

May 22, 2004

James M. Kovakas
Freedom of Information/Privacy Act Officer
Civil Division
Department of Justice (DOJ)
Room 7304, 20 Massachusetts Avenue, N.W.
Washington, DC 20530-0001
(202) 514-3319

Re: Freedom of Information Act Request - "Approval To Intervene" Memos

- Reference:
1. All 10 cases listed in DOJ Press Release # 03-613, dated Monday, November 10, 2003. (Marked by blue numbers on copied Pages 6 and 7 of this document.)
 2. United States of America *ex rel.* Laurence Saklad v. Henry R. Lewis, Vantage Travel Services, Inc. and Harry S. Melikian, USDC - Mass., CA - 97-10052-MLW.
 3. United States of America *ex rel.* U.S. ex rel. Albert Campbell v. Lockheed Martin Corp. (M.D. Fla. Aug. 5, 2003) DOJ PR #03-475. (Note: This is case number 10 on Page 7 of this document.)

Dear sirs:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, As Amended By Public Law No. 104-231, 110 Stat. 3048.

I request that a copy of the following documents be provided to me within the time frame dictated by law:

A. REQUEST FOR DOCUMENTS - DOJ MEMORANDUM(S) FOR FILE.

I request a copy of every "Memorandum(s) For File" and any other similar documents under any other names or descriptions issued by any DOJ party (the Attorney General, an Assistant Attorney General, etc.), granting the Department of Justice (DOJ) Civil Division Commercial Litigation Group (or other DOJ attorneys) statutory authority:

- (1) to intervene (and request the Court's approval to allow the Government to intervene) in the above referenced DOJ Press Release listed qui tam fraud lawsuits and reference 2 and 3 qui tam fraud lawsuits, and /or
- (2) to accept any qui tam proceeds (including any cash payments, alternate remedies of specific or future performance, forfeitures or other thing of value or other valuable considerations) in full or partial settlement of the above referenced qui tam lawsuit(s).

Specifically, there should be at least one document of this type for each of the above referenced eleven (11) False Claims Act lawsuit(s) filed by the relators and/or investigated, negotiated, and/or settled by the DOJ. Copies are most likely located in an outgoing correspondence file retained by the officer titled and authorized to give such "government intervention" approvals and/or in the Main Justice litigation approval files of each FCA lawsuit.

FIGURE 1 on Page 4 is a true copy of one of these sample documents from an unrelated lawsuit and is included so that there can be no misunderstanding about what is being requested. At minimum, the delivered documents should include the citation of the lawsuit, the name or names of the defendants, the generic or specific identification of the proceeds, the date issued, the DOJ "File No.", and the name of the party approving it.

B. REQUEST FOR DOCUMENTS - DOJ PRESS RELEASES.

A copy of each related DOJ Press Release announcing the results of any qui tam lawsuit filed or settled by any qui tam relator or the Government in the above referenced FCA lawsuits.

C. REQUEST FOR DOCUMENTS - ANNUAL REPORT OF QUI TAM PROCEEDS.

All sums owed to the United States and recovered as defense industry fraud "proceeds of the action or settlement of the claim" under a False Claims Act Relator's lawsuit are subject to delivery to the United States Treasury.¹ The DOJ is required to recover sums owed the United States² and to accurately report all money and property collected for the government on the Department's statistical reporting system.³

Please provide (1) the documents or report that itemizes what dollar total the DOJ claimed for each FCA lawsuit referenced above and (2) the documents or report that formally identifies the final dollar total reported to Congress (and the public) as "total FCA proceeds recovered in FY2003."

I request any report that itemizes and identifies all dollars and alternate remedies the DOJ claims to have recovered as qui tam proceeds in accordance with any and all of the False Claims Act lawsuits referenced above and delivered to the defrauded agencies or back to the public fisc. There should be at least one report for FY2003 and the numbers of dollars recovered should match the dollars returned to the public fisc, with a few administrative funds exceptions.

¹ U.S. *ex rel* Gibeault v. Texas Instruments, 104 F.3d 276 (9th Cir. 1997) - "...were in part proceeds of the action and due to the public treasury." U.S. *ex rel* Kelly v. Boeing Corp., 9 F.3d at 769 (All penalties and government recoveries from defense industries' fraud, under the qui tam statute, were originally intended to be deposited in the federal treasury's "general funds" account which is sometimes called the "miscellaneous receipts account".) U.S. *ex rel* Springfield Terminal Ry. Co. v. Quinn, 14 F.3d 645, 649 (D.C. Cir. 1994) (qui tam provisions are meant to encourage insiders with "genuinely valuable information" which will return money to the Federal Treasury). Moreover, in the course of the qui tam proceedings, any findings of fact which show a potential for increased return to the Federal Treasury are material to the court's application of Section 3730(b)(5), (Comment added: Section 3730(b)(5) is the "first-to-file" bar)." Source: Page 3 - Brief of Taxpayers Against Fraud, The False Claims Act Legal Center as AMICUS CURIAE Supporting Appellant in United States of America, ex rel. Linda A. Lujan, Appellant, vs. Hughes Aircraft Company, Appellee, No. 00-55328, in the United States Court of Appeals For The Ninth Circuit.

² US Attorney's Manual, Title 4, 4-4.430 Collections. "A major responsibility of the Attorney General, the Civil Division, and the United States Attorneys is recovering sums owed the United States. "In particular, all referrals of money claims which come within the United States Attorneys' delegated authority up to \$1,000,000 should be made through the National Central Intake Facility. Referrals beyond that amount should continue to be made directly to the Commercial Litigation Branch of the Civil Division."

³ US Attorney's Manual, § 4-1.511 - Cases Delegated To United States Attorneys., ¶ 2, (Rev.06/98.) - "Disposition of delegated cases, like the disposition of nondelegated cases, must be accurately reported on the Department's statistical reporting system. In particular, all money and property collected for the government should be reported."

In order to help to determine my status to assess fees, you should know that I am an individual seeking information for personal use and for dissemination to the general public and not for commercial use.

I request a waiver of all fees. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest. Every citizen that has paid even one dollar in federal taxes or that may be placed in a position to identify fraud, past or present, has a interest in and a right to know the DOJ success rate and how they handle the settlement of cases (including both the policy and procedures in place and the actual actions of the DOJ to impliment same) that are the results of a court's decision or a negotiated settlement.

If you make an initial determination that I do not qualify for an exemption to the fees, I am willing to pay fees for this request up to a maximum of \$100.00. If you estimate that the fees will exceed this limit, please inform me of the estimated cost first.

Please mail these documents to me at the address shown below my signature.

Thank you.

Sincerely,



Robert C. Ballew
3333 Chapel Wood Court
Fort Worth, Texas 76116-1226
(817) 244-3647

FIGURE 1 - SAMPLE DOCUMENT

MEMORANDUM FOR FILE

Re: United States ex rel. Robert C. Ballew v. Aerospatiale Helicopter Corporation and Textron Lycoming Corporation, Civ. Action No. 4-38-297-E (N.D. Tex.)

D. J. File No. 45-73-1322

Authority to intervene in the above-referenced ~~qui tam~~ suit under the False Claims Act against Aerospatiale Helicopter Corporation ("Aerospatiale") and Textron Lycoming Corporation ("Textron"), based upon the manufacture and delivery of defective LTS 101 engines for use in helicopters owned by the United States Coast Guard, and the submission of false claims for payment, is granted. In addition, authority is granted to accept Textron's offer to pay the Government \$17 million (with interest from November 2, 1989) and other valuable consideration, and to accept Aerospatiale's offer to dismiss administrative claims against and to grant other valuable consideration to the Government, in settlement of the above-referenced suit, and to move to dismiss that suit with prejudice. Finally, authority is granted to pay the relator 15 percent of the \$17 million payment (with interest from November 2, 1989) by Textron as the relator's statutory share of the recovery in this case.

Dated: MAR 15 1990

MAR. 15, 1990

151
STUART H. GERSON
Assistant Attorney General
Civil Division



Department of Justice

FOR IMMEDIATE RELEASE
MONDAY, NOVEMBER 10, 2003
WWW.USDOJ.GOV

CIV
(202) 514-2007
TDD (202) 514-1888

JUSTICE DEPT. CIVIL FRAUD RECOVERIES TOTAL \$2.1 BILLION FOR FY 2003 FALSE CLAIMS ACT RECOVERIES EXCEED \$12 BILLION SINCE 1986

WASHINGTON, D.C. - Recoveries in suits and investigations of fraud against the United States for the fiscal year ending September 30, 2003, tallied a record \$2.1 billion, the Justice Department announced today. This is a 75 percent increase over the prior year's recoveries (\$1.1 billion) and brings total recoveries to over \$12 billion since Congress substantially strengthened the civil False Claims Act in 1986.

"The record recoveries in civil fraud cases demonstrate this Administration's unwavering commitment to combat fraud and to ensure that tax dollars are well spent," said Peter D. Keisler, Assistant Attorney General for the Department's Civil Division. "It also attests to the contributions of whistle-blowers who report fraud and the extraordinary and tireless efforts of the civil servants from Justice's Civil Division, the United States Attorneys' Offices and other agencies that investigate and prosecute these cases."

Mr. Keisler also paid tribute to Senator Charles Grassley of Iowa and Representative Howard L. Berman of California who sponsored the 1986 amendments to the False Claims Act, the government's primary weapon to fight fraud against the government. "Without this important legislation strengthening the act and, in particular, the qui tam provisions that give everyone who comes in contact with a federally funded program a stake in reporting fraud, such recoveries would not have been possible."

Of the \$2.1 billion, \$1.48 billion is associated with suits initiated by whistle-blowers under the qui tam provisions of the False Claims Act. The qui tam provisions authorize individuals, known as "relators," to file suit on behalf of the United States against those who have falsely or fraudulently claimed federal funds. Such cases run the gamut of federally funded programs from Medicare and Medicaid to defense contracts, gas leases and agricultural subsidies. If the United States intervenes in the action, the person filing the suit can recover from 15 to 25 percent of any settlement or judgment attributable to the fraud identified by the whistle-blower. The percentage increases up to 30 per cent if the United States declines to intervene and the whistleblower pursues the action alone. In the fiscal year just ended, whistle-blowers recovered over \$319 million in rewards under the Act.

As in the last several years, health care fraud accounted for the lion's share of recoveries-\$1.7 billion. This number includes both whistleblower claims and those initiated by the United States in independent fraud investigations. The Department of Health and Human Services (HHS) reaped the biggest recoveries, largely attributable to its Medicare and Medicaid programs.

Substantial recoveries were also made for the Office of Personnel Management which administers the Federal Employees Health Benefits Program, the Department of Defense for its TRICARE insurance program, the Department of Veterans Affairs and the Railroad Retirement Board.

Outside the health care arena, defense procurement fraud accounted for \$299 million in recoveries and fraud in connection with gas leases with the Department of the Interior totaled another \$49 million.

Among the Department's largest recoveries in fiscal year 2003 were:

1. \$641 million from HCA Inc. (formerly known as Columbia/HCA and HCA - The Healthcare Company) for cost report fraud, the payment of kickbacks to physicians and overbilling Medicare for HCA's wound care centers. This settlement concluded litigation in numerous qui tam lawsuits as well as separate investigations initiated by the government. Along with an earlier civil settlement and criminal guilty plea reached in 2000, as well as a related administrative settlement with HHS, HCA has paid the United States \$1.7 billion, with whistleblowers receiving a combined share of \$154 million-by far, record recoveries both by the United States and whistle-blowers.
2. \$382 million from Abbott Laboratories and its Ross Products Division. Abbott is the first combined civil settlement and criminal conviction arising from "Operation Headwaters," an undercover investigation by the Federal Bureau of Investigation, the U.S. Postal Inspection Service and the Office of the Inspector General for HHS, in which federal agents created a fictitious medical supplier known as Southern Medical Distributors. During its operation, various manufacturers, including Ross, offered kickbacks to undercover agents to purchase the manufacturers' products and then advised them how to fraudulently bill the government for those items. In addition to federal Medicare and Medicaid recoveries, the states recovered \$18 million in state Medicaid funds in connection with the federal government's claims and an additional \$14.5 million on claims the states pursued alone. Abbott subsidiary C G Nutritionals also paid \$200 million in criminal fines.
3. \$280 million from AstraZeneca Pharmaceuticals, LP, to resolve allegations that AstraZeneca conspired with health care providers to charge Medicare, Medicaid and other federally funded insurance programs for free samples of its prostate cancer drug, Zoladex, and for otherwise inflating the price of the drug in violation of the Prescription Drug Marketing Act. The whistleblower's share of this settlement was \$47.7 million.
4. \$191 million from Northrop Grumman to resolve three separate fraud investigations. In the first, Northrop Grumman Space & Mission Systems Corporation paid \$111 million as successor to TRW Inc. to resolve allegations that TRW fraudulently overcharged the government on Department of Defense and National Aeronautics and Space Administration contracts. The whistleblower's share of this settlement was \$27.2 million. In the second and third, Northrop Grumman Corporation paid \$60 million and \$20 million, respectively, to resolve allegations of mischarging and selling the Navy defective military equipment. The former settlement involved Newport News Shipbuilding which Northrop Grumman acquired in November 2001.

5. \$143 million from Bayer Corporation to resolve a whistleblower's allegations that Bayer defrauded the Medicaid and Public Health Service programs by relabeling products sold to a health maintenance organization at deeply discounted rates and then concealing the discounts to avoid paying rebates, in violation of the Medicaid Rebate program. In addition, Bayer paid \$108 million to reimburse state Medicaid programs for the same conduct.
6. \$47 million from SmithKline Beecham Corporation, doing business as GlaxoSmithKline, to settle claims similar to those against Bayer. GlaxoSmithKline paid an additional \$40 million to reimburse state Medicaid programs and Public Health Service entities.
7. \$51 million from Tenet Healthcare Corporation and Tenet HealthSystems Hospitals, Inc. to settle government allegations that Tenet's Redding, California facility performed unnecessary cardiac procedures that were then billed to Medicare, Medicaid and TRICARE. In addition, Tenet paid nearly \$3 million to reimburse California's Medicaid funds.
8. \$49 million from Endovascular Technologies, Inc., a subsidiary of Guidant Corp., to settle the government's allegations that Endovascular Technologies failed to report to the Food and Drug Administration thousands of adverse incidents involving its "Ancure" cardiac device. The failure resulted in the submission of tens of millions of dollars of false claims for Medicare, Medicaid and VA benefits for procedures involving the device. In several instances, the device was linked to patient injuries and deaths. Endovascular Technologies also paid \$43.4 million in criminal fines and forfeitures.
9. \$49 million from Shell Oil Company to settle allegations that Shell improperly vented and flared gas from various offshore leases with the Interior Department. The suit also alleged that Shell underreported and underpaid royalties on the vented and flared gas. In 2000 and 2001, Shell paid the United States \$56 million and \$110 million to settle two earlier cases involving underpaid royalties owed the United States on natural gas and oil, respectively.
10. \$38 million from Lockheed Martin Corporation to settle claims that Lockheed Martin failed to provide complete, accurate and current cost and pricing data as required by the Truth in Negotiations Act, when it bid on a foreign military sales contract under the Air Force's Low Altitude Navigation and Targeting Infrared for Night program, known as LANTIRN. The United States' complaint alleged that the inaccurate data concealed a scheme to create additional profit which could be used to offset overruns on another Air Force contract.

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03-613