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Unisys Can't Escape \$13M Army Overcharge FCA Suit

By **David McAfee**

Law360, Los Angeles (March 21, 2014, 4:47 PM ET) -- A Virginia federal judge on Thursday refused to throw out a False Claims Act suit brought against Unisys Corp. by a former employee for allegedly overbilling the U.S. Army for a global radio frequency identification network by more than \$13 million over the course of two years.

Relator Michael Saunders, a former partner for the federal systems division of Unisys who says the company terminated him after he criticized it for concealing the overbilling, brought two claims under the FCA: one for the fraudulent overbilling and one alleging retaliation. Unisys moved last year to dismiss the complaint, arguing that the overbilling claim was precluded by the FCA's disclosure bar and the second cause of action failed to state a claim.

But U.S. District Judge Gerald Bruce Lee on Thursday sided with the plaintiff, saying two reports Unisys made to the Department of Defense's Office of Inspector General disclosing "unacceptable" time billing practices denied the existence of overbilling and were not public admittance of fraud.

"Unisys's motion to dismiss as to count I is denied because the public-disclosure bar has not been triggered, given that Unisys's reports to DOD-IG were not made public and did not reveal allegations or transactions of fraud," Judge Lee wrote in the memorandum and order, adding that Saunders pled sufficient facts to show that he engaged in protected activity when he conducted his own investigation of the company's time billing practices and told Unisys that its reports concealed the scheme.

Thursday's order denying Unisys's motion to dismiss is the most recent development in the FCA suit, coming just five months after Saunders filed an amended complaint seeking recovery of treble damages for harm to the government stemming from the \$13 million overbilling plot.

Max Maccoby of Butzel Long PC, an attorney for Saunders, said the order is a "careful and thoughtful ruling" and a tremendous victory for the plaintiff.

"Hopefully, Judge Lee's decision helps deter companies which commit fraud against the government from making incomplete or misleading 'self-disclosures' of their wrongdoing in the hopes it will exculpate them from legal responsibility," Maccoby told Law360 on Friday.

Saunders first filed suit in April 2012, but later amended the complaint to address an earlier motion to dismiss brought by Unisys.

Saunders says Unisys overcharged the U.S. Army Product Manager Joint-Automatic Identification Technology on Task Order 122 — which included contracts for installing, supporting and monitoring the Army's worldwide radio frequency identification network — from February of 2008

until May of 2010 by unlawfully inflating the billings, according to court documents.

The plaintiff says Unisys's work included the installation and daily operation and maintenance of a network of electronic tags and readers used to track the movement of supplies throughout the defense transportation system all over the world.

The field service engineers who worked on the system were instructed by Unisys to apply an artificially designed charging methodology to bill the contracts for their activity without regard to what the engineers were actually doing. The formula was in conflict with the contract terms designating certain tasks to be charged and it did not reflect actual engineer time on the invoices Unisys submitted, the complaint alleges.

When the corrupt practice was reported, Saunders alleges, the company conducted an internal investigation that led to admission of wrongful conduct. But those disclosures were materially false and denied the \$13,474,000 in overcharges caused by the activities, according to the suit.

Jason N. Workmaster of McKenna Long & Aldridge LLP, attorney for Unisys, told Law360 on Friday that the company "disagrees strongly with the court's ruling and will continue to defend itself vigorously."

Saunders is represented by Max Maccoby, James Gehrke and Thomas Earl Patton of Butzel Long PC.

Unisys is represented by Jason N. Workmaster of McKenna Long & Aldridge LLP.

The case is United States of America v. Unisys Corp., case number 1:12-cv-00379, in the United States District Court for the Eastern District of Virginia, Alexandria Division.

--Editing by Stephen Berg.

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