

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION,
100 F Street, N.E.
Washington, DC 20549,

Plaintiff,

v.

CON-WAY INC.,
c/o Charles F. Walker, Esq.
Jennifer L. Spaziano, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, DC 20005,

Defendant.

Case: 1:08-cv-01478
Assigned To : Sullivan, Emmet G.
Assign. Date : 8/27/2008
Description: General Civil

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission") alleges as follows:

SUMMARY

1. The Commission seeks the imposition of a civil penalty against Defendant Con-way Inc. ("Defendant" or "Con-way").
2. This matter involves Con-way's violations of the books and records, and internal controls provisions of the Foreign Corrupt Practices Act ("FCPA") through a Philippine-based firm, Emery Transnational. From 2000 to 2003, Emery Transnational made hundreds of small payments totaling at least \$417,000 to Philippine customs officials and to officials of numerous majority foreign state-owned airlines. These

payments were made with the purpose and effect of improperly influencing these foreign officials to assist Emery Transnational to obtain or retain business. In connection with these improper payments, Con-way failed to accurately record these payments on the company's books and records, and knowingly failed to implement or maintain a system of effective internal accounting controls.

JURISDICTION

3. This Court has jurisdiction pursuant to Sections 21(d)(3) and 27 of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78u(d)(3) and 78aa].

DEFENDANT

4. Con-way Inc. is a Delaware corporation with its headquarters in San Mateo, California. Con-way is an international freight transportation and logistics services company that conducts operations in a number of foreign jurisdictions. During the relevant period, the company was named CNF, Inc. The company changed its name to Con-way in April 2006. Con-way's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is traded on the New York Stock Exchange.

OTHER RELEVANT ENTITIES

5. Menlo Worldwide Forwarding, Inc. ("Menlo Forwarding") was a wholly-owned U.S.-based subsidiary of Con-way that Con-way purchased in 1989. During the relevant period, Menlo Forwarding was named Emery Air Freight Corporation and was headquartered in Redwood City, California. Menlo Forwarding had a 55% voting

interest in Emery Transnational. Con-way sold Menlo Forwarding to United Parcel Service of America, Inc. ("UPS") in December 2004.

6. Emery Transnational was a Manila, Philippines-based firm engaged in shipping and freight operations within the Philippines. Emery Transnational was also sold to UPS in December 2004.

FACTS

7. During the relevant period, Con-way and Menlo Forwarding engaged in little supervision or oversight over Emery Transnational. Neither Con-way nor Menlo Forwarding took steps to devise or maintain internal accounting controls concerning Emery Transnational, to ensure that it acted in accordance with Con-way's FCPA policies, or to make certain that its books and records were detailed or accurate.

8. During the relevant period, Con-way and Menlo Forwarding required only that Emery Transnational periodically report back to Menlo Forwarding its net profits, from which Emery Transnational then paid Menlo Forwarding a yearly 55% dividend. Menlo Forwarding incorporated the yearly 55% dividend into its financial results, which were then consolidated in Con-way's financial statements. Neither Con-way nor Menlo Forwarding asked for or received any other financial information from Emery Transnational. Accordingly, neither Con-way nor Menlo Forwarding maintained or reviewed any of the books and records of Emery Transnational – including the records of operating expenses, which should have reflected the illicit payments made to foreign officials.

9. Emery Transnational made hundreds of small payments to foreign officials at the Philippines Bureau of Customs and the Philippine Economic Zone Area

between 2000 and 2003 in order to obtain or retain business. These payments were made to influence the acts and decisions of these foreign officials and to secure a business advantage or economic benefit. By these payments, foreign officials were induced to: (i) violate customs regulations by allowing Emery Transnational to store shipments longer than otherwise permitted, thus saving the company transportation costs related to its inbound shipments; and (ii) improperly settle Emery Transnational's disputes with the Philippines Bureau of Customs, or to reduce or not enforce otherwise legitimate fines for administrative violations.

10. To generate funding for these payments, Emery Transnational employees submitted a Shipment Processing and Clearance Expense Report ("SPACER") to Emery Transnational's finance department. These SPACER reports requested cash advances to complete customs processing. The cash advances were then issued via checks made payable to Emery Transnational employees, who cashed the checks and paid the money to designated foreign officials. Unlike legitimate customs payments, the payments at issue were not supported by receipts from the Philippines Bureau of Customs and the Philippine Economic Zone Area. Emery Transnational did not identify the true nature of these payments in its books and records. During the period 2000 to 2003, these payments total at least \$244,000.

11. Emery Transnational, in order to obtain or retain business, also made numerous payments to foreign officials at fourteen state-owned airlines that did business in the Philippines between 2000 and 2003. These payments were made with the intent of improperly influencing the acts and decisions of these foreign officials and to secure a business advantage or economic benefit. Emery Transnational made two types of

payments. The first type of payments were known as “weight shipped” payments, which were made to induce airline officials to improperly reserve space for Emery Transnational on the airplanes. These payments were valued based on the volume of the shipments the airlines carried for Emery Transnational. The second type of payments were known as “gain shares” payments, which were paid to induce airline officials to falsely under-weigh shipments and to consolidate multiple shipments into a single shipment, resulting in lower shipping charges. Emery Transnational paid the foreign officials 90% of the reduced shipping costs.

12. Both types of payments to foreign airline officials were paid in cash by members of Emery Transnational’s management team. Checks reflecting the amount of the “weight shipped” and “gain shares” payments were issued to these managers, who cashed the checks and personally distributed the cash payments to the foreign airline officials. Emery Transnational did not characterize these payments in its books and records as bribes. During the period 2000 to 2003, these payments totaled at least \$173,000. Neither Con-way nor Menlo Forwarding requested or received any records of these payments, or any of Emery Transnational’s expenses, during this period.

FIRST CLAIM

[Violations of Exchange Act Section 13(b)(2)(A)]

13. Paragraphs 1 through 12 are realleged and incorporated by reference.

14. Section 13(b)(2)(A) of the Exchange Act requires public companies to make and keep books, records, and accounts that accurately and fairly reflect the transactions and dispositions of their assets.

15. As described above, Con-way's books, records, and accounts did not properly reflect the illicit payments made by Emery Transnational to Philippine customs officials and to officials of majority state-owned airlines. By reason of the foregoing, Con-way violated Exchange Act Section 13(b)(2)(A) [15 U.S.C. § 78m(b)(2)(A)].

SECOND CLAIM

[Violations of Exchange Act Section 13(b)(2)(B)]

16. Paragraphs 1 through 15 are realleged and incorporated by reference.

17. Section 13(b)(2)(B) of the Exchange Act requires public companies to devise and maintain a system of internal controls sufficient to provide reasonable assurances that: (i) transactions were executed in accordance with management's general or specific authorization; and (ii) transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for its assets.

18. As described above, Con-way failed to devise or maintain sufficient internal controls to ensure that Emery Transnational complied with the FCPA and to ensure that the payments it made to foreign officials were accurately reflected on its books and records. By reason of the foregoing, Con-way violated Exchange Act Section 13(b)(2)(B) [15 U.S.C. § 78m(b)(2)(B)].

THIRD CLAIM

[Violations of Exchange Act Section 13(b)(5)]

19. Paragraphs 1 through 18 are realleged and incorporated by reference.

20. Section 13(b)(5) of the Exchange Act prohibits any person or company from knowingly circumventing or knowingly failing to implement a system of internal accounting controls as described in Section 13(b)(2)(B), or knowingly falsifying any book, record, or account as described in Section 13(b)(2)(A).

21. By knowingly failing to implement a system of internal accounting controls concerning Emery Transnational, Con-way violated Exchange Act Section 13(b)(5) [15 U.S.C. § 78m(b)(5)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a judgment directing Defendant Con-way Inc. to pay a civil penalty in the amount of \$300,000 pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

Respectfully submitted,



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