

[38.] Consequently BNP had a conflict of interest. On the one hand it had to serve the interest of the UN to promote transparency of transactions. On the other hand it had to serve the interests of private clients and maintain the confidentiality of their business and financing arrangements. BNP had "unique access" to information relating to purchases of oil by shell companies, which was often accompanied by the assignment of rights and resale of oil. Typically a large corporate entity such as Glencore would finance letters of credit in the name of a shell company and would request the bank not to disclose its participation in the transaction. This would not be called to the attention of the UN. This deficiency applied to the financing of the Lexoil Contract which is dealt with below.

Fraud and perjury on the part of Hamphill

[81.] Hemphill addressed a series of documents to the Mission on behalf of the “Falcon Trading Group” during 2001, 2002 and 2003. He represented that this entity was registered in South Africa as a company known as the Falcon Trading Group, with its principal place of business situated at 117 Eleventh Street, Parkmore, South Africa (“the Parkmore address”). Some of these documents are identified and elaborated upon below.

[82.] It is apposite to mention that Hemphill may have committed perjury in his founding affidavit in the High Court application. In paragraph 27 thereof he stated that-

“Summons No. 13 relates to me in my capacity as a director of a company described as ‘Falcon Trading Group Limited’. I am not a director of a company having this name, and am unaware of the existence of such a company. However, I am a director of a company known as ‘Falcon Commodity Trading (Pty) Limited’ which has been cited as the third applicant in this application”.

[83.] Falcon Commodity Trading (Pty) Ltd was registered on 8 April 2002. The registered address of this enterprise is given as 34 Monkor Road, Randburg Ridge, Randburg. **It is not the company that Hemphill**

purported to represent when he made representations to the Mission.

[84.] If Hemphill was unaware of the existence of a South African company known as Falcon Trading Group when he addressed the aforementioned series of documents to the Mission he perpetrated a fraud on South Africa's diplomatic representatives to the UN. However, the documents contradict his averment.

[85.] Hemphill not only misled the Mission as to the true identity of Falcon, but when he did so he knew that, in all likelihood, the person behind Falcon (Al Khafaji) would pay "kickbacks" in Falcon's business dealings with Iraq.

[86.] By representing to the Mission that the application for registration of Falcon was being made on behalf of a South African company (i.e. a legal person having South African nationality), Hemphill induced the Mission to process his application for registration of Falcon; and to associate the Republic of South Africa with Falcon's operations under the Programme. The process of applying for registration under the Programme was concluded via the missions of member states who were bound by Resolutions 661 and 986. These resolutions had not only imposed sanctions and created the Programme, but they also specifically prohibited direct payments to

the Iraqi regime. The process in question lent the credibility of the state of nationality of a company to applications by their nationals and ought to have assured compliance with the resolutions.

[87.] IIC documentation shows that Falcon probably paid after-sales-service fees and inland transportation fees. Al Khafaji signed at least five "side agreements" in which Falcon agreed to pay a ten percent after-sales-service fee to the Iraqi State Trading Company for Construction Materials³¹. Three of these side agreements also made provision for inland transportation fees. **In the circumstances the Republic of South Africa was prejudiced or potentially prejudiced by the misrepresentations contained in documentation forwarded by Hemphill to UN bodies established under the Programme.**

Illustrative documentation

[88.] The DFA documents contain information emanating from the Mission ("the Mission records"). There is a schedule of 37 contracts relating to Falcon that were either approved by the 661 Committee or actually concluded. In the Mission records Hemphill is reflected as the Mission's contact for "Falcon Trading Ltd" with the following contact details:

**Tel: 0112711 883 1172
011 27 21 790 6863
011 27 21 791 0081**

³¹ Contract NO. 12-CO 00210/YANG WOOD, CONTRACT NOS. 10-H-23, 011-H-024, 12-CO-00211 and one side agreement to supply 1 000 tons of round plain bars. See documents "1" to "6" in Addendum One.

Fax: 0112711 884 0098
0112721 790 5928
0112721 791 0085
Cell No. 082 412 0690
E-mail: falcontrading@icon.co.za

IIC documentation shows that these contact details were shared between Falcon, Omni and Montega.

[89.] On 18 October 2001 Hemphill directed a letter to the Mission for the attention of Cardy³². The letterhead suggests that it was written on behalf of the "FALCON TRADING GROUP", having the Parkmore address. An e-mail address, apparently belonging to Al Khafaji, appears on the letterhead of Hemphill's letter. Certain addresses at the foot of the same page allude to the fact that Falcon may also have operated in the USA, Tunisia and Iraq. In this letter Hemphill requested the Mission to make application "on our behalf for the necessary authorities under phase 10 in terms of the MOU for the supply from South Africa or the Trans Ukraine... for the supply of 25,000 tons of various sizes of re-enforcing deformed bars...". Hemphill attached Contract No. 10-H-23 from the State Trading Company of Iraq to his letter. This contract was one of the five, referred to above, in relation to which Al Khafaji concluded a side agreement and gave Falcon's undertaking to pay after-sales-service fees as well as inland transportation fees. **Hemphill, Al Khafaji and Falcon Trading Group were therefore all associated in the payment of the kickbacks identified in Contract No. 10-H-23.**

³² See document "7" in Addendum One.

[90.] The words "Falcon Trading Group" also appear opposite the "Company Name" of the "Supplier" set out in Section 2 of an "Amendment Summary Sheet" attached to an amendment to the (humanitarian assistance) Contract bearing Iraqi Contract No. 11-0-996³³. The UN reference number was 1201522. The amendment was signed by Hemphill on 3 November 2003 above the words:

**"(signature)
Rodney S Hemphill
Director
Falcon Trading Group"**

[91.] The purpose of this amendment was to reduce the original contract value of Euro 239, 580.00 by Euro 21, 780.00: in order to remove the "after sales service fee".

[92.] This contract was for the supply of 600 air conditioning units. The original contract had been concluded on 16 June 2002³⁴. The parties were Falcon Trading Group, with the above-mentioned contact details of Falcon, and the Ministry of Trade, State Company for Shopping Centres, Baghdad. The original contract appears to bear the signature of Al Khafaji on behalf of Falcon.

[93.] On 1 July 2002 the Chairman of the 661 Committee addressed a communication to South Africa's permanent representative to the UN,

³³ See document "8" in Addendum One.

³⁴ By that date, Omni Oil, which was effectively a joint venture between Hemphill and Al Khafaji, had already made two surcharge payments exceeding \$ 1, 000, 000 in total.

Ambassador Kumalo authorising Falcon, to send the air conditioning units in question to Iraq and stating that the exporter, who was referred to in the UN documents relating to this contract (with UN reference number 1201522), as "Falcon Trading Group", was eligible for payment. The eligibility for payment depended on financing specified in the Mission's communication to the 661 Committee. The payment to be made in relation to this contract was to be facilitated by a letter of credit issued by BNP Paribas, New York, in favour of the "Falcon Trading Group, Parkmore, South Africa"³⁵.

[94.] In the Matrix provided by the Mission ("the Matrix"), the authors have recorded that the value of this contract was Euro 239, 580 and that the air conditioning units were to be sourced from Saudi Arabia. This was a "priority contract". It was submitted on 18 June 2002 and deemed eligible for payment on 1 July 2002. The amendment referred to above was approved on 24 November 2003.

[95.] Neither the documentation in the possession of the UN nor the Mission, which relate to the original contract, make any reference to after-sales-service or after-sales-service fees. From the Mission records it appears that seven amendments of the kind referred to above were effected. The documentation in question is not at hand. It might have been obtained

³⁵ See document "9" (REPORT CONCERNING REQUEST TO SHIP GOODS TO IRAQ IN ACCORDANCE WITH RESOLUTION 986 (1995) AND 133 (1999)) in Addendum One.

from Hemphill under a summons in terms of section 3 of the Commissions Act. Present constraints prevent this line of investigation.

[96.] Hemphill probably managed some of the finances of Falcon. On 18 April 2001, during Phase 9, the Falcon Trading Group (with the Parkmore address) concluded a contract (UN No. 900406), for the supply of 3000 tons of instant full cream milk powder with the Iraqi State Company for Foodstuff Trading (Iraqi Contract No. 09/F0149). On 6 July 2001 a letter of credit (LC No. 1737958) was issued by BNP Paribas in favour of Falcon Trading Group (with the Parkmore address). The details of the bank account of Falcon were given as Standard Bank Limited Johannesburg. The amount was Euro 9, 674, 500 (Euro nine million six hundred and seventy four thousand five hundred)³⁶. According to the Matrix this contract involved a fast track application. The milk powder was sourced from Vietnam. On 24 May 2001 the Mission forwarded Falcon's request, to amend the contract, to the OIP for approval, because Falcon was "now sourcing goods from Indonesia".

[97.] The impression which had been created in the mind of Mission officials by Hemphill's representations, up until 14 May 2001, is illustrated in a briefing ("the Mission briefing"), which was directed to Ambassador Kumalo by two members of the Mission, Fadl Nacerodien ("Nacerodien") and Cardy³⁷. Beneath a heading, "**Contract for the Supply of Goods and Services to**

³⁶ See document "10" in Addendum One.

³⁷ See document "11" in Addendum One.

Iraq", the authors said the following. "Mr Hemphill's new company 'Falcon Trading' has recently forwarded four extremely large contracts for the supply of non-South African produce to Iraq. Falcon Trading is registered both in South Africa and the UK (Guernsey) and appears to be acting as an intermediary for supplies from Malaysia, Syria and Vietnam". At the top of the same page the briefing states that two companies "(Omni Oil and Montega Trading) that have submitted contracts to the OIP via the Mission are registered to the same person (Mr. R Hemphill). Mr. Hemphill owns a third South African registered Company (Falcon Trading) that supplies non South African goods to Iraq ...". **Ineluctably, Hemphill falsely represented to the Mission that Falcon was a South African registered company in which he was the major shareholder³⁸ and the officials at the Mission were induced to pass on this representation to the UN.**

Omni Oil

IIC allegations

[98.] Table 1 contains the following information about the activities of Omni Oil. The "Mission Country" was South Africa. Four contracts were concluded with SOMO. The non contractual beneficiary was Al Khafaji. Five and a half million barrels of oil were allocated of which 2, 070, 270 barrels were lifted. According to Table 2 these barrels were lifted under Contract No.

³⁸ See document "12" in Addendum One.

M/10/24 ("the Omni Contract"). The value of this contract was US \$ 38, 550, 168. Surcharges were levied in the amount of US \$ 621, 081. Surcharges were paid on the Omni Contract and amounted to US \$ 621, 000. Table 4 reflects that Bay Oil was the underlying oil financier of this contract and provided a letter of credit for the contract value.

[99.] Mr David Chalmers ("Chalmers"), the sole shareholder of Bay Oil, has been indicted in the US District Court for the Southern District of New York³⁹, *inter alia*, on a charge of paying surcharges to Iraq. Bay Oil is alleged to have paid inflated commissions to intermediaries, who then used a portion thereof to satisfy their own surcharge obligations to the Government of Iraq. **(This technique becomes significant when the Glencore/Montega and Glencore/Imvume arrangements are considered below.)** Between mid 2000 and late 2003 Chalmers is alleged to have conspired with Iraqi officials and others to lobby the Oil Overseers to select a deflated OSP in order to permit the Iraqis to collect surcharges more easily.

[100.] According to Table 5 Omni Oil deposited the following surcharges:

- * US \$ 60, 000.00 at Jordan National Bank on 17 July 2001;
- * US \$ 540, 0000.00 at Jordan National Bank on 5 September 2001;
and
- * US \$ 21, 0000.00 at Jordan National Bank on 24 January 2002.

³⁹ See USA v David B Chalmers, JR. and four others – indictment S105 Cr 59 (DC).