

Daily Journal

FEBRUARY 18, 2015

Top Verdicts of 2014

The Largest and most significant verdicts and appellate reversals handed down in California in 2014

TOP DEFENSE RESULTS

U.S. ex. rel. Hooper v. Lockheed Martin Corp.

case
INFO

Whistleblower

Central District of California

U.S. District Judge Beverly Reid O'Connell

Defense attorneys: Crowell & Moring LLP, Mark R. Troy, Jeffrey H. Rutherford, Mana E. Lombardo, Megan A. Weisgerber

Plaintiff's attorneys: The Cullen Law Firm PLLC, Joseph A. Black, Daniel E. Cohen; James A. Moody Law Offices, James A. Moody; Isaacs, Friedberg & Labaton, Mark I. Labaton



Mark Savage / Special to the Daily Journal

FROM LEFT, JEFFREY RUTHERFORD, MEGAN WEISGERBER, MANA LOMBARDO, AND MARK TROY

By proving a bill to the U.S. Air Force for Lockheed Martin Corp.'s rocket launch software program doubled due to the government's changes, Crowell & Moring LLP attorneys helped their client avoid returning \$432 million in alleged overcharges.

Under the False Claims Act, that amount of money could have tripled to \$1.2 billion if the whistleblower won the case.

The contract, which focused on automating and updating software to support the rocket launch operations at Vandenberg Air Force Base in California and Kennedy Space Center in Florida, was estimated to cost \$400 million in 1995 but rose to over \$800 million by 2008.

The Air Force paid Lockheed Martin the doubled estimate, but former research operations engineer Nyle J. Hooper filed a lawsuit in 2005 alleging the company made a low bid to win the contract and then fraudulently upped the charges. *U.S. ex. rel. Hooper v. Lockheed Martin Corp.*, 08-CV00561 (C.D. Cal., filed Jan. 29, 2008).

The federal government investigated the contract and found no wrongdoing.

"[The government] said, 'Lockheed, we want you to build this system and we'll pay you whatever it costs.' This is quite unusual," said defense attorney Mark R. Troy of Crowell & Moring. "It would strike a normal person like a juror as odd business."

The cost-reimbursement contract is how the government does business with contractors inventing new systems or products. Though the complex contract was an issue in the case, defense lawyers also had to contend with potential sympathy for the whistleblower who allegedly lost his job over the claims.

"One guy standing up and saying the government is harmed is not compelling evidence when the Air Force personnel who were allegedly harmed stand up as witnesses and say we were not harmed," Troy said. "They said we

imposed changes and we got what we wanted and we didn't feel Lockheed overcharged us at all."

In the recently filed opening brief of the plaintiff's appeal to 9th U.S. Circuit Court of Appeals, plaintiff's attorneys argue that U.S. District Judge Beverly R. O'Connell improperly banned a witness and expert.

"This expert looks at what Lockheed had done and concluded the use of particular software cost estimation model was done wrong. He concluded it was fraud," said Joseph A. Black of The Cullen Law Firm PLLC in Washington, D.C.

"The other person was an Air Force officer who testified Lockheed's performance on the contract was very bad, and it cost the government a lot of money," Black added. "Both of those people would have helped us a lot."

— Kibkabe Araya