

**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA)	
)	
<i>ex rel.</i>)	
)	
ANTHONY HEAD)	
)	
Plaintiffs)	
)	
vs.)	Civ. No. 05-00317(GK)
)	
)	Pursuant to 31 U.S.C. § 3729 et seq.
THE KANE COMPANY, <u>et al.</u>)	(False Claims Act)
)	
Defendants.)	
_____)	

UNITED STATES' COMPLAINT IN INTERVENTION

Comes now the Plaintiff, the United States of America, by and through undersigned counsel, and respectfully states as follows:

1. This is an action brought by plaintiff, United States of America, against The Kane Company, a Maryland corporation. to recover treble damages and civil penalties under the False Claims Act, 31 U.S.C. §§ 3729-33. The Kane Company, after obtaining government contracts for moving and installation services that required payment of specific wages and benefits under the Service Contract Act, 41 U.S.C. §§ 351-358, failed to pay such wages and benefits, and submitted invoices to federal agencies indicating compliance with the contracts.

2. Relator, Anthony Head, originally filed this action, on behalf of plaintiff United States, pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. §3730(b)(1). The United States files this Complaint in Intervention pursuant to 31 U.S.C. § 3730(b)(4)(A).

Jurisdiction and Venue

3. This Court has subject matter jurisdiction over this action under 31 U.S.C. §§ 3730 and 3732.

4. This Court has personal jurisdiction over defendants, pursuant to 31 U.S.C. §3732 (a) because defendants transact business and is found in this District.

5. Venue is proper in this District pursuant to 31 U.S.C. §3732(a), and under 28 U.S.C. §§1391(b) and 1395(a), and because acts proscribed by 31 U.S.C. § 3729, and 41 U.S.C. § 351, which are complained of herein, occurred within this District.

The Parties

6. The Plaintiff is the United States of America.

7. The Defendants are The Kane Company and its subsidiaries, including Office Movers, Inc., and Office Installers, Inc. (hereinafter Kane). The Kane Company's main corporate office is in Elkridge, Maryland, and it has as its clients multiple federal government agencies.

Factual Allegations

8. As set forth below, The Kane Company, by and through its officers, knowingly submitted, caused to be submitted or facilitated the submission of false and fraudulent documents to various federal government agencies over a period of several years. Specifically, Defendants submitted bills, invoices and statements demanding payment of funds owing under contracts entered into subject to the Service Contract Act, 41 U.S.C. §§ 351-358 (“SCA”).

9. Under the SCA, the private contractor must, *inter alia*, pay its employees a prevailing wage as determined by the Secretary of Labor. The Service Contract Act (SCA), 41 U.S.C. 351-58, et seq. establishes minimum labor standards for service provided by private contractors to the United States. See 41 U.S.C. 351(a) (making SCA applicable to service contracts in excess of \$2,500). The SCA requires contractors to: (1) pay a “prevailing wage” to employees who work on federal contracts; (2) contribute a certain amount to pay fringe benefits for covered employees (“health and welfare”); (3) provide covered employees a minimum number of paid holidays and vacation days; and (4) notify employees of their rights under the statute. Id. at 351 (a)(1) - (a)(4).

10. Defendants knowingly submitted bills, invoices and statements to government agencies without regard to its compliance with the SCA.

11. Defendants also obtained government contracts with multiple federal agencies, including the General Services Administration and the Department of Defense, that

required compliance with the SCA. The Company has entered into such contracts with, *inter alia*, the Department of Defense (Pentagon), National Security Agency, Department of Health and Human Services, Department of the Navy, Department of Education, Department of Housing and Urban Development, Social Security Administration, Department of Labor, U.S. Department of Agriculture, National Institute of Health, Environmental Protection Agency, NASA, Library of Congress, the Architect of the Capitol, the FDIC, and the Food and Drug Administration, Department of Homeland Security, GSA, Office of Naval Research, United States Army JAG Corp., Army Air Force Mutual Aid, Contract Claims Branch, Defense Logistics Agency, National Labor Relations Board, and the United States Administration of the Courts. *See e.g.*, www.kanecompany.com/GOV/?bid=Gov, accessed February 11, 2005, attached to Relator's Complaint as Exhibit #1 (stating, "[Kane] ha[s] extensive experience serving the federal sector including [the listed agencies]").

12. Defendants' companies routinely failed to comply with the Service Contract Act, 41 U.S.C. 351-58, et seq., (SCA) for most of its federal government contracts between 1998 and 2003 and a substantial number of those contracts between 2003 and the present.

13. With regard to the GSA multiple award schedules, in two, numbered GS00F0034N and GS-33F-0017R, Kane made repeated certifications in their

submissions to the government. In those schedule contracts, Kane repeatedly submitted price lists for workers with the annotation:

These Labor Categories hourly rates are subject to State of Alaska WD942107. These hourly rates shall be adjusted at the Agency Task Order level to comply with WD rates specific to the designated geographic area, where applicable.

See Attachment A-1, excerpts from GSA Contract No. GS00F0034N (with the above language) and A-2, excerpts from GSA Contract No. GS-33F-0017R (where the contract provision requiring compliance with the SCA is checked).

14. Compliance with the SCA is required under the Federal Acquisition Regulations, 48 C.F.R. 52.222-41 that are incorporated into GSA multiple award schedule contracts.

15. These GSA contracts permitted other federal agencies to use defendants' services without independently requesting bids. See, for example, Attachment B, a sampling of contracts with agencies under the GSA contract where Kane did not comply with the SCA. For example, in 2005 and 2006, the House of Representatives contracted under GSOOFOO34N for work totaling approximately \$151,000. GSA auditors determined that SCA wage determination and health and welfare benefits for that work was not paid, resulting in an underpayment of wages of 10% (for 2005) and 24 % (for 2006) of the contract value. In another example, in 2003, the State Department also contracted under that GSA contract for a project valued at over \$117,000 and defendants

underpaid on that contract at the rate of 6.49%. Attachment C contains samples of invoices provided under the House of Representatives.

16. These GSA contracts would not have been awarded but for defendants' false certification that it would comply with SCA requirements.

17. In addition, contracts with other agencies similarly were subject to the legal requirement of compliance with the SCA. For example, the Department of Defense required SCA compliance in its contracts with Kane, such as the most recent multi-year Pentagon contract.

18. When submitting invoices, Kane indicated it had complied with the contract requirements.

19. Plaintiff/Relator Head was employed by the Company in various mid-level management positions from December 1997 until January 10, 2005.

20. During his employment with the Company, Head went to meetings, including executive meetings, and functions with Defendants' representatives, and was involved in various government contracts the Company had entered into. In addition, Head personally saw employees' pay stubs that indicated that the required wage determination was not being paid on several government contracts. In fact, in 1998, Head spoke with John Kane, the Company CEO, about its SCA practices. Mr. Kane assured Head that he would "handle it," but failed to change this illegal practice.

21. In September 1999, Head was promoted to Vice President of Moving Services and ran that operation well into 2002 when he was asked to take another position, starting a government initiative in the Company. Head immediately discovered that on all or most of the Company's existing government contracts the Company was not paying wage determination. In fact, on most of its contracts, Kane completely ignored its obligations under the SCA to pay wage determination. Head brought this to the attention of Meliker, the Company's Chief Operating Officer, on several occasions in 2002 who passively acknowledged the situation but took no action to correct it.

22. Furthermore, starting in 2002, Head had several conversations with William Auchter, Vice President for Facilities, about how the Company ran its labor operation. Auchter expressly told Head that through the years Defendant Kane Company never instructed him to pay wage determination.

23. Head's knowledge of Kane's fraudulent practices also came to light in late 1999 when Head learned that Company workers assigned to the new Pentagon project were not being properly paid in accordance with the SCA.

24. As a result of that revelation, Head sent then-CFO, Mark Cavanaugh, an email on January 3, 2000, stating the following:

Mark,

I think we have a major problem. When I first came back to work here in 1997 we had just won the contract. I am very familiar with the contract because I worked on the same contract with Government Movers Inc. I remember asking numerous individuals if there was a wage determination and I was told there was not. If there was it is not only on packers. There would be one on every position, including project

managers, movers, etc. Our failure to pay the wage determination on this contract could be extremely costly given the amount of work we have performed. We have to do a better job in looking at these government contracts. It seems we are much too careless when it comes to nailing down specifics with regard to payment and performance.

See Jan. 3, 2000 email, attached to First Amended Complaint as Exhibit #2 (emphasis added). Cavanaugh acknowledged Head's concerns via telephone but indicated that he was powerless to correct the problem given the Company's posture on not paying wage determination.

25. In addition, Head voiced his concerns to the Company's Vice President of Sales, James Durfee. Durfee stated that, though he understood the wage determination issue, he also understood the government environment to be "lax" and that Head should not worry about it.

26. Next, Head informed the Company's Chief Operating Officer, Ronald Meliker, who then asked Head to establish and bring structure to the government services division. Head was then to report to Buck Whitman. Though Head had an ongoing dialogue with Whitman throughout 2002, 2003, and 2004 about nonconformance to the wage determination requirements under the SCA, Whitman failed to take any corrective action.

27. Moreover, in March 2004, Head spoke with a new supervisor, John Middlebrooks, the Vice President of Government Sales. Middlebrooks agreed that the Company's practices were "dangerous" and could cause the company to be debarred.

Middlebrooks further stated that he had also warned Meliker about the deficiencies but those warnings were summarily dismissed.

28. Several Company officers, including Meliker, Whitman, and Middlebrooks, told Head that CEO Kane was fully apprised of the situation regarding wage determination issues. In fact, Kane was present at many overview meetings regarding government services as well as Washington Management Group's presentation, which addressed the wage determination issues. Moreover, Kane had met with Meliker on several occasions regarding various government contract issues including wage determination, separation of accounts, and investment staffing. CEO Kane, despite having full knowledge of the Company's fraudulent pattern of practice, took no corrective measures, nor did he ever seek to make restitution to the government or employees for benefits unlawfully withheld from SCA-governed contracts.

29. In or about late 2003, Relator also had numerous discussions with Bill Mohen, a consultant of the Washington Management Group who was brought in to assist the Kane Company in gaining approval to be listed on the GSA Schedule. During these conversations, Mr. Mohen routinely expressed his concern that Kane Company was not providing the government with accurate information for the GSA Schedule. Mr. Mohen also gave a presentation in or about 2003 to the senior executive committee, which included all of the vice presidents at Kane Company, John Kane, and Ron Meliker, in which he expressed how important it was to pay wage determination and that the

company must always follow the rules and regulations for wage determination (as well as other regulations) if they wanted to be on the GSA schedule. The Kane Company failed to follow these instructions.

CAUSE OF ACTION

(False Claims Act)

30. This is a claim for treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729, as amended.

31. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 30 as if set forth fully herein.

32. By virtue of the acts set forth above, defendants knowingly presented, or caused to be presented, false or fraudulent claims to the United States for payment, in violation of 31 U.S.C. § 3729(a)(1). Defendants knew that these claims for payment were false, fraudulent or fictitious, or was deliberately ignorant of the truth or falsity of said claims, or acted in reckless disregard of whether said claims were true or false. These claims, therefore, were false or fraudulent claims for payment to the United States, in violation of 31 U.S.C. §3729 (a) (1).

33. By virtue of the acts set forth above, defendants knowingly made and used, or caused to be made or used, false statements to get false or fraudulent claims paid by the United States, in violation of 31 U.S.C. § 3729(a)(2).

/s/

LAURIE WEINSTEIN
Assistant United States Attorney
Room E4820
555 4th Street, NW
Washington, DC 20530
(202) 514-7133

Attorneys for the United States of America

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