

FALSE CLAIMS ACT

2 Firms Pay \$1.75 Million to End Afghanistan Contract Fraud Case

Two companies will pay a total of \$1.75 million to resolve allegations they defrauded the U.S. Army while working under contract to provide vehicle maintenance services to the Afghanistan military.

United States ex rel. Walker v. PAE Government Services Inc. et al., No. 11-CV-00382, settlement announced (E.D. Va. Sept. 11, 2015).

The payment by Virginia-based PAE Government Services Inc. and Hong Kong-based RM Asia (HK) Ltd. resolves allegations lodged in the U.S. District Court for the Eastern District of Virginia that the companies violated the False Claims Act through a scheme that allowed employee-controlled entities to receive subcontracts, the Justice Department said in a Sept. 11 statement.

The FCA, 31 U.S.C. § 3729, is the government's primary tool for fighting procurement fraud.

PAE and RM Asia admitted no wrongdoing in agreeing to the settlement, the statement said.

THE COMPANIES' POSITIONS

PAE spokeswoman Meg Manthey said the company also was victimized in the scheme.

"PAE was also a victim in this case. Although a former PAE employee was among the perpetrators of this criminal scheme, in no way did the company benefit from this criminal conspiracy. In fact, the Department of Justice told the court that the criminal scheme was intended to defraud PAE as well as the government. PAE also provided significant assistance to the Department of Justice during the criminal prosecutions," Manthey said.

RM Asia also issued a statement about its participation in the settlement.

"RM Asia (HK) Ltd. has agreed to resolve, without an admission of liability, a civil case under the federal False Claims Act arising from the criminal actions of its former employees, John Eisner and Jerry Kieffer. Over the past several years, RMA fully cooperated with federal authorities who investigated and prosecuted Eisner and Kieffer, both of whom were acting outside the scope of their employment," the company said.

ALLEGED FRAUD IN AFGHANISTAN

The government became aware of the fraud when former PAE project manager Steven D. Walker sued the companies in April 2011.

Walker alleged PAE and RM Asia were involved in a bid-rigging scheme in Afghanistan that caused the submission of false claims for contract payments from the U.S. Army.

“The False Claims Act was born in war — the American Civil War — and has always served as a check on dishonesty by military contractors,” plaintiff’s attorney **R. Scott Oswald**, managing principal of **The Employment Law Group** in Washington, said in a statement.



The United States awarded PAE a contract in December 2007 to provide vehicle maintenance and training services to the Afghan National Army. PAE hired RM Asia to handle warehousing for vehicle parts and to manage the supply chain, the Justice Department said.

Walker alleged some members of the management staff at PAE and RM Asia, together with their relatives, set up their own companies in order to obtain supply subcontracts from PAE between May 2007 and June 2010. The defendant managers used confidential information to prepare bids so their companies could win the subcontracts, which were funded by the United States for the benefit of the Afghan National Army, the Justice Department said.

Four employees involved in the scheme were prosecuted and received prison sentences.

PAE and RM Asia were aware of the alleged fraud but took no steps to stop it, Walker alleged. The complaint said the bid-rigging fraud made PAE’s and RM Asia’s claims for contract payments from the government violate the FCA.

“The complaint alleged that the defendants formed a conspiracy which they called ‘The Network,’ where they set up the bid process to assure that one of their own companies would bid against an unqualified company, and therefore made sure the bids were awarded to themselves,” **Brian J. Markovitz**, one of Walker’s attorneys, said in a statement.

CASE RESOLUTION

The United States joined the case in August to negotiate the settlement.

“Our national security and those of our allies depend on quality goods and services delivered at a fair price,” Principal Deputy Assistant Attorney General Benjamin C. Mizer, head of the Justice Department’s Civil Division, said in a statement. “[The] settlement demonstrates our continuing vigilance to ensure that those doing business with the government do not engage in bid-rigging or other anticompetitive conduct.”

Defendants who pleaded guilty to participating in the bid-rigging scheme

- PAE program manager Keith Johnson
- Johnson’s wife, Angela
- RM Asia Project Manager John Eisner
- RM Asia Deputy Project Manager Jerry Kieffer.

PAE and RM Asia agreed to pay \$1.75 million to resolve the allegations, with PAE to pay \$1.15 million and RM Asia paying \$600,000.

The United States will receive \$1.45 million of the settlement funds, and each company will pay Walker \$150,000 to cover attorney fees and costs, court records indicate.

The government will pay Walker a \$261,000 portion of the settlement sum, according to the Justice Department as the FCA allows private citizens who bring fraud to the government’s attention to share in any recovery.

“Mr. Walker’s acts in ferreting out the fraud in this case were extensive and brave,” plaintiff’s

Experts weigh in on the False Claims Act

Q: Why is the False Claims Act important?

A: The False Claims Act is the most effective fraud fighting tool in the government's arsenal. The government has collected billions of dollars in taxpayer funds as a result of the act. The awards to the whistleblowers are indispensable for the law to have any appreciable impact. The government recoups billions of dollars of fraudulently obtained funds largely because honest insiders are willing to take tremendous personal risks to come forward. Without the act, a massive amount of fraud against the taxpayers would never have a chance of being detected.



Q: What lessons can be learned from this settlement?

A: Turn square corners when dealing with the government. Here, crime certainly did not pay for the individuals who went to jail. As to the contractors, strong and effective compliance programs that encourage whistleblowers to come forward without fear of retaliation are absolutely essential.

— Attorney Jay Holland,
Joseph, Greenwald & Laake, Greenbelt, Md.

Q: Why should government contractors be wary of the False Claims Act?

A: Government contractors should be concerned about the False Claims Act because, if they are caught defrauding the government, they can stand to lose substantial sums of money. The act provides for triple damages on any loss to the government in addition to fines of at least \$5,500 for each false claim made.



Q: Why should whistleblowers come forward when they suspect fraud against the government?

A: We, the taxpayers, all lose when contractors commit fraud. So, foremost, coming forward is the right and honest thing to do. While there is certainly great personal risk to people who come forward, fraud will not stop without brave people, like Mr. Walker, coming forward to stop it.

— Attorney Brian J. Markovitz,
Joseph, Greenwald & Laake, Greenbelt

attorney **Jay P. Holland** said in a statement. "Kickbacks and collusive bidding can be very difficult to uncover in a war zone, like in Afghanistan, and the wrongdoers would never have gone to jail, and the companies would not have been held responsible, if it were not for Mr. Walker's sense of duty and loyalty to his country."

The Employment Law Group principal **David Scher**, who also represented Walker, further commented on the settlement.

"A government contract is an expression of trust from American taxpayers," Scher said in a statement. "Here, several bad actors abused that trust terribly, treating the PAE contract as a license for fraud and self-dealing. After arriving in Afghanistan, Mr. Walker was disgusted to find himself in



the middle of such a scheme, and quickly blew the whistle. He acted as the conscience of his company, and as the eyes and ears of U.S. taxpayers. It was the right thing to do — but being a whistleblower in a war zone is never easy, and Mr. Walker deserves our admiration and gratitude.”

U.S. District Judge Liam O’Grady approved the settlement.

ATTORNEYS:

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DEFENDANT (PAE): ROBERT K. HUFFMAN, AKIN GUMP STRAUSS HAUER & FELD, WASHINGTON

DEFENDANT: (RM ASIA): KRISTIN H. JONES AND MICHAEL A. SCHWARTZ, PEPPER HAMILTON LLP, PHILADELPHIA

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