

**NEW YORK STATE BAR ASSOCIATION
INTERNATIONAL SECTION: GLOBAL MEETING 2019**

Tokyo, Japan: November 5-8, 2019

Cross-Border White Collar Investigations



Labaton
Sucharow

The Players

- Sun Energy:
 - Headquartered in Japan.
- Broad Light:
 - Headquartered in Singapore.
- Rays 'R US:
 - Headquartered in the US.

The Solar Panels Conspiracy



- The conspiracy:
 - Sun Energy manufactures components for solar electricity systems, including solar panels that capture sunlight for conversion into electricity.
 - Sun Energy's GC has discovered that the company is part of what appears to be a broad conspiracy to rig bids for supplying solar panels.
 - She believes the conspiracy started in 2010 at a meeting in Seoul, and includes meetings among participants in at least South Korea and Tokyo, and perhaps also in Singapore and Europe.
 - The other participants are manufacturers of large solar panels: Broad Light and Rays 'R US,

The Solar Panels Conspiracy

(cont'd)

- Solar panels:

- Solar panels absorb sunlight as a source of energy to generate electricity.
- Used with a photovoltaic (PV) module, a connected assembly of (typically) photovoltaic solar cells of varying sizes.
- Solar panels and PV modules offer an array of a system features that generate and supply solar electricity
- Only four companies have the expertise, production techniques and capacity needed to produce solar panels for the very high electricity voltage level systems suitable for governments and large commercial enterprises.



The Solar Panels Conspiracy

(cont'd)

- Solar panel customers and end users:
 - Direct purchasers: (a) project owners, consisting of government bodies and, occasionally, large commercial enterprises who self-manage projects; and (b) general contractors engaged by government and commercial project owners.
 - Project owners are also indirect purchasers of panels where they engage general contractors who themselves purchase the solar panels directly from manufacturers.
 - Panels for very high voltage systems are sold worldwide.
 - Together Broad Light (40%), Sun Energy (20%), and Rays 'R US (15%) control 75% of the market.






The Solar Panels Conspiracy

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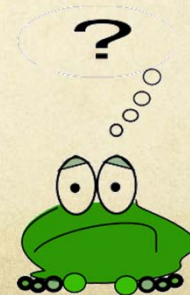
- The conspirators:



- Sun Energy (No. 3, 20%): 
 - ❖ Manufactures solar panels both for sale as components and for use within Sun Energy's own systems.
- Broad Light (No. 1, 40%): 
 - ❖ Sells panels as components and for use in its own systems.
 - ❖ Regularly collected information on the solar panel market to monitor and enforce adherence to the bid rigging.
- Rays 'R US (No. 4, 15%): 
 - ❖ Sells panels as components and for use in its own systems.

The Conspiracy Is Undetected

- Sun Energy's GC informs you that, to her knowledge, no government agency knows about the bid rigging conspiracy. Several major direct purchasers (general contractors) however, are suspicious, and executives at Sun Energy are nervous.
- The next major RFP—for a huge project in Brazil—is due in two weeks, and a meeting to select the winning company and set bid prices for the other two is scheduled for Sao Paulo in a week.
- What should Sun Energy do?



The Conspiracy Is Known To Government Enforcers But Only In Its Broad Outlines



- Against your advice, Sun Energy decided to hold off on an internal investigation and declined to report the conspiracy to any antitrust enforcer.
 - Sun Energy also did not attend the Sao Paulo meeting, where Broad Light and Rays 'US rigged their bids for the Brazilian project.
- Rays 'R US has deposited \$10 million in a Swiss bank account for the benefit of a Brazilian government contracting official, who discovered the bid rigging scheme and needed to be paid to keep quiet. Rays 'R US has gone to "antitrust enforcers," but which ones is not clear.
 - This isn't the only instance in which pay-offs have been made to contracting officials. The others, however, were much smaller in amount—on the order of \$50,000-100,000—and almost always came from Broad Light. This particular payment is so large that it's unlikely Rays 'R US paid without part of the money coming from Broad Light.
 - The GC does not know whether Rays 'R US knows about the prior payments, or, if it does, whether it has disclosed them to the enforcers it has approached.

The Dike Is Leaking

- Sun Energy's GC now tells you that she has heard rumors that in 2015 (years after the bid rigging conspiracy began) Broad Light and Bavarian Panel Works, a German company (No. 2, 25%), made an arrangement under which Bavarian Panel Works agreed to limit its business to Europe, and Broad Light agreed to keep the bid rigging scheme out of Europe.
- To avoid suspicion, from time to time, Broad Light submitted fictitious bids on European projects, which enabled Bavarian Panel Works to appear to win against "competition."



The Dike Gives Way



- Still acting against your advice, Sun Energy has again failed to approach any antitrust or other enforcer.
- Sun Energy's GC has learned Broad Light in fact provided part of the \$10 million pay-off, wiring money from one of its Singapore bank accounts to a Rays 'R US account in the UK.
- Broad Light, too, has gone to one or more antitrust enforcers and is working out "plea" deals.
- Full-blown investigations by multiple enforcers are getting underway.

The Aftermath

- Investigations have begun with publicly disclosed “raids” in the US and Singapore.
- The US criminal investigation is believed to be proceeding, although not formally confirmed by the US DOJ.
- Private lawsuits, some of them class actions, are filed in the US.



Hope Springs Eternal

- Sun Energy's GC has read that the US DOJ recently adopted a new policy regarding consideration of corporate antitrust compliance programs and issued a document to guide prosecutors' evaluation of corporate compliance programs at the charging and sentencing stage.
- She asks whether Sun Energy could avail itself of the benefits of the change.



An Ounce of Prevention Is Worth A Pound of Cure

June 6, 2008

Speaker 1: Well, then first, first of all I need to stress that the overall environment is getting more and more dangerous, especially due to the fact that Andrew [a excluded former conspirator] attended meetings like ours before. Therefore, I have to declare first that **after this meeting is adjourned**, on behalf of all the, the, the attendees, **we won't acknowledge such meeting was ever held**. This is something I have to say.

June 12, 2008

Speaker 1: Then let us, us begin. Let's cut to the chase. Well, then first as I said last time, well, we should, should, should keep this antitrust law in mind. So later on no matter who comes in to divide and conquer, **never ever, ever agree that we had two teleconferences. So these two teleconferences never existed.**

Speaker 1: This needs to be stressed.

Speaker 2: Yes. Yes.