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Government joins qui tam lawsuit against Boeing *Whistleblower - Faulty connection cost Army over \$20 million*

June 22, 2000 -- The government has joined a whistleblower lawsuit against Boeing Co. that charges the company failed to properly install a part on the Apache attack helicopter that prevents unnecessary maintenance stops — costing the U.S. Army more than \$20 million dollars for aborted missions, unnecessary maintenance and lost training time.

The problem involved a part known as a "fuzz buster" on the AH-64A Apache attack helicopter, which Boeing (formerly McDonnell Douglas Helicopter Systems) manufactures for the Army and other foreign customers. Boeing learned of the problem at least as early as 1991 but failed to notify the Army and continued to deliver helicopters without the working part, says the whistleblower (qui tam) lawsuit.

"Boeing simply didn't want to spend the money to fix the problem," said Lisa Foster, a San Diego attorney with Phillips & Cohen LLP, which represents the whistleblower. "Instead, they chose to ignore it and let their customers — and taxpayers — foot the bill."

Fuzz busters are designed to attract and burn off small pieces of metal shavings and other debris from the oil in both the Apache's main transmission and each of its two engine nose gearboxes. If a piece of debris is too large to be burned off, a "CHIPS" caution and warning light goes off. Army procedures require that the helicopter be landed as soon as possible so the metal pieces won't wreck the transmission and gearboxes and cause a crash.

The fuzz busters were manufactured by a Boeing subcontractor. They work properly when wired to 28 volts. But Boeing connected them to receive only a residual 8 volts from the caution and warning panel on the helicopters, according to the U.S. Defense Criminal Investigative Service (DCIS), which investigated the whistleblower's complaint.

Because the fuzz busters were unable to burn off the small pieces of debris, the system for detecting the larger pieces would be set off and the CHIPS light would illuminate. The helicopter pilots would have to land and determine what the problem was. This meant missions aborted unnecessarily and money spent for unnecessary maintenance.

"It's a small part, but Boeing's fraudulent actions had enormous consequences," Foster said.

When confronted later by the Army about the problem, Boeing insisted there wasn't anything wrong, said Foster. "Then Boeing had the audacity to insist that if they hooked up the fuzz buster properly, it would explode.

"Both the manufacturer and Boeing's own employees told the company the explosion theory was absurd," Foster said.

The qui tam lawsuit was brought under the False Claims Act by Eugene Swensen, a highly skilled avionics engineer at McDonnell Douglas (now Boeing) for over 20 years. In 1992, Swensen's supervisor wrote in his evaluation of Swensen that "Gene is the best electronics design engineer" at McDonnell Douglas Helicopter

System.

In October 1994, Swensen wrote to the Department of Defense complaining about the fuzz buster and other matters. His complaint sparked a lengthy investigation by the government. It also initiated a relentless campaign of retaliation against him. Swensen — who has separately alleged unlawful retaliation under the False Claims Act — was denied deserved promotions and pay raises, isolated and ostracized by the company and assigned menial work.

He filed his qui tam lawsuit in 1998 in federal district court in Phoenix. His case (CIV-98-1476-PHX-SMM) has been under seal, as required by law, while the DCIS and the U.S. Army Criminal Investigation Command investigated his allegations. The government decided to intervene and filed an amended complaint late Wednesday.

The False Claims Act permits individuals with knowledge of fraud against the government to file qui tam lawsuits against companies on its behalf.

If found liable, companies can be required to pay as much as three times damages and \$5,000 to \$10,000 for each false claim. The "relator," as the whistleblower is known, is entitled to a share of whatever money the government recovers as a result of the qui tam lawsuit.

For more information about this case, see the following news stories:

- "U.S. sues Boeing over alarm wiring on Army copters," Andy Pasztor, *The Wall Street Journal*, 6/23/00.
- "U.S. joins \$20 mil suit vs. Boeing," Riccardo A. Davis, *The Arizona Republic*, 6/23/00.
- "Government joins a whistleblower suit vs. Boeing," *Seattle Post-Intelligencer*, 6/23/00.
- "U.S. joins suit against Boeing over Apache helicopter part," *Seattle Times*, 6/23/00.

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