UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

U.S. SECURITIES AND EXCHANGE COMMISSION, **100 F. Street, NE** **Washington, D.C. 20549-6030** **Plaintiff,** **v.** **YORK INTERNATIONAL CORP.** **631 South Richland Ave.** **York, PA 17403** **Defendant.**	Case: 1:07-cv-01750 Assigned To : Lamberth, Royce C. Assign. Date : 10/1/2007 Description: General Civil

COMPLAINT

Plaintiff, U.S. Securities and Exchange Commission (the "Commission"), alleges that:

SUMMARY

1. York International Corporation ("York International" or the "Company"), and certain of its subsidiaries, violated the anti-bribery, books and records, and internal controls provisions of the Foreign Corrupt Practices Act (the "FCPA") by making illicit payments to secure and maintain business opportunities worldwide.

2. From 2000 to 2003, York International's Dubai subsidiary authorized and made approximately $647,110 in kickback payments in connection with its sale of humanitarian goods to Iraq under the United Nations Oil for Food Program (the "Program"). Although the payments were characterized as "after-sales service fees," no bona fide services were actually performed. The Program provided humanitarian relief to

the Iraqi population during the time that Iraq was subject to international trade sanctions. Iraq could only purchase necessary humanitarian goods and related services through a U.N. escrow account. However, the kickbacks paid in connection with York International's subsidiary's sale of goods to Iraq bypassed the escrow account and were instead paid by a third party to Iraqi-controlled accounts in countries such as Jordan. The company received approximately $931,318 in net profits for the six transactions for which it paid kickbacks.

3. In 2003 and 2004, York International's Delaware subsidiary, York Air Conditioning and Refrigeration, Inc. ("YACR") paid approximately $522,500 to an intermediary while knowing that most of the money was intended to bribe United Arab Emirate officials to secure contracts in connection with the construction of a government-owned luxury hotel called the Conference Palace. These payments were made to influence acts and decisions by the government officials in awarding YACR lucrative contracts. Altogether, thirteen illicit payments were made on this project, ranging from $1,700 to $320,000, totaling approximately $550,000. The total amount of YACR sales revenue relating to orders on the project was approximately $3.7 million.

4. From September 2001 through 2006, York International, through certain of its subsidiaries, made over $7.5 million in illicit payments to secure orders on certain commercial and government projects in the Middle East, India, China, Nigeria and Europe. York International's subsidiaries devised elaborate schemes to conceal kickback payments to certain individuals who had enough influence to secure contracts for York International's subsidiaries. These illicit payments were referred to internally as

"consultancy payments;" however, similar to the payments made under the Oil for Food Program, no bona fide services were performed.

5. York International subsidiaries made a total of 854 improper consultancy payments on approximately 774 contracts and received approximately $8,017,814 in net profits for these contracts. Kickbacks were made on more than 302 projects involving government end-users, such as government owned companies, public hospitals or schools. Including the net profits on the Oil for Food Program transactions, York International received net profits of approximately $8,949,132 on contracts involving illicit payments.

6. York International violated Section 30A of the Securities Exchange Act of 1934 (the "Exchange Act") by paying bribes to officials of the United Arab Emirates ("UAE") to secure business. York International failed to accurately record in its books and records the kickbacks that were authorized for payment to Iraq, the bribes in the UAE, and the illicit consultancy payments made in the Middle East, Africa, Asia and Europe in violation of Section 13(b)(2)(A) of the Exchange Act. York International also failed to devise and maintain a system of internal accounting controls to detect and prevent each of those illicit payments in violation of Section 13(b)(2)(B).

JURISDICTION

7. This Court has jurisdiction over this action under Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa]. York International, directly or indirectly, made use of the means or instrumentalities of interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the transactions, acts, practices, and courses of business alleged in this Complaint.

8. Venue is appropriate in this Court under Section 27 of the Exchange Act [15 U.S.C. § 78aa] because York International does business in this judicial district and certain acts or transactions constituting the violations by York International occurred in this district.

DEFENDANT

9. **York International Corporation**, a global provider of heating, ventilation, air conditioning, and refrigeration products and services, is headquartered in York, Pennsylvania. The company's common stock was registered with the Commission pursuant to Section 12(b) [15 U.S.C. § 78l(b)] of the Exchange Act and was listed on the New York Stock Exchange ("NYSE") until it was acquired by Johnson Controls, Inc. ("Johnson Controls") on December 9, 2005 and became a wholly owned subsidiary of Johnson Controls. Johnson Controls trades on the NYSE under the symbol JCI.

RELEVANT ENTITIES

10. **York Air Conditioning and Refrigeration, Inc.** ("YACR") was at all relevant times a Delaware corporation and was a wholly-owned subsidiary of York International. YACR has branch offices in Dubai and Abu Dhabi, United Arab Emirates. The Dubai office serves as the headquarters for York International's Middle East operations. Many of the individuals who were complicit in the Oil for Food kickbacks, the bribes to UAE government officials, and the improper consultancy payments were employees of YACR's Dubai and Abu Dhabi branches.

11. **York Air Conditioning and Refrigeration FZE** ("York FZE") is a wholly owned subsidiary of YACR. York FZE is based in the Jebel Ali Free Zone of Dubai. York FZE was the contracting party in the Oil for Food transactions.

12. **York Middle East** is the business unit within York International that is responsible for handling all Middle East business. It is not a separate corporate entity.

13. **York Refrigeration India Ltd.** ("York India") is a corporation organized under the laws of India and is owned by York International Denmark subsidiaries. York India made certain illicit consultancy payments to secure business.

14. **York United Kingdom ("York UK")** is a wholly owned subsidiary of York International. York UK made certain illicit consultancy payments to secure business.

15. **York Refrigeration Marine (China) Ltd.** ("YRMC") is a subsidiary of a York International Denmark subsidiary. YRMC sells air conditioning and refrigeration equipment to shipbuilders and also to shipyards. YRMC made certain illicit consultancy payments to secure business.

FACTS

I. <u>The United Nations Oil for Food Program</u>

16. On August 2, 1990, the government of Iraq, under Saddam Hussein, invaded Kuwait. Four days later the United Nations Security Council voted to enact U.N. Resolution 661, which prohibited member states from trading in any Iraqi commodities or products. The United Nations continued to enforce these sanctions until 2003.

17. On April 14, 1995, the United Nations Security Council adopted Resolution 986, which authorized the Government of Iraq to sell oil on the condition that the proceeds of all of its oil sales be deposited in a bank account monitored by the United Nations and used only to purchase designated humanitarian goods for the benefit of the

Iraqi people. In May 1996, the Government of Iraq entered into a written Memorandum of Understanding to implement Resolution 986.

18. The United Nations Office of Iraq Program, Oil for Food (the "Oil for Food Program" or "Program") was subsequently established to administer Iraq's sale of oil and purchase of humanitarian goods by Iraq. A special bank account was established at a bank in New York (the "UN Escrow Account") to handle the transactions. The United Nations' economic sanctions on Iraq remained in place for all trade and transactions not authorized by the Oil for Food Program.

19. Starting in the middle of 2000, the Iraqi government made a concerted effort to subvert the Program by demanding secret kickbacks from its humanitarian goods suppliers. Although contracts entered into pursuant to the Program were subject to UN review and approval, the Program gave Iraq discretion to select the companies from which it purchased goods. A humanitarian supplier would submit a bid for the sale of its goods. After the Iraqi ministry would accept the bid, the ministry would inform the supplier of the requirement that the supplier pay a secret kickback in the form of an "After-Sales Service Fee" ("ASSF") to Iraq in order to win the contract. The Iraqi ministry would also inform the supplier that the ASSF would have to be paid prior to the goods entering into the country, or the goods would be stopped at the border until the kickback was paid.

20. Initially, when this scheme first began, suppliers met with the Iraqi ministries in person and signed a side agreement acknowledging that the supplier would pay the kickback.[1] By October 2000, this fee was usually ten percent of the total contract

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[1] The side agreement was not provided to the UN when the Oil for Food contract was submitted and approved. This was in violation of the Program and U.S. and international trade sanctions against Iraq.

value. Later in the scheme, everyone understood that the ten percent would have to be paid, thus, side agreements were no longer needed - the supplier would simply increase its original contract bid by ten percent.

21. The supplier would then submit its contract with the inflated contract price to the UN for approval, and not disclose the ten percent kickback, which was in violation of the Program rules. The supplier would pay the ASSF to Iraq prior to shipping its goods. Afterwards, the UN Escrow Account would pay the supplier the inflated contract price for the goods, thus, unknowingly reimbursing the supplier for the ten percent that the supplier had already kicked back to Iraq. As a result of this conduct, the UN Escrow Account lost the benefit of $1 billion.

22. After the United States invaded Iraq in March 2003, at the request of the provisional government, the UN ceased Iraq's ASSF scheme. The UN required that all pending contracts that had been inflated by ten percent be amended to reflect the true contract value of the goods.

II. <u>York International's Subsidiary Makes Illicit Payments to Iraq</u>

23. York FZE began participating in the Program in approximately March 1999. It retained a Jordan-based consulting firm to act as its agent ("Agent") in the bidding process. The retention agreement with the Agent at that time was not formalized in writing. The consulting firm was headed by a well-connected Iraqi citizen who resided in Jordan. With the Agent's assistance, York FZE secured three contracts under the Program from March 1999 to April 2000 prior to Iraq's demand for kickbacks.

24. On or about September 20, 2000, the Agent notified York FZE that it had been awarded its fourth contract under the Program. The contract was for the sale of air

conditioner compressors (the "Compressor Contract") to the Iraqi Ministry of Trade for $1,025,800. However, shortly thereafter, the Agent informed York FZE that the Iraqi ministries had instituted a new policy requiring companies supplying humanitarian goods under the Program to pay an ASSF on each contract even though no after-sales services would actually be performed.

25. In light of the new Iraqi policy, the Agent advised YACR's Middle East Regional Sales Manager ("Regional Sales Manager") that the Ministry of Trade had requested that York FZE increase its bid on the Compressor Contract it had just been awarded in September by ten percent. In a November 7, 2000 memorandum to the Regional Sales Manager, who was based in YACR's Dubai branch, the Agent asserted that the Agent could facilitate the "requested 10%" by characterizing the payment as a "performance bond." The Agent also stated that the "York Name will not be in the middle for such agreement [sic]." Further, the Agent suggested that if York FZE did not sign the contract including the ten percent kickback, it could adversely impact York FZE's reputation and its ability to obtain future business under the Program.

26. That same day, the Regional Sales Manager responded in writing stating that York FZE only wanted to conduct business in Iraq in full compliance with UN rules and regulations. For unrelated reasons, the Regional Sales Manager shortly thereafter transferred out of the office. In late November 2000, the Regional Sales Manager turned over his responsibilities to a Dubai-based YACR area manager ("Area Manager"). On or about November 19 and 20, 2000, the Area Manager and his supervisor, YACR Vice-President and General Manager for the Middle East ("Vice-President"), met with the Agent in York FZE's Dubai office.

27. The Agent and York FZE agreed that the Agent would pay the ten percent kickback on York FZE's behalf and that the Agent's commission would be increased to cover the payment. On or about November 19, 2000, the Agent and York FZE memorialized the agreement to increase the Agent's commission from between 3 and 4% to 13.5%. When York FZE submitted the contract to the UN, it inflated its contract price by ten percent. The Agent submitted an inflated invoice to York FZE, which included the ten percent kickback it paid to the Ministry of Trade on behalf of York FZE. York FZE paid the invoice knowing the ten percent was kicked back to Iraq on its behalf and described the payment as a "consultancy" payment in its books and records.

28. The Agent paid ASSFs on York FZE's behalf for five additional contracts under the Program. For these contracts, York FZE submitted inflated bids to the relevant Iraqi ministries. The Agent typically deposited the kickback payments in Jordanian banks designated by the Iraqi ministries. The kickback payment had to be made prior to the goods being shipped to Iraq because Iraqi custom officials required proof of the kickback payment before the goods could enter the country. Therefore, the Agent made the ASSF payment up front and was later reimbursed when York FZE received a disbursement from the UN Escrow Account.

29. In total, the Agent paid approximately $647,110 in improper payments on behalf of York FZE.

III. <u>York Middle East and Numerous Other York International Subsidiaries Devise Elaborate Schemes to Make Illicit Consultancy Payments to Secure Contracts</u>

30. York International, through its subsidiaries, made numerous illicit payments to secure orders on certain commercial and government projects in the Middle

East and elsewhere. York Middle East personnel in both the Dubai and Abu Dhabi branches of YACR devised an elaborate scheme to conceal kickback payments to certain individuals who could influence their customers, such as construction companies or other end-users, to choose York products for their particular project. These payments, which York Middle East internally referred to as "consultancy fees," were made to a variety of recipients, including (1) employees of the end-user; (2) employees of technical engineering firms retained by end-users to provide design services; (3) employees of contractors retained by the end-users to carry out construction; (4) employees of technical engineering firms retained by contractors or other parties; and (5) contractor firms.

31. These consultancy payments were similar to the ASSF payments York FZE paid under the Oil for Food Program because no bona fide consulting services were actually performed and the payments were made to secure contracts.

A. **<u>The Mechanics of the Scheme</u>**

32. York International subsidiaries used a number of different mechanisms to funnel money to persons with authority to impact or secure business for the company. One mechanism involved the payment of cash. For example, in the UAE, complicit sales people employed by YACR's Dubai and Abu Dhabi branches arranged for purported contractors to generate and submit bogus invoices to York Middle East for "consulting services" that the contractors had not actually performed. Either the Dubai or Abu Dhabi branch, depending on the location of the project, paid the invoices. Afterwards, the purported contractor gave an equal amount of cash to the branch sales people less a small fee. The sales people then used the cash to pay customer-affiliated individuals to secure contracts.