Project, including the principal integration contract, the STF and CETS contracts, and other modifications and add-on contracts, generated approximately \$64 million in revenue and \$8.6 million in net profit for ACL from 1999 through 2004, representing over one-third of ACL's total gross revenues over the same period.

¹ Although the EAF was the ultimate customer for the Egyptian F-16 Depot Project, ACL did not enter into any formal arrangement directly with the EAF; rather, ACL's contractual obligations for the Egyptian F-16 Depot Project were with the U.S. Air Force and ARINC, Inc. (an Annapolis, Maryland-based defense contractor), which were the direct purchasers of ACL's products and services on the Project and supervised logistical and procurement matters.

B. ACL, at Wurzel's Direction, Retained a Former EAF General as Consultant

11. By at least December 1996, Wurzel had enlisted the assistance of a foreign agent, a retired EAF General (the "EAF Agent"), to act as a consultant to ACL to help influence the EAF in moving the Egyptian F-16 Depot Project forward. By at least December 1997, Wurzel also authorized monthly stipends of \$4,000 to the EAF Agent, although ACL did not maintain any due diligence files for the agent at that time and did not have a formal consulting contract with the agent until March 13, 1998 (at which time the agent's monthly stipends were raised to \$20,000). As Wurzel stated in 1997 correspondence to the EAF Agent, the purpose for hiring the agent was clear: "[ACL's] objective, as before, is to convince the EAF to hire us as the integrating contractor" for the Project. The EAF Agent appeared to be well situated to help ACL "convince" the EAF to recommend ACL's hiring because, as a former EAF General, he maintained relationships with current EAF officials who would benefit from the Egyptian F-16 Depot Project; according to ACL's Vice President and Program Manager for the Egyptian F-16 Depot Project, in Egypt "it's a very small community of high-level military people." In addition, Wurzel was aware that the EAF Agent had a personal relationship with at least one active EAF official.

12. Shortly after the Project's initial October 1999 award, Wurzel authorized the EAF Agent, through his company, to continue to act as ACL's consultant for obtaining business. The EAF Agent's role as the company's Egyptian-based "consultant" was continued through a new consulting agreement with the agent in November 1999. That agreement essentially renewed the terms of the prior 1998 consulting contract, including paying the agent a monthly stipend of \$20,000 per month. Although ACL had already been awarded the initial integrating contract for the Egyptian F-16 Depot Project, this new agreement was geared towards helping solicit new or add-on business related to the Project. Wurzel described this understanding of the continuing

consulting relationship in an e-mail to the agent in February 2001: "We are certainly interested in paying for other new business if you can work it. . . . [T]he training effort needs some influence to make sure we are not excluded and the EAF needs to insist on our follow on support after the Depot is in place."

13. In April 2000, several months after the initial October 1999 award, Wurzel also separately authorized the EAF Agent to act as a local labor subcontractor for ACL in connection with its work on the Egyptian F-16 Depot Project. In this role, the EAF Agent was brought under the umbrella of ACL's principal contract with the U.S. Air Force, with the agent's company receiving reimbursement from ACL for coordinating the retention of local labor for the Project. Beginning in the fall of 2000, ACL made periodic payments to the EAF Agent's company for his provision of local labor on the larger Egyptian F-16 Depot Project. The EAF Agent submitted monthly invoices to ACL for these services and included in these invoices were the agent's own expenses as "program manager" on the project with compensation varying between \$4,300 and \$11,100 per month. This compensation was separate from the consulting fees ACL paid to the agent, which by August of 2000 had totaled over \$434,000. However, because ACL rolled the EAF Agent's subcontract labor expenses into ACL's submission to the U.S. Air Force for reimbursement of its aggregate material costs on the Egyptian F-16 Depot Project, ACL routinely was late in making payment to the EAF Agent's company under the labor subcontract.

14. By mid-2001, ACL had satisfied its remaining obligations under the consulting agreement executed with the EAF Agent in November 1999, and it was not renewed. However, as articulated in an e-mail from the EAF Agent in June 2001, Wurzel had promised "to continue paying us the consultant fee either through the service contract or any other way." As a result, from mid-2001 through 2002, the EAF Agent regularly contacted Wurzel to request a variety of

payments, a portion of which related to reimbursement to the EAF Agent's company for the legitimate provision of local labor on the Project, and a portion of which were requests for additional funds in circumstances that strongly indicated they would be used to make illicit payments. Wurzel approved payments for additional funds and he also knew that the EAF Agent charged ACL for his subcontract labor at a rate that enabled the agent to maintain a cushion between what he paid the project's local employees and what he received from ACL; this cushion was on top of the agent's own salary as "project manager" of the subcontract labor.

C. Illicit Payments Tied to CETS Contract

(i) *Improper payments through cushion in EAF Agent's invoices*

15. During early 2001, ACL targeted a new contract from the U.S. Air Force, known as CETS, which was related to the Egyptian F-16 Depot Project. The CETS contract involved providing personnel for technical assistance on-site at Helwan Air Force Base in Cairo, Egypt, where the depot was being constructed, so that EAF personnel could get hands-on training to do testing and make repairs to their aircraft. The EAF Agent assisted ACL with obtaining this contract add-on, and in August 2001, ACL learned that the EAF had submitted to the U.S. Air Force its recommendation that ACL be awarded a "sole source" contract for the CETS project.

16. In December 2001, months before the CETS project would be officially awarded to ACL, the EAF Agent e-mailed Wurzel telling him that ACL could expect the formal award of CETS in the near future because the EAF Agent had "succeeded to make the [EAF] give all the pressure on the USAF to finalize the sole source" The EAF Agent then added, "[i]t is very important to start giving motivation that we discussed to give it before the year end. It was better to give it before the feast but we cant [sic] do this now." To help provide the "motivation," the EAF Agent requested an advance of funds separate and apart from payments due on his invoices under his local labor subcontract. Although no separate payments were made by ACL at the

time, within a week, at the direction of Wurzel, ACL wired the EAF Agent approximately \$114,000 against invoices received from the agent for labor subcontract services.

17. In January 2002, the EAF Agent again emailed Wurzel requesting funds to cover due invoices, plus additional funds to “secure our team loyalty . . . as you have started to have some doubts about ou[r] commitment with them.” When ACL had not forwarded any new money to the EAF Agent by late February 2002, the EAF Agent sent another more pressing e-mail to Wurzel: “Congratulations on the CETS contract. Thank[] God that our key persons are still on their position till now. We are now in a very critical situation to really get the benefit out [sic] this contract. We should satisfy our people and really we can not do that from our resources as we used to do before.” The EAF Agent then asked for an “urgent response” from Wurzel regarding a list of payment requests, including past due invoices for his labor subcontract work in the approximate amount of \$171,000, a separate advance payment of \$300,000, a “CETS lump Sum Payment of 50% from our 8% fee from the contract value as agreed before,” and “[c]ontinuing a consultation monthly fee for the remaining 50%.” In March 2002, at Wurzel’s direction, ACL wired the EAF Agent amounts due on his past-due labor subcontract invoices, although it did not advance him monies for his separate funding requests outlined in his February e-mail.

18. On April 4, 2002, after having received payments from ACL on his past due invoices but not having received any additional monies, the EAF Agent e-mailed another payment request to Wurzel. This time, the EAF Agent told Wurzel that he was planning to use the additional money “to motivate people and secure our business specially [sic] the CETS.” (Emphasis in original). Making it clear that the agent was distinguishing between payments to him to “secure our business” and payments to him for his provision of subcontract labor, the EAF Agent added “[a]lso please bare [sic] in mind that the due invoices for domestic services

reached US \$272,120” (referring to subcontract labor invoices submitted to ACL for February and March 2002). Later that day, and without questioning the EAF Agent’s stated purpose for the funds, Wurzel responded that ACL would “advance” monies to the agent, but would offset the payment against pending labor subcontractor invoices for services provided by the EAF Agent; ACL paid the EAF Agent four days later.

19. On April 30, 2002, ACL received the official award of the CETS subcontract from the U.S. Air Force’s designated contractor Aeronautical Radio, Incorporated (“ARINC”), with an initial funding to ACL in the amount of \$500,000. Internal documents reflect that, around this time, ACL had estimated that the total potential contract revenues for the CETS program, if awarded, were approximately \$8 million.

(ii) *Improper \$100,000 “advance” payment to the EAF Agent*

20. On June 4, 2002, the EAF Agent again requested monies separate and apart from the regular payments ACL was making to him on his labor subcontract invoices. Noting the recent success regarding ACL’s receipt of sole source letters for the CETS project and a separate project for a surface treatment facility (known as the “STF” project), the EAF Agent added “our people should be awarded before the next PMR, [sic] it is very important to keep the pressure to get all the allocated budget of the US\$8M” (referring to the anticipated total value of the CETS contract). Apparently frustrated that ACL had offset its prior payments to him against the agent’s invoices for subcontract labor, the EAF Agent specifically requested that these new monies not be deducted from his labor invoices; rather, the EAF Agent requested that ACL send “at least US\$200,000 before the next PMR to fulfil [sic] the present commitment This will help keep[] the pressure to get all the CETS budget as well as the [surface treatment facility project] which is [in] the final phase.” Wurzel responded in an e-mail by noting that ACL included \$40,000 per month for the EAF Agent’s services under the CETS contract which “will

permit you to meet all your obligations;" since the initiation of the CETS contract had been delayed, however, Wurzel suggested that ACL could pay the EAF Agent an advance under the existing integration contract.

21. Two days later on June 6, 2002, the EAF Agent again emailed Wurzel, this time requesting approximately \$200,000 in past due labor subcontract invoices and an additional \$100,000 advance payment; the EAF Agent added that "[t]his could help us fulfil [sic] the commitment" Wurzel responded by instructing the EAF Agent to send ACL a \$100,000 invoice, and to type on the invoice, among other things, that "THIS INVOICE IS FOR ADVANCE PAYMENT OF RENTAL OF EQUIPMENT AND CONTRACTING OF MATERIAL AND SERVICES UNDER THE F-16 EAF DEPOT INTEGRATION CONTRACT" (capitalization in original). There is no indication in the correspondence between Wurzel and the EAF Agent, or elsewhere, that there was any actual need for "rental equipment" or "advance" payments for other of the agent's services given that he billed for his labor services in the ordinary course of business.

22. On June 10, 2002, bypassing typical protocol that required the EAF Agent to submit his labor subcontract invoices first to ACL's on-site project manager for his review and approval, the EAF Agent e-mailed an invoice directly to Wurzel using the language specified by ACL's president. That day, Wurzel affixed his signature to the invoice and authorized the \$100,000 advance payment to the agent. Relying on the invoice drafted at Wurzel's direction, ACL then inaccurately recorded the \$100,000 advance on its books as a bona fide "material" expense of the Egyptian F-16 Depot Project; instead, the \$100,000 advance was paid to the EAF Agent based on a concocted invoice for reasons that were not transparent, and was approved through the circumvention of a company process designed to ensure that identifiable legitimate services had been or were being provided.

(iii) *Improper \$50,000 "marketing" payment to the EAF Agent*

23. In the Fall of 2002, the EAF Agent continued to press Wurzel for additional payments that had no relation to his labor subcontract services, suggesting cryptically in an e-mail that the new monies were needed to meet "commitments" and to "keep the momentum." This language was consistent with that in prior e-mails, which had suggested that the EAF Agent would use such monies to influence officials who could recommend the award of business to ACL. Wurzel agreed to provide the agent with additional funds – this time through a purported "marketing contract." By using this vehicle to provide the EAF Agent with funds, Wurzel caused ACL to pay the EAF Agent from ACL's own funds outside those associated with the Egyptian F-16 Depot Project. In December 2002, the EAF Agent sent an invoice for \$50,000 to ACL for "[m]arketing service for the period from July 02 – December 02," and Wurzel, without further inquiry as to the nature of the services provided, authorized payment of the invoice. ACL neither created nor executed any new marketing agreement with the EAF Agent that would cover this \$50,000 payment.

24. Between the Fall of 2002 and 2004, ACL was awarded an additional five CETS funding contracts (or "modifications") worth a total of \$4.7 million. Combined with ACL's initial funding for the contract received in late April 2002, ACL received total gross revenue of approximately \$5.3 million, and net profits of \$267,571, for its work on the CETS contract.

D. Fraudulent "Repayment" of \$100,000 Advance

25. In January 2004, Wurzel traveled to Egypt to visit the site of the Egyptian F-16 Depot Project. During this trip, Wurzel attended a meeting with the EAF Agent, ACL's Vice President and the company's on-site project manager at the project manager's apartment in Cairo. During this meeting, Wurzel indicated that ACL would forgive the \$100,000 debt the EAF Agent owed the company as a result of the advance payment made to the Agent in June

2002. Rather than forgive the debt in a direct and transparent manner, Wurzel approved a plan for the agent to submit false invoices to ACL to make it appear that the agent had repaid the \$100,000 advance. The scheme Wurzel approved would have the agent "repay" the \$100,000 advance in ten equal installments by putting a \$10,000 credit on the EAF Agent's labor subcontract invoices for a ten month period. To offset any real repayment of the debt, Wurzel also approved the EAF Agent's expenses to be inflated on each of the ten invoices at least by the amount of the \$10,000 credit. By approving this scheme, Wurzel authorized his subordinates to process fraudulent invoices from the EAF Agent, and thereby circumvented ACL's controls for accurate supporting documentation for disbursements to third party agents.

26. In March 2004, the scheme was put into effect. At that time, ACL first received subcontract labor invoices from the EAF Agent covering the January 2004 service period, which reflected a \$10,000 credit for "Advance pay back." The same January 2004 invoice showed that the agent's aggregate cost for his subcontract labor had increased by slightly more than \$10,000 as compared to his aggregate labor cost for the same work for December 2003. The EAF Agent's increase in labor costs, as shown by the invoices, was directly attributable to a categorical increase in the monthly salary rates for each type of labor provided to the Egyptian F-16 Depot Project (aggregating to slightly more than \$10,000). For the next nine months, through the October 2004 service period, the EAF Agent's invoices reflected the monthly \$10,000 credit deducted from his total costs, until the debt was "repaid." For seven of those nine months, until September 2004, the EAF Agent's invoices also reflected the inflated labor rates. In September 2004, in response to a new initiative by the U.S. Air Force to contain ACL's costs on the project, ACL required the EAF Agent's rates to be reduced to approximately their 2003 levels. By this time, Wurzel had left the company, having been terminated from his position as a result of the roll-up of ACL's business to AAI Corporation.

CLAIMS FOR RELIEF

FIRST CLAIM

Wurzel Violated Exchange Act Section 30A

27. Paragraphs 1 through 26 are re-alleged and incorporated by reference.

28. Section 30A(a)(3) prohibits any issuer, or any officer, director, employee, or agent of such issuer to make use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official for the purposes of influencing their acts or decisions in their official capacity, inducing them to do or omit to do actions in violation of their lawful duties, securing any improper advantage, or inducing such foreign officials to use their influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality in order to assist such issuer in obtaining or retaining business for or with, or directing business to, any person.

29. By reason of the foregoing, Wurzel violated the anti-bribery provisions of the FCPA, as codified at Section 30A of the Exchange Act [15 U.S.C. § 78dd-1].

SECOND CLAIM

Wurzel Aided and Abetted Violations of Exchange Act Section 30A

30. Paragraphs 1 through 29 are re-alleged and incorporated by reference.

31. As a consequence of the conduct described above, UIC violated the anti-bribery provisions of the FCPA as codified at Exchange Act Section 30A [15 U.S.C. § 78dd-1], and Wurzel knowingly provided substantial assistance to UIC in connection with its violations of Section 30A of the Exchange Act [15 U.S.C. § 78dd-1].

32. By reason of the foregoing, and pursuant to Section 20(e) of the Exchange Act, Wurzel aided and abetted UIC's violations of Exchange Act Section 30A [15 U.S.C. § 78dd-1].

THIRD CLAIM

Wurzel Violated Exchange Act Section 13(b)(5) and Exchange Act Rule 13b2-1

33. Paragraphs 1 through 32 are re-alleged and incorporated by reference.

34. As described above, Wurzel knowingly circumvented a system of internal accounting controls. Wurzel also directly or indirectly falsified, or caused to be falsified, UIC's books and records.

35. By reason of the foregoing, Wurzel violated Exchange Act Section 13(b)(5) [15 U.S.C. § 78m(b)(5)] and Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1].

FOURTH CLAIM

Wurzel Aided and Abetted UIC's Violation of Exchange Act Section 13(b)(2)(A)

36. Paragraphs 1 through 35 are re-alleged and incorporated by reference.

37. As detailed above, UIC violated Exchange Act Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)] by failing to make and keep books and records which, in reasonable detail, accurately and fairly reflected UIC's transactions and disposition of its assets. Through his conduct as described above, Wurzel knowingly provided substantial assistance to UIC in connection with its violations of this provision.

38. By reason of the foregoing, and pursuant to Section 20(e) of the Exchange Act, Wurzel aided and abetted UIC's violation of Exchange Act Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)].


PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a judgment:

- A. Permanently enjoining Defendant Wurzel from violating Exchange Act Sections 30A and 13(b)(5) [15 U.S.C. §§ 78dd-1 and 78m(b)(5)] and Exchange Act Rule 13b2-1 [17 C.F.R. § 240.13b2-1];
- B. Permanently enjoining Defendant Wurzel from aiding and abetting violations of Exchange Act Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)];
- C. Ordering Wurzel to pay a civil penalty pursuant to Sections 21(d)(3) and 32(c) of the Exchange Act [15 U.S.C. §§ 78u(d)(3) and 78ff(c)]; and
- D. Granting such further relief as this Court may deem just and appropriate.

Dated: May 29, 2009

Respectfully submitted,



Charles D. Stodghill (Bar No. 256792)
Christopher R. Conte (Bar No. 419774)
Charles E. Cain (Bar No. 461527)
Michael E. Coe (Bar No. 429041)
Giles T. Cohen (Bar No. 469544)

SECURITIES AND EXCHANGE COMMISSION
Division of Enforcement
100 F Street, N.E., Mail Stop #4010A
Washington, DC 20549
Tel.: (202) 551-4413 (Stodghill)
Fax.: (202) 772-9246 (Stodghill)
Email: stodghillc@sec.gov
Attorneys for Plaintiff