

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA	:	Hon.
	:	
	:	Crim. No. 15- 357(MLC)
	:	
v.	:	18 U.S.C. § 371
	:	15 U.S.C. §§ 78dd-2(a) & 2(i)
JAMES McCLUNG	:	18 U.S.C. § 2

INFORMATION

The defendant having waived in open court prosecution by indictment, the United States Department of Justice, Criminal Division, Fraud Section; and the United States Attorney for the District of New Jersey charge:

At times relevant to this Information:

COUNT ONE
(Conspiracy to Violate the Foreign Corrupt Practices Act)

Relevant Statutory Background

1. The Foreign Corrupt Practices Act of 1977, as amended, Title 15, United States Code, Sections 78dd-1, *et seq.* (the "FCPA"), was enacted by Congress for the purpose of, among other things, making it unlawful for certain classes of persons and entities to act corruptly in furtherance of an offer, promise, authorization, or payment of money or anything of value to a foreign government official for the purpose of assisting in obtaining or retaining business for, or directing business to, any person.

Relevant Entities and Individuals

2. Berger Group Holdings, Inc. ("BGH"), was a privately held Delaware corporation that controlled a group of companies that provided consulting services in global infrastructure engineering, environmental science, and economic development, and was thus a "domestic concern" as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(1)(B).

3. Louis Berger International, Inc. ("LBI"), was a company incorporated under the laws of New Jersey and, thus, was a "domestic concern" as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(1)(B). LBI was a wholly-owned subsidiary of BGH, and as part of a corporate restructuring assumed responsibility for all international operations and liabilities of BGH previously conducted by other BGH subsidiaries or affiliates (hereinafter collectively referred to as "the Company"). The Company was a privately-held consulting firm that provided engineering, architecture, program and construction management services.

3. The defendant, JAMES McCLUNG, was a citizen and national of the United States who was employed by the Company as a Senior Vice-President and was thus a "domestic concern" as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(h)(1)(A), and an employee and agent of a domestic concern, as those terms are used in the FCPA, Title 15, United States Code, Sections 78dd-2(a) and 78dd-2(h)(1)(B), and a "United States person" as that term is used in the FCPA, Title 15, United States Code, Section 78dd-2(i). Defendant McCLUNG maintained a residence in India.

4. "Employee 1" was a citizen and national of Vietnam employed by the Company in Vietnam in various roles, including business development. "Employee 1" owned or controlled several entities, including Firm A and Firm B, which received payments from the Company and which served as conduits for bribe payments to Vietnamese government officials.

6. "The Foundation" was a non-government organization that the Company engaged as its local sponsor in Vietnam and which served as a key source for local labor and operational support in Vietnam, as well as a conduit for bribe payments to Vietnamese government officials.

The Conspiracy

7. From in or around 2000, through in or around August 2010, in the District of New Jersey and elsewhere, the defendant,

JAMES McCLUNG,

did willfully, that is, with the intent to further the object of the conspiracy, and knowingly conspire, confederate, and agree with others to commit offenses against the United States, that is, being a domestic concern and an employee and agent of the Company, a domestic concern, to willfully make use of the mails and means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, offer, gift, promise to give, and authorization of the giving of anything of value to a foreign official and to a person, while knowing that all or a portion of such money and thing of value would be and had been offered, given, and promised to a foreign official, for purposes of (i) influencing

acts and decisions of such foreign official in his or her official capacity; (ii) inducing such foreign official to do and omit to do acts in violation of the lawful duty of such official; (iii) securing an improper advantage; and (iv) inducing such foreign official to use his or her influence with a foreign government and agencies and instrumentalities thereof to affect and influence acts and decisions of such government and agencies and instrumentalities, in order to assist the domestic concerns in obtaining and retaining business for and with, and directing business to, the Company and others, contrary to Title 15, United States Code, Section 78dd-2(a).

Object of the Conspiracy

8. The object of the conspiracy was to make and conceal corrupt payments to foreign officials in India and Vietnam in order to obtain and retain contracts with government entities in those countries and thus to enrich the Company and the co-conspirators, including defendant McCLUNG, with the full economic benefits anticipated from such contracts.

Manner and Means of the Conspiracy

9. The manner and means by which defendant McCLUNG and his co-conspirators sought to accomplish the object of the conspiracy included, among other things, the following:

a. Defendant McCLUNG, together with others while in the District of New Jersey and elsewhere, would and did discuss in person, via telephone, and via electronic mail ("e-mail") making bribe payments to foreign

government officials, including foreign government officials in India and Vietnam, to secure their assistance in awarding business to the Company.

b. Defendant McCLUNG, together with others, while in the District of New Jersey and elsewhere, would and did offer to pay, promise to pay and authorize the payment of bribes, directly and indirectly, to and for the benefit of foreign government officials, including foreign government officials in India and Vietnam to secure their assistance in awarding business to the Company.

c. Defendant McCLUNG, together with others, while in the District of New Jersey and elsewhere, would and did discuss in person, via telephone and via e-mail the manner and means by which the bribe payments were to be paid.

d. Defendant McCLUNG, together with others, while in the District of New Jersey and elsewhere, would and did use terms like "field operation expenses" as code words to conceal the true nature of the bribe payments and by utilizing cash disbursement forms and invoices which did not truthfully describe the services provided or the purpose of the payment.

e. Defendant McCLUNG, together with others, while in the District of New Jersey and elsewhere, would use the Foundation, Employee 1, Firm A, and Firm B as conduits for the payment of bribes to foreign government officials in Vietnam to conceal the bribe payments.

f. Defendant McCLUNG, together with others, while in the District of New Jersey and elsewhere, would and did cause to be wired certain

funds from the bank accounts of the Company in New Jersey for the purpose of making payments to foreign government officials in exchange for the officials' assistance in awarding business to the Company.

g. Defendant McCLUNG, together with others, while in the District of New Jersey and elsewhere, would make and cause to be made bribe payments directly and indirectly to foreign government officials, including to foreign government officials in India and Vietnam.

h. Members of the conspiracy, while in the District of New Jersey and elsewhere, would create ostensibly legitimate but ultimately illicit accounts, or "slush funds," for the payment of bribes through third parties.

Overt Acts

10. In furtherance of the conspiracy and to achieve the object thereof, at least one of the co-conspirators committed or caused to be committed, in the District of New Jersey and elsewhere, at least one of the following overt acts, among others:

Bribery of Vietnamese Officials

(1) On or about February 9, 2007, an employee of the Company sent an email stating, "I need a [sic] detailed info on which proposals work is being done for as well as descriptions of other staff invloved [sic] in this. 25K is a handsom [sic] amount of money and more information is required."

(2) On or about February 10, 2007, an employee of the Company responded to the email referenced in Overt Act (1), stating, "I am ok to tell you what is to be paid for. But I am thinking whether it should be

written throw [sic] email or not. So I think better [the regional director] will tell you today.”

(3) On or about February 10, 2007, an employee of the Company responded to the email referenced in Over Act (2) above, stating, “No problem with detailed description—but probably not via email message. I’ll contact [defendant McCLUNG] via telephone or sms. Could you please check with [defendant McCLUNG], say Sunday evening, and process the fund request.”

(4) On or about February 3, 2008, an employee of the Company sent an email to defendant McCLUNG and others stating, “I’ll be requesting personal advance from Bangkok office (THB equivalent to about US\$13,000). Mr. McClung has approved this request.”

(5) On or about May 6, 2008, an employee of the Company sent an e-mail to Employee 1 stating,

Need urgent help from you. Need a [sic] invoice from either [Firm A or Firm B] to liquidate my advance for you know what..... Can you send me an [sic] signed invoice statement (as usual) with the following: . . . In reference with above, we are herewith submitting invoice in the amount of US\$13,000—logistics support and travel cost.

(6) On or about August 26, 2008, a divisional accountant of the Company sent an email to another accountant at the company working in Morristown, New Jersey, stating, “Here is the settlement of [the regional director’s] advance \$13,657.72. the [sic] amount paid was Thai Baht 425,705 (equivalent to US\$13,000). The Main Frame was using different exchange rate [sic] that’s why the advance per your book was \$13,657.52.”

(7) On or about April 20, 2010, an employee of the Company sent an email to defendant McCLUNG describing a meeting with another agent of the Company regarding several projects, stating,

[The Company's agent] stated that he agreed to \$200,000 for [the previous director of the government customer], wants to pay \$15,000 to [a government official] in Hanoi, wants to pay \$10,000 to [another government official] He explained that he had discussed these figures of \$200,000 for [government customer] only, with [defendant McCLUNG] and [defendant McCLUNG] had agreed to it. I told him that I will discuss with [defendant McCLUNG] and will get back to him about the total costs. [. . .] The new [government agency] director and some other [agency] staff is [sic] already asking for money.

(8) On or about July 2, 2010, an agent of the Company sent an email to an accountant for the Company "RE: Funds for Danang" stating, "Just to let you know that \$30,124 has been credited in my account on July 1, 2010."

Bribery of Indian Officials

(9) On or about December 30, 2009, a consortium partner sent an email to agents of the Company stating, "I enclose the working for the shares between firms for the Goa Project. Pls go through the same and we could discuss. Pls see the sheet 'Master.'"

(10) On or about August 17, 2010, a consortium partner sent an email to defendant McCLUNG stating, "As discussed I enclose the details as provided by [third party intermediary]. I have also added the details of amounts paid to [the Company] as of date by [the consortium partner] in the same sheet." The attachment included an entry, "Paid directly by [an employee of the Company] to Minister on behalf of agent."

(11) On or about August 26, 2010, a consortium partner prepared a payment tracking schedule stating that the Company had paid \$976,630 in bribes in connection with the Goa Project to date.

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

COUNT TWO
(Violation of the Foreign Corrupt Practices Act)

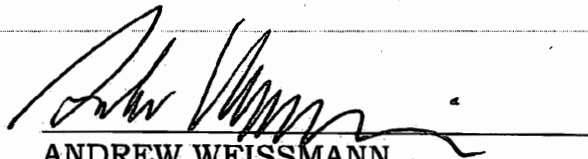
1. Paragraphs 1 through 7 and 9 through 10 of Count One are realleged and incorporated by reference as though fully set forth herein.
2. On or about February 10, 2010, in the District of New Jersey and elsewhere, the defendant,

JAMES McCLUNG,

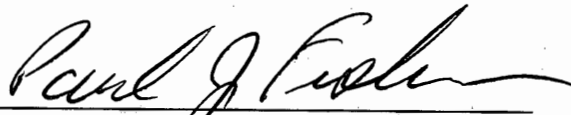
being a domestic concern, an employee and agent of a domestic concern, and a United States person, did willfully do an act outside the United States corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of money, offer, gift, promise to give, and authorization of the giving of anything of value to a foreign official, and to a person, while knowing that all or a portion of such money and thing of value would be and had been offered, given, and promised to a foreign official, for purposes of (i) influencing acts and decisions of such foreign official in his or her official capacity; (ii) inducing such foreign official to do and omit to do acts in violation of the lawful duty of such official; (iii) securing an improper advantage; and (iv) inducing such foreign official to use his or her influence with a foreign government and agencies and instrumentalities thereof to affect and influence acts and decisions of such

government and agencies and instrumentalities, in order to assist the domestic concerns in obtaining and retaining business for and with, and directing business to, the Company and others, to wit, executing a contract that promised to pay a third party \$21,420 for the purpose of passing on all or a portion of that money to Indian government officials in exchange for their assistance in helping to secure the Guwahati project for and on behalf of the Company.

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



ANDREW WEISSMANN
CHIEF, FRAUD SECTION
CRIMINAL DIVISION
U.S. DEPARTMENT OF JUSTICE



PAUL J. FISHMAN
UNITED STATES ATTORNEY
DISTRICT OF NEW JERSEY