

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

08 - 20574 CR - LENARD  
CASE NO.

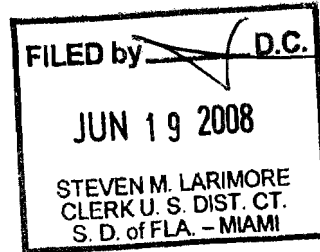
18 U.S.C. § 371  
18 U.S.C. § 1001(a)(2)  
18 U.S.C. § 1031

MAGISTRATE JUDGE  
GARDNER

UNITED STATES OF AMERICA

v.

AEY, INC.,  
EFRAIM DIVEROLI,  
DAVID PACKOUZ,  
ALEXANDER PODRIZKI, and  
RALPH MERRILL,



Defendants.

\_\_\_\_\_ /

INDICTMENT

The Grand Jury charges:

General Allegations

At times relevant to this Indictment:

1. The corporate defendant **AEY, INC.** (hereinafter referred to as **AEY**), engaged in the business of procuring arms and ammunition. **AEY** was incorporated in the State of Florida, and its principal place of business was in Miami Beach, Florida.
2. The defendant **EFRAIM DIVEROLI**, a resident of the United States, was the President and owner of **AEY**. The defendant **EFRAIM DIVEROLI** managed and directed the business operations of **AEY**.
3. The defendant **DAVID PACKOUZ** was a Director and Vice President of **AEY**.

4. The defendant **ALEXANDER PODRIZKI** was an agent of **AEY** stationed in Tirana, Albania.

5. The defendant **RALPH MERRILL** was a business associate of **EFRAIM DIVEROLI**, who provided financial and managerial assistance to **AEY**.

6. The United States Department of the Army (hereinafter referred to as the Army) was an agency of the United States.

7. On or about July 28, 2006, the United States Army Sustainment Command, a component of the Army, issued a solicitation, designated number W52P1J-06-R-0129, requesting bids on a contract to provide various types of ammunition to the Islamic Republic of Afghanistan.

8. On or about September 20, 2006, **AEY** submitted a bid and proposal for the procurement of various types of ammunition in response to the Army's solicitation. On or about October 17, 2006, **AEY** submitted a revised price and represented that it could fulfill the requirements of the solicitation for approximately \$298,000,000.

9. On or about January 26, 2007, the Army awarded a prime contract, designated number W52P1J-07-D0004 (hereinafter referred to as the contract), to **AEY**, for the procurement of various types of ammunition referenced in the contract.

10. Under the contract, **AEY** was required to certify that it was providing serviceable and safe ammunition. The contract also required **AEY** to comply with Defense Federal Acquisition Regulation 252.225-7007, which prohibited delivery of ammunition acquired, directly or indirectly, from a Communist Chinese military company.

**COUNT 1**  
**(Conspiracy to Commit Offenses Against the United States)**

1. Paragraphs 1 through 10 of the General Allegations are restated and realleged as if fully set forth herein.

2. From in or about April 2007, and continuing through in or about December 2007, the exact dates being unknown to the Grand Jury, in Miami-Dade County, in the Southern District of Florida and elsewhere, the defendants,

**AEY, INC.,  
EFRAIM DIVEROLI,  
DAVID PACKOUZ,  
ALEXANDER PODRIZKI, and  
RALPH MERRILL,**

did knowingly and willfully combine, conspire, confederate and agree with each other, and with other persons known and unknown to the Grand Jury, to commit offenses against the United States, that is:

a. in a matter within the jurisdiction of the Department of the Army, an agency of the executive branch of the Government of the United States, to knowingly and willfully make materially false, fictitious, and fraudulent statements and representations, in violation of Title 18, United States Code, Section 1001(a)(2); and

b. in a procurement of property as a prime contractor with the United States, where the value of the contract for such property was \$1,000,000 or more, did knowingly execute a scheme and artifice with the intent:

- (1) to defraud the United States and its agency, the Department of the Army; and
- (2) to obtain money by means of material false and fraudulent pretenses, representations and promises; in violation of Title 18, United States Code, Section 1031.

### THE PURPOSE OF THE CONSPIRACY

3. It was the purpose of the conspiracy for the defendants **AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL**, to unjustly enrich themselves and derive a benefit by concealing and misrepresenting the fact that the ammunition being provided pursuant to the contract was manufactured and originated in China.

### THE MANNER AND MEANS OF THE CONSPIRACY

4. The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

(a) Defendants **EFRAIM DIVEROLI, DAVID PACKOUZ, and ALEXANDER PODRIZKI**, would direct others to assist in the packaging of ammunition to be delivered to Afghanistan.

(b) As part of the packaging process, defendants **EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL**, would provide instructions and guidance on how to remove Chinese markings from containers, so as to conceal the fact that the ammunition was manufactured and originated in China.

(c) With each shipment, the defendant **EFRAIM DIVEROLI**, on behalf of **AEY**, would falsely certify in a Certificate of Conformance that the ammunition being furnished conformed in all respects with the contract requirements.

(d) With each shipment, the defendant **EFRAIM DIVEROLI**, on behalf of **AEY**, would falsely represent in a Certificate of Conformance that the manufacturer and point of origin of the ammunition being delivered was the Military Export and Import Company (hereinafter referred to as MEICO) in Tirana, Albania.

(e) Upon delivery of each shipment of ammunition, defendant **EFRAIM DIVEROLI**

would submit and cause others to submit to the Department of the Army, a copy of the Certificate of Conformance and an invoice for payment to **AEY**.

(f) **AEY** would cause the Department of the Army to pay for the ammunition furnished under the contract.

### **OVERT ACTS**

In furtherance of the conspiracy and to achieve the objects thereof, the defendant or defendants noted below, committed and caused to be committed in the Southern District of Florida, and elsewhere, at least one of the following overt acts, among others:

5. On or about April 20, 2007, **ALEXANDER PODRIZKI** sent an electronic communication to **DAVID PACKOUZ** which referenced attached pictures of ammunition from containers with Chinese markings.

6. On or about April 20, 2007, **DAVID PACKOUZ** sent an electronic communication to **ALEXANDER PODRIZKI** stating that they had to get rid of the crates with the Chinese letterings since Chinese products were prohibited and would not be accepted.

7. On or about April 20, 2007, **EFRAIM DIVEROLI** sent an electronic communication to the Department of State, asking whether a United States company could book a transaction involving ammunition from China to fulfill a United States government contract for various types of ammunition destined to Afghanistan.

8. On or about April 23, 2007, **ALEXANDER PODRIZKI** sent an electronic communication to **DAVID PACKOUZ** referencing a communication **ALEXANDER PODRIZKI** had previously sent to a representative of MEICO, which indicated that they were awaiting a response from Washington, DC to see if the Army would accept Chinese manufactured materials, and “[i]f the response is negative we will need to have the metal cases painted over.”

9. On or about April 23, 2007, **EFRAIM DIVEROLI** sent an electronic communication to the Department of State, asking whether a United States company could broker Chinese ammunition that had been in an Albanian company for about twenty years.

10. On or about April 23, 2007, **EFRAIM DIVEROLI** forwarded an electronic communication from the Department of State to **DAVID PACKOUZ** and **RALPH MERRILL** which indicated that the transaction would not be authorized. On the same date, **DAVID PACKOUZ** forwarded this communication to **ALEXANDER PODRIZKI**.

11. On or about April 24, 2007, **EFRAIM DIVEROLI** sent an electronic communication to the Department of State, acknowledging the response of April 23, 2007, and further questioned whether there was a provision for ammunition that would authorize the transaction, similar to a provision that allowed for the United States importation of firearms which were manufactured in proscribed countries, if said firearms had been stored in friendly countries for more than five years and certification documents were provided.

12. On or about April 24, 2007, **EFRAIM DIVEROLI** sent another electronic communication to the Department of State, acknowledging its response that no such provision existed as to the question set forth in paragraph 11, and further questioned whether there was any way the transaction would be allowable. **EFRAIM DIVEROLI** included **DAVID PACKOUZ** and **RALPH MERRILL** on this communication.

13. On or about April 24, 2007, **EFRAIM DIVEROLI** forwarded an electronic communication from the Department of State to **RALPH MERRILL**, which indicated that the transaction referenced in paragraph 11 would only be allowed with a waiver by the President of the United States, based on a recommendation to the President that such waiver was in the national security and foreign policy interest of the United States, and there was no way that the proposed

transaction could be so justified.

14. On or about April 25, 2007, **RALPH MERRILL** sent an electronic communication to **EFRAIM DIVEROLI** and **DAVID PACKOUZ**, which referenced attached photographs showing methods of “cleaning wooden crates.” Attached to the communication was a photograph showing a person scraping the words “MADE IN CHINA” off of a wooden crate.

15. On or about May 16, 2007, **RALPH MERRILL**, on behalf of **AEY**, sent an electronic communication to negotiate a lower price due to shipping costs, the origin of the ammunition, and the repackaging. On the same date, **EFRAIM DIVEROLI** and **DAVID PACKOUZ** were sent copies of this electronic communication.

16. On or about May 23, 2007, **EFRAIM DIVEROLI** traveled to Tirana, Albania.

17. On or about May 26, 2007, **EFRAIM DIVEROLI** sent an electronic communication to **DAVID PACKOUZ** and **RALPH MERRILL** to confirm that a lower price for the ammunition had been negotiated.

18. On or about June 28, 2007, in a Certificate of Conformance, **EFRAIM DIVEROLI**, on behalf of **AEY**, falsely certified that the ammunition being furnished conformed in all respects with the contract requirements, and falsely represented that the manufacturer and point of origin of the ammunition was MEICO in Tirana, Albania.

19. On or about October 31, 2007, in a Certificate of Conformance, **EFRAIM DIVEROLI**, on behalf of **AEY**, falsely certified that the ammunition being supplied conformed with all aspects of the contract, and falsely represented that the manufacturer and point of origin of the ammunition was MEICO in Tirana, Albania.

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

**COUNTS 2-36**  
**(False Statements to a Federal Agency)**

1. Paragraphs 1 through 10 of the General Allegations are restated and realleged as if fully set forth herein.

2. On or about the dates listed as to each count below, in Miami-Dade County, in the Southern District of Florida and elsewhere, the defendants,

**AEY, INC., and**  
**EFRAIM DIVEROLI,**

in a matter within the jurisdiction of the Department of the Army, an agency of the executive branch of the Government of the United States, did knowingly and willfully make and cause to be made, materially false, fictitious, and fraudulent statements and representations, in that the defendants stated and represented, and caused to be stated and represented in Certificates of Conformance, as described more fully below in Counts 2 through 36, that the ammunition being furnished under the Army contract number W52P1J-07-D0004 was manufactured and originated in Albania, when, in truth and in fact, and, as the defendants then and there well knew, the ammunition was not manufactured and did not originate in Albania:

<b>COUNT</b>	<b>DATE</b>	<b>CERTIFICATE OF CONFORMANCE NO.</b>	<b>REPRESENTED MANUFACTURER (POINT OF ORIGIN)</b>
2	06/21/07	AFG-0002-6	MEICO, Tirana, Albania
3	06/23/07	AFG-0002-7	MEICO, Tirana, Albania
4	06/26/07	AFG-0002-8	MEICO, Tirana, Albania
5	06/28/07	AFG-0002-10	MEICO, Tirana, Albania
6	06/30/07	AFG-0002-11	MEICO, Tirana, Albania
7	07/01/07	AFG-0002-12	MEICO, Tirana, Albania



<b>COUNT</b>	<b>DATE</b>	<b>CERTIFICATE OF CONFORMANCE NO.</b>	<b>REPRESENTED MANUFACTURER (POINT OF ORIGIN)</b>
8	07/04/07	AFG-0002-13	MEICO, Tirana, Albania
9	07/09/07	AFG-0002-14	MEICO, Tirana, Albania
10	07/10/07	AFG-0002-15	MEICO, Tirana, Albania
11	07/11/07	AFG-0002-16	MEICO, Tirana, Albania
12	07/12/07	AFG-0002-17	MEICO, Tirana, Albania
13	07/16/07	AFG-0002-18	MEICO, Tirana, Albania
14	07/17/07	AFG-0002-19	MEICO, Tirana, Albania
15	07/28/07	AFG-0002-21	MEICO, Tirana, Albania
16	07/30/07	AFG-0002-23	MEICO, Tirana, Albania
17	08/02/07	AFG-0002-25	MEICO, Tirana, Albania
18	08/06/07	AFG-0002-26	MEICO, Tirana, Albania
19	08/11/07	AFG-0002-27	MEICO, Tirana, Albania
20	08/14/07	AFG-0002-29	MEICO, Tirana, Albania
21	08/16/07	AFG-0002-30	MEICO, Tirana, Albania
22	08/23/07	AFG-0002-31	MEICO, Tirana, Albania
23	08/27/07	AFG-0002-36	MEICO, Tirana, Albania
24	08/31/07	AFG-0002-39	MEICO, Tirana, Albania
25	09/03/07	AFG-0002-40	MEICO, Tirana, Albania
26	09/05/07	AFG-0002-41	MEICO, Tirana, Albania
27	09/08/07	AFG-0002-43	MEICO, Tirana, Albania
28	09/15/07	AFG-0002-44	MEICO, Tirana, Albania
29	09/18/07	AFG-0002-45	MEICO, Tirana, Albania
30	09/22/07	AFG-0002-46	MEICO, Tirana, Albania
31	09/22/07	AFG-0002-47	MEICO, Tirana, Albania

<b>COUNT</b>	<b>DATE</b>	<b>CERTIFICATE OF CONFORMANCE NO.</b>	<b>REPRESENTED MANUFACTURER (POINT OF ORIGIN)</b>
32	09/29/07	AFG-0002-48	MEICO, Tirana, Albania
33	10/10/07	AFG-0002-50	MEICO, Tirana, Albania
34	10/16/07	AFG-0002-51	MEICO, Tirana, Albania
35	10/22/07	AFG-0002-53	MEICO, Tirana, Albania
36	10/31/07	AFG-0002-54	MEICO, Tirana, Albania

All in violation of Title 18, United States Code, Sections 1001(a)(2) and 2.

**COUNTS 37-71**  
**(Major Fraud Against the United States)**

1. Paragraphs 1 through 10 of the General Allegations are restated and realleged as if fully set forth herein.

2. From in or about April 2007, and continuing through in or about December 2007, the exact dates being unknown to the Grand Jury, in Miami-Dade County, in the Southern District of Florida and elsewhere, the defendants,

**AEY, INC.,  
EFRAIM DIVEROLI,  
DAVID PACKOUZ,  
ALEXANDER PODRIZKI, and  
RALPH MERRILL,**

in a procurement of property as a prime contractor with the United States, where the value of the contract for such property was \$1,000,000 or more, did knowingly execute and attempt to execute a scheme and artifice with the intent:

- (a) to defraud the United States and its agency, the Department of the Army; and
- (b) to obtain money by means of material false and fraudulent pretenses, representations

and promises.

**THE PURPOSE OF THE SCHEME AND ARTIFICE**

3. It was the purpose of the conspiracy for the defendants **AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL**, to unjustly enrich themselves and derive a benefit by concealing and misrepresenting the fact that the ammunition being provided pursuant to the contract was manufactured and originated in China.

**THE SCHEME AND ARTIFICE**

4. Paragraph 4 of Count 1 of this Indictment is restated and realleged as if fully set forth herein as a description of the scheme and artifice to defraud the United States and its agency, the Department of the Army.

**ACTS IN EXECUTION OF THE SCHEME AND ARTIFICE**

5. On or about the dates listed as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant or defendants noted below, did knowingly execute and attempt to execute the scheme and artifice, with the intent to defraud the United States and to obtain money by means of material false and fraudulent pretenses, representations and promises, by causing the Department of the Army to make the payments described below:

<b>COUNT</b>	<b>DEFENDANT(S)</b>	<b>INVOICE DATE</b>	<b>SHIPMENT NUMBER</b>	<b>PAYMENT DATE</b>	<b>AMOUNT PAID</b>
37	<b>AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL</b>	06/21/07	AEY0006	07/23/07	\$291,081.27

<b>COUNT</b>	<b>DEFENDANT(S)</b>	<b>INVOICE DATE</b>	<b>SHIPMENT NUMBER</b>	<b>PAYMENT DATE</b>	<b>AMOUNT PAID</b>
38	AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL	06/23/07	AEY0007	07/23/07	\$291,081.27
39	AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL	06/26/07	AEY0008	07/24/07	\$291,081.27
40	AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL	06/28/07	AEY00010	07/26/07	\$291,081.27
41	AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL	07/02/07	AEY00011	07/30/07	\$291,081.27
42	AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL	07/02/07	AEY00012	07/30/07	\$360,050.25

COUNT	DEFENDANT(S)	INVOICE DATE	SHIPMENT NUMBER	PAYMENT DATE	AMOUNT PAID
43	AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL	07/05/07	AEY00013	08/09/07	\$291,081.27
44	AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL	07/09/07	AEY00014	08/10/07	\$291,081.27
45	AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL	07/10/07	AEY00015	08/09/07	\$291,081.27
46	AEY, INC., EFRAIM DIVEROLI, DAVID PACKOUZ, ALEXANDER PODRIZKI, and RALPH MERRILL	07/11/07	AEY00016	08/09/07	\$291,081.27
47	AEY, INC., EFRAIM DIVEROLI, ALEXANDER PODRIZKI, and RALPH MERRILL	07/16/07	AEY00017	08/13/07	\$291,081.27

<b>COUNT</b>	<b>DEFENDANT(S)</b>	<b>INVOICE DATE</b>	<b>SHIPMENT NUMBER</b>	<b>PAYMENT DATE</b>	<b>AMOUNT PAID</b>
48	<b>AEY, INC., EFRAIM DIVEROLI, ALEXANDER PODRIZKI, and RALPH MERRILL</b>	07/17/07	AEY00018	08/13/07	\$291,081.27
49	<b>AEY, INC., EFRAIM DIVEROLI, ALEXANDER PODRIZKI, and RALPH MERRILL</b>	07/23/07	AEY00019	08/20/07	\$291,081.27
50	<b>AEY, INC., EFRAIM DIVEROLI, ALEXANDER PODRIZKI, and RALPH MERRILL</b>	07/30/07	AEY00021	08/27/07	\$291,081.27
51	<b>AEY, INC., EFRAIM DIVEROLI, ALEXANDER PODRIZKI, and RALPH MERRILL</b>	07/30/07	AEY00023	08/27/07	\$276,724.64
52	<b>AEY, INC., EFRAIM DIVEROLI, ALEXANDER PODRIZKI, and RALPH MERRILL</b>	08/02/07	AEY00025	08/28/07	\$276,724.64
53	<b>AEY, INC., EFRAIM DIVEROLI, ALEXANDER PODRIZKI, and RALPH MERRILL</b>	08/13/07	AEY00027	09/11/07	\$276,724.64

COUNT	DEFENDANT(S)	INVOICE DATE	SHIPMENT NUMBER	PAYMENT DATE	AMOUNT PAID
54	AEY, INC., EFRAIM DIVEROLI, ALEXANDER PODRIZKI, and RALPH MERRILL	08/16/07	AEY00029	11/26/07	\$276,724.64
55	AEY, INC., EFRAIM DIVEROLI, ALEXANDER PODRIZKI, and RALPH MERRILL	08/22/07	AEY00030	09/17/07	\$276,724.64
56	AEY, INC., EFRAIM DIVEROLI,, and RALPH MERRILL	08/27/07	AEY00031	09/24/07	\$276,724.64
57	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	08/31/07	AEY00036	10/02/07	\$276,724.84
58	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	09/04/07	AEY00040	10/02/07	\$291,081.28
59	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	09/06/07	AEY00041	10/09/07	\$291,081.28
60	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	09/09/07	AEY00039	10/02/07	\$291,081.28
61	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	09/10/07	AEY0043	10/16/07	\$296,045.45

COUNT	DEFENDANT(S)	INVOICE DATE	SHIPMENT NUMBER	PAYMENT DATE	AMOUNT PAID
62	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	09/17/07	AEY0044	10/09/07	\$296,045.45
63	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	09/19/07	AEY0045	10/17/07	\$296,045.45
64	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	09/24/07	AEY0046	10/22/07	\$296,045.45
65	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	09/27/07	AEY0047	10/24/07	\$291,081.28
66	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	10/01/07	AEY0048	10/29/07	\$296,045.45
67	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	10/10/07	AEY0050	11/09/07	\$360,050.29
68	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	10/18/07	AEY00026	11/02/07	\$276,724.64
69	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	10/18/07	AEY0051	11/19/07	\$360,050.25
70	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	10/30/07	AEY0053	12/06/07	\$297,790.18

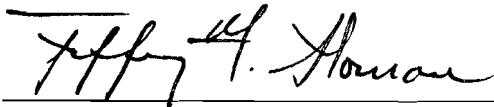


COUNT	DEFENDANT(S)	INVOICE DATE	SHIPMENT NUMBER	PAYMENT DATE	AMOUNT PAID
71	AEY, INC., EFRAIM DIVEROLI, and RALPH MERRILL	11/08/07	AEY0054	12/06/07	\$311,389.27
	TOTAL				\$10,331,736.44

All in violation of Title 18, United States Code, Sections 1031 and 2.

A TRUE BILL

FOREPERSON \_\_\_\_\_



*for* R. ALEXANDER ACOSTA  
UNITED STATES ATTORNEY



JAMES M. KOUKIOS  
ASSISTANT UNITED STATES ATTORNEY



ELOISA DELGADO FERNANDEZ  
ASSISTANT UNITED STATES ATTORNEY