

Breaking Legal NEWS

Qui Tam Whistleblower

Retaliation & Contract Fraud

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Federal Court Declines To Dismiss Whistleblower Retaliation Suit By Engineer Who Complained About \$27 Million Pennsylvania Road Project;

(Williamsport, PA) - A federal court has declined to dismiss a whistleblower retaliation suit by an engineer who complained internally about billing fraud and contract improprieties in connection with a \$27 million Tioga County road project. Instead of acting against the project's general contractor, the engineering firm overseeing the four-lane project retaliated against the engineer because "he could not keep his mouth shut," according to the lawsuit filed by whistleblower Attorney Timothy J. McInnis, Esq.

McTish, Kunkle Associates ("McTish"), a consulting engineering, environmental and construction management firm with offices in Pittsburgh, Montoursville and Allentown, had petitioned Middle District of Pennsylvania Senior District Judge Malcolm Muir to dismiss the amended Complaint filed by McInnis on behalf of engineer David A. Anderson, of Elmira, New York. McTish had argued that the suit contained no claim on which federal relief could be granted.

The Amended Complaint was filed in November 2005, after the federal Government declined to intervene in the original whistleblower suit filed under seal in April 2004, McInnis noted.

In the amended Complaint, brought under the federal False Claims Act, Anderson alleges that he exposed fraudulent billing practices for PennDOT's "SR 15 Project." Financed by Federal Highway Administration and state funds, it involved construction along a six-mile portion of State Route 15 in Tioga County, approximately one mile north of the Blossburg interchange to just south of Mansfield.

McTish was responsible for overseeing the work of New Enterprise Stone & Lime Co., Inc., ("New Enterprise"), of New Enterprise, Pennsylvania, general contractor on the SR 15 Project; and Anderson was an on-site project manager for McTish, according to the Amended Complaint.

Included in the SR-15 Project were grading and drainage for the construction of a four-lane limited access highway with ramps and reconstruction of State Route 15 and three township roads. The project also involved mitigation of two wetlands and installation of guard rails, signs, and pavement, according to the Amended Complaint.

In November 2002 Anderson was laid off from the project, with a promise that he would be rehired in spring 2003. When he was not rehired, "... he contacted McTish and was told that the Pennsylvania Department of Transportation did not want him rehired on the SR 15 Project because he had raised problems with the contract administration and because he 'could not keep his mouth shut as he was told,'" the Complaint states.

Alleged by Anderson in the Complaint are:

That \$1.8 million was paid for environmentally removing brush and debris as required by the contract, when New Enterprise saved \$1 million by paying a subcontractor to burn the material on site. New Enterprise, McTish and PennDOT agreed to withhold this information from the Federal Highway Administration. Anderson brought up the subject to McTish and the need to return some of the funds on numerous occasions;

Contract milestones were missed by New Enterprise but liquidated damages were not assessed;

New Enterprise was paid to maintain an accurate Critical Path Method schedule but did not perform timely updates;

No work schedule was followed by New Enterprise; and

Over objections, New Enterprise "invaded" a "quarantine area," creating damage to the embankment and "causing significant cost overruns;" used substandard materials for the embankment's rock face and failed to conduct proper tests on the embankment or job site materials."

Anderson said he challenged the legality of actions by McTish, New Enterprise and PennDOT but was ordered to conceal those activities from the Federal Highway Administration, the Order noted.

The next step on the case will be a schedule for motions, discovery and trial, according to McInnis, whose New York City office concentrates its practice on whistleblower and employment matters.

"Across the U.S., conscientious employees do the right thing by discovering improprieties and fraud in Government contracts and payments," McInnis said. "When they rightfully bring these concerns to their employers, only to become targets for retaliation and dismissal, the courts are needed to address their plight. Whistleblower and employment protection laws are critical for insuring the return of improperly paid out Government funds and restoring the good names of those who spearhead those efforts."

In Anderson's case, he is seeking two times his lost wages, attorney's fees, litigation costs and other types of monetary relief, all of which are provided for under the anti-retaliation provisions of the False Claims Act, McInnis said.