

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

**UNITED STATES OF AMERICA))
))
 vs.) **5:07-CR-00098-IPJ-PWG**
))
**ALEXANDER NOOREDIN LATIFI,))
and AXION CORPORATION))****

GOVERNMENT’S TRIAL MEMORANDUM

I. INTRODUCTION

The United States hereby submits this Trial Memorandum outlining the expected evidence at trial, the statutory provisions charged, and the potential legal issues implicated by this prosecution. This memorandum is intended for the convenience of the Court and is not intended to bind the government or limit the proof or arguments to be offered by the United States during the course of trial.

II. OVERVIEW OF THE GOVERNMENT’S CASE

On October 25, 2002, Axion Corporation was awarded a contract (DAAE07-D-N002) to supply Shock Absorbers to the United States Tank-Automotive Command (TACOM), Warren, MI. The contract value with exercised options was \$3,085,161.08 over a five-year period. The contract required Axion to provide a representative sample of the production quantity by completing

a First Article Test (FAT). Upon completion of the FAT, Axion was required to submit a First Article Test Report (FATR) to the U.S. Government, which was to assure that Axion had the capability to manufacture a product that conformed to all the contract requirements. The contract required Axion to test two completed shock absorbers (units), but only one of those units had to complete the testing process. The unit that completed the process could be used as a representative sample of the production quantity.

In order to provide further assurance to the Department of Defense (DOD) and its contractors, the suppliers of the parts are generally required to execute and provide a document known as a "Certificate of Conformance" or "Certificate of Compliance". This document is provided and signed by a representative of the manufacturer, distributor, or other supplier of the relevant part. Generally, the COC certifies that the parts have been tested and are in compliance with all applicable specifications. The DOD also requires that the suppliers/contractors of parts be able to provide sufficient documentation, including test results, to enable DOD to confirm that the parts have been manufactured and tested in accordance with applicable specification. This requirement, known as traceability, is meant to provide an independent means of verifying that testing has been properly performed.

On January 13, 2004, Axion submitted a FATR to the government regarding

the shock absorber contract. The report, which was signed by Alex Latifi, President of Axion Corporation, contained certifications, test reports, inspection reports and drawings regarding the representative first article sample. The report included a COC that indicated Industrial Fabrication Incorporated (IFI), 527 Plummer Road, Huntsville, AL, manufactured the bearing assembly, which was part of the shock absorber. The COC was signed by Kary Warren, Owner, IFI, and dated October 27, 2003. The COC indicated that IFI manufactured and tested the bearing assembly. The COC contained attached sheets that displayed the test requirements for the bearing assembly and certified test reports signed by Latifi and Warren for testing performed on the bearing assembly dated November 18, 2003. The evidence will show that the three tests either did not take place or were performed on machinery that was not calibrated.

In April 2004, a federal search warrant was executed on the AXION facility located at 317 Nick Fitchard Road NW, Huntsville, AL, and Latifi's residence, 15 Asbury Road, Huntsville, AL, to obtain evidence relating to the United States Army contract, DAAH23-03-D-0320, bifilar weight assembly for the Blackhawk helicopter. Axion was awarded this contract on August 23, 2003. In the original solicitation and the contract was the following clause: "This acquisition contains data which is considered critical technology and has been restricted for release outside the United

States. This information cannot be released outside the United States without prior approval of the government."

On January 13, 2004, Axion submitted a FATR to the government regarding the bifilar weight assembly contract. The report, which was signed by Alex Latifi, President of Axion Corporation, contained certifications, test reports, inspection reports and drawings regarding the representative first article. The report included a COC that indicated on January 5, 2003, B&C Instruments weighed the item certified to in the FATR. The report also included COCs from Techtrix, Inc., dated January 6, 2003; Material Technology, Inc., dated January 8, 2003, and Smith's Paint Shop, dated January 10, 2003. During the government's review of the FATR, several items were noted as missing, one being the name and address of the contractor who performed the process from powder to into blanks. A request was made to Axion on February 9, 2004, to provide this information along with several other items. Axion faxed the requested items to the administrator of the contract. In the documents provided by Axion, one the items was a COC from Tungsten Products dated January 9, 2004. Based on the items received, the government approved the FATR.

In September 2003, Latifi asked James Hopkins to edit the technical drawings for the bifilar weight assembly. Hopkins extracted information from the technical drawings and used a computer-aided design program to redraw the drawings. While

working at Axion, Hopkins observed a brochure from a Chinese manufacturer for tungsten parts, which is the material used to make the bifilar weight assembly. Hopkins advised Latifi that the drawings might be subject to the export control laws. Latifi told Hopkins that it seemed too complicated to export the technical drawings outside the United States; instead, Latifi advised Hopkins that he would only distribute them to domestic companies.

During the search, numerous documents were seized that indicated Latifi and Axion were conducting business with a Chinese company through Ming Hwang, EcoTungsten, San Jose, CA. Email correspondence between Latifi and EcoTungsten revealed that Latifi had provided the bifilar weight assembly technical drawings, requirements and other information to EcoTungsten. Furthermore, email correspondence from September and October 2003 revealed that EcoTungsten subsequently forwarded the technical drawings, requirements and other information to offshore engineers in China. Latifi knew the drawings were forwarded to China because Hwang and Latifi discussed his “off-shore” engineers in China and visiting the Chinese facility. After producing the part, the Chinese delivered the weight assemblies via fedex, air and sea to the Axion facility, 317 Nick Fitchard Road NW, Huntsville, AL. Hwang, through EcoTungsten, provided the delivered 146 Chinese parts delivered to Axion from 2003 until 2005.

In the FATR, Latifi identified Tungsten Products, Madison, AL, as the supplier of the First Article and supplier of the production quantities. From November 2004 to September 2005, Axion delivered 246 weight assemblies to the United States Government. However, during 2004 and 2005, Tungsten Products, Madison, AL, only provided Axion with a total of 233 weight assemblies (blanks). At a minimum, there were thirteen (13) weight assemblies delivered to the government that were not supplied to Axion by Tungsten Products as required by contract.

In December 2005, the contract was Terminated for Default because Axion failed to deliver per the terms of the contract. After the termination, Latifi submitted a letter to Gary Biller, Contracting Officer, requesting Biller reconsider terminating the contract. Latifi stated, "The reason that I was unable to deliver 34 units in October was because my supplier, EcoTungsten was unable to deliver the large quantities of tungsten required for the weight assemblies. Without the tungsten, Axion was unable to manufacture the weight assemblies." Latifi stated that Hurricane Katrina caused the cargo ship that was carrying the tungsten to be diverted from the Gulf of Mexico to California. Latifi never requested a deviation or modification to switch vendors nor did Latifi ever advise the contracting office that he was getting his tungsten from overseas. Furthermore, Latifi identified EcoTungsten in his letter as the supplier of the tungsten.

Also during the course of the investigation, several emails were found on Latifi's computer and in documents obtained from the search warrant, to Dong Ding who is located in China. Latifi sent Ding a request for quote to manufacture the blank for the bifilar from drawings sent by email from Alabama to China. Ding and Latifi also discussed the drawings and Ding's ability to manufacture the blank for the bifilar.

On October 19, 2007, the United States Department of State provided certifications that the bifilar weight assembly technical drawings submitted for review are on the U.S. Munitions List Article Category (VIII). On October 19, 2007, the United States Department of State also provided certification that no record has been found of any registration application by, any application for an export license by, or any export license granted to, or any other written approval granted to Axion Corporation, Alexander Nooredin Latifi, Elizabeth Latifi aka Beth Johnson Latifi, and Elizabeth Lemay with respect to the exportation of defense articles and defense services or any other regulated activities from October 1, 1996 through September 26, 2007.

III. THE CHARGED OFFENSES

The Indictment charges the defendant with violating four statutes. Each is discussed below.

Counts One and Six: Exporting Defense Articles without a license, 22 U.S.C.

§2778

Title 22, United States Code, Section 2778, makes it a federal crime for anyone to willfully export defense articles without a license. The Defendant can be found guilty of that offense if all of the following facts are proved:

First: The defendant exported, or caused to be exported, from the United States an item or items designated on the United States Munitions List;

Second: The defendant did not obtain a license from the Department of State to export the item or items; and

Third: The defendant did such acts knowingly and willfully.

Under this code section, the designation of items as defense articles or defense services for purposes of this section shall not be subject to judicial review. Title 22, United States Code, Section 2778(h).

Count Two: Fraud involving aircraft parts, 18 U.S.C. §38

Title 18, United States Code, Section 38, makes it a federal crime for anyone to make or use any materially false writing, entry, certification, document, record, data plate, label or electronic communication concerning an aircraft part. The Defendant can be found guilty of that offense if all of the following facts are proved:

First: That the Defendant knowingly made or used a false writing,

entry, certification, document, record, data plate, label or electronic communication concerning an aircraft part, in or affecting interstate or foreign commerce, as charged;

Second: That the false or fraudulent aspect of the representation or writing related to a material fact; and

Third: That the Defendant acted willfully and with knowledge of the falsity.

Count Three: False Document, 18 U.S.C. §1001

Title 18, United States Code, Section 1001(1)(3), makes it a federal crime for anyone to willfully make or use any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry to a department or agency of the United States. The Defendant can be found guilty of that offense if all of the following facts are proved:

First: That the Defendant made or used a false writing or document, as charged;

Second: That the document contained a false statement;

Third: That the falsity related to a material matter;

Fourth: That the Defendant acted willfully and with knowledge of the falsity; and

Fifth: That the false document was made or used in relation to a matter within the jurisdiction of a department or agency of the United States, as charged.

IV. ANTICIPATED LEGAL ISSUES

A. Statements of the Defendant pursuant to Fed. R. Evid. 801(d)(2)

Where “the statement is offered against a party and is (A) the party’s own statement in either an individual or representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth . . .”, the statement is not hearsay. Fed. R. Evid. 801(d)(2). Consistent with this rule, the government intends to offer evidence of the defendant’s out-of-court statements against him at trial. The defendant made several statements to individuals during the term of both government contracts.

B. Right for Agent to Sit at Trial

Under Fed. R. Evid. 615,

At the request of a party the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses, and may make the order of its own motion. This rule does not authorize exclusion of . . . an office or employee of a party which is not a natural person designated as its representative by its attorney.

Id. Courts have interpreted this rule to permit an agent who has been in charge of an investigation to remain in court during the trial despite the fact that he will be a

witness. Portomene v. United States, 221 F.2d 582, 583 (5th Cir. 1955); see also United States v. Infanzon, 235 F.2d 318, 318 (2d Cir. 1956).

While there appears to be limited discussion of Rule 615 in this Circuit, other circuits have recognized that “the practice has been long-standing that in a criminal prosecution, state or federal, the prosecution is permitted to have a representative of the law enforcement agency that is actually prosecuting the accused present in the courtroom to assist the attorney representing the government agency.” United States v. Wells, 437 F.2d 1144, 1146 (6th Cir. 1971); see also Powell v. United States, 208 F.2d 618, 619 (6th Cir. 1953) (“it is the uniform rule in this jurisdiction in the court of criminal trials that an officer in charge of the case be permitted to sit in the courtroom through the trial and to advise counsel for the government, even though he himself testifies as a witness).

United States Postal Service, Office of Inspector General Special Agent Marcus Mills has investigated the case since its inception. The government may call SA Mills to testify concerning his role in the investigation. Because of his knowledge about the case, the government respectfully requests that SA Mills be exempted from any sequestration order entered by the Court.

C. Authentication of Handwriting pursuant to Fed. R. Evid. 901(b)(2)

The government may offer handwriting authentication non-expert opinion

testimony from certain witnesses during the presentation of its evidence. Under Fed. R. Evidence 901(b)(2), “non-expert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of litigation” is a proper means to authenticate handwriting. Id. Under the rule, if a witness testifies to being familiar with another person’s handwriting, and describes a relationship or circumstances from which the familiarity has been acquired, the testimony should be permitted. See United States v. Barker, 735 F.2d 1280, 1283-84 (11th Cir. 1984) (co-worker’s testimony identifying handwriting properly admitted); compare United States v. Pitts, 569 F.2d 343, 348 (5th Cir. 1978) (familiarity acquired for purposes of pending criminal investigation does not meet 901(b)(2) standards).

D. Certified Copies of Public Records

A document bearing a seal of the United States and with a signature attesting to its authenticity is self-authenticating, pursuant to Fed. R. Evid. 902(1). The United States expects that should such records become relevant during the course of the trial, and thus offered into evidence, they will be appropriately certified. This will negate the inconvenience and the danger of loss or damage that arises from removing a public record from its usual place of keeping.

Respectfully submitted, this the 19th day of October, 2007.

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/s/
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Certificate of Service

I, Angela Redmond Debroy, hereby certify that I have caused a copy of the Government's Trial Memorandum to be served on all counsel of record by electronic filing this the 19th day of October, 2007.

/s/

ANGELA REDMOND DEBROY