

THE 2019 CLAY AWARDS

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QUI TAM /FALSE CLAIMS

Blowing the whistle on BP helps California recoup funds

State of California ex rel. et al. v BP America



JUSTIN T. BERGER Cotchett, Pitre & McCarthy LLP **PAULA L. BLIZZARD AND KENNETH J. SUGARMAN** California Department of Justice **NIALL P. MCCARTHY** Cotchett, Pitre & McCarthy LLP

From 2003 to 2012, BP allegedly overcharged the California Department of General Services for natural gas — violating the terms of three successive contracts in the process. This cost was then passed on to universities, cities, agencies and others that used the gas.

A former BP employee turned whistleblower, Christopher Schroen, filed a lawsuit, claiming the company provided the services department with false and misleading information.

“Fraud against the government is a growth industry,” said Niall P. McCarthy, a principal with Cotchett, Pitre & McCarthy LLP in Burlingame who led the case. “We see it in every sector. We’ve had cases against health care companies, tech companies, oil and gas companies.”

Government agencies often lack the manpower and expertise of the corporations they have to deal with, he said, leaving them vulnerable to manipulation.

Schroen was a BP trader in Texas whose job it was to put together under an overall contract he had never seen. His bosses told him to get a minimum amount of profit from each deal, but neglected to tell him there was a cap on how much BP could charge, according to court documents.

Agencies begin to have problems paying for these contracts during the financial crisis. Then auditors discovered the discrepancies as the overall contract came up for renewal. Schroen was blamed, then fired, court documents said.

“The first thing defendants do is point the finger at the whistleblower and look for a fall

guy,” said Justin T. Berger, also a principal with the firm.

In 2012, Schroen sued BP under the California False Claims Act. The act allows a private citizen, even one outside the state, to sue for fraud committed against the government. The California Department of Justice got involved in 2014, with Kenneth J. Sugarman and Paula L. Blizzard representing the state.

McCarthy and Berger compared the fraud to some of the manipulation that happened during the financial, in which unsuspecting investors were sold mortgage-backed securities too complex to understand. In this case, the industry jargon involved MMBtus, units of natural gas. While the profit on each unit seemed small, the actual profit on each deal often ended up being multiple times what BP was permitted to keep under the contract.

The company abruptly settled for \$102 million right before a month-long trial was about to begin. Schroen was instrumental in undermining BP’s case, the attorneys said.

“I think the turning point in the case came when we were able to show even using BP’s own data, the state was massively overcharged,” Berger said.

Schroen himself got a significant payout as part of the settlement, a provision that is written into the Act in order to encourage people to take the risk to come forward. But Berger noted he lost his chosen career and endured years of litigation.

BP also lost the right to bid on the next contract, which is also now being monitored far more carefully. But danger remains anytime when state or local agencies sign big deals with suppliers of goods or services.

“Traditionally, false claims cases are on the federal side, but we’re seeing more and more on the state side,” McCarthy said.

He added, “Until some of the corporate executives who perpetrate these frauds go to jail, nothing will change.”

— Malcolm MacLachlan