

## United States v. York International Corp. (D.D.C. 2007)

### Nature of the Business.

Procurement of contracts to supply air compressors, air conditioners, air-cooled package units and spare parts to governmental entities in Iraq, the United Arab Emirates, and several other countries by York International Corp. ("York International"), a U.S. corporation, which is a major global supplier of heating, ventilation, air conditioning and refrigeration products. York International is now owned by U.S.-based Johnson Controls. York International maintained subsidiary entities around the world, including York Air Conditioning and Refrigeration FZE ("York FZE") in Dubai and York Air Conditioning and Refrigeration, Inc. ("York Inc."), a Delaware corporation.

### Influence to be Obtained.

In April 1995, the U.N. adopted Security Council Resolution 986, which permitted the government of Iraq to sell oil and to use proceeds from those sales to purchase humanitarian supplies such as food for the Iraqi people ("U.N. Oil-for-Food Program"). In an extensive scheme, the Iraqi government received illicit payments in the form of surcharges from oil purchasers and kickbacks, often termed "after sales service fees," from humanitarian goods suppliers. The kickback payments were masked by inflating the contract price, usually by 10% of the contract value. From November 2000 to March 2003, York FZE used a Jordanian company as an intermediary to make a series of indirect kickback payments to the Iraqi government in exchange for receiving contracts to supply its products to various Iraqi ministries and governmental departments. In 2003–04, York Inc. used one of its employees, a Syrian sales manager, to make payments to an intermediary, which is suspected of passing along the payments to governmental appointees responsible for managing the construction of a luxury hotel and convention complex. From September 1999 through December 2005, York Inc. and York FZE used contractors and false invoices to extract cash from the companies that was, in turn, used to make hundreds of kickback or bribe payments.

### Enforcement.

On October 1, 2007, York International entered into a three-year deferred prosecution agreement ("DPA") with the DOJ. The criminal information attached to the agreement charges York International with wire fraud and violation of the books and records provisions of the FCPA, as well as conspiracy to commit such offenses. York International agreed to pay a \$10 million fine and to submit to the appointment of an independent monitor for its compliance program. On October 1, 2010, the DOJ dismissed the criminal information on the basis that York International had fully complied with all of its obligations under the DPA, including (i) payment of the \$10 million penalty; (ii) full cooperation with the government; and (iii) improvement of its compliance policies and procedures to ensure compliance with the FCPA and other applicable anti-corruption laws, as certified by the independent monitor. In a related SEC litigation, the company also separately consented to the entry of final judgment enjoining it from further violations and to pay over \$10 million in disgorgement and interest, as well as a \$2 million civil penalty.

### Key Facts

**Citation.** *United States v. York Int'l Corp.*, No. 1:07-cr-00253 (D.D.C. 2007).

**Date Filed.** October 1, 2007.

**Country.** Iraq; Bahrain; Egypt; India; Turkey; United Arab Emirates.

**Date of Conduct.** 1999 – 2005.

**Amount of the Value.** Approximately \$647,000 in connection with the Iraqi U.N. Oil-for-Food Program; approximately \$550,000 in connection with a project in the UAE; an undisclosed amount comprising several hundred bribes and kickbacks relating to an unspecified number of projects in the other countries.

**Amount of Business Related to the Payment.** Over \$6 million in contracts in connection with the U.N. Oil-for-Food Program; \$3.7 million in contracts in connection with a project in the UAE; approximately \$42 million relating to other projects in the UAE and projects in the other countries mentioned above.

**Intermediary.** A Jordanian company as a sales agent for some contracts in connection with the U.N. Oil-for-Food Program; a York Inc. employee and an unspecified intermediary in connection with the UAE project; unnamed contractors for other projects in Bahrain, Egypt, India, Turkey, and the UAE.

**Foreign Official.** Various Bahraini, Egyptian, Indian, Turkish, and UAE government officials.

**FCPA Statutory Provision.** Conspiracy (Books-and-Records); Books-and-Records.

**Other Statutory Provision.** Conspiracy (Wire Fraud); Wire Fraud.

**Disposition.** Deferred Prosecution Agreement.

**Defendant Jurisdictional Basis.** Issuer.

**Defendant's Citizenship.** United States.

**Total Sanction.** \$10,000,000.

**Compliance Monitor/Reporting Requirements.** Compliance Monitor.

**Related Enforcement Actions.** *SEC v. York Int'l Corp.*

**Total Combined Sanction.** \$22,032,880.