

June 3, 2008

IBM Corporation  
New Orchard Road  
Armonk, NY 10504

Dear Sir or Madam:

Sometime in the next few weeks, the Project On Government Oversight (POGO) will update its Federal Contractor Misconduct Database (<http://www.contractormisconduct.org/>), a compilation of information from public resources regarding government contractors, including IBM. On February 27, 2006 and November 16, 2006, we sent IBM information regarding findings in POGO's database. As of today, we have not received a response from you. I have enclosed the findings relevant to your company, and I am seeking verification of this data.

Any response would be greatly appreciated, as the accuracy of this information is in the best interest of all parties. Out of fairness to IBM, please be assured that any response received by POGO will be posted on the website along with the data.

The biggest change we will be making to the database is the inclusion of more federal contractors (the top 100). We are also adding new instances that we have found in recent months and updating instances already in the database with new information. Please note that the database also includes pending instances, but these are kept separate from resolved instances and are not included in the totals.

If you have any questions, I can be reached at (202) 347-1122. Thank you for your time and consideration.

Sincerely,

Neil Gordon  
Investigator

Enclosure

## **Instances**

### 1. Unlawful Exports (Russia)

Date: 07/31/1998 (Date of Fine)

Misconduct Type: Import/Export

Enforcement Agency: Commerce

Contracting Party: None

Court Type: Criminal

Amount: \$8,500,000

Disposition: Fine

Synopsis: "On July 31, a U.S. district judge in Washington D.C. imposed a criminal fine of \$8.5 million on IBM East Europe/Asia Ltd. for exporting computers to Arzamas-16, a Russian nuclear weapons laboratory, in violation of the International Emergency Economic Powers Act and the Export Administration Regulations."

### 2. Cooper v. IBM (Pension Issues)

Date: 09/29/2004 (Date of Settlement)

Misconduct Type: Labor

Enforcement Agency: Non-Governmental

Contracting Party: Non-Governmental

Court Type: Civil

Amount: \$320,000,000

Disposition: Settlement

Synopsis: In July of 2003, IBM and a collection of plaintiffs collectively known as "Cooper" reached a partial settlement concerning pension issues. The remainder of the decision was made in Illinois District court, which decided that several aspects of IBM's pension plan violated the Employees Retirement Income Security Act by discriminating against older employees. The settlement is originally set at \$320 million, however, a pending appeal could increase the settlement by an additional \$1.4 billion.

### 3. Unlawful Exports (Russia)

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Enforcement Agency: Commerce

Contracting Party: None

Court Type: Criminal

Amount: \$8,500,000

Disposition: Fine

Synopsis: "On July 31, a U.S. district judge in Washington D.C. imposed a criminal fine of \$8.5 million on IBM East Europe/Asia Ltd. for exporting computers to Arzamas-16, a Russian nuclear weapons laboratory, in violation of the International Emergency Economic Powers Act and the Export Administration Regulations."

### 4. Rosenberg v. IBM (Overtime Pay)

Date: 11/22/2006 (Date of Settlement Announcement)

Misconduct Type: Labor

Enforcement Agency: Non-Governmental

Contracting Party: None

Court Type: Civil

Amount: \$65,000,000

Disposition: Settlement

Synopsis: IBM settled a class action lawsuit filed in federal district court in California in January 2006 by agreeing to pay \$65 million to 32,000 workers who claimed they were wrongly denied overtime pay.

#### 5. Securities Violations (Dollar General)

Date: 06/25/2007 (Date of Company Announcement)

Misconduct Type: Securities

Enforcement Agency: SEC

Contracting Party: None

Court Type: Administrative

Amount: \$7,000,000

Disposition: Settlement

Synopsis: IBM agreed to pay \$7 million as part of a settlement of a Securities and Exchange Commission investigation of Dollar General Corp., a client of IBM's retail store services unit. IBM neither admitted nor denied wrongdoing in the settlement, but it consented to the entry of an SEC order directing it not to violate certain provisions of the federal securities laws. In 2004, IBM disclosed that regulators might take civil action against it for violating securities laws related to Dollar General accounting transactions dating back to 2000. Around the same time in a related matter, the SEC settled a civil action against IBM employee Kevin B. Collins for aiding and abetting Dollar General's commission of accounting fraud. See IBM Corporation misconduct instance "SEC v. Kevin B. Collins (Securities Violations)."

#### 6. Providing Materially Misleading Financial Statements

Date: 06/05/2007 (Date of Settlement)

Misconduct Type: Securities

Enforcement Agency: SEC

Contracting Party: None

Court Type: Administrative

Amount: \$0

Disposition: Settlement

Synopsis: The Securities and Exchange Commission concluded an investigation of IBM, finding the company misled analysts about employee stock-option expenses in 2005. The SEC said IBM's conduct violated the reporting provisions of the Securities and Exchange Act of 1934 and ordered IBM to cease and desist from committing or causing violations of these provisions. However, the SEC stopped short of finding fraud had been committed and imposed no fine.

#### 7. SEC v. Kevin B. Collins (Securities Violations)

Date: 06/26/2007 (Date of Settlement)

Misconduct Type: Securities

Enforcement Agency: SEC

Contracting Party: None

Court Type: Civil

Amount: \$95,000

Disposition: Settlement

Synopsis: The Securities and Exchange Commission settled a civil action against IBM employee Kevin B. Collins for aiding and abetting IBM client Dollar General Corp.'s commission of accounting fraud. The SEC alleged Collins assisted Dollar General in a sham transaction that was designed to increase IBM's revenue for fiscal year 2000 and increase Collins' bonus compensation. Collins agreed to pay \$95,000, including \$48,769 in disgorgement, \$21,231 in prejudgment interest and a \$25,000 civil penalty. Around the same time in a related matter, the SEC settled an administrative proceeding against IBM involving Dollar General. See IBM Corporation misconduct instance "Securities Violations (Dollar General)."

#### 8. 'Alliance Benefits' Alleged Kickback Scheme

Date: 08/16/2007 (Date of Announcement)

Misconduct Type: Government Contract Fraud

Enforcement Agency: Multiple Agencies

Contracting Party: Multiple Agencies

Court Type: Civil

Amount: \$2,972,038

Disposition: Settlement

Synopsis: IBM Corp. and PriceWaterhouseCoopers (PWC) separately agreed to pay the U.S. government a total of \$5.3 million to settle allegations that the companies solicited and provided improper payments on technology contracts with government agencies. IBM agreed to pay \$2.97 million and PWC will pay \$2.3 million to settle the complaints, which alleged IBM and PWC requested or made kickback payments, known as "alliance benefits," to other companies with whom they had global alliance relationships and then did not disclose these conflicts of interest. Other prominent tech companies – including Accenture, Hewlett-Packard, and Sun Microsystems – were also alleged to have participated in this arrangement since the late 1990s. See related Accenture pending instance, "False Claims On Hardware, Software & Technology Services Sales" and IBM instance, "'Alliance Benefits' Alleged Kickback Scheme."

#### 9. EPA Suspension

Date: 03/27/2008 (Date of Announcement)

Misconduct Type: Ethics

Enforcement Agency: EPA

Contracting Party: EPA

Court Type: Administrative

Amount: \$0

Disposition: Suspend/Debar - Company

Synopsis: A notice posted on the General Services Administration's Excluded Parties List System (EPLS) Web site announced that IBM was indefinitely suspended from doing business with the federal government. The information provided on the EPLS Web site did not give a reason for the suspension, only that it was initiated by the Environmental Protection Agency "pursuant to Executive Order 12549 and the agency implementing regulations based on an indictment or other adequate evidence (a) to suspect the commission of an offense that is a cause for debarment or (b) that other causes for debarment under the agency regulations may exist."

However, the next day, the U.S. Attorney's Office for the Eastern District of Virginia issued subpoenas to various IBM employees to testify before a grand jury concerning allegations that IBM violated the procurement integrity provisions of the Office of Federal Procurement Policy Act while bidding on an EPA contract. About a week after it had been imposed, the government lifted the suspension after IBM agreed to cooperate with the EPA's and the U.S. Attorney's ongoing investigations.

### **Pending Instances**

Trichloroethylene Pollution

Date: 01/03/2008 (Date of Filing)

Misconduct Type: Environment

Enforcement Agency: Non-Governmental

Contracting Party: None

Court Type: Civil

Amount: \$0

Disposition: Pending

Synopsis: Residents and businesses in Broome County, New York are suing IBM Corp. over trichloroethylene (TCE) pollution alleged to have been discharged by a manufacturing facility once owned by IBM. Exposure to TCE has been linked to various illnesses including cancer, heart defects and brain damage. This is the first in what is expected to be a series of lawsuits, eventually involving nearly 1,000 claims.