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WHAT'S INSIDE

DEFAMATION

Ex-employee claims military contractor defamed him about alcohol use

A former employee of defense contractor DynCorp International Inc. claims the company defamed him by falsely claiming he had illegally consumed alcohol while on guard duty at a U.S. Army base in Serbia.

Liverett v. DynCorp International Inc. et al., No. 17-cv-282, complaint filed (E.D. Va., Richmond Div. Apr. 11, 2017).

Grant A. Liverett says DynCorp knowingly and willfully made false and defamatory statements about him without conducting a substantive investigation to determine if the allegations that he had consumed alcohol were true.

As a result of the false statements, Liverett was forced to leave DynCorp, lost his job with another

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REUTERS/Hazir Reka

The plaintiff said he was guard service post supervisor for DynCorp at Camp Bondsteel in Kosovo, Serbia, shown here, when he was accused of consuming alcohol while on duty.

EXPERT ANALYSIS

Live by the sword, die by the sword: Making the False Claims Act's attorney fee provisions equitable

William E. Bucknam of MWI Corp. and Robert T. Rhoad and Matthew W. Turetzky of Sheppard, Mullin, Richter & Hampton discuss the case of *United States v. MWI Corp.* and how the False Claims Act's attorney fee provisions work to the disadvantage of a defendant that prevails over allegations of fraud against the government.

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EXPERT ANALYSIS:

On FCA enforcement, Sessions DOJ might be more friendly than it first appears

DLA Piper attorneys John M. Hillebrecht, Courtney G. Saleski, Andrew J. Hoffman and Mark A. Kasten analyze U.S. Attorney General Jeff Sessions' proposed changes to the False Claims Act and what that could mean for whistleblowers, the government and defendants.

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Live by the sword, die by the sword: Making the False Claims Act's attorney fee provisions equitable

By William E. Bucknam, Esq., *MWI Corp.,* and Robert T. Rhoad, Esq., and Matthew W. Turetzky, Esq., *Sheppard, Mullin, Richter & Hampton*

When it comes to attorney fees, the federal civil False Claims Act[1] gives prevailing qui tam relators, colloquially referred to as whistleblowers, special treatment. The FCA allows prevailing relators to recover attorney fees, costs and expenses.

Prevailing defendants may recover only if the government does not intervene in the case and if the court concludes that the relator's action was clearly frivolous, clearly vexatious or brought primarily for the purposes of harassment.

> Defendants cannot recover attorney fees if the government intervenes in a clearly unmeritorious case.

This means defendants cannot recover attorney fees if the government intervenes in a clearly unmeritorious case. We know firsthand what it is like to litigate such a case on behalf of a defendant that is being unfairly prosecuted. Based on that experience — which we are sharing in this analysis — we are calling for reformation of the FCA's attorney fee provisions.

Imagine your company becomes the subject of a U.S. Department of Justice investigation that lasts for 30 months — and ends without a grand jury indictment or criminal prosecution. Then, in a recalcitrant pivot, the DOJ decides to intervene in a civil FCA case that was filed years earlier and under seal by a qui tam relator.

The government intervention triggers the unsealing of the complaint and prompts active litigation. The company suddenly finds itself subjected to potential treble damages and penalties of nearly $225 million, even though it was never suspended or disbarred from government contracting.

That is precisely what happened to MWI Corp., a small, family-owned pump manufacturer in Deerfield Beach, Florida. The company has manufactured and provided infrastructure-grade pumping equipment for safe and sustainable drinking water, agricultural irrigation and flood abatement to customers in the United States and to emerging countries since the 1920s.

In 1997, MWI was the largest small-business user of the Export-Import Bank of the United States' loan programs and the No. 13 borrower overall. That year, MWI was named the Ex-Im Bank's "Small Business Exporter of the Year."

In August 1998, however, a former employee filed an FCA case against the company under seal in the U.S. District Court for the District of Columbia.

According to the lawsuit, MWI paid excessive commissions to a sales agent who brokered the sale of the company's water pumps to Nigeria.

The Ex-Im Bank, which provided financing to Nigeria to facilitate the deal, required MWI to certify that it had paid only "regular commissions" to its sales agents. The relator alleged MWI's certifications that it had paid only "regular commissions" were false and therefore violated the FCA.

After reviewing the lawsuit's allegations, the DOJ launched its own criminal investigation.. The grand jury/criminal investigation continued until early 2002, when the DOJ finally abandoned it without obtaining an indictment.

The DOJ then announced it was intervening in the former employee's civil FCA case. Suddenly, MWI found itself facing draconian FCA damages and penalties. If imposed, those penalties would have sent the company into bankruptcy and prevented it from providing much needed services to its customers.

The case finally went to trial in late 2013. The fundamental issue was whether the commissions paid to MWI's sales agent were "reasonable commissions." The term "reasonable commissions" had never been defined or clarified by the Ex-Im Bank.

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The government attempted — unsuccessfully — to prevent the jury from hearing evidence that the Ex-Im Bank pays its own export credit insurance brokers a significantly higher commission than the commission MWI paid to its sales agent.

The government did prevent the jury from hearing that the government of Nigeria had repaid $74.3 million in loans in full with interest and fees of roughly $30 million.

At the conclusion of the trial, the jury returned a verdict for the government amounting to only $7.5 million of the nearly $225 million it had sought. The $7.5 million sum was trebled to $22.5 million.

As a result of post-trial motions, however, the District Court reduced that judgment to zero because the loans had been repaid in full together with significant interest and fees — a fact of which the government was fully aware when it elected to intervene in 2002.

MWI Corp. found itself facing draconian FCA damages and penalties, which, if imposed, would have bankrupted the company.

The District Court nonetheless assessed mandatory statutory penalties against MWI in the amount of $580,000, resulting in an interim judgment in that amount.

The DOJ appealed the offset of the damages to zero, and MWI cross-appealed the judgment of liability. The National Association of Manufacturers weighed in on MWI's behalf, filing an amicus brief to demonstrate the full support of the business community.

On Nov. 24, 2015, the District of Columbia U.S. Circuit Court of Appeals issued a unanimous opinion that completely exonerated and vindicated MWI.

The appeals court reversed the judgment of liability and ruled that MWI's interpretation of the undefined and ambiguous term "regular commission" was reasonable.

In so doing, it noted that the company had never been warned away from its interpretation by the Ex-Im Bank. The D.C. Circuit instructed the District Court to enter judgment for MWI, and the lower court did so.

The D.C. Circuit subsequently denied the DOJ's petitions for rehearing and rehearing en banc. On Sept. 19, 2016, the U.S. solicitor general declined to file a petition for a writ of certiorari with the U.S. Supreme Court, thereby abandoning the government's case against MWI after over 18 years of litigation.

MWI's former employee, however, did file a petition for a writ of certiorari with the Supreme Court. The solicitor general filed a reply brief arguing that this was not an appropriate case for Supreme Court review. The Supreme Court denied certiorari in the case Jan. 9, thereby ending MWI's nearly two-decades-long legal nightmare.

MWI has finally been completely exonerated of any wrongdoing by the highest court in the land.

However, it has absolutely no hope of ever recouping the significant legal fees and expenses it incurred to defend itself or the millions of dollars in business it lost while fighting what was deemed to be a meritless case brought by the government. MWI's plight stems from the one-sided nature of the FCA's treatment of attorney fees.

Under the FCA, prevailing defendants such as MWI can recover attorney fees and expenses only if the government does not proceed with the action; the defendant prevails in the action; and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for the purposes of harassment.[2]

Prevailing relators, on the other hand, can recover "reasonable expenses which the court finds to have been necessarily incurred, plus attorneys' fees and costs," regardless of whether the government intervenes and regardless of whether the defendant's conduct was particularly malicious or willful.[3] What public policy rationale is served by such one-sided attorney fee provisions?

Perhaps Congress thought that without an attorney fees provision relators would not come forward and assert allegations of fraud. According to the Senate Report accompanying the FCA's 1986 amendments, "[u]navailability of attorneys fees inhibits and precludes many private individuals, as well as their attorneys, from bringing civil fraud suits."[4]

We think, however, that this concern has been overplayed and is now in need of reform. The relators' bar and its clients make a calculated economic decision when they file qui tam suits under the FCA. The calculation is that the costs associated with such suits will be outweighed by the likelihood and magnitude of success.

Given that the FCA already calls for treble damages and permits relators to take a cut of a settlement when a case does not advance to trial, we struggle to find the need for a fee provision that protects relators differently than defendants.

Congress was clearly aware of the burdens imposed on small businesses engaged in FCA litigation when it passed the 1986 amendments. Consider Rep. Berkeley Bedell's comments from the House floor Sept. 9, 1986:

> However, I am also a small businessman, and I understand the dangers involved. We must be careful not to add to the legal burdens of the vast majority of honest business persons who give the government the best product they can at the best price. I am pleased to note that H.R. 4827 provides that a defendant can receive expenses and lawyers' fees from the plaintiff if the court finds that a suit is clearly vexatious, frivolous or brought solely for purposes of harassment.[5]

Bedell and his colleagues would be disappointed to learn that 30 years later, a small business named MWI would be ensnared in the very harm that he thought the FCA protected against.

It is time for Congress to change the FCA attorney fees paradigm. Including a provision that allows prevailing FCA defendants to recover attorney fees — regardless of the government's decision to intervene and regardless of whether the relator acted vexatiously in filing the lawsuit — would even the playing field, ensuring that small businesses like MWI can at least be made whole when, after several decades of litigation, they are finally vindicated by multiple federal appellate courts. WJ

NOTES

1 31 U.S.C.A. § 3729.

2 *See* 31 U.S.C.A. § 3730(d)(4).

3 *See* 31 U.S.C.A. §§ 3730(d)(1), (d)(2).

4 *See* S. Rep. 99-345, reprinted at 1986 U.S.C.C.A.N. 5266, 5294.

5 32 Cong. Rec. H6474-02.

On FCA enforcement, Sessions DOJ might be more friendly than it first appears

By John M. Hillebrecht, Esq., Courtney G. Saleski, Esq., Andrew J. Hoffman, Esq., and Mark A. Kasten, Esq.
DLA Piper

When then-U.S. Sen. Jeff Sessions testified before the Senate Judiciary Committee for his confirmation hearing to become attorney general, his prepared remarks included forceful comments about the need to combat fraud on the federal government:

> This government must improve its ability to protect the United States Treasury from fraud, waste and abuse. This is a federal responsibility. We cannot afford to lose a single dollar to corruption, and you can be sure if I'm confirmed, I will make it a high priority of the Department of Justice to root out and prosecute fraud in federal programs and to recover monies lost due to fraud and false claims, as well as contracting fraud and issues of that kind.

Following these remarks, Sessions faced pointed questions about his plans for the False Claims Act, which imposes treble damages and civil penalties on any person who "knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval" by the United States.

The statute empowers private whistleblowers to bring lawsuits on the government's behalf and to share in any recovery. Whistleblowers file these so-called qui tam lawsuits under seal, during which time the Justice Department has an opportunity to investigate their allegations.

While the statute provides for a 60-day sealing period, the government routinely requests — and courts routinely grant — extensions of the seal. Qui tam cases can remain under seal for years to enable the government to complete its investigation and decide whether to intervene in the lawsuit.

During the Sessions hearing, Iowa Republican Charles Grassley, chairman of the Judiciary Committee and longtime advocate for whistleblowers, asked about the length of time that FCA cases remain under seal.

Grassley also asked whether, as attorney general, Sessions would provide timely updates to Congress on this issue. Grassley expressed his hope that these updates would "keep people within (DOJ) more responsive and responsible."

Sessions said he understood Grassley's concerns, acknowledged that FCA cases are sometimes under seal for "an awfully long time," and agreed to provide the requested reports to Congress.

Following the hearing, whistleblower groups and their lawyers trumpeted Sessions' remarks, stating that he "pledged his support for the FCA" and expressed "the importance of supporting whistleblowers."[1]

However, if the Sessions DOJ takes steps to meaningfully reduce sealing periods, doing so would not necessarily benefit qui tam plaintiffs.

To understand why, it is helpful to consult the DOJ's court filings in cases where the government has declined to intervene.

In these filings, the government often emphasizes that its declination "should not be interpreted as a comment on the merits of plaintiff's claims."[2]

Instead, "The Justice Department may have myriad reasons for permitting the private suit to go forward," including "limited prosecutorial resources."[3]

It stands to reason that these resource constraints may also explain the length of time it takes for the government to complete FCA investigations.

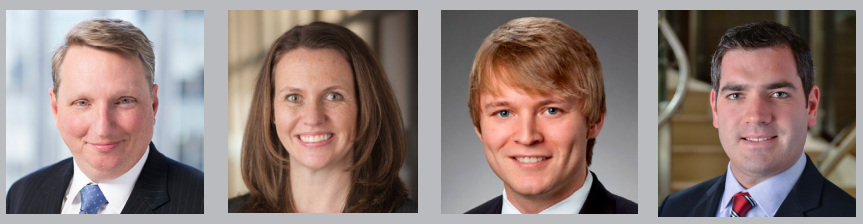
A meaningful reduction in sealing times could result in more declinations by federal prosecutors simply because they lack the resources to complete their investigations within the allotted time.

Historically, a government decision not to intervene has been the death knell for false-claims actions.

According to statistics published by the DOJ, the dollar amount of settlements and judgments in qui tam actions where the government declined to intervene accounts for only 8 percent of total recoveries in these actions over the past 10 years.[4]

In other words, a whistleblower's prospects of success decrease dramatically when the government refuses to join the case.

Earlier unsealing has other potential benefits for FCA defendants as well.



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First, unsealing triggers the public disclosure bar, which may prevent subsequent whistleblowers from bringing substantially similar cases.

Unlike the first-to-file bar, which applies only when a related action is "pending," the public disclosure bar applies in perpetuity.

Moreover, earlier unsealing would mitigate an imbalance currently experienced by many FCA defendants.

While the seal is in place, the government and whistleblowers have an opportunity to build their cases without the defendant's knowledge, giving plaintiffs a substantial advantage.

A defendant who is forced to defend against an FCA lawsuit after a substantial period under seal may encounter significant hurdles locating crucial witnesses and documents. A shorter sealing period puts plaintiffs and defendants on more equal footing.

> Qui tam cases can remain under seal for years to enable the government to complete its investigation and decide whether to intervene in the lawsuit.

From the perspective of FCA defendants, there may be other potentially encouraging news coming out of the early days of the Sessions DOJ.

The Trump administration's pick to serve as principal deputy assistant attorney general in the DOJ's civil division — tasked with enforcing the FCA — is Chad Readler, a former law firm partner who has been active in Ohio politics. The PDAAG is the second-in-command in the civil division, and Readler is currently serving as the acting head of the division until the Senate confirms a permanent replacement.

In 2013 Readler wrote a newspaper column in Cleveland's The Plain Dealer warning against creeping "overcriminalization" on the federal level. Discussing a proposed Ohio statute modeled on the FCA, he wrote, "Federal law can provide an ill-advised model for Ohio to follow."

Readler was critical of FCA enforcement that imposed "quasi-criminal" penalties for technical violations of complicated federal regulations.

He went on to note that the FCA has "come under criticism for ensnaring people who may not have entirely understood" their regulatory obligations.[5]

Readler is not alone in criticizing efforts to leverage the FCA to combat regulatory violations as opposed to intentional fraud. Just last year, for example, the U.S. Supreme Court noted that the FCA is "not 'an all-purpose antifraud statute,' ... or a vehicle for punishing garden-variety breaches of contract or regulatory violations."[6]

These remarks are consistent with a decision by the 4th U.S. Circuit Court of Appeals noting that, while "the correction of regulatory problems is a worthy goal," such a theory is "not actionable under the FCA in the absence of actual fraudulent conduct."[7]

More recently, a federal judge in the Central District of California sympathized with an FCA defendant accused of engaging in off-label drug promotion, describing the applicable regulations as "such a complicated maze one would be forgiven for thinking it was designed to house a Minotaur."[8]

Accordingly, there appears to be support in the federal courts — and possibly now in the DOJ's civil division — for reining in more expansive applications of the FCA.

While only time will tell how the Trump administration's Justice Department will enforce the FCA, the outlook may not be as grim for defendants as the plaintiffs' bar has suggested. Earlier unsealing and a focus on actual, intentional fraud may result in substantial benefits to defendants. WJ

NOTES

[1] Mary Jane Wilmoth, *Senator Sessions Questioned on Whistleblowers,* The Whistleblower Blog (Jan. 12, 2017), http://bit.ly/2oQNgwi.

[2] United States' Statement of Interest Addressing Merck's Motion to Dismiss at 1-2 n.1, *U.S. ex rel. Krahling v. Merck & Co.,* No. 10-cv-4374 (E.D. Pa. May 20, 2013), ECF No. 54.

[3] *Id.* (quoting *U.S. ex rel. Atkins v. McInteer,* 470 F.3d 1350, 1360 n.17 (11th Cir. 2006)).

[4] Fraud Statistics – Overview, Civil Division, U.S. Department of Justice (Dec. 13, 2016), http://bit.ly/2kkoene.

[5] Chad Readler, *Federal overcriminalization hurts Ohioans,* The Plain Dealer July 20, 2013, http://bit.ly/2otshDW.

[6] *Universal Health Servs. Inc. v. U.S. ex rel. Escobar,* 136 S. Ct. 1989, 2003 (2016) (quoting *Allison Engine Co. v. U.S. ex rel. Sanders,* 553 U.S. 662, 672 (2008)).

[7] *U.S. ex rel. Rostholder v. Omnicare Inc.,* 745 F.3d 694, 702 (4th Cir. 2014) (quoting *Mann v. Heckler & Koch Def. Inc.,* 630 F. 3d 338, 346 (4th Cir. 2010)).

[8] *U.S. ex rel. Brown v. Celgene Corp.,* No. 10-cv-3165, 2016 WL 7626222, at *9 (C.D. Cal. Dec. 28, 2016).

Watchdog group seeks former Defense secretary's email records

The U.S. Defense Department must release records concerning former Defense Secretary Ashton Carter's use of personal email and electronic devices for official business, a conservative government watchdog group says in a lawsuit.

Cause of Action Institute v. U.S. Department of Defense, No. 17-cv-741, complaint filed (D.D.C. Apr. 21, 2017).

Cause of Action Institute, a Washington-based conservative group, says the department must turn over the records to comply with the Freedom of Information Act, 5 U.S.C.A. § 552. CoA filed the complaint in the U.S. District Court for the District of Columbia.

RECORDS REQUESTED

A December 2015 New York Times article revealed Carter used a personal email account to conduct official government business.

Carter was secretary of defense from February 2015 until January. According to the complaint, he used the personal account for at least the first two months of his tenure in the Obama administration.

CoA says it was concerned Carter used the personal account to hide controversial communications. The group sent the department a FOIA request Dec. 18, 2015, seeking five categories of documents, the suit says.

In the first document category, the group sought records of official agency business Carter created or received on any personal email account. CoA says it requested other records of business conducted through text or instant message on Carter's personal devices, including BlackBerry Messenger, Facebook Messenger and Google Chat/Hangout.

Additionally, the group asked the department to supply all communications between any DOD official or the president's office and Carter concerning the use of personal devices and accounts for official business, the suit says.

CoA also requested records of the department's efforts to retrieve and retain government documents Carter created on his personal devices and email accounts, and records on archiving those official documents, the complaint says.

CoA says it sought these records for the period of Feb. 17, 2015, through the department's search date.

FOIA DOCUMENTS

The department responded to CoA's request in April 2016, the suit says. According to the complaint, the department said it received many requests for messages from Carter's personal email account and had already conducted a records search for the period of Feb. 1, 2015, through Jan. 1, 2016, made redactions and posted the documents on its FOIA website.

The department said it did not have any other records in response to CoA's request, the suit says.

DOD WITHHOLDING RECORDS?

CoA appealed the department's decision April 27, 2016, disputing the claim the government did not have any other documents.

CoA said the department adequately responded to its request for documents relating to official emails on Carter's personal accounts but did not make a sufficient search for other the types of records outlined in the FOIA request.

The department only looked through the first document category to see if it contained information sought in other parts of the request, rather than conducting an independent search of texts, instant messages or White House communications, the suit says.

The department said May 9, 2016, it would conduct a new search in response to the group's appeal, the suit says.

CoA alleges the department has not provided any records since then and has not complied with FOIA's deadlines.

FOIA generally provides government agencies 20 days to determine whether to comply with a records request, notify the requester of the decision and give reasons for the agency's conclusion. The statute also allows the government a time extension of up to 10 days.

If an agency needs more time, it must work with the requesting party to arrange an alternative time frame for processing the request, according to the complaint.

CoA is asking the District Court to order the department to process its documents request and turn over all responsive records. WJ

Related Filing:
Complaint: 2017 WL 1531715

See Document Section B (P. 22) for the complaint.

GE may have liability for third-party asbestos product, Washington state court says

By Kenneth Bradley, Esq.

General Electric Co. may have had a duty to warn a user about the dangers of exposure to asbestos products the company did not make but were necessarily used with turbines it made and sold to the Navy, a Washington state appeals court has ruled.

Woo et al. v. General Electric Co. et al., No. 74458-5-I, 2017 WL 1293478 (Wash. Ct. App., Div. I Apr. 3, 2017).

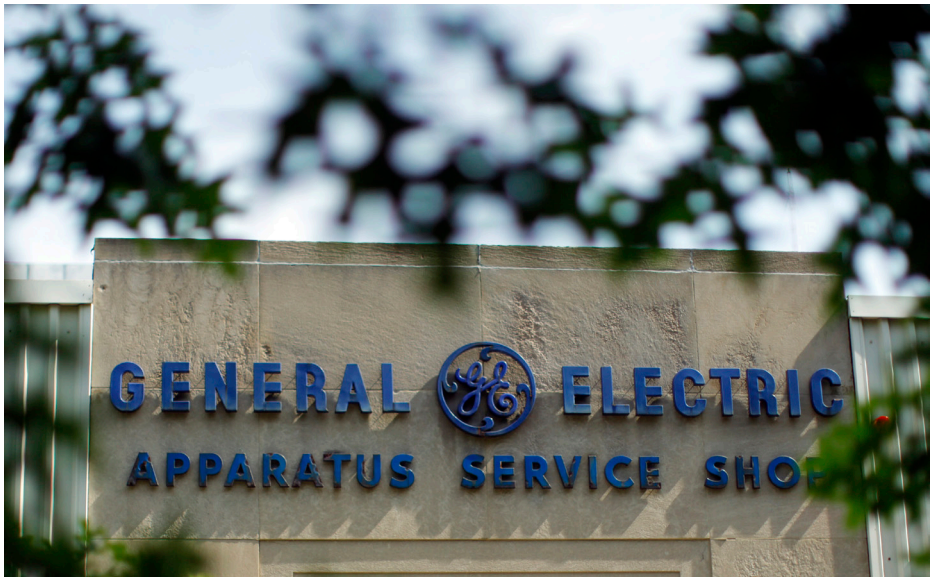
"There is a reasonable inference from the evidence that GE knew only asbestos-containing insulation, packing, and gaskets were available in the 1940s and 1950s and therefore, only asbestos-containing products could be used with the steam turbines," a three-judge panel of the Division I Court of Appeals said in an April 3 opinion.

The ruling reversed a trial court's decision to grant summary judgment in the company's favor in a wrongful-death suit.

Yeanna Woo, the personal representative of Yuen Wing Woo and his widow, Jean Oi Woo, filed the suit against GE in the King County Superior Court.

The plaintiffs said Yuen Wing Woo served in the Navy from 1943 to 1946 and then served as civilian engineer on several Navy vessels until 1952.

Woo died of the asbestos-related lung cancer mesothelioma in 2009, the opinion said.



REUTERS/Brian Snyder

GE made turbines and sold them in the 1940s and 1950s to the Navy, which used them on three vessels Woo served on, according to the opinion.

The company moved for summary judgment, contending the plaintiffs provided no evidence that it supplied any asbestos-containing component parts used with its turbines on the vessels Woo served on.

The plaintiffs opposed the motion. They offered evidence that GE knew that its turbines required insulation, packing and gaskets and that only asbestos-containing component parts were available in the 1940s and 1950s.

> The plaintiffs offered evidence that GE knew its turbines required insulation, packing and gaskets and that only asbestos-containing component parts were available in the 1940s and 1950s.

The Superior Court granted the motion, finding GE did not have a duty to warn under precedent set by the Washington Supreme Court in two similar cases, *Simonetta v. Viad Corp.*, 165 Wash. 2d 341 (2008), and *Braaten v. Saberhagen Holdings*, 165 Wash. 2d 373 (2008).

In *Simonetta* the state high court said in a Dec. 11, 2008, opinion that a company that made an evaporator used on a Navy vessel did not have a duty under common law to warn about asbestos-containing insulation it did not make but was later added to its product.

On the same day, the Washington Supreme Court reached a similar conclusion in *Braaten*.

The Woos appealed the Superior Court's ruling.

They argued that four years after *Simonetta* and *Braaten*, a divided Washington Supreme Court found a company that made respirators designed to filter out asbestos fibers may have had a duty to warn of the dangers of exposure to the toxin because the respirators were made specifically for use with asbestos. *Macias v. Saberhagen Holdings Inc.*, 175 Wash. 2d 402 (2012).

The plaintiffs told the appeals court that summary judgment for GE is inappropriate in light of *Macias*.

The appeals court panel noted that in *Braaten* the state Supreme Court said it had

not settled the question of whether there may be a duty to warn for a company that specified its product must be used with an asbestos-containing component part.

Both *Simonetta* and *Braaten* said that "generally" the law does not require a manufacturer to warn of the dangers of products others made, the panel in this case added.

However, here, summary judgment for GE was not warranted, the appeals court concluded.

"Viewing the evidence and reasonable inferences in the light most favorable to the estate, material issues of fact preclude summary judgment on whether GE had a duty to warn of the hazards of asbestos-containing insulation, packing, and gaskets manufactured by others," the panel said. WJ

Related Filing:
Opinion: 2017 WL 1293478

ASBESTOS

Texas aerospace company hit with $8.8 million verdict in asbestos suit

By Kenneth Bradley, Esq.

A Dallas jury has returned an $8.8 million damages award for the family of a man who developed the lung cancer mesothelioma from exposure to asbestos while working at a Bell Helicopter manufacturing facility.

Dickson et al. v. Bell Helicopter Textron Inc., No. DC-12-5995-D, verdict returned (Tex. Dist. Ct., Dallas Cty., 95th Dist. Mar. 27, 2017).

The jurors in Dallas County 95th District Court found that Bell Helicopter Textron Inc. engaged in "grossly negligent conduct" in exposing mechanical engineer Billy Dickson to the toxic fiber.

While the damages award includes $7.8 million in exemplary, or punitive, damages, the company will be responsible for just $1.64 million of the award due to Texas' cap on punitive damages, according to the plaintiffs' attorney Darren McDowell of Simon Greenstone Panatier Bartlett in Dallas.

Dickson's family sued at least 17 companies, alleging he was exposed to asbestos over many decades due to their activities, but the jury was not permitted to hear about these alleged sources of asbestos exposure, a spokesperson for Bell Helicopter said.

"Bell believes that the jury's verdict would have been very different had they been permitted to hear all the relevant evidence and looks forward to raising these issues on appeal," the spokesperson said.

Dickson worked at a Bell facility in Hurst, Texas, for 38 years and died of complications from mesothelioma at age 74 in 2013, according to a statement from Simon Greenstone Panatier.

His wife, Shirley, and three children alleged Bell did not have a company-based respiratory protection policy in place when Dickson was exposed to asbestos, the statement said.

His work included testing components in helicopters used in the Vietnam War, and Dickson was often exposed to 200 times the amount of asbestos permitted by government safety standards, the statement said.

> The decedent was often exposed to 200 times the amount of asbestos permitted by government safety standards, a law firm representing his family said in a statement.

McDowell described it as "an ungodly amount of asbestos exposure."

"They [Bell] knew in 1955 that asbestos exposure could be fatal, but did not do anything until the mid-1970s, and then only semi-complied," McDowell said.

REUTERS/Jose Gomez

The suit alleged Bell Helicopter did not have a company-based respiratory protection policy in place when the decedent was exposed to asbestos. Bell 212 helicopters are shown here.

"For Bell to have a total lack of regard for asbestos danger was absolutely heart-breaking to him [Dickson]," McDowell added.

The verdict came following a weeklong trial and after five hours of deliberation.

Judge Ken Molberg presided. WJ

Attorneys:
Plaintiffs: Darren McDowell and Samuel Iola, Simon Greenstone Panatier Bartlett, Dallas, TX

Defendant: Don Swaim, Cunningham Swaim LLP, Dallas, TX

Related Filing:
Verdict form: 2017 WL 1185164

Florida man admits to scamming would-be FEMA contractors out of $604,500

A Florida man has admitted he defrauded 1,200 companies by falsely promising that in exchange for a fee his business could help them obtain preferential treatment for contracts from the Federal Emergency Management Agency.

United States v. Pirolo, No. 17-cr-113, guilty plea entered (M.D. Fla. Apr. 10, 2017).

U.S. Magistrate Judge Thomas G. Wilson of the Middle District of Florida accepted Michael Pirolo's guilty plea to wire fraud charges, according to court records.

Pirolo, 48, admitted that his company, Government Contract Registry Inc., fraudulently collected more than $604,500 from firms seeking government business, acting U.S. Attorney W. Stephen Muldrow of the Middle District of Florida said in a press statement.

Pirolo, of Palm Harbor, Florida, perpetrated the fraud between June 2014 and October 2016, according to the Department of Justice.

In a March 14 criminal information filed in the District Court, prosecutors said GCR did business under the name "FEMA Contract Registration" and used telemarketers to contact companies by phone and email.

The telemarketers followed a script that Pirolo supplied and used fake names when communicating with potential victims, according to the government. The telemarketers falsely told businesses that GCR could register them with FEMA so they could receive preferential status when the agency awarded federal contracts, the charges said.

Pirolo's employees allegedly told companies that GCR would handle the registration and have them placed on a FEMA list of preferred contractors for a one-time $500 fee. The telemarketers told the victim companies that FEMA used the list to bypass competitive procurements and award no-bid contracts to registered firms, Muldrow said.

When a company agreed to start GCR's registration process, the telemarketers would send it an online form similar to one available on FEMA's website, according to the government. FEMA, however, does not register companies, charge any fees in connection with completion of its form or use the document in agency procurements, the government said. Instead, the agency uses the form for market research, prosecutors said.

After businesses signed and returned the completed forms to Pirolo, GCR employees used the information on the documents to complete the actual FEMA forms and submitted them to the government, the statement said. The submissions caused FEMA to email the companies, which gave the alleged registrations a legitimate appearance, according to Muldrow.

The government further claimed that Pirolo sometimes had his telemarketers contact clients and ask for another $500 payment to renew the purported FEMA registration.

The employees also tried to sell companies a $199 monthly subscription that would give them access to a business, GovBizOpps LLC, that would allegedly help them identify government contracting opportunities, prosecutors said.

Pirolo and his telemarketers signed some of their victims up for this additional service without their knowledge by using falsified signatures on the subscription contracts, according to the DOJ. When a GCR customer objected to a $199 charge on its credit card, Pirolo supplied the fake contract to the bank or credit card company as proof of an agreed-upon charge, prosecutors said.

Pirolo, who is currently out on bond, faces up to 20 years in prison. His sentencing has not been scheduled as of press time. WJ

Related Filing:
Criminal Information: 2017 WL 1405032

See Document Section C (P. 26) for the criminal information.

Oil and gas driller cries foul at nixing of lease in national forest

By Conor O'Brien

After expanding a Native American tribe's "traditional cultural district" in Montana, the Interior Department canceled a nearby oil and gas lease in violation of the leaseholder's constitutional due process rights and federal law, according to a federal court lawsuit.

W.A. Moncrief Jr. v. U.S. Department of the Interior et al., No. 17-cv-609, complaint filed (D.D.C. Apr. 5, 2017).

Plaintiff W.A. Moncrief Jr., a sole proprietorship, asks the U.S. District Court for the District of Columbia to declare the cancellation illegal and to reinstate the 35-year-old lease, which granted Moncrief the right to extract oil and gas deposits from more than 7,600 acres in the Lewis and Clark National Forest in northwestern Montana.

Moncrief, a Texas-based oil and gas driller, says that in the waning days of President Barack Obama's administration the Department of the Interior and the Bureau of Land Management on Jan. 10 announced the decision without providing Moncrief an opportunity to contest it.

In addition to alleging due process violations, Moncrief says the cancellation violates the Mineral Leasing Act, 30 U.S.C.A. § 181, which generally requires a judicial proceeding before the interior secretary may terminate a lease.

'SUBSTANTIAL RELIANCE'

In deciding to terminate the lease, the agencies said a 1981 environmental review by the Forest Service failed to adequately evaluate the lease's impact on the Blackfeet Tribe's cultural resources and interests in the area, the complaint says.

The National Environmental Policy Act, 42 U.S.C.A. § 4321, and the National Historical Preservation Act, 54 U.S.C.A. § 300101, require the federal government to analyze the impacts to the environment and any historic places before taking certain actions.

The 1981 review assessed the effects of oil and gas drilling on nearly 130,000 acres of land, including the contested leasehold, adjacent to the Blackfeet Indian Reservation in the Lewis and Clark National Forest, Moncrief says.

The Forest Service agreed to grant leases with surface occupancy for oil and gas drilling only for areas that could be "adequately protected," according to the complaint.

Moncrief's lease, for instance, requires the company to subject its plans to environmental analysis, engage "qualified cultural resource specialists," and obtain the approval of the area oil and gas supervisor before drilling, the complaint says.

The BLM awarded the lease to Moncrief's predecessor-in-interest in 1982, and Moncrief acquired it Jan. 1, 1989, according to the complaint.

"From 1989 to January 2017, Moncrief has placed substantial reliance on DOI's issuance of the Moncrief lease and has conducted geological assessments of the leasehold area and evaluated oil and gas exploration plans to develop the area," the plaintiff says.

EXPANSION OF TRIBE'S TRADITIONAL CULTURAL DISTRICT

The complaint says the federal government has curtailed oil and gas drilling in the area for decades, but each time has ensured that the rights of existing leaseholders would not be affected.

The decision to cancel Moncrief's lease came after the Forest Service's 2014 expansion of the Blackfeet Tribe's traditional cultural district to cover a total of 165,588 acres, including national forest lands leased for oil and gas development, according to the complaint.

A BLM official called Moncrief on Nov. 17, 2016, to say the lease would be canceled, but the company received no written notice before the DOI made the announcement Jan. 10, the complaint says.

Moncrief on March 17 asked Interior Secretary Ryan Zinke to reconsider, but the DOI has taken no further action, the plaintiff says. WJ

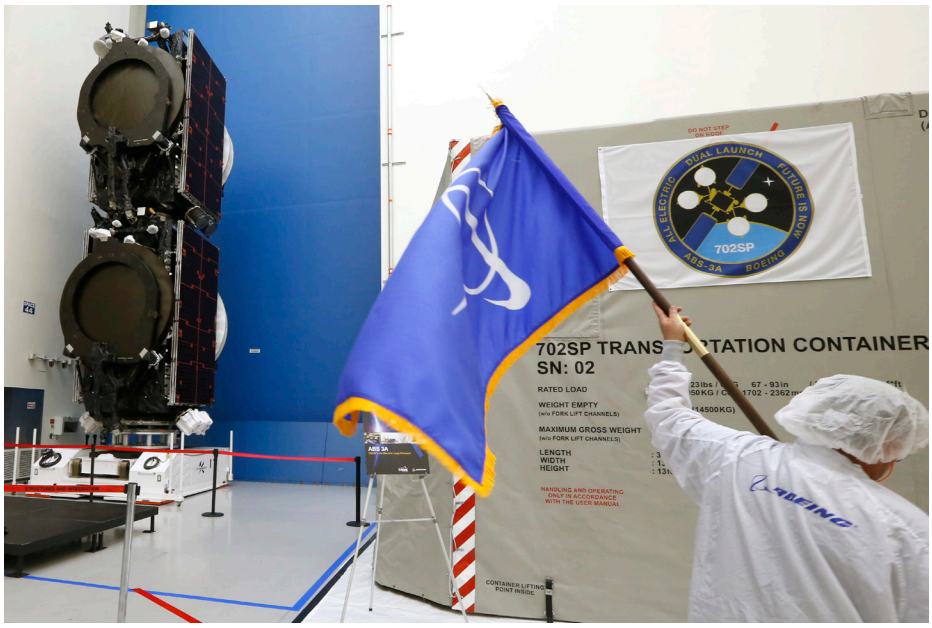
Related Filing:
Complaint: 2017 WL 1276819

See Document Section D (P. 29) for the complaint.

Black former Boeing employee alleges discrimination, hostile workplace

By Tricia Gorman

A former worker at Boeing's El Segundo, California, manufacturing facility says the aviation giant "blatantly" violates its anti-discrimination policy and subjects black workers to disparate treatment and harassment.



REUTERS/Lucy Nicholson

The plaintiff noted a related case previously was filed in the District Court by a black woman who has worked at Boeing's El Segundo facility, shown here, for more than 33 years.

Kensey v. Boeing Co. et al., No. 17-cv-2257, complaint filed (C.D. Cal. Mar. 22, 2017).

Boeing has created a corporate culture in which black workers are not promoted, are hired for lower-tier jobs and are denied preferred job assignments, Donzella Kensey says in the complaint, filed in the U.S. District Court for the Central District of California.

Kensey, who worked for the company for 15 years, says Boeing's discriminatory practices violate various provisions of the state's Fair Employment and Housing Act, Cal. Gov't Code § 12940.

The suit gives several examples of the company's past violations of state and federal anti-discrimination laws, but says the full list is "too long to recite."

"These instances demonstrate the culture of unfair employment practices condoned and performed by Boeing," the complaint says. "In fact, the workplace culture at Boeing is riddled with occurrences of racial discrimination, harassment and a hostile work environment."

Kensey says she received numerous awards for her work performance and on several occasions assumed additional duties and responsibilities but did not receive corresponding increases in compensation or title changes.

She was never rewarded as part of the company's employee recognition program, which included a $200 bonus, despite her work above and beyond the scope of her job, the suit says.

Kensey further alleges that instead she was replaced by a white, male employee on more than one occasion.

According to the complaint, Boeing's "systemic nepotism" promotes positions for white workers, and its failure to alert all employees of open jobs prevented Kensey from applying for higher positions.

"Plaintiff suffered adverse employment actions on pretextual grounds, but the true and only reason plaintiff suffered adverse employment actions is because she is African American," the suit says.

The complaint includes state law claims for racial and gender discrimination and harassment, as well as claims that Boeing failed to prevent the discrimination and harassment.

Kensey further alleges the company negligently supervised the managers and workers who engaged in the "extreme and outrageous" conduct against black employees.

The hostile work environment also caused Kensey humiliation, mental anguish and emotional distress, according to the complaint.

Kensey seeks unspecified compensatory, exemplary and punitive damages, as well as injunctive relief.

RELATED SUIT

In a separate filing March 22 Kensey noted a related case previously filed in the District Court by a black woman who has worked at Boeing's El Segundo facility for more than 33 years.

Simone Kelly, represented by the same attorneys as Kensey, also filed claims for race and gender discrimination and harassment in violation of California's anti-discrimination laws. *Kelly v. Boeing Co. et al.*, No. 17-cv-1679, *amended complaint filed*, 2017 WL 1161805 (C.D. Cal. Mar. 2, 2017). WJ

Attorneys:
Plaintiff: Steven H. Haney and Gregory L. Young, Haney & Young, Los Angeles, CA

Related Filing:
Complaint: 2017 WL 1161796

See Document Section E (P. 39) for the complaint.

Trump 'Buy American' edict may have little impact on U.S. steel, analysts say

(Reuters) – U.S. President Donald Trump's "Buy American, Hire American" executive order April 18 left questions about how the government would enforce the order and whether it would make a real difference in output and employment, according to steel executives and analysts.

"Buy American" provisions already exist in U.S. law but policing them has been difficult because of waivers granted to foreign companies that undercut their U.S. counterparts on pricing. Earlier April 18, Trump ordered a review of government procurement rules favoring American companies to see if they are actually benefiting, especially the U.S. steel industry.

Trump's executive order promises to properly police those provisions, but avoided detail about how that will happen.

Bill Hickey, president of Chicago-based Lapham-Hickey Steel, which has seven steel mills in the Midwest and Northeast, said he has heard talk of "Buy American" for decades, but American or foreign contractors frequently find loopholes to use imported steel.

"Politicians all talk the same, but at the end of the day it just doesn't work," Hickey said, citing waivers to existing provisions.

Charles Bradford of Bradford Research said focusing on "Buy American" for U.S. steel does not take into account that some steel products — including tin plate and semi-finished products — are not made in the United States. So if enforced improperly, it could cause supply problems in a U.S. market in which up to 25 percent of steel was imported in the first quarter of this year.

"The people who have pushed for this don't have a clue and they don't know math," said Bradford.

Cutting off the supply of goods not made in the United States would create fresh problems for U.S. companies, he said.

In the construction industry, there also are concerns over "too strict a definition of what constitutes U.S.-made steel products," said Kenneth Simonson, chief economist of the Associated General Contractors of America.

Simonson cited concerns with steel that might have been melted down from scrap metal that could have come from outside the United States, for example, and tracing its origins before that point.

Trump's White House track record so far also helps fuel skepticism inside the industry.

Instead of bold action promised last year by then-candidate Trump on the North American Free Trade Agreement, on China, and free trade agreements, the new administration has "not shown much evidence of doing so," said KeyBanc Capital Markets steel analyst Philip Gibbs.

"I'm a lot less optimistic than I was three-and-a-half months ago because so far what I've seen coming out of the Trump administration is the same as the prior administration," he added.

As a result, Gibbs said investors should dial back expectations that Trump will do anything meaningful on trade, or on infrastructure which is where such an order could make a difference.

AK Steel did not respond to requests for comment. Nucor and U.S. Steel both welcomed the president's executive order.

The move was welcomed by labor unions. The United Steelworkers said that under current practice, "contractors often try to avoid the law through loopholes to buy cheap and often substandard foreign products like many from China."

Thomas Gibson, chief executive of lobby group the American Iron and Steel Institute, said in a statement that "Buy American" provisions "are vital to the health of the domestic steel industry, and have helped create manufacturing jobs and build American infrastructure."

Veteran steel industry analyst Michelle Applebaum said while it remains to be seen how thoroughly the Trump administration will police the steel industry, the executive order sends a clear message to steel importers. "Trump has just created more risk for anyone who wants to import steel," she said. "If he puts money behind enforcement that will force people to play by the rules and that will be a good thing." WJ

(Reporting by Nick Carey; editing by Matthew Lewis)

Military contractor

CONTINUED FROM PAGE 1

contractor and has been unable to obtain employment in the defense contracting industry, according to the complaint, filed in the U.S. District Court for the Eastern District of Virginia.

'GIFT' OF ALCOHOL

Liverett says he began working for DynCorp and its subsidiaries in November 2013 as a guard service post supervisor at the U.S. Army's Camp Bondsteel in Kosovo, Serbia.

The Virginia-based defendants were under contract with the U.S. government to provide civilian security services at the base, according to the suit.

While Liverett was working at one of the base's gates on Sept. 23, 2014, a group of U.S. and Serbian military personnel sought entry to the camp with a bottle of alcohol, the suit says.

The ranking U.S. Army officer who was with the group allegedly told Liverett the bottle was a gift from the Serbian Army personnel for the base commander.

Liverett told the group that they could not bring the bottle into the base, and he offered to hold it at the gate and would permit it in if the base commander sent for it before his guard shift ended, the suit says.

When Liverett did not hear from the base commander by the end of his shift, he dumped out the bottle's contents and put the bottle in the trash, the suit says.

THE ALLEGED OFFENSE

The next day, Liverett learned from DynCorp officials that he was being charged with a crime under the Uniform Code of Military Justice for consuming alcohol while on duty, according to the complaint.

Liverett says he was never given a blood-alcohol test even though such testing is the protocol when alcohol use is suspected.

A military police investigator interviewed the ranking U.S. official from the incident, who confirmed Liverett's story about what happened at the gate, including the fact that the bottle's contents were dumped, according to the complaint.

Liverett says he discussed the allegations with a DynCorp human resources employee, who told him that she had been informed about the alcohol consumption by the company's security project manager.

The HR official was aware that the company's project manager had fabricated issues about Liverett's job performance in the past, the suit claims.

Liverett alleges the HR official told him she was looking into the allegations, but the company never conducted a "credible or substantive investigation."

DynCorp's security project manager allegedly told Liverett on Sept. 25, 2014, to leave Camp Bondsteel and threatened to have him blacklisted.

The plaintiff learned from DynCorp officials that he was being charged with a crime under the Uniform Code of Military Justice for consuming alcohol while on duty, the suit says.

Liverett says that after the incident he was subjected to "a continuing and systematic course of torment and abuse" by DynCorp's employees, who threatened him with imprisonment and frequently sent guards to his room to prevent him from getting any sleep.

Liverett was forced to resign Oct. 3, 2014, and he left the camp "humiliated, with very little money and no place to go," the suit says.

A NEW JOB

According to the complaint, Liverett obtained a new job Oct. 11, 2014, with nonparty Torres Advanced Enterprise Solutions LLC, a DynCorp competitor. At the time of his hiring, Liverett fully disclosed the events surrounding his leaving the position at the base, the suit says.

In his new position Liverett helped Torres defeat DynCorp for a new security contract at Camp Bondsteel, and Torres appointed him as security project manager for the new contract June 22, 2015, according to the suit.

Three days later Torres management told Liverett that they had heard from DynCorp that his employment there had been terminated for a violation of the military justice code.

DynCorp in September 2015 published a list of its employees who were barred from entering U.S. bases due to alleged offenses, and Liverett was on the list, the suit says.

Liverett alleges that Torres terminated him in December 2015 as a direct result of his name being on the list.

DEFAMATION CLAIM

Liverett says DynCorp published the list even though it knew that its security project manager had made false allegations against him and without having performed an investigation into the underlying allegations.

The company included Liverett on the list in a willful effort to show he was not fit to perform his new job with Torres and that he had committed a crime and to discredit him in his profession, the complaint claims.

Liverett says he has been unable to obtain employment in the military contracting industry and has suffered a loss of income because his name was included on DynCorp's list.

He also claims he has suffered emotional stress, humiliation and injury to his reputation.

The suit is seeking an award of unspecified compensatory damages, punitive damages of at least $350,000, interest, costs and attorney fees.

As of press time DynCorp had not responded to the suit. WJ

Attorneys:
Plaintiff: James B. Thorsen Jr. and Jesse A. Roche, Thorsen Hart & Allen, Richmond, VA

Related Filing:
Complaint: 2017 WL 1454160

See Document Section A (P. 17) for the complaint.

NAVY PICKS OREGON FIRM FOR $7.7 MILLION SHIP OVERHAUL JOB

The Navy has chosen Vigor Marine LLC of Portland, Oregon, to perform maintenance and repairs on the USNS Guadalupe, which brings fuel, cargo and supplies to ships at sea, the Defense Department said in an April 21 statement. The $7.7 million contract calls for the company to place the vessel in dry dock and paint the hull, perform various maintenance tasks and replace steel on parts of the deck. Vigor Marine also will inspect and overhaul the ship's firefighting and propeller systems and handle recertification for the vessel's lifeboats. The contract allows the Navy to order additional work and brings the job's value to more than $8.2 million, the department said. The company, which beat one other bidder for the contract, is expected to finish the work by Aug. 7.

LOUISIANA FIRM TO CONTINUE SUPPORTING IRAQI NAVY

The United States is paying Swiftships LLC of Morgan City, Louisiana, an additional $27 million so the company can continue working for the Iraqi Navy under an existing contract, the Defense Department said in an April 24 statement. Under the contract, which the company originally won in September 2014, Swiftships provides technical expertise on maintenance issues and handles repairs and overhaul services for the Iraqi Navy's patrol boats and other vessels, according to the DOD. The new funding, which brings the contract's value to more than $45 million, will allow the company to work at Umm Qasr Naval Base in Iraq until March 2018, the department said.

6 FIRMS WIN NAVY CONSTRUCTION CONTRACTS

Six bidders — C.E.R. Inc., CFM/Severn JV, Desbuild Inc., G-W Management Services LLC, Ocean Construction Services Inc. and Tidewater Inc. — beat 22 other s to win a Navy construction contract for projects in the District of Columbia, Maryland and Virginia, the Defense Department said in an April 26 statement . The government has allotted a total of $99 million for all the work, which will be performed between now and April 2020. The firms can compete for individual projects , according to the statement. G-W Management will handle the first contract project, which involves making $2.5 million worth of repairs and improvements to a building at Marine Corps Base Quantico in Quantico, Virginia, it said.

CASE AND DOCUMENT INDEX