



United States Nuclear Regulatory Commission

NUREG/BR 0272
Volume 1, Issue 3
November 2000

OIG FRAUD BULLETIN

CIVIL FALSE CLAIMS

This is the third in a series of bulletins intended to sensitize NRC employees to common fraud schemes perpetrated against the United States Government. This edition focuses on the Civil False Claims Act. The Civil False Claims Act describes fraud and penalties for violation. The submission of a false claim to the government can make anyone liable to the government, both criminally and civilly. The Civil False Claims Act stipulates that the government can take action to recover penalties and damages for false claims in addition to, or instead of, resorting to criminal sanctions. Through such actions, the government recovers assets lost through fraud. A number of civil settlement case examples have also been included in this edition. A special feature entitled "Investigating Procurement Fraud" is included. We have also continued with our efforts to provide tips to individual NRC employees on how to avoid becoming the victim of current fraud schemes.

Civil False Claims Act (31 U.S.C. 2729-3733)

I. History/Reasons for Statute

The False Claims Act of March 2, 1863, was enacted during the Civil War in response to a "series of sensational congressional investigations into the sale of provisions and munitions in the War Department." The investigations showed how the United States "had been billed for nonexistent or worthless goods, charged exorbitant prices for goods delivered, and generally robbed in purchasing the necessities of war." Several revisions have been made to the act over the years. In 1986, Congress rewrote virtually the entire Act, known as the False Claims Amendments Act. The amendments were enacted "in order to strengthen and clarify the government's ability to detect and prosecute civil fraud and to recoup damages suffered by the government as a result of such fraud." Congress intended to provide the government with a "more useful tool" against fraud in modern times.

Table with 2 columns: Article Title and Page Number. Includes 'Inside this issue:' and 'Special points of interest:' sections.

II. What is a False “Claim”?

A false “claim” is broadly defined as any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded. A more encompassing definition of a false “claim” is “any claim for payment or transfer of government money or property,” including:

- A. claims for payment on a contract (e.g., invoices, requests for reimbursement);
- B. fraudulent negotiation of a treasury check;
- C. application of a loan;
- D. claims arising from loan guarantees;
- E. claims arising from grants and subsidies;
- F. reverse false claims - claims or statements to have the government forgo the collection of a duty, etc.

III. Burden of Proof

The government must prove by a “preponderance of the evidence,” that the contractor “knowingly” submitted a false claim.

IV. Knowledge and Intent

In the 1986 amendments, Congress also made clear that a “knowing” violation of the False Claims Act would take place if the defendant acted in “deliberate ignorance” or in “reckless disregard” of the truth or falsity of the information provided to the government. Knowing submission means actual knowledge or deliberate ignorance of the truth (failure to take reasonable steps to find out if the claim is truthful) or reckless disregard of the truth (failure to pursue indications of falsity to find out the truth). The False Claims Act made clear that proof of specific intent to defraud is not required.

V. Statute of Limitations

In 1986, Congress amended the limitations period to allow a False Claims Act action to be brought up to “3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed.”

VI. Damages and Penalties

The False Claims Act provides for treble damages, or not less than double damages if the defendant falls within the voluntary disclosure provisions of the Act. When the False Claims Act was amended in 1986, Congress added a new provision giving the court the discretion to impose not less than double damages if a person voluntarily discloses its violation of the Act. The False Claims Act provides that a person who commits any of the acts specified in the act is liable for “a civil penalty of not less than \$5,000 and not more than \$10,000.” As stated by Congress, the “United States is entitled to recover [civil penalties] solely upon proof that false claims were made, without proof of any damages.”

Because the False Claims Act Statute provides for penalties of \$5,000 to \$10,000 per false claim, each invoice submitted by a contractor could, under appropriate circumstances, be considered a separate false claim for purposes of the statute. The government can also recover treble damages or three times the amount of each false claim. The government must actually suffer monetary damages to collect under that portion of the statute but not to have the civil penalties assessed. The government is precluded from intentionally paying a claim it knows is false merely to activate the damages portion of the statute.

As the case examples in this edition will attest, in the majority of cases, contractors reach an out-of-court settlement with the government. By settling the matter, the contractor avoids the risk of treble damages being assessed. The government, on the other hand, avoids the cost and risk of a potentially long trial.

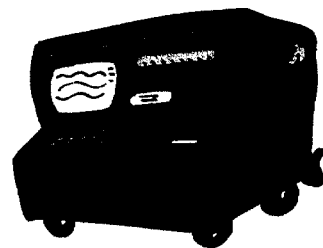
Examples of Civil Settlement Cases

Raytheon Agrees to Pay \$1,061,392 in Civil Suit

An investigation of the Raytheon Company Electronic Systems Division, (Raytheon) Quincy, MA determined that Raytheon failed to conduct various testing of parts used by the U.S. Army, Navy and Air Force. The investigation concluded that uncalibrated equipment was used for tests that were performed; improper test equipment was used; inaccurate test

data documentation was submitted; parts were not tested; and/or test documentation was missing. Some of the parts were located and retested with no failures and no field failures pertaining to these parts were reported. As a result of the investigation, Raytheon fired 17 employees, disciplined 9 employees and took other administrative actions.

On June 9, 2000, Raytheon agreed to pay a civil settlement of \$1,061,392.



NAPCO Reaches Settlement Agreement for \$500,000

The settlement was the result of an investigation that disclosed that North American Pipe Corporation (NAPCO), a subsidiary of



Westlake Chemical Company, Houston, TX, did not test all polyvinyl chloride (PVC) pipe it

manufactured and sold to the Department of Defense (DoD) as required by contract specifications. The NAPCO pipe had been installed on 36 DoD military installations across the nation at a cost of

approximately \$1.2 million. These PVC pipes are utilized in pressurized water systems for fire protection and potable drinking water.

The settlement resolves charges brought against NAPCO and the Westlake Chemical Company by Stan Price, an independent salesman who formerly sold pipe manufactured by the company. The case was brought under the whistleblower or qui tam provisions of the False Claims Act in the U.S. District Court for the Southern District of Texas in 1996.

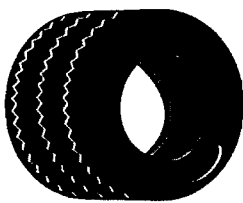
Under the qui tam provisions of the Act, a private party can file an action on behalf of the U.S. Government and receive a portion of any recovery if the party satisfies certain requirements. Under the settlement terms, Mr. Price will receive \$100,000 from the cash settlement and an additional \$300,000 from NAPCO.

On June 20, 2000, a civil settlement agreement of \$500,000 was reached between NAPCO and the U.S. Government.

Goodyear Settles in Civil Suit for \$453,000

An anonymous caller contacted the Department of Defense Hotline to report Goodyear Tire and Rubber Company (Goodyear) production deficiencies involving T-107 track shoe assemblies, which are utilized on the M-88 Armored Recovery Vehicle. An investigation disclosed that some Goodyear T-107 track components manufactured and delivered to the government during approxi-

mately September and October 1996, did not conform to contractual specifications. A settlement agreement was reached between Goodyear and the



U.S. Government. Under the settlement agreement, Goodyear agreed to make payment to the

government in the amount of \$453,000. Further, Goodyear will deliver 5,000 alternative T-130 Track shoe assemblies to the United States Army Tank-Automotive and Armaments Command, Warren, MI, valued at approximately \$300,000. Goodyear also agreed to implement modifications to the T-107 production line at a cost of approximately \$153,000.

\$400,000 Paid in Settlement of Contract Mischarging

Diverse Technologies Corporation (DTC) was awarded two U.S. Navy time and materials type contracts which called for the development of software for the Navy's financial accounting system known as Standard Accounting and Reporting System (STARS). STARS is used in the Defense Financing and Accounting Service (DFAS) accounting system. Each



of the contracts were valued at approximately \$3 million.

Information was developed that alleged that DTC officials were directing employees, through written memoranda to charge their time to the Navy contracts while performing administrative duties or working on other contract pro-

posals. Additionally, DTC was alleged to have used an overhead rate on both contracts that was fully burdened with the expenses of establishing an office in Mechanicsburg, PA, when in fact the office was never established.

DTC and the United States Attorney's Office, Baltimore, MD, reached an out of court settlement in the amount of \$400,000. The settlement agreement resolves allegations of systematic mischarging by DTC .

Fairfax Company Agrees to Settlement

On March 30, 2000, Mantech International Corporation (Mantech) of Fairfax, VA, entered into a civil settlement agreement with the United States Government for compensation and costs associated with Mantech's violation of the Federal Acquisition Regulation. Allegedly, Mantech billed the government for subcontractor

costs when, at the time of the invoices, its subcontractors had not been paid. The agreement requires Mantech to pay \$415,000 for compensation related to the interest lost by the government as a result of Mantech's improper billings and cost of the investigation.

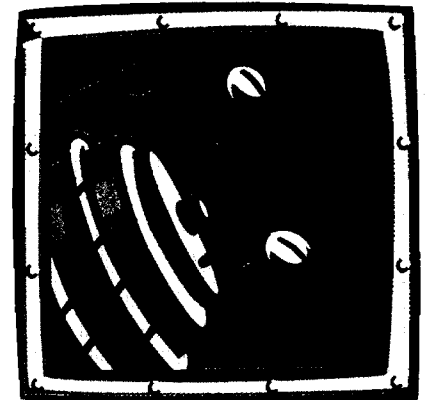


DOJ Contractor Pays \$320,000 in Settlement Fees

The Office of the Inspector General (OIG), Department of Defense (DoD), announced that Maxwell-Sierra Capacitor and Filter, Carson City, NY, agreed to pay \$320,000 in settlement of allegations that the DoD contractor failed to perform, or properly perform required testing on items manufactured for the U.S. Army, Air Force, Navy and the National Aeronautics & Space Administration (NASA) Maxwell-Sierra paid the \$320,000 on March 7, 2000. Testing of the parts is contractually required under military qual-

ity specification standards.

The U.S. Department of Justice negotiated the agreement on behalf of the DoD. This payment represents double damages for the Qualified Parts List (QPL) items Maxwell-Sierra sold to the government plus single damages for the source control drawing (SCD) parts which are dependent upon Maxwell-Sierra's status as a QPL parts manufacturer.



Investigating Procurement Fraud

The first step in the course of a procurement fraud investigation is receipt of a complaint of wrongdoing or an allegation. Allegations are received primarily from NRC employees and licensees. However, Congress, other agencies, citizens, and public interest groups also refer matters to the OIG for investigation. Current and former contractor employees are also a potential source of information concerning contractor fraud. A major conduit for complaints is the OIG Hotline. Allegations of suspected wrongdoing are also referred by NRC managers and the OIG audit program.

Timeliness of the referral is critical to the OIG's ability to successfully investigate a procurement fraud matter. Should there be a delay, the contractor could be afforded the opportunity to destroy or otherwise tamper with key evidence. A delay in reporting suspected fraud could also result in more loss to the government. It is important to note that NRC employees, especially those employees or project officers involved in the procurement process, should provide information to OIG even when there is a mere suspicion that a fraudulent act may have been committed by an NRC contractor or an NRC employee. Once an allegation is received, an analysis is conducted to determine whether further action is warranted and, if so, what type of action is needed.

If an OIG investigation is warranted, an investigative plan which outlines the pertinent facts of an allegation and how to best obtain evidence that will either prove or disprove matters essential to the offense under investigation is formulated. Investigative activities include examination of documents, to include: files, contracts, vouchers, reports, and memoranda. OIG investigators also obtain information by interviewing witnesses, technical experts and the subjects of investigations. During the course of the investigation, NRC contracting personnel (DCPM) as well as NRC project managers and project officers, work in close coordination and cooperation with the OIG investigators while continuing to perform their normal duties and responsibilities. NRC employees must be careful to ensure that the investigation is not discussed with contractor personnel. Attempts to solicit information concerning the investigation should be reported to OIG. Any effort to compromise, interfere with or impede the OIG investigation could be an obstruction of justice violation.

Close coordination and cooperation by DCPM, OIG and the Department of Justice (DOJ) must be maintained throughout the OIG investigation and DOJ civil remedy action and any proposed settlement agreement. Administrative contract settlement agreements are normally held in abeyance until the investigation has been resolved. Administrative remedies, such as suspension, debarment or contract action lie within the discretion of the contracting officer. The contracting officer's action is normally coordinated with OIG and DOJ so that the civil and administrative actions do not interfere with each other. The success of any criminal procurement fraud prosecution is dependent upon coordination and team work.

The investigation of procurement fraud is a top priority of the OIG, NRC. We hope the foregoing will be of some practical assistance in raising the awareness of NRC employees, especially those affiliated with the procurement process.

Tips on Telephone Scams*

There are many different kinds of scams that involve telephone services. Here are some to watch out for:

☎ “Slamming” is when your long-distance telephone service is switched to another company without your permission. It can happen in many ways. You may receive a check in the mail, or enter a contest, not realizing that the fine print says that by signing the check or the entry form you have agreed to change your phone service. Or you may get a call offering you lower rates and, even if you haven't agreed, find out later that you've been switched. Look at your phone bill carefully. If a different long-



distance company is listed, call your local phone company to find out how to get switched back with no fee and how to be re-billed at your original long-distance company's rates.

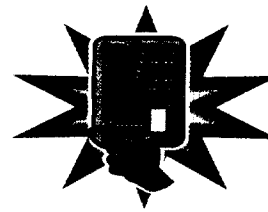
☎ Don't be “Crammed.” When monthly charges pop up on your telephone bill for optional services that you never authorized such as

voice mail, paging, a personal 800 number or club membership, it's called “cramming.” Like slamming, it can happen by filling out a contest entry form, failing to respond to a negative option sales pitch, or calling a 900 number. Or the crammer may simply pick your phone number out of the blue and place charges on your bill through your local telephone company claiming that you agreed to purchase the services. Look at your bill closely every month. Charges for optional services should be itemized and show the name of the company providing them and its toll-free number. If you did not authorize the services, call that number and insist that they be canceled and the charges removed from your bill. If the “crammer” agrees, let your local telephone company know. If it refuses or you can't get through, notify your local carrier that you're disputing the charges. Be sure to pay your bill on time, subtracting the disputed amount and any taxes or fees associated with it. Your phone service should not be disconnected, but be aware that the “crammer” can refer the matter to a collection agency.

☎ Prepaid phone cards are sometimes worthless or more expensive to use than coins or collect calls. Beware of cards that do not come with clear information about the rates for the calls. Comparison shop for the best rates and find out if there are fees or surcharges that might apply. Choose companies that provide toll-free numbers for 24-hour customer ser-

vice. If your card doesn't work, or the value of the card turns out to be less than what it said, or you have other problems, report them to your state or local consumer agency.

Not all 800 numbers are toll-free. You can be charged for calling an 800 number if you have

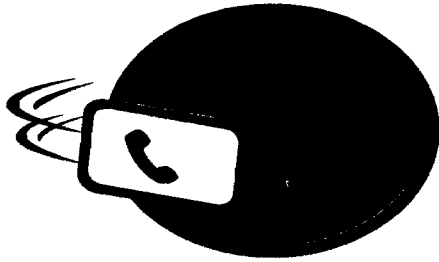


agreed in advance. But some consumers are tricked into being charged for 800 numbers by fol-

lowing instructions to dial “personal activation codes” that are really access codes linking them to “pay-per-call” numbers, or by other means. You can dispute improper 800 number charges by contacting the billing company.

☎ Claims of savings by using “dial-around” access numbers may be phony. Those seven-digit numbers that you can dial to get around your regular long-distance phone company to save money could result in higher charges, not lower, if there are added fees or calling minimums. Get all of the details and compare both the rates and the terms before you use an access code to place your long-distance calls through another company.

☎ You may be lured into making an international call without realizing it. Some international phone numbers look very similar to U.S. numbers, but the charges can be



far more. An advertisement may not make clear that the phone number listed is international. Or you might receive a message on your pager, your computer or your telephone answering machine that there is a family emergency or that legal action on a debt is about to be taken, with an unfamiliar phone number to call. If you are unsure where a number is, ask your operator before you dial.

☎ Beware of fraudulent computer-generated phone charges.

In the latest twist to phone frauds reported to the National Fraud Information Center, consumers who downloaded a program from a web site on the Internet to view pictures later received huge phone bills for international calls they never made. They did not know that the viewer program was designed to disconnect their computers from their regular Internet service providers and reconnect them to the Internet through a phone number in Moldova, formerly

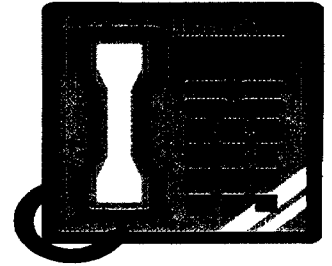


part of the Soviet Union! Don't download programs from web sites unless you know and trust them.

☎ Not all pay phones charge the same rates. Pay phones on streets, or in hotels, airports, restaurants,

stores and other public places may provide long-distance service through different companies than your own long-distance carrier. There should be information on or near the phone that explains how to get the service provider's rate

for



the call and that you have the right to be connected to the long distance company of your choice. If rate information is not provided or you are blocked from accessing another company, report it to your state public utility department.

*The above information comes directly from the National Consumers League.

Beware of Unexpected Charges for Buyers Clubs*

Consumers are finding charges on their credit card bills and debits from their bank accounts for memberships in buyers clubs that they never agreed to join or didn't agree to renew after the initial trial offer, according to the National Consumers League (NCL), a nonprofit advocacy organization. Complaints about buyers clubs to NCL's National Fraud Information Center, a hotline for consumers to report telemarketing fraud, are on the rise, from an average of 4 per month in 1999 to 12 per month in the first six months of this year. Buyers Club complaints currently rank as the ninth most common telemarketing complaint.

In some cases the charges or debits have appeared after consumers called to buy merchandise such as beauty products and lighting fixtures that were advertised on television. Typically the products are offered for very low prices, or they may be free but the consumer pays



for shipping. What consumers may not notice is a disclosure in fine print on the TV screen that purchasers will be enrolled in a club that offers discounts on other products. In other cases, consumers have received calls from telemarketers selling products and offering, in addition, buyers club memberships. Sometimes they are described as "free trial offers" but the

charges are made immediately. Other consumers report being charged for memberships despite the fact that they said they only wanted the merchandise and did not want to join the club.

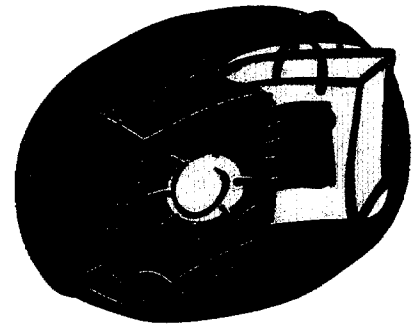
Some consumers say they have received "welcome packets" for club memberships even though they did not recall having any contact with the company. These included notices that the consumers would be charged unless they contacted the company to cancel but when they called, the consumers couldn't get through or were told the charges would not be removed.

Consumers should be wary of offers that involve very low prices or free products. These offers may only be the lure to get your credit card or bank account information. Consumers are cautioned to look carefully at their debit and credit card statements. Once someone has your account number, it is possible to charge you or debit your account even if you never agreed to purchase the services. Consumers who find unauthorized credit card charges or debits should dispute them immediately with their credit card issuer or bank.

The top ten telemarketing frauds reported to NCL's National Fraud Information Center in the first six months of 2000 are:

1. Prizes and Sweepstakes-phony prize awards requiring payment of fees first

2. Magazine-fake sales or renewals for magazine subscriptions that are never received
3. Credit card issuing-phony promises of credit cards requiring advance payment of fees
4. Work-at-home-kits sold with false promises of profits
5. Advance Fee Loans-empty promises of loans requiring advance payment of fees
6. Telephone Slamming-phone service is switched without the consumer's advertised on knowledge or consent
7. Credit Card Loss Protection-unnecessary insurance sold using scare tactics or misrepresentations



8. Telephone Cramming-billing consumers for optional services they never ordered
9. Buyers Clubs-unauthorized charges for memberships in buyers clubs consumers never agreed to join or didn't agree to renew after initial trial offer
10. Travel/Vacation-offers of free trips or discount travel that never materialize

*The above information comes directly from the National Consumers League.

Mail Stop T 5D-28
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Washington, DC 20555

Phone: 301-415-5930
Fax: 301-415-5091

Hotline:



800-233-3497

Things People Actually Said In Court

- Q. Did you blow your horn or anything?
A. After the accident?
Q. Before the accident?
A. Sure, I played for ten years. I even went to school for it.
- Q. Trooper, when you stopped the defendant, were your red and blue lights flashing?
A. Yes.
Q. Did the defendant say anything when she got out of the car?
A. Yes, sir.
Q. What did she say?
A. What disco am I at?
- Q. You say the stairs went down to the basement?
A. Yes.
Q. And these stairs, did they go up also?
- Q. Is your appearance here this morning pursuant to a deposition notice which I sent your attorney?
A. No, this is how I dress when I go to work.
- Q. How was your first marriage terminated?
A. By death.
Q. And by whose death was it terminated?

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