

Qui Tam Whistleblower Breaking Legal NEWS

Small Business Innovation

Research (SBIR) Grant Fraud

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US Partially Joins Qui Tam Whistleblower Suit Against Nanotechnology Research Firm That Received \$50 Million in SBIR Grants Since 1985; Judge Orders Unsealing, Service Of Qui Tam Complaint Filed By Whistleblower's Attorney Timothy J. McInnis, Esq. In 2005; MER And Its Principals And Officers Defrauded Departments of Defense, Energy and NASA By Illegally Duplicating Projects, Falsifying Progress Reports, And Billing Government For Work On Private Projects, McInnis' Complaint Alleges

TUCSON, AZ —The U. S. Department of Justice and the U.S. Attorney's Office for the District of Arizona, in a March 31, 2008 notice filed in U.S. District Court, announced that the federal Government is partially intervening in a qui tam whistleblower lawsuit against Tucson-based Materials and Electrochemical Research Corporation ("MER"), a nanotechnology company that has received more than \$50 million in Government research grants since 1985.

The suit, filed under seal in 2005, charges the company and four individual defendants with violating the federal False Claims Act between 2002 and 2005 in connection with MER's receipt of Small Business Innovation Research ("SBIR") grants, according to the whistleblower's attorney, Timothy J. McInnis, Esq.

A week after the U.S. announced its intervention decision, on April 7th U.S. District Judge David C. Bury ordered the whistleblower's qui tam Complaint to be unsealed and also ordered the Government and the whistleblower to serve their respective Complaints on the defendants within 30 days. It is not clear from the Government's March 31 filing which of the qui tam Complaint allegations it will be joining, McInnis explained.

McInnis' qui tam Complaint alleges that MER, its two principals J.C. Withers and R.O. Loutfy, and two of its officers, Vice Presidents W. Kowbel and R. Storm, defrauded the federal Government's SBIR grant program by, among other schemes, illegally duplicating projects among three different agencies, billing the Government for time spent for private customers, and providing false documents. The Complaint also

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charges MER with retaliating against former MER employee Masoud Samandi, the whistleblower who brought forward the allegations which McInnis presented to the Government under seal.

The Government's notice of intervention does not specify which Samandi Complaint allegations it will be joining. That should become more clear after the Government files its own Complaint, McInnis explained.

MER, a privately held firm with approximately 70 employees, many of which are PhD's, "engages in high technology materials and electrochemical research and development with an emphasis on advanced composites, powders, coatings and fullerenes as well as energy conversion systems that include batteries, fuel cells, and gas storage," according to Samandi's qui tam Complaint.

An Australian national, Samandi was hired with a U.S. Government-approved work permit as an MER senior engineer. Prior to that he had been a Senior Lecturer in Engineering at the University of Wollongong, New South Wales, Australia. Withers and Loutfy forced Samandi to participate in making false reports to the Government by threatening him with loss of his job and deportation back to Australia, according to the retaliation count of his Complaint. Samandi left MER in 2004 and no longer resides in Arizona, McInnis said.

The SBIR program is part of the Small Business Administration. Its goal, "... is to provide the Government with new and cost-effective solutions to complex scientific and technical problems, while also encouraging small businesses to market such technology in the private sector, thereby helping to stimulate the U.S. economy." according to the Complaint. Under SBIR regulations, federal agencies with extramural research and development budgets over \$100 million are required to give out grants amounting to approximately 2.5% of their annual budgets.

Among other things, the commercialization potential for products flowing from SBIR research grants is a basis for awarding SBIR grants, the Samandi Complaint explains. MER claimed to be, the "world's largest producer of fullerene." In truth, "from at least in or about 2001 to in or about 2004, MER did not produce any fullerene, but instead imported its entire output of fullerene from Russia," the Samandi Complaint states.

McInnis is a former federal prosecutor with offices in New York City who concentrates his practice on federal and state False Claims Act ("FCA") and Qui Tam whistleblower suits across the U.S. McInnis filed Samandi's allegations under seal, pursuant to federal law, so federal authorities could investigate the charges before making an intervention decision. "Qui Tam" is a term derived from English Common Law meaning "he who sues on behalf of the king as well as himself."

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Under the FCA, Qui Tam actions allow private citizens with knowledge of fraud to help the Government recover ill-gotten gains and additional civil penalties. The FCA allows the Government to collect up to three times the amount it was defrauded, in addition to civil penalties from \$5,500 to \$11,000 per false claim. In successful Qui Tam whistleblower cases in which the Government intervenes, whistleblowers are typically entitled to receive awards representing 15-to-25 percent of Qui Tam recoveries, McInnis noted.

“Our Departments of Defense and Energy, and NASA have limited dollars for SBIR grants. Unscrupulous applicants and grantees who abuse this system siphon away dollars that could help solve today’s technology challenges and improve our national economy. We need more whistleblowers like Masoud Samandi to help return fraudulently obtained SBIR money to the Government so, instead, it can be granted to applicants who will not abuse the system,” McInnis said.

The United States is represented by the Department of Justice’s Commercial Litigation Branch, Fraud Section, in Washington, and the U.S. Attorney’s Office for the District of Arizona. The federal Government and McInnis will now determine how their respective cases will be prosecuted.

Contact Information

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Attorney for MER and Individual Defendants

MER and the individual defendants are represented by Bruce Heurlin, Esq. (Tucson), 520-325-4200.

Case Caption

United States ex rel. Masoud Samandi v. Materials and Electrochemical Research Corporation;- J.C. Withers; R.O. Loutfy; W. Kowbel; and R. Storm. CV 05-124-TUC-DCB District of Arizona (Tucson)

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