



U.S. Department  
of Transportation  
Office of  
Inspector General

# IMPACT

MAGAZINE

## Bogus Air Bags

OIG Shuts Down  
Counterfeit Air  
Bag Operation

## Doing the Right Thing

FMCSA Agent  
Alerts OIG to  
Bribery Attempt

## Operation Boxed Up

OIG Protects  
Consumers  
From Household  
Goods Fraud

# DBE

# FRAUD

# Issue

FALL 2015



[www.dot.oig.gov](http://www.dot.oig.gov)

# DOT

Every day, you are impacted in some way by industry regulated by the U.S. Department of Transportation—from the subway you take to work to the tomatoes in your salad (someone's gotta ship 'em). Just how big is DOT and the transportation industry?

# \$117 BILLION

ESTIMATED FY 2015 SPENDING ON CONTRACTS AND GRANTS



THAT'S TWICE THE ESTIMATED 2015 GDP OF URUGUAY (\$57.5B)



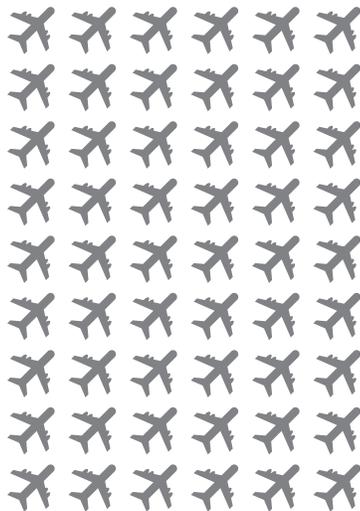
# 25,000

NUMBER OF METRIC TONS EACH SEAWAY-SIZE VESSEL CAN CARRY—AS MUCH AS 870 TRACTOR TRAILORS

DOT EMPLOYS ABOUT

# 55,000

PEOPLE WORLDWIDE



IN FY 2013, IN THE U.S.

# 826 MILLION

PASSENGERS

# 9.7 MILLION

FLIGHTS

# 357

ACTIVE DRONE PERMITS

THE NATIONAL HIGHWAY SYSTEM

# 164,000 MILES



THAT'S MORE THAN 6 TIMES AROUND THE EARTH

# 32,719

HIGHWAY FATALITIES IN 2013



# 2.6 BILLION TONS

HAZARDOUS MATERIALS TRANSPORTED IN THE UNITED STATES IN 2012



# 254 MILLION

PASSENGER CARS REGISTERED (AS OF 2007)



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Office of Inspector General

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# DOT OIG INVESTIGATIONS

DOT OIG's criminal and general investigators conduct investigations of fraud and other allegations affecting DOT, Operating Administrations, programs, and grantees. The office also manages a Hotline Complaint Center and investigates whistleblower complaints.



## TYPES OF INVESTIGATIONS

Investigations are opened based on four priority areas:

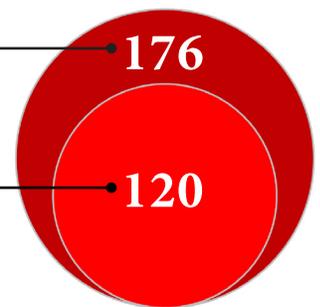


## WORKING WITH PROSECUTORS

Early in an investigation, allegations that appear to be criminal are presented to the Department of Justice for prosecutorial consideration.

Investigations referred for prosecution in FY 2014

Investigations accepted for prosecution



## FY 2014 RESULTS

**\$1.36B**  
in investigative financial recoveries

**> 15x** DOT OIG's total budget

**119**  
PERSONNEL & ADMINISTRATIVE ACTIONS

**58**  
INDICTMENTS

**64**  
CONVICTIONS

**192**  
TOTAL YEARS OF PROBATION & SUPERVISED RELEASE

**88.6**  
TOTAL YEARS IN JAIL

## Our relentless fight against DBE fraud

**T**HIS YEAR'S ISSUE OF *IMPACT* FOCUSES ON the U.S. Department of Transportation (DOT) Office of Inspector General's (OIG) efforts to prevent and detect disadvantaged business enterprise (DBE) fraud—a program created to help socially and economically disadvantaged individuals who own and control small businesses to participate in DOT contracting opportunities. In fiscal year 2013, DOT distributed around \$5.3 billion through its DBE program, making it a high risk for fraud, waste, and abuse. As of July 2015, DBE fraud cases represented about 36 percent of our active grant fraud investigative work. Such fraud typically involves a pass-through scheme: a prime contractor obtains transportation contracts by committing to have work performed by a DBE firm, but instead does the work itself and pays a fee to the firm for the use of its DBE status. DOT OIG special agents have extensive experience identifying and investigating allegations of DBE fraud. In fiscal year 2014, our investigators reported 6 indictments and 20 convictions, civil judgments, and civil settlements for DBE fraud, with \$143 million in financial recoveries.

This year's edition also highlights investigations resulting in arrests of individuals who endangered the lives of others to line their own pockets—including the owners of a multimillion-dollar counterfeit air bag operation. Although we identified some instances of DOT employees engaging in irresponsible behavior—including one individual who generated over half a million dollars in illicit tax refunds—other DOT employees did the right thing. Special Agent Edgar Albisarez from the Federal Motor Carrier Safety Administration not only refused a bribe from a trucking business owner, he reported the bribery attempt to DOT OIG agents who helped remove the risky trucking business from our Nation's highways.

Our work continues to reflect our commitment to combat fraud, waste, and abuse, and assist DOT in achieving a safe, efficient, and effective transportation system. DOT OIG's fiscal year 2014 investigative work resulted in 58 indictments and 64 convictions, and \$1.36 billion in financial recoveries. These impressive results are due in no small part to the many folks who contact our DOT OIG hotline—either by phone (1-800-424-9071), website ([www.oig.dot.gov/hotline](http://www.oig.dot.gov/hotline)), or email ([hotline@oig.dot.gov](mailto:hotline@oig.dot.gov))—to report roughly 6,000 complaints a year. Even the smallest tip can help uncover a fraud scheme that could save thousands of dollars in taxpayer funds or more.

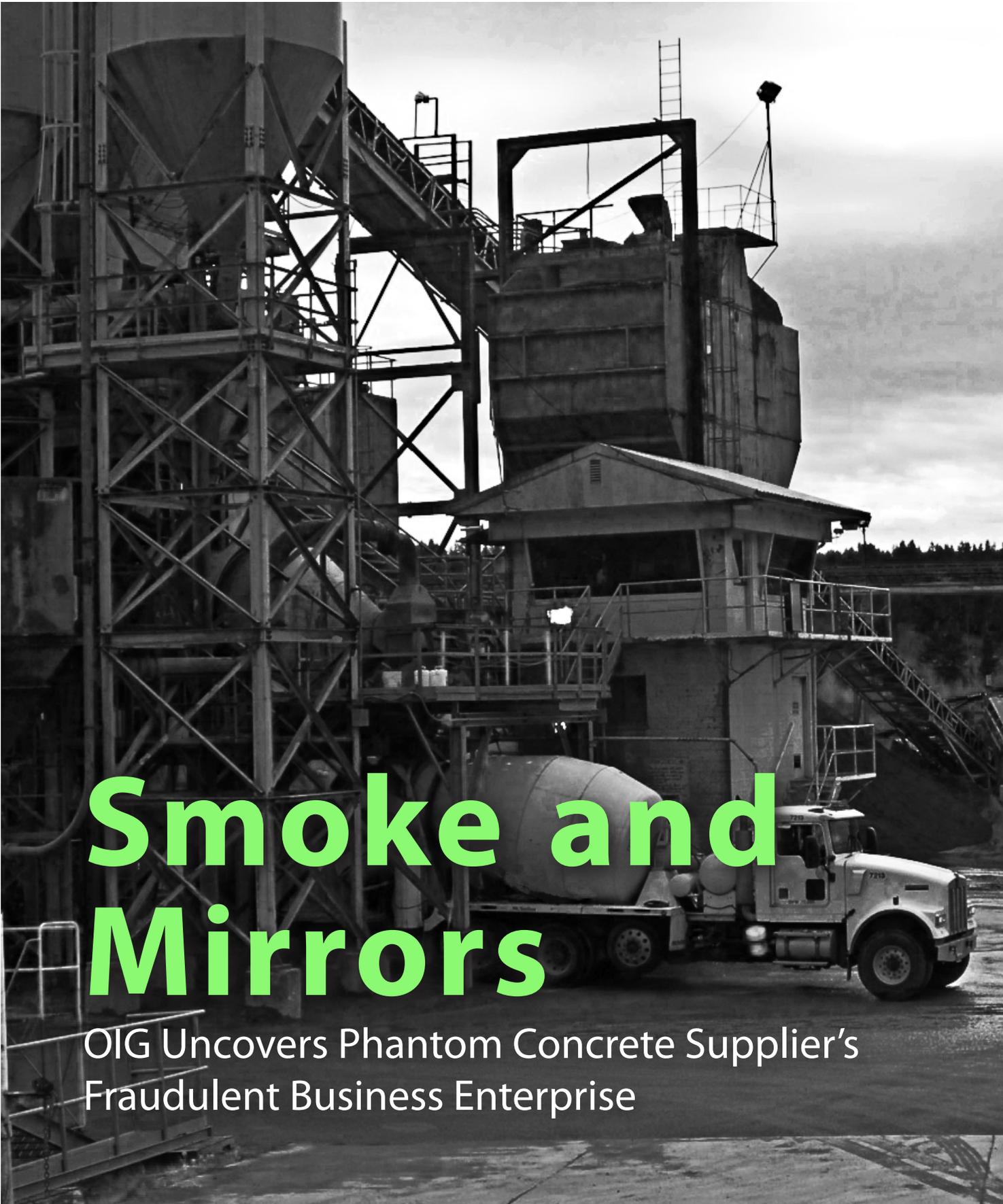
I commend and thank our hard-working staff for their outstanding efforts, and I look forward to continuing our meaningful work with the Secretary and the modal administrators in our efforts to provide the American public with a safe transportation system.

We hope you enjoy this year's issue of *IMPACT Magazine*.



**Calvin L. Scovel III**

**Inspector General**  
U.S. Department of  
Transportation



# Smoke and Mirrors

OLG Uncovers Phantom Concrete Supplier's  
Fraudulent Business Enterprise

PHOTOGRAPH: "CEMENTPLANT" / JOE MABEL



Daniel Burd, Washington, DC; Daniel Helzner, New York, NY; and Sharon Smith, Washington, DC, contributed to this article.

**I**N THE 1950's Oscar Rayford worked part time as a bricklayer in the Buffalo, NY, area. After high school, he went to the University of Buffalo, but returned to working in the trade after earning a degree in history.

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### From Humble Beginnings to a Rising Star

After participating in a New York Department of Labor internship where he worked with bricklayers, cement finishers, and carpenters, Rayford went on to create Rayford Enterprises and Rayford Development, which led to his becoming a very successful businessman in the Buffalo area. In the nineties he graduated from the U.S. Small Business Administration's 8(a) program, which is similar to DOT's Disadvantaged Business Enterprise (DBE) program, designed to help small, disadvantaged businesses compete in the marketplace. Rayford was quoted in *The Buffalo News* as saying that the program "was a tremendous help—it allowed us to get into the mainstream." He added that women and minorities (Rayford is African American) have more than one strike against them.

At the time, his company purportedly had six full time employees and annual revenue of \$2 million. He was also certified to expand his business into the area of supplier and manufacturer of concrete products.

In 1999, *The Buffalo News* stated that Oscar Rayford was the first African American to privately develop a commercial

renewal area after the Buffalo water system opened a \$1.3 million headquarters building on a lot that Rayford had acquired from the Buffalo Urban Renewal Agency for just \$60,000.

### Dreams Made of Smoke and Mirrors

Rayford had dreams of expansion, but in 2004, a representative from Hanson Concrete, a non-DBE concrete production company based in Rochester, NY, contacted the DOT OIG office in New York City—launching an investigation that would change Rayford's life forever.

In an attempt to expand his business to Rochester, Rayford proposed an illicit joint venture in which Rayford Enterprises would serve as an illegal DBE pass-through for Hanson. Specifically, Rayford Enterprises would purchase concrete and other materials produced by Hanson for use on Rayford DBE projects. Rayford would invoice the general contractor for the same materials and, in turn, pay Hanson once they had been paid, keeping a fee of 1–2 percent for their trouble.

In addition, Rayford Enterprises would lease trucks from Hanson, but Hanson would assume the costs associated with insurance, maintenance, and

taxes. Since Rayford had only one truck driver, one of Hanson's drivers would have to be placed on Rayford Enterprises' payroll, reimbursed by Hanson.

Hanson declined Rayford's offer—and called DOT OIG.

Assistant Special Agent-in-Charge Daniel Helzner took Hanson's call. As Helzner looked closer at the information provided, he began to grow more and more suspicious.

He learned that Rayford's proposal was similar to an arrangement Rayford Enterprises had with Lafarge North America in Buffalo, one of the largest suppliers of construction materials in the United States.

The Rayford Enterprises-Lafarge relationship began in 2001. At that time, Lafarge had acquired Pine Hill Concrete Mix Corp. of Buffalo, NY, including Pine Hill's existing contract with Rayford Enterprises. Two years later, in June 2003, Lafarge and Rayford executed a supply agreement to replace the previous agreement in an effort to more appropriately reflect their current relationship.

Helzner came across a supply agreement between Lafarge and Rayford Enterprises, which was riddled with red flag indicators of

fraud and raised numerous questions. For instance, if Rayford Enterprise was a concrete manufacturer, why were there no provisions in the supply agreement for Rayford Enterprises to:

- lease a concrete batching facility to manufacture ready-mix concrete from Lafarge;
- cover ancillary expenses such as utilities, plant insurance, plant personnel, or dispatching services; or
- pay Lafarge any lease or rent for the use of Lafarge concrete mixer trucks—especially since Rayford had only one driver and no concrete mixer trucks?

However, the supply agreement did contain provisions for Rayford Enterprises to pay Lafarge for the supply of concrete at current market prices—effectively altering Rayford’s status as a DBE “manufacturer” to one of a “purchaser” of concrete. According to the agreement, Lafarge would also pay \$3,500 per month for Rayford’s administrative costs and reimburse liability insurance and any other expenses associated with Rayford’s sole truck driver.

However, the supply agreement was not provided to the New York State Department of



Concrete truck like the ones used by LaFarge

PHOTO: “CEMENT MIXER (AND SOME CEMENT)”/ EDDIE WELKER / CC-BY-NC 2.0 / MODIFIED FROM ORIGINAL

Transportation (NYS DOT). Instead, Rayford and Lafarge submitted an agreement in 2004 that appeared to conform to Federal and State DBE regulations. Under the terms of this agreement, Rayford Enterprises paid Lafarge \$2,000 a month to rent a concrete batch plant, and \$1,500 a month per truck for two mixer trucks. Rayford Enterprises also paid expenses associated with automobile and commercial liability insurance.

Rayford was so thorough that he even provided cancelled checks and other supporting documents to NYS DOT to show that he

was living up to the terms of the contract.

But the agreement provided to NYS DOT was a sham document—giving the appearance that Rayford Enterprises was engaged in concrete production and supply. In fact, Rayford Enterprises was merely acting as an illegal, DBE pass-through for Lafarge.

After sifting through the documentation, Helzner untangled their complex reimbursement scheme. All of Rayford Enterprises’ purported lease payments to Lafarge for use of the batch plant and mixer trucks; all expenses related to payroll, liability insurance, overhead, and

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advertising; and the 1–2 percent “keeping fee” were “backed-out” of contractor reimbursements that passed through Rayford Enterprises to Lafarge. This reimbursement mechanism, couched as a discount on Rayford’s books and records, was not disclosed to NYS DOT.

Helzner also examined NYS DOT contracts where Rayford Enterprises was a subcontractor. He discovered that from 2001 through 2007, Lafarge performed \$3.2 million worth of work on NYS DOT jobs on behalf of Rayford Enterprises.

### **The Raid**

Helzner reached out to FBI Special Agent Marc Falconetti. Together, they convinced a prosecutor at the U.S. Attorney’s Office to accept the case for prosecution.

As damning as the evidence appeared so far, more was needed to prove the case beyond a reasonable doubt. They obtained search warrants for four locations: Rayford Enterprises’ primary place of business in Buffalo; Oscar Rayford’s residence in Buffalo; Lafarge’s headquarters in Amherst, NY; and Lafarge’s batch plant in Tonawanda, NY.

Agents Helzner and Falconetti assembled a team of over 30 special agents from DOT OIG and the FBI to help execute the search warrants and to conduct simultaneous interviews. On June 27, 2006, they briefed all participating agents, ensuring that everyone knew what types of evidence were subject to seizure, what their assignments were, and what risks they might encounter.

Early the next morning, the special agents simultaneously executed the four search warrants, seizing records and interviewing several key individuals. What they learned confirmed their suspicions: Rayford was, in fact, acting as a pass-through for Lafarge. According to Lafarge officials, they had agreed not to use any other DBE for Buffalo-area projects, and Rayford pledged to use Lafarge as its only materials supplier. Magnetic signs had even been made to replace the Lafarge logos on the mixer trucks with the Rayford Enterprises logo when they delivered concrete to Rayford’s supposed “jobs.”

### **The Scheme Crumbles**

DBE schemes are not uncommon; but what set Oscar Rayford’s scheme apart from others was

its brazenness. His audacity and greed were ultimately his undoing. The records seized during the search revealed the scheme’s complex financial transactions. To demonstrate the complex financial relationship between Rayford and Lafarge, Helzner created a series of flow charts and bar graphs. These visuals helped to present the investigative findings to the prosecutor—as well as to the targets of the investigation (a strategy that would prove beneficial).

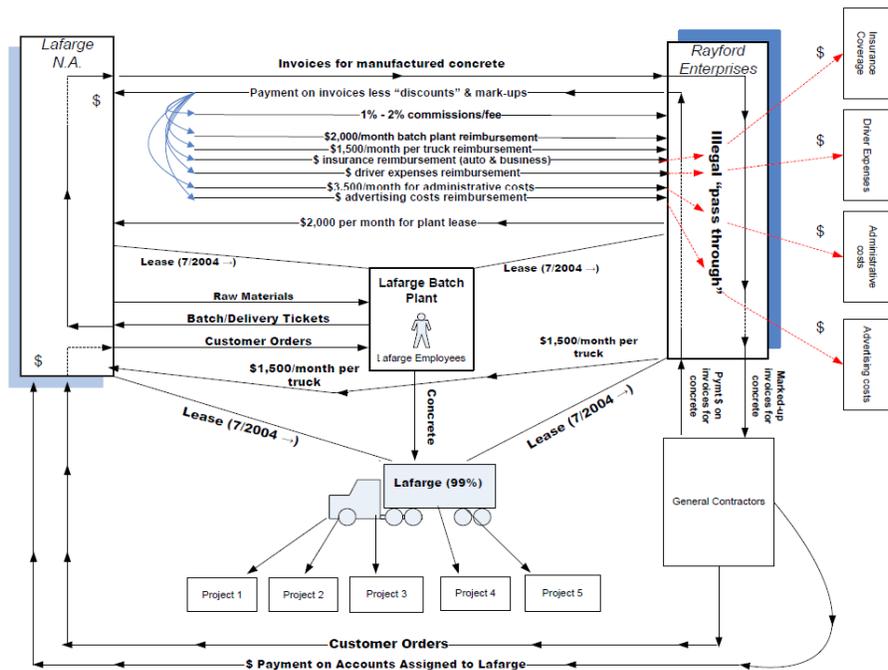
In 2009, Rayford’s attorneys told prosecutors their client would be willing to plead guilty to criminal charges. Oscar Rayford sat down with Helzner and prosecutors from the Department of Justice. He described the scheme in detail during a proffer session—an interview offering suspects the opportunity to speak about their criminal activity with the knowledge that their statements cannot be used against them later at trial. Rayford described feeling used by Lafarge. He said Lafarge officials designed the scheme, and he claimed he had misgivings about it from the start.

In 2010, Rayford pleaded guilty to a mail fraud charge in connection with the scheme. He also

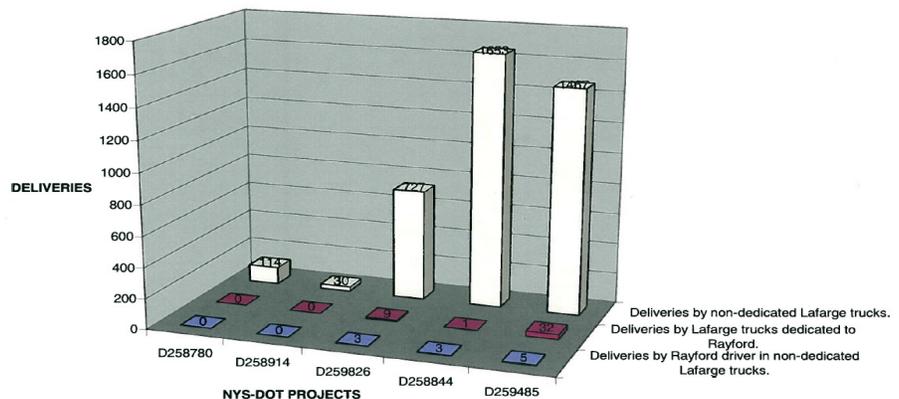
agreed to forfeit \$1.8 million to the Government and was later sentenced to 8 months of home confinement and 12 months of probation, as well as ordered to pay \$7,500 in fines. In 2011, the Federal Highway Administration (FHWA) suspended Rayford Enterprises from all federally funded programs for over 2 and a half years.

In 2012, Lafarge and the U.S. Attorney's Office reached a civil settlement. Lafarge agreed to pay \$950,000 to the Government and also agreed to an Administrative Settlement and Compliance Agreement with FHWA. This agreement requires Lafarge to emphasize the company's Corporate Compliance Program, issue an executive letter to all employees concerning compliance with regulations for DBEs and MBEs (New York State's minority business program), and to retain an independent monitor to submit periodic reports to FHWA.

Model of Relationship Between Rayford Enterprises and Lafarge N.A. (7/2004 - 11/2006)



LAFARGE N.A. vs. RAYFORD ENTERPRISES  
CONCRETE TRUCK DELIVERIES



Examples of flow charts and bar graphs used to present findings to the prosecutor.

# Fraud in DOT's Disadvantaged Business Enterprise Program

In 1983, Congress enacted a law requiring DOT to achieve a goal that at least 10 percent of the funds authorized for highway and transit grants be spent on work performed by disadvantaged business enterprise (DBE) firms. Any agency that receives DOT grant money must establish DBE goals to ensure nondiscrimination in federally assisted contract awards.

For a firm to participate in DOT's DBE program, it must apply for and receive certification for the State in which it will be working. To be certified, a firm must be a small business owned and controlled by socially or economically disadvantaged individuals. Federal procedures stipulate that only the work actually performed by the DBE can be counted toward the DBE goal, and the DBE must perform a commercially useful function—either by performing the work or by providing materials.

Special agents in OIG's Office of Investigations look into allegations of fraud, waste, and abuse in DOT operations and programs, including the DBE program. Agents have extensive experience identifying and investigating allegations of DBE deception. DBE fraud is one of the most common types of grant fraud. Typically, the fraud involves a prime contractor who misrepresents that a DBE performed part of the work to increase job profit while appearing to be in compliance with contract goals involving minority- or women-owned businesses.

## COMMON DBE FRAUD INDICATORS

- DBE owner lacks background, expertise, or equipment to perform work.
- Employees are shuttled back and forth between prime contractor and DBE business payrolls.
- Paint or magnetic signs cover business names on equipment and vehicles.
- Individuals, who are not employed by the DBE, order and pay for the DBE's supplies.
- Prime contractor facilitates the purchase of DBE-owned businesses.
- DBE owner is never present at the job site.
- Prime contractor always uses the same DBE.
- The prime and DBE contractors have financial agreements or joint bank accounts.
- No written contract, or the contract is carefully worded to make it appear that DBE regulations are satisfied.



Are they really  
meeting  
ALL the contract  
goals?



## Disadvantaged Business Enterprise (DBE) Fraud

Under this scheme, a contractor misrepresents who performed the contract work in order to increase job profit while appearing to be in compliance with contract goals for involvement of minority- or women-owned businesses.

**Recognize and Report Fraud in  
Federally Funded Programs,  
Contracts, and Grants**

**(800) 424-9071**

*U.S. Department of Transportation  
Office of Inspector General*

PHOTOGRAPHS (CLOCKWISE FROM TOP LEFT): "TOWERS" BY PAYTON CHUNG / CC BY 2.0; "CHICAGO - WATER TOWER PLACE" BY GINO RONGAGLIA / CC BY-NC-SA 2.0; "TRUMP TOWER" BY EDWARD STOJAKOVIC / CC BY 2.0; "STATION HOPPING SHUFFLER" BY SETH ANDERSON / CC BY-NC-SA 2.0; "GOODMAN THEATER" BY DANNY HULZINGA / CC BY 2.0; "WALK 2.0" BY TONY / CC BY-NC 2.0.



# Deception in the Windy City

## Whistleblower Helps OIG Expose Million-Dollar DBE Fraud Scheme





BY JACQUIE WENTE  
Chicago, IL

**I**F YOU'VE BEEN TO Chicago, you've likely seen a James McHugh Construction Company sign. The 118-year-old business' client list reads like a who's who of major developers, corporations, and governments: Trump International, Hyatt, Magellan, American Airlines, British Airways, the University of Chicago, Mercy Hospital, the Army Corps of Engineers, and the Illinois Department of Transportation, to name just a few. McHugh's large-scale public and private projects include many of Chicago's most recognizable landmarks, such as the Goodman Theatre, Marina City, and the 92-story Chicago Trump Tower—the tallest concrete building in the United States, for which McHugh poured more than 180,000 cubic yards of concrete. Over the last 20 years, McHugh has received millions of dollars in public construction contracts.

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In 2007, Ryan Keiser, a project manager for Accurate Steel Installers (ASI) and Perdel Contracting Corporation, contacted OIG. Keiser reported allegations that McHugh and Elizabeth Perino, ASI and Perdel's owner, conspired to circumvent DOT's Disadvantaged Business Enterprise (DBE) program regulations on various Chicago Transit Authority (CTA) projects including two massive reconstruction projects: Chicago's North Avenue Bridge and a CTA elevated train line.

The historic North Avenue Bridge—a steel structure originally built in 1907—was in desperate need of reconstruction. Due to the cost of steel and the short river span, the new North Avenue Bridge was built as a hybrid suspension, cable-stayed bridge—the first of its kind in the country. Chicago's Red Line was in similar need of modernization. With over a quarter of a million passengers boarding each weekday, the Red Line is the busiest rail line in the CTA rail system.

CTA awarded McHugh the contract, valued at over \$50 million, to rehabilitate Howard Station's offices and facilities, platforms, electrical and lighting

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Investigators learned about "the McHugh way," a term employees used to refer to a subcontracting DBE scam.

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systems, communications, and accessibility.

By subcontracting ASI and Perdel—both certified DBEs—McHugh appeared to have met the requirements of the lucrative contracts: that a portion of the business be set aside for women and minority owned businesses. Perino's DBE companies were required to perform a commercially useful function by carrying out, managing, and supervising the work that the companies were subcontracted to do. However,

according to Keiser, ASI and Perdel were acting as pass-through DBEs, and McHugh was actually performing the work.

With billions of DOT dollars available to disadvantaged small businesses each year, DBE fraud has become a major concern. In March 2015, DBE cases represented 37 percent of OIG's active procurement and grant fraud investigations. DBE fraud prevents legitimate disadvantaged business owners the opportunity to compete for large Federal contracts in order to help grow their businesses.

After speaking with Keiser and hearing of the potential fraud, OIG agents quickly launched an investigation and began gathering necessary contract documentation from the City of Chicago, CTA, and other sources. As they interviewed key company employees, the agents learned about "the McHugh way"—a phrase employees used to refer to a subcontracting DBE scam. Agents also learned that when Keiser mentioned the McHugh way to Perino, he was fired.

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The investigation further revealed that McHugh employees were put on ASI's certified payrolls and often put ASI stickers on their construction helmets over McHugh stickers. McHugh employees routinely negotiated with steel suppliers for items within ASI's scope of work, and passed the payments through ASI. McHugh also entered into contracts with Perdel, which in turn signed a subcontract with ASI, even though Perino owned both companies.

As the investigation continued, agents discovered that the scope of work Perdel and ASI allegedly undertook as subcontractors expanded substantially—and regularly exceeded the companies' experience and abilities. Perdel and ASI project managers were completing more administrative type tasks, such as processing invoices—not supervising work on the complex, multi-million dollar projects. Instead, McHugh selected the suppliers on each of the contracts, determined quantity and quality of materials,

negotiated price, and even drafted purchase orders for Perdel and ASI to put on their letterhead. In some cases, McHugh directed Perdel and ASI to hire specific union crews. Yet McHugh reported to State and Federal Government authorities that Perdel and ASI performed all these functions.

On May 1, 2014, McHugh agreed to pay a \$12 million civil fine in connection with seven major projects including the North Avenue Bridge, Howard Station, Washington and Monroe viaducts over Interstate 90/94, CTA Brown Line, and the Wacker Drive Viaduct reconstruction.

In separate administrative and compliance agreements between McHugh and several transit agencies, including the Federal Transit Administration and Federal Highway Administration, McHugh also agreed to ensure future DBE compliance. Specifically, McHugh agreed to retain an independent monitor to report to State, Federal, and City of Chicago officials on its evaluation of McHugh's efforts to comply

with DBE requirements; initiate a corporate compliance program to train and educate McHugh employees about DBE regulations; and conduct informational events to promote DBE compliance by construction companies throughout Illinois. McHugh also agreed to terminate two employees who were at the center of the DBE fraud.

Keiser, who brought the DBE scam to OIG's attention, filed a qui tam—a civil lawsuit whistleblowers bring under the False Claims Act, which gives complainants a percentage of the civil penalty if Government funds are recovered.

This successful case was the result of diligent efforts by DOT OIG and other hard-working investigators from the Illinois Attorney General's office, U.S. Department of Labor and the Federal Bureau of Investigation. In addition, the Federal Transit Administration and the Federal Highway Administration were crucial partners.

# Shell Game

OIG Cracks Down on Multimillion-Dollar  
DBE Certification Fraud Scheme

PHOTOGRAPH: "VIEW SOMETHING" / DAVID DEHETRE / CC-BY-NC 2.0



BY MICHELLE WARD-MCGEE  
Seattle, WA

**T** HIS CASE IS ABOUT LIES. *It's about hiding or concealing income, hiding or concealing assets, and finally, it's about how the defendants obstructed justice and specifically, concealed their lies from the investigation into the truth as to what actually happened.*

These words were spoken to a Federal jury by the prosecuting Assistant U.S. Attorney in the Government's case against MarCon Incorporated's president and owner Elaine Martin and co-founder Daryl Swigert.

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The case began in December 2011, when an OIG agent received a referral from an Assistant U.S. Attorney in the District of Idaho. The DOT OIG agent then telephoned a special agent from the Internal Revenue Service (IRS) Criminal Investigation Division (CID) who was investigating MarCon Inc., a Boise highway guard rail installer.

According to the IRS CID agent, a former MarCon employee—who left the company because of her reluctance to falsify records—alleged that Martin had filed false tax returns and had used illegal immigrants to work on federally funded road construction projects.

In his preliminary inquiry, the OIG agent learned that since 1999, MarCon was a certified DBE in Utah and Idaho, having been awarded some 245 State and Federal contracts. The disadvantaged business enterprise (DBE) contracts in Idaho alone totaled in excess of \$42 million. After its entry into the Small Business Administration's (SBA) 8(a) program, MarCon was awarded nearly \$2.8 million in sole-sourced, non-competitive bid contracts.

In March 2012, agents from OIG, IRS CID, and SBA OIG shared their findings and realized that Martin was playing a shell game to hide her assets and make it appear that her personal net worth

was below the DOT DBE program limit of \$750,000 and the SBA 8(a) limit of \$250,000. She concealed her personal net worth by back-dating transactions, moving her personal assets into the names of other entities and individuals; and disguising her personal and business relationships with different businesses. In addition, she had significantly under-reported her income to the IRS.

The agents reported their findings to the Assistant U.S. Attorney and a Department of Justice Trial Attorney, the case co-prosecutor, which constituted probable cause for Federal warrants to search Martin's home and MarCon offices in Meridian, ID. In June 2012, the agents executed the warrants and seized criminal evidence, including documents and computers. It took the agents a full day to conduct the searches of Martin's home and business, but the seized evidence would prove to be the undoing of Martin and Swigert, her co-conspirator.

The evidence showed that Martin applied for SBA 8(a) status three times: in 1999, 2003, and 2004. In 1999 and 2003, Martin withdrew her application when her eligibility was questioned. However, in April 2004, Martin submitted the required documentation along with her application: a personal financial statement showing her net worth was less

than \$250,000, a narrative essay as to why she belonged in the 8(a) program, and her personal income tax returns.

In her essay, Martin wrote, "Some people wonder why I don't have more personal assets. The only reason I own a house is because I sold the construction yard I purchased in 1992 to MarCon and bought my home." However, the documents the agents obtained and reviewed included property records and deeds that showed Martin owned her home prior to 1992. Martin also asserted that she had "never taken money out of the company except for taxes," but the agents knew that prior to April 2004, Martin had taken hundreds of thousands of dollars out of MarCon to give to family members and invest in real estate ventures.

While the agents examined Martin's personal financial statement line by line and found numerous irregularities, their burden of proof was to prove beyond a reasonable doubt that Martin schemed to get her net worth down to \$250,000 to qualify for the 8(a) program. The document recovery skills of OIG's Computer Crimes Unit would prove invaluable in helping the agents obtain this proof.

Evidence recovered from Martin's computer included a

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May 16, 2002, memorandum that detailed how she planned to defraud the 8(a) program. Martin wrote, “I am selling my assets in MarCon so I can participate in 8(a). The actual value would throw me out of contention even if I lowered values...this way we can try for 8(a) and not be worried about cooking the books.” Martin added, “I understand this makes me subject to a lawsuit. We believe this is in the short-term, and... MarCon issued \$4 million with an umbrella and \$1 million worth of personal insurance coverage.” This one transaction allowed Martin to reduce her personal net worth from approximately \$342,000 to \$23,530. Martin sold her assets but did not disclose the transaction in the personal financial statement she submitted to SBA.

The agents found solid evidence of false statements Martin made in annual renewal applications she submitted to SBA from 2005 to 2008. The agents confirmed that many of the false documents she had submitted to SBA for 8(a) certification—including false tax returns and backdated transactions—were also submitted to the Utah DOT from 2002 to 2011 and Idaho DOT from 2002 to 2012 in order to obtain DBE certification.

Martin also failed to disclose her interests in 12 real estate development companies—none of

which were disclosed to SBA—to move money around and make it appear as though she was qualified for the 8(a) program. For example, in December 2009, Martin took \$800,000 out of MarCon (more than the \$750,000 DBE limit) to allegedly buy 41 acres in Eagle, ID—undeveloped acreage that Martin and Swigert owned adjacent property to and planned to use to build their dream home.

The paper trail showed that

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**Agents found documents that tied Martin to 12 companies she used to move money around and make it appear as though she was qualified for the 8(a) program.**

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when Martin bought the property, with a \$300,000 contribution from Swigert, she transferred it to one of her companies: Martin LLC. While Martin disclosed the company on the personal financial statement she submitted to the Utah DBE office, her interest in Martin LLC was valued at \$2,500—significantly below the actual one-third interest in a company that owned an \$800,000 property.

Based on the false information, she maintained her DBE status and was subsequently awarded a contract in Utah in June 2011 valued at \$426,000. From 2002 to 2005, Martin and MarCon were similarly awarded DBE contracts in Idaho—valued at a total of more than \$7.9 million.

The Federal prosecutor noted at the August 2013 hearing that “three transactions...demonstrate obstruction by both Swigert and Martin.”

The first involved an August 2011 meeting between the co-conspirators at an Applebee’s restaurant in Meridian, ID, where they discussed a \$256,000 “gift” Martin purportedly gave to Swigert. During an interview with prosecutors in January 2012 and testimony before the grand jury in February 2013, Swigert confirmed the transaction as a gift Martin gave him and acknowledged signing the gift agreement on August 24, 2011. Shortly after his testimony, a second document describing the same meeting identified the \$256,000 as a loan. Swigert denied the money was a loan. The joint investigation would later find a personal journal entry of Martin’s, which indicated this amount was neither a loan nor a gift. Instead, both were intended to conceal that Swigert was actually holding Martin’s

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\$256,000 until after the investigation concluded.

The second involved a promissory note Swigert signed in September 2008. During grand jury testimony in April 2012, Swigert testified that a \$1 million promissory note he signed “had to be in my Waddell & Reed account.” This contradicting his earlier testimony that he had no recollection of the promissory note. Moreover, a Waddell & Reed representative told the agents that there never was \$1 million in Swigert’s account and that there was no activity of any kind in the account.

The third transaction concerns the \$800,000 property in Eagle, ID. Agents interviewed the attorney involved in the purchase of the acreage, known as the Bald Eagle Pointe development, and he recalled that Martin bought the property for \$800,000. When Swigert was asked about the property during an interview with the IRS CID agent in February 2012 and during his grand jury testimony in April 2012, he mentioned Martin’s son’s involvement but never mentioned Martin herself or her involvement.

Martin’s IRS tax returns were also key to uncovering Martin and Swigert’s shell game. The IRS CID agent reviewed the tax returns and found that Martin hid

hundreds of thousands of dollars of income—generated from the sale of used concrete barriers—from MarCon’s certified public accountant (CPA) by depositing it into a secret bank account that was opened in July 1987. As a result, the income was not included on MarCon’s or Martin’s tax returns. According to the IRS CID agent, only a few individuals knew about the secret bank account, including a MarCon employee who reported

**Martin hid hundreds of thousands of dollars of income—generated from the sale of used concrete barriers—by depositing it into a secret bank account.**

the account to an IRS agent.

In 2008, IRS initiated a civil audit of MarCon, and during an interview with an IRS agent, Martin said all income was deposited into a separate bank account, but she did not mention this secret account. Agents later obtained a subpoena for those records. When the CPA who prepared MarCon’s income tax returns confronted her about the account, she admitted that she had not reported the

income. The investigating agents determined that the proceeds from the secret account were divided among Martin, Swigert, and Martin’s son in amounts based on their ownership interest or share in MarCon.

The CPA later testified that he actually created a false tax return in 2001, for one of Martin’s shell companies—a company that didn’t even exist—to move assets prior to her final application to the SBA 8(a) program in 2004.

In March 2013—following a year of investigative work that included executing search warrants, conducting interviews, and reviewing a mountain of documentary evidence—the prosecutors presented the case to a Federal grand jury in the U.S. District Court in Idaho. Martin was charged with filing false income tax returns, conspiracy, wire fraud, and making a material false statement.

Additional charges were added in May 2013, including mail fraud, interstate transportation of property taken by fraud, money laundering, obstruction of justice, and aiding and abetting. Swigert was also charged with violations of conspiracy, obstruction of justice, and aiding and abetting. The indictment sought forfeiture of more than \$9 million from Martin, which was the estimated

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amount she received from Federal and State small business programs through her alleged crimes.

The agents and prosecutors spent the next 4 months preparing for trial. Their efforts included preparing some 1,200 trial exhibits to highlight the documentary evidence the agents uncovered; identifying DOT and SBA subject matter experts and other witnesses who would give vital testimony. They also developed presentations that the experts and prosecutors would use to clearly describe DBE and SBA programs to jurors so they could understand the programs' importance to small businesses.

On August 5, 2013, the trial of Martin and Swigert began in U.S. District Court in Boise. The Government took nearly 3 weeks to put its case before the Court. The trial lasted 26 days, and the case went to the jury on September 19, 2013. Shortly after lunch, the jury announced that it had reached a verdict: Martin and Swigert were found guilty on all counts. Martin was convicted on 22 criminal counts, including 4 counts of filing false individual and corporate tax returns and 2 counts of conspiracy among several others. Swigert was found guilty of two counts of obstruction

of justice and one count of conspiracy to obstruct justice.

In January 2014, prosecutors and Martin entered into an agreement in which they stipulated that the correct forfeiture amount was just over \$3 million. Martin paid the full amount via wire transfer to a U.S. Treasury account.

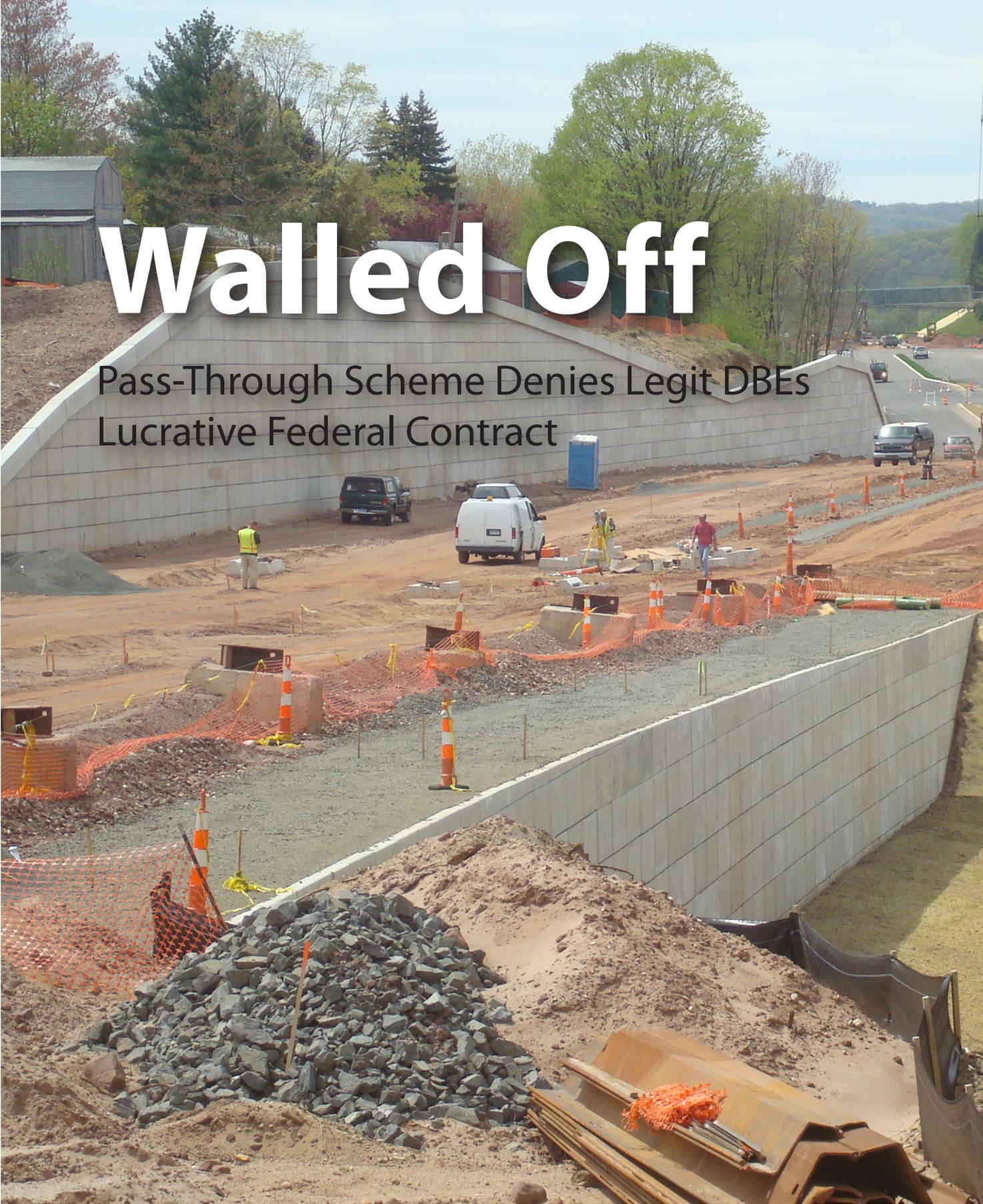
On February 27, 2014, the Court sentenced Martin to 7 years in prison, followed by 3 years of supervised release. She was also sentenced to serve 24 months in prison for tax fraud and obstruction of justice followed by 3 years of supervised release. The Court ordered her to pay restitution of over \$98,000 to the IRS and over \$32,000 to the Idaho DBE Program. She was also ordered to pay costs of over \$22,000.

During the brief comments she made at her sentencing, Martin blamed four company accountants for failing to keep MarCon out of legal trouble. She also denied doing anything illegal. The judge expressed disappointment that Martin continued to deny responsibility for her actions, but he took into account Martin's age when determining her sentence. Although she had faced up to 20 years on some counts, the judge said that given Martin's age, 67,

it would have likely have been a death sentence.

On March 19, 2014, Swigert was sentenced to 3 months in prison and 2 years of supervised release for obstruction of justice and conspiracy to obstruct justice. He was also fined \$5,000, ordered to pay a special assessment of \$300 and perform 100 hours of community service. Swigert, Martin, and Martin's son were also suspended by the Federal Highway Administration from doing any work for federally funded highway construction projects—and are currently awaiting debarment action.

After Martin's sentencing, DOT OIG regional Special Agent-in-Charge William Swallow said, "Severe penalties await those who seek to defraud DOT's DBE Program. DBE fraud harms the integrity of the program and adversely impacts law-abiding, small businesses trying to compete for Federal contracts on a level playing field." Swallow added, "Working with the Secretary of Transportation and other DOT leaders and our law enforcement and prosecutorial colleagues, we will continue to protect the taxpayers' investment in our Nation's infrastructure from fraud, waste, abuse, and violations of law."



# Walled Off

Pass-Through Scheme Denies Legit DBEs  
Lucrative Federal Contract



**BY TODD DAMIANI**

Cambridge, MA

**O**N A DECEMBER morning in 2008, a project foreman pulled his company truck into the Manafort Brothers Inc. parking lot. He was prepared for another day of managing his crew of five laborers in building a complex retaining wall along a newly built highway in Connecticut. The foreman had been working at Manafort for about 2 years and had grown comfortable in his role. But that day turned out to be different.

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That day, Manafort management informed the workers that they were being temporarily hired by a subcontractor and required them to complete application forms and new tax documents. Manafort told the workers that the switch was necessary to complete a “minority contract deal” and assured them that they would continue to receive the same compensation and benefits. However, their paycheck would bear the name of another company—a certified disadvantaged business enterprise (DBE)—not Manafort.

After the switch, everything was the same. The foreman drove the same Manafort truck, reported to the same Manafort managers, and received the same salary. Every once in a while, the workers saw “the guy” from the minority company, but he had “no clue” as to how to do the work. He was not involved in the project other than to write out the checks.

While the workers may not have been aware, they were pawns in a DBE fraud scheme. The Manafort contract was officially awarded in August 2007 based, in part, on the company’s representations that a DBE would perform the work described in its pre-award submission. However, Manafort was using the DBE as a pass-through to create the

appearance that the DBE was performing the work, when the work was in fact performed by Manafort employees.

The deception was not limited to switching employees between payrolls. The scheme also involved employing other vendors and subcontractors to keep up the charade. Manafort even

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**DOT OIG special agents confronted the DBE owner in his corporate office—his one bedroom apartment in Hartford, CT.**

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prepared correspondence on the DBE’s letterhead to maintain the ruse—anything to convince the State DOT that the DBE was what it purported to be.

If it were not for inspectors, Manafort might have gotten away with the fraud. The inspectors noticed the changes in payroll names, the continuation of work despite changes in the certified payrolls, and other vendor invoices for the supplies that the DBE was supposed to furnish to the project. It smelled bad.

In a memorandum to DOT, the inspectors detailed their observations on the project—how the invoices did not match up, how employees appeared to have switched companies, and how all of the work was being performed by the prime contractor, not the DBE.

In December 2009, DOT OIG special agents confronted the DBE owner in his corporate office—his one bedroom apartment in Hartford, CT. From this small apartment, the DBE was supposedly managing the \$3.2 million Federal subcontract for the prime contractor.

It did not take long for the owner to admit he had signed off on joint checks that were made out to the real vendors. He received a “management fee” for allowing Manafort to use his certified payrolls to give the appearance that his DBE was performing more work on the project than it actually was.

Pass-through and other DBE fraud schemes on Federal aid projects harm the DBE program. Manafort had an unfair advantage over its competition because it knew it would pass fixed costs through the DBE, enabling it to claim DBE credit on project items that the competition could not.



Retaining wall under construction.

## OIG Audit Recommends Strengthening Oversight of DOT's Disadvantaged Business Enterprise Program

In fiscal year 2013, DOT distributed around \$5.3 billion to support small businesses through its Disadvantaged Business Enterprises (DBE) program—a program created in the 1980s to help socially and economically disadvantaged individuals who own and control small businesses to participate in DOT contracting opportunities—an increase of almost \$1 billion from fiscal year 2012. As a high-dollar program implemented by numerous recipients across the Nation, the DBE program carries a high risk of fraud, waste, and abuse. As of March 31, 2015, DBE fraud cases represented about 37 percent of our active grant fraud investigative case work. In fiscal year 2014, our investigators reported 39 indictments and 41 convictions for DBE fraud with \$143 million in financial recoveries.

We issued a report on our audit of DOT's administration of its DBE Program in April 2103. As part of that audit we assessed whether (1) the Department provides adequate DBE program management, (2) DOT's Operating Administrations and recipients sufficiently oversee and implement the DBE program, and (3) the Department achieves its program

objective to help develop DBEs to succeed in the marketplace.

The DBE program is unique to the transportation sector and covers contracts awarded by grant recipients, including State highway agencies, airport and transit authorities, and other State and local jurisdictions that receive DOT funds. As required by law, each recipient must implement a DBE program and establish an annual DBE participation goal. The integrity of the DBE program depends in large part on grant recipients' procedures for ensuring only eligible firms are certified to participate in the program and DBEs actually perform the work according to the contract terms. DOT's DBE regulations place these responsibilities primarily on recipients. However, the program also requires the Department to provide leadership, guidance, and oversight.

Despite this requirement, we found that DOT has not issued comprehensive and standardized DBE guidance or provided sufficient training to those responsible for implementing the program. DOT has recently established a single line of accountability for the program.

In addition, Operating Administrations and recipients did not adequately oversee

or implement the DBE program. We identified weak DBE certification and contract oversight practices in several States, which increases the risk that ineligible firms will be certified as DBEs. These weaknesses are also evident in our increasing DBE fraud investigation results. Finally, the Department has had limited success in achieving its regulatory program objective to develop DBE firms to succeed in the marketplace, as we found that most certified DBEs never receive work on Federal projects.

As a result of these findings, we made eight recommendations to enhance DOT's DBE program management and oversight. In addition, in September 2013, we issued a management advisory highlighting errors in some State DBE directories. Specifically, the directories identified suspended or debarred firms as eligible to participate in the DBE program, creating the risk that firms considered ineligible under Federal requirements could receive Federal DBE funds. The advisory emphasized the need for DOT to implement program guidance and the necessary safeguards to protect against DBE contracts being awarded to suspended or debarred firms and ensure

ineligible firms do not receive federally funded projects.

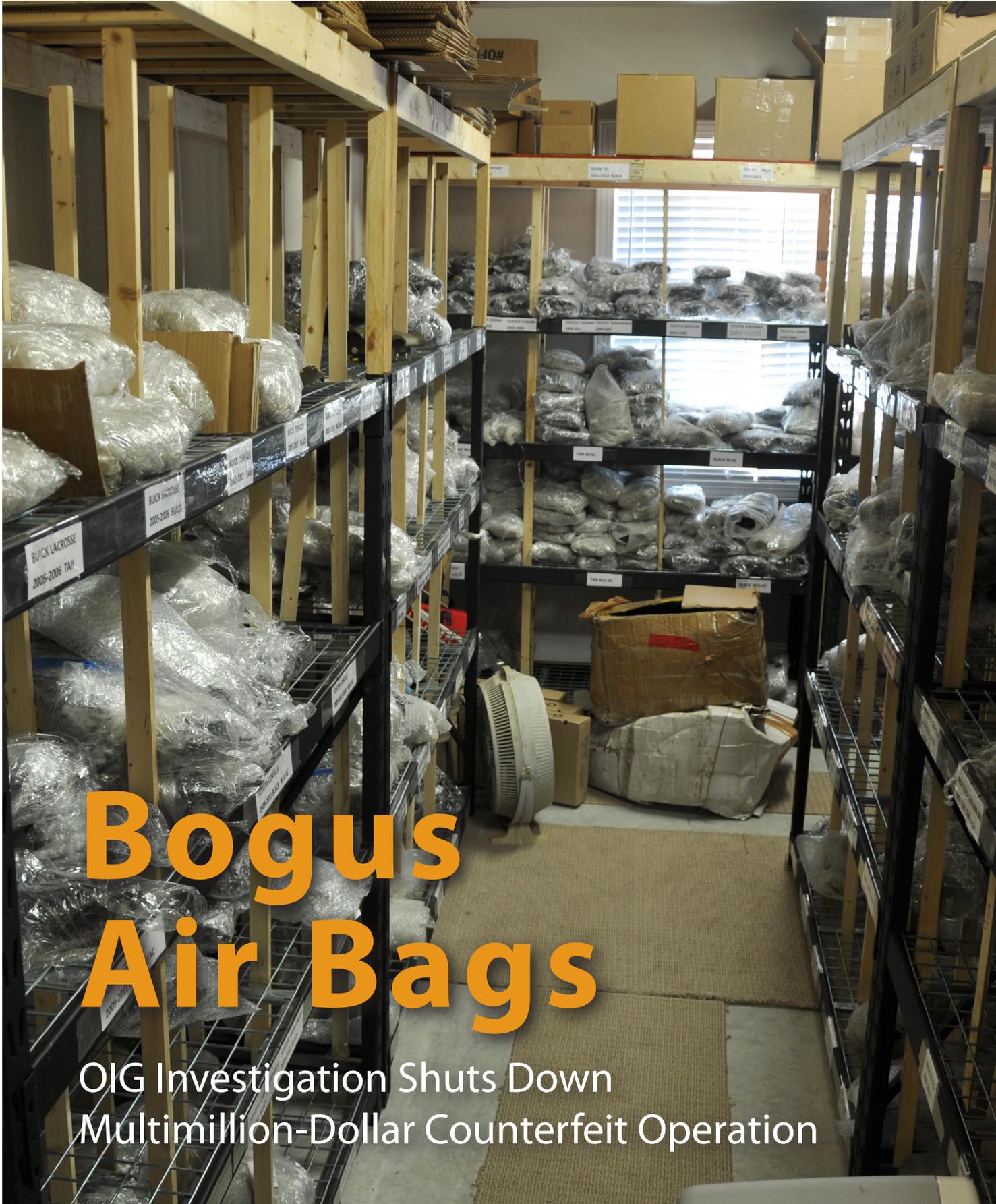
Within 1 month of the issuance of our April 2013 report, the Congressional Black Caucus asked the Department to provide a detailed plan that addresses each of our recommendations—including implementation dates and criteria for assessing management improvements—

and requested a briefing with the Inspector General on the Department's progress. Other congressional members have asked DOT to fully implement our recommendations so that the DBE program fairly and effectively expands opportunities for DBEs. In addition, the FAA

In fiscal year 2014, our investigators reported 39 indictments and 41 convictions for DBE fraud with \$143 million in financial recoveries.

Modernization and Reform Act of 2012 required OIG to identify possible impediments to obtaining DBE awards and best practices among the Nation's 64 largest airports with the greatest numbers of new DBE entrants. We reported these audit findings in June 2014.

Successful implementation of our recommendations—including consolidating leadership for the DBE program under DOT's Office of Civil Rights—will better position the Department to meet the intent of the DBE program and prevent future fraud, waste, and abuse.



# Bogus Air Bags

OIG Investigation Shuts Down  
Multimillion-Dollar Counterfeit Operation



BY MICHAEL CLARK  
Atlanta, GA

## T H E W O R D S

“trafficking” and “counterfeit” often evoke images of illegal drugs smuggled into the United States or the suspect cache of designer handbags and watches sold on the street or at local flea markets. But in May 2012, OIG and Department of Homeland Security (DHS) agents were called to investigate the trafficking of a new threat to the Nation’s safety and economy: counterfeit automobile air bags. This new counterfeit industry seemed to materialize overnight. According to the National Highway Traffic Safety Administration (NHTSA), these air bags look nearly identical to certified, original equipment parts—including bearing the insignia and branding of major automakers.

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While NHTSA is not aware of any deaths or injuries connected to counterfeit air bags, testing of fake air bags consistently demonstrated malfunctions, ranging from non-deployment to the expulsion of metal shrapnel during deployment.

Complaints to DOT and the insurance industry began to surface, and citizens and Government regulators called on law enforcement for assistance. Information and tips on potential sources of these dangerous goods rolled in. In a short time, OIG and DHS agents were on the ground with a mission to identify, infiltrate, and eliminate this growing safety threat to unknowing drivers, the automobile industry, and freight handlers across the country.

OIG Special Agent Brad Wheeler in Atlanta assumed the lead role in collaboration with DHS agents in Chattanooga, TN. Within a few days, Wheeler and his DHS counterparts followed one particularly promising lead that took them to Krugger Auto in Charlotte, NC, and to the owner's modest brick home just a few miles away. It was there that Wheeler discovered ground zero for a multimillion-dollar counterfeit parts operation.

In the home's attached garage, behind a false wall, agents would soon uncover the criminal enterprise where Krugger Auto owner and president Igor Borodin had

sold and shipped over 7,000 counterfeit air bags to other repair shops and vendors across the country as well as overseas—all within 15 months.

As with many criminal investigations, there soon came another startling revelation: the devices used to deploy the air bags were classified as a hazardous and potentially explosive material. The agents' anxiety rose again

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**Agents uncovered the false wall in the garage—which concealed floor-to-ceiling shelves of counterfeit air bags.**

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after they learned that Krugger typically shipped the counterfeit air bags through the U.S. mail—a shipping prohibition due to the extreme risk of a catastrophic incident occurring in transit, especially shipments by air.

Time was now of the essence, and the investigation's priority escalated to "high."

Yet agents knew they would need to move carefully to ensure their work was unassailable and would support any charges brought against the suspect. Working with OIG's law enforcement partners, agents established layers of investigative "backstops,"

including phantom Post Office boxes, telephone numbers, and special exemptions from the U.S. Postal Service to allow the potentially hazardous material to be shipped through the mail.

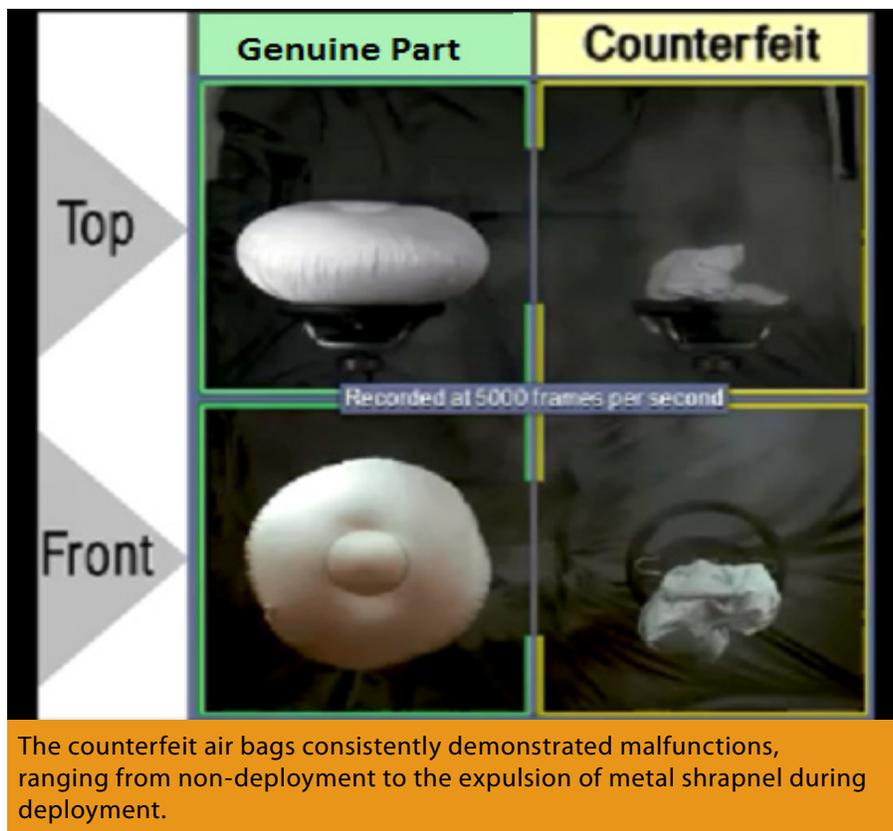
After extensive investigative collaboration and planning, agents were ready to make their move. On May 11, 2012, they placed their first order for air bags from Krugger Auto, posing as body shop owners looking for a deal. Within days, agents had a box containing two counterfeit air bags from Krugger Auto—one described as a Honda air bag and one as a Lexus air bag.

With the suspect products in hand, agents brought in experts from NHTSA and the Pipeline and Hazardous Materials Safety Administration (PHMSA) and the automobile manufacturers to help examine the parts and plan their next moves. Simultaneously, agents worked around the clock to prepare multiple requests for judicial authority to obtain the digital footprints of the Internet Protocol addresses and computers Krugger Auto used to conduct the transactions and communications with undercover agents. With confirmations as to the authenticity of the counterfeit air bags and the digital data used to conduct the transactions, agents moved to secure multiple search warrants for Borodin's residence and Krugger Auto.

In August 2012, DOT OIG with the support of law enforcement agents from around the Southeast descended on Borodin's residence and business, serving multiple search warrants. They quickly confirmed they were on the right trail. During the search warrant at Borodin's residence, agents uncovered the false wall in Borodin's garage—which concealed floor-to-ceiling shelves of counterfeit air bags sorted by make, year, and color—and a cache of priority mail shipping boxes, scales, bubble wrap, and other supplies for mailing the suspect air bags through the U.S. Postal Service. In all, the agents located over 1,500 air bags and \$60,000 in cash at Borodin's residence, along with scores of other counterfeit parts—including air bag covers and dash covers for the air bags—for Lexus, Toyota, Honda, Nissan, and other import models.

The search warrant executed at Krugger Auto proved just as revealing. Agents seized another 99 air bags and located business records confirming the sale of over 7,000 air bags to U.S. and overseas customers.

Despite the operation's success, agents were hit with a sobering reality—that there were potentially thousands of vehicles on the road with counterfeit components that could pose a risk of serious injury or death.



Agents again faced a time-critical task: tracking down the more than 7,000 counterfeit air bags to alert owners and repair technicians to the potential danger to safety. Working collaboratively with law enforcement, DOT regulatory agencies and the auto industry sent a notice to all known Krugger Auto customers. NHTSA followed with a Notice to Industry designed to alert all repair shops and technicians of this new danger. With input from NHTSA and PHMSA, our agents also prepared industry flyers with information

on how to contact authorities with further questions, leads, or tips.

In 5 short months from the time the case was opened, OIG's agents and law enforcement partners had secured the evidence to shut down the bogus air bag business and bring Borodin to justice. In U.S. District Court, Borodin pleaded guilty to trafficking in counterfeit goods by air and was sentenced to 7 years in prison and 2 years supervised release. The court also ordered the seizure of his home valued at over \$260,000.

## FMCSA Regulated Drug Tester Debarred For Pennsylvania Fraud Scheme Enterprise Program

On January 16, 2015, the Federal Motor Carrier Safety Administration (FMCSA) debarred Elizabeth Pope for 3 years retroactive to August 6, 2014. In addition, FMCSA issued a Notice of Proposed Exclusion, recommending that Pope be excluded from conducting business with the Department of Transportation for 5 years.

Pope operated Eastgate Laboratory Testing Inc., a company that conducted drug testing for trucking companies in the Pittsburgh, PA, area. Eastgate administered drug tests that included pre-employment, random, and post-accident testing. The investigation determined that between 2008 and 2012, Pope illicitly used the computer-generated signature of a doctor who had once served as Eastgate's Medical Review Officer on all required FMCSA paperwork. Pope admitted to falsifying FMCSA-regulated drug testing documents to give the impression that all tests received the necessary oversight and review. Pope was sentenced in December 2014 to 8 months house arrest and ordered to pay \$109,000 in restitution.

We conducted this investigation with assistance from FMCSA.

## Former FAA-Certified Repair Business Owner Sentenced for Fraudulent Aircraft Part Repairs

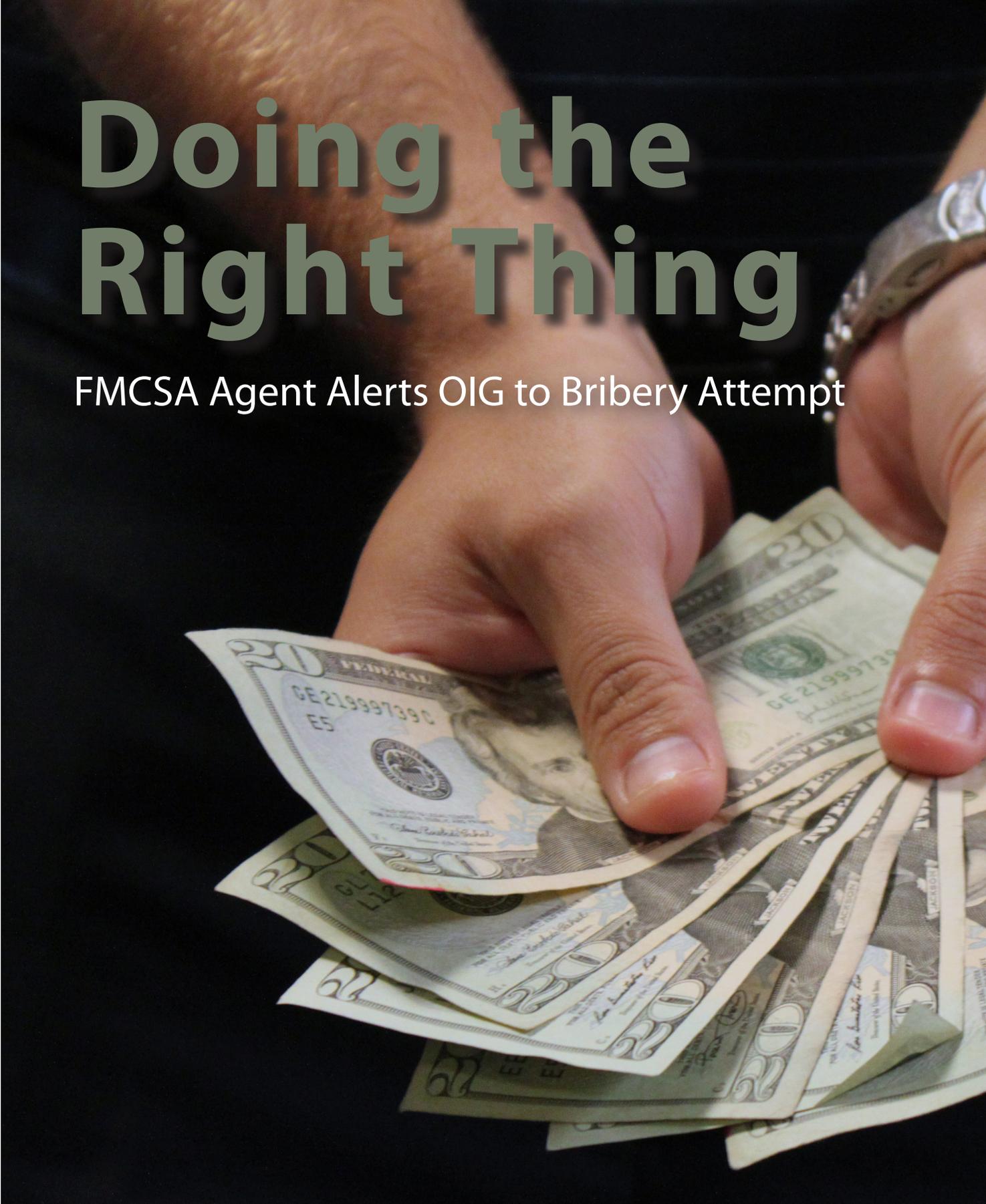
On November 13, 2014, William H. Weygandt, former owner and president of Weco Aerospace Systems, Inc. (WECO), appeared in U.S. District Court, Sacramento, CA, and was ordered to pay \$600,000 in restitution to Gulfstream Aerospace Corporation for losses relating to fraud involving aircraft parts.

In July 2014, Weygandt was sentenced to 30 months in prison and 36 months supervised release. The sentence was a result of a 3-week trial in November 2013 where a federal jury found Weygandt guilty of conspiracy to commit fraud involving aircraft parts repair.

WECO was an Federal Aviation Administration (FAA)-certified repair business with facilities in Lincoln and Burbank, CA. Weygandt began working for WECO upon its founding in 1974 by his father. By 2005, he was the president and sole owner. In January 2007, Weygandt sold the 75-employee company to Gulfstream Aerospace Corporation for approximately \$17 million and remained as president of the company until February 2008.

According to evidence presented at trial, WECO was permitted by FAA to repair certain types of aircraft parts, including starter generators and converters used on various types of aircraft, including small helicopters used by tour companies and law enforcement agencies. However, evidence at trial established that WECO employees at both its Lincoln and Burbank repair stations regularly failed to follow FAA regulations in repairing and overhauling the aircraft parts, and falsely certified the parts passed tests and had been repaired in accordance with FAA standards.

We conducted this investigation with the Federal Bureau of Investigation and the U.S. Department of Homeland Security OIG.



# Doing the Right Thing

FMCSA Agent Alerts OIG to Bribery Attempt



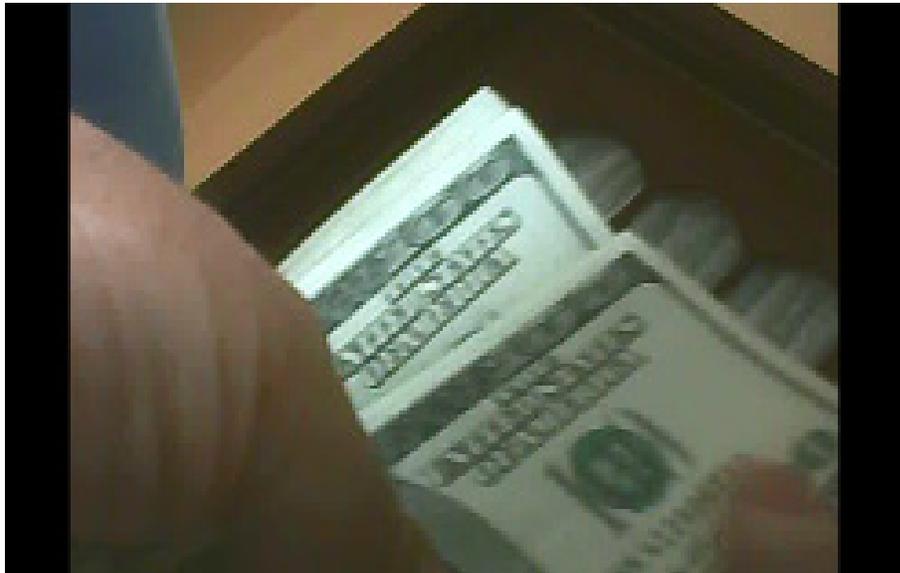
TODD DAMIANI  
Cambridge, MA

**S**UPPOSE YOU WERE offered \$1,000 to look the other way for a minute. Just walk away with the money in your pocket. It happens all the time. No harm, no foul. What would you do? Would you do the right thing? Federal Motor Carrier Safety Administration (FMCSA) Special Agent Edgar Albisurez did—he called OIG.

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In April 2013, Albisurez was performing what FMCSA refers to as a “focused compliance review” on Korca Enterprises Inc.—a now defunct Worcester, MA, general freight forwarding trucking business owned and operated by Irfan Dushku. Dushku had been cited for several motor carrier safety violations and a few accidents. During his review, Albisurez discovered evidence of what appeared to be the falsification of records pertaining to the number of hours that Korca’s drivers were working.

Falsifying driving records is a serious offense—and a major safety concern if the hours logged are fewer than the actual hours driven. In January 2014, the National Transportation Safety Board testified before Congress that “driver fatigue remains...an area in which action is needed to reduce crashes, injuries, and deaths on our highways” and specifically pointed to fatigue “as a contributing factor in numerous major commercial motor vehicle crashes.” To keep fatigued commercial drivers off roadways, FMCSA places limits on when and how long they can drive. Any



Actual footage of the bribery transaction.

action to circumvent these hours-of-service regulations is not taken lightly by OIG, FMCSA, or the Department.

Following up on his discovery, Albisurez spent a day scanning Korca’s records at Dushku’s home, where Dushku ran his business. As Albisurez was leaving, he informed Dushku that he would be back soon to complete the review. Dushku then approached Albisurez and asked, “Do you want a gift?” Albisurez informed Dushku he could not accept gifts,

to which Dushku responded, “\$1,000 if you don’t write anything down.”

Our office is unequivocal in its advice to DOT employees when someone offers them a bribe: Say nothing. Then tell OIG.

Albisurez immediately informed his supervisor of the bribery attempt. OIG Special Agent Michaela Stuart, who happened to be in FMCSA’s office reviewing records on another matter, quickly launched a joint FMCSA-OIG operation.

The first step in the investigation was to confirm the offer by setting up a sting operation.

On May 8, 2013, Albisurez called Dushku and asked if the gift was still available. Dushku responded, "Of course." Dushku and Albisurez set a date to meet. Working together, OIG and FMCSA agents created a compliance review that did not document identified falsifications and appeared to clear Korca of violating any motor carrier safety regulations. A week later, Albisurez met with Dushku at his home office and provided the fake report. In turn, Dushku presented Albisurez with ten \$100 bills.

What Dushku did not know was the entire transaction was

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**Advice to DOT employees  
when someone offers  
them a bribe: Say  
nothing. Then tell OIG.**

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being recorded and broadcast live to OIG special agents on radio via a tiny button camera affixed to Albisurez's shirt prior to the meeting.

In addition, several OIG special agents were strategically positioned on the street both in front of and behind Dushku's home listening to the events unfold.

On the recorded footage, Dushku can be seen handing Albisurez a stack of money, as Albisurez discusses the merits of being discreet during such transactions because there are "a lot of cameras" around the area, and you can never be too careful.

The following day, OIG special agents returned to Dushku's residence and informed him the paperwork he received was fake. While being questioned, Dushku admitted he gave Albisurez a \$1,000 gift but tried to convince the agents that the \$1,000 was just because he appreciated the job Albisurez was doing.

After being confronted with the video evidence and the statements from the special agents involved



Special Agent Edgar Albisurez was presented with a plaque from DOT OIG.

with this investigation, Dushku agreed to plead guilty to a felony charge of bribing a public official and was sentenced to a fine and probation. In addition, FMCSA revoked Korca Enterprises' operating authority.

By doing the right thing and working with OIG, Albisurez helped to remove the risks this corrupt carrier posed to our roadways.



Because they will give,  
doesn't mean you should  
take...



## Kickbacks

In kickback schemes, a contractor or subcontractor misrepresents the cost of performing work by secretly paying a fee for being awarded the contract and therefore inflating the job cost to the government.

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*U.S. Department of Transportation  
Office of Inspector General*

## Florida Department of Transportation Consultant Sentenced for Accepting a Bribe

On May 7, 2013, Ron Capobianco, Jr., a construction engineering and inspection consultant at Metric Engineering Inc. —which contracted with the Florida Department of Transportation (FDOT)—was sentenced in U.S. District Court, Miami, FL, for conspiracy to commit bribery in connection with programs receiving Federal funds. Capobianco was sentenced to 12 months and 1 day imprisonment, 1 year of supervised release, 200 hours of community service, and a \$100 special assessment fee. He also made a forfeiture payment of \$4,000.

FDOT contracted with Metric to design, inspect, troubleshoot, and provide other services in the construction of roads signs and traffic signals. Capobianco was consulted as an FDOT expert on certain aspects of signalization and lighting construction, including the use of video detection cameras for traffic signalization and control.

In 2009, FDOT began the Marathon Key project, which was partially financed with Federal funds. The goal of the project was to improve traffic flow along Highway 1 in the Florida Keys. In May of that year, an agent of a project subcontractor offered Capobianco money if the subcontractor received at least \$25,000 for the installation of the video detection equipment. Capobianco agreed to the subcontractor's \$25,000 estimate, enabling the subcontractor to make a significant profit. After being paid by the State of Florida, the subcontractor then paid Capobianco \$4,000 for his assistance.

We conducted this investigation jointly with the Federal Bureau of Investigation and the Internal Revenue Service Criminal Investigation Division.



# Operation Boxed Up

OIG Special Agents Protect Consumers  
From Household Goods Fraud

PHOTOGRAPH: "THE MOVING TRUCK" BY JONAH WEST / CC BY-NC 2.0



BY BRENDAN CULLEY  
Cerritos, CA

**E**ACH YEAR, ABOUT 4,000 interstate moving companies transport household goods for 1.6 million Americans. And each year, the Federal Motor Carrier Safety Administration receives about 2,200 consumer complaints regarding interstate movers. More than one-fourth of these complaints involve egregious offenses, including exorbitant fees and holding goods hostage. To carry out this extortion, brokers and carriers engage in other illegal activities such as conspiracy, wire fraud, mail fraud, money laundering, and falsifying bills of lading and shipment weight documents to extort money from unsuspecting consumers.

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To protect consumers from these rogue companies, OIG's Office of Investigations launched Operation Boxed Up in 2011. This initiative targeted suspect household goods brokers and carriers that demanded significantly larger sums of money than originally quoted before releasing consumers' goods. In two significant cases, OIG special agents in Texas and Colorado successfully investigated and built cases that resulted in convictions of the individuals running fraudulent moving companies.

The Texas case began with a referral from the District Attorney's office in Houston in March 2012. The Houston Police Department had been fielding complaints about a moving company run by Anthony Fanelli. His company quoted flat, hourly rates and promised "no hidden charges" to customers. Our agents, working closely with State partners, uncovered a different story.

According to the lead agent, the company would add additional charges for anything, including fuel surcharges, the distance between the unit or home and the moving truck, and even stairs. The most common hidden charge was for shrink wrap. Fanelli's

crew shrink wrapped anything and everything and then charged the customer for it. A particularly egregious example: \$90 for shrink wrapping a pair of shoes, a cost that exceeded the value of the shoes.

The upcharges were added after

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**In one case, where the customer could not pay the ransom, she and her children slept on the floor while their mattresses, clothes, and toys remained locked in a storage facility.**

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Fanelli's crew packed customers' belongings and pressured them to sign a moving contract that contained blank spaces for the added fees. Once customers signed the moving contract, they had little recourse. Fanelli's crew were so confident of their rights, they would wait by the loaded truck while customers called the police. When the police arrived, the crew would show the signed contract to the officers who would tell the

customers there was nothing they could do and recommended taking the issue up in Small Claims court.

When customers refused to pay, Fanelli threatened to hold their belongings in a storage facility or sell them at auction. Either way, customers did not get their goods until they paid the inflated costs. Even when they paid, many customers found their personal effects unceremoniously thrown from the moving truck at the delivery location. In one case, where the customer could not pay the ransom and Fanelli refused to release her goods, she and her children slept on the floor while their mattresses, clothes, and toys remained locked in a storage facility. She tried to persuade Fanelli's crew to at least release the children's toys, but they refused.

To put an end to this fraud, OIG agents and their partners interviewed dozens of victims, reviewed hundreds of documents, and collected numerous items of evidence. Ultimately, Fanelli and two of his associates, Andy Bueno and Jovan Balknight, were indicted on State felony charges for household goods fraud involving 42 victims. All three individuals entered into

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plea agreements. After serving 7 months in county jail, Fanelli offered to help with another State case. He paid a bond but then failed to appear for his court date. U.S. Marshalls picked him up in Philadelphia, PA, a couple of months later. He was subsequently sentenced to 20 years in prison and ordered to pay \$200,000 in restitution. Bueno was sentenced to 8 years in prison and ordered to pay \$249,000 in restitution, and Balknight was sentenced to 2 years in prison.

The Colorado case involved the pursuit of Yaron Levin—a household goods mover who worked through moving brokers to scam consumers. Levin got his interstate authority in 2007 and had a standing order with several brokers for moving requests estimated between \$1,000 and \$10,000 for customers leaving Denver, CO. Levin’s scam was largely based on false load weights. He would report artificially low weights for his empty trucks, then after his crew loaded customers’ belongings (always with the more valuable goods loaded first), they would inform customers that the weight of goods was more than originally estimated. After convincing customers to

sign a change of service form—which amounted to a “revision of estimate,” Levin’s crew would add items to the truck before it was weighed. According to OIG’s lead agent on the case, the added items were heavy, often heavy chains, but in at least one case, the crew paid a heavysset truck driver \$5

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**Levin had no compassion for his victims. He held hostage a motorized wheelchair provided by the Department of Veterans Affairs for a disabled veteran.**

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to sit inside the moving truck during the weigh-in. They once offered to take a wrecked Pontiac off the owners’ hands at no cost, which they used to add additional weight to the truck with the owners’ belongings.

Customers’ goods were stored in Levin’s “warehouse”—five moving vans on blocks at the back of a lot. With their belongings taken away, customers felt there was little they could do. And like Fanelli,

Levin had no compassion for his victims. He once held hostage a motorized wheelchair belonging to a disabled veteran. When customers could not pay, Levin tried to sell their belongings at auctions and flea markets.

The paperwork for the moves always fit the weight of the load. However, the rest of Levin’s operation was disorganized. In many cases, he used the same weight slip for different customers’ moves. Estimates and final costs were largely based on what Levin thought each customer would pay to have the goods released.

After receiving a complaint about Levin, OIG agents contacted a victim whose belongings were being held by Levin and worked with the FBI to set up a controlled purchase. Using cash provided by the agents, the victim met with Levin on the pretense of securing the release of his belongings. During the transaction, the victim wore a body wire and recorded the conversation, which proved beneficial in making the case against Levin. The recording also showcased Levin’s arrogance and rudeness. While accepting payment, Levin carried on a side conversation in Hebrew with his wife, making disparaging remarks

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about the customer, while smiling and speaking cordially to the victim in English. Agents followed up with a search warrant of Levin's trailers and office where they discovered the motorized wheelchair belonging to the disabled veteran. In Levin's office, agents also found a desk and computer that belonged to the disabled veteran and her husband.

After the search, Levin worked hard to convince law enforcement agents he was a good guy. He

respectfully addressed OIG's lead agent as "Mister" and left a voice message in which he interviewed a client who attested to his good character. However, the client subsequently left another message explaining that Levin told him he would not see his personal belongings again if he did not give the positive review.

The Assistant U.S. Attorney's indictment against Levin was based on 10 of the dozens of victims Levin defrauded and the

"revision of estimate" forms seized for those victims. A superseding indictment was used for another 20 victims. During the extended trial, Levin went through several defense lawyers. At one point, he claimed mental incompetence and was sentenced to 6 months in a mental health facility. He was eventually sentenced to prison, but his wife and two drivers who were also indicted, never saw jail time. Approximately \$100,000 was disbursed to Levin's victims.

## OIG's Wanted Fugitives Program

Each year, millions of Americans move their household goods from one State to another. And each year, the Federal Motor Carrier Safety Administration (FMCSA) receives thousands of consumer complaints regarding interstate movers. Some of these complaints involve egregious offenses, such as holding goods hostage. Victims of this crime can be faced with paying exorbitant fees or risk losing their personal property. Protecting consumers from these rogue companies is an important part of OIG's criminal case work. Our investigations target suspect household goods brokers and carriers. These thieves engage in illegal activities including

conspiracy, wire fraud, mail fraud, money laundering, and falsification of bills of lading and shipment weight.

To identify unscrupulous household goods movers before they victimize more American consumers, OIG's Office of Investigations launched Operation Boxed Up. This proactive initiative in cooperation with the FMCSA targets groups of interrelated carriers and brokers engaged in household goods fraud schemes.

In connection with Operation Boxed Up, OIG's Office of Investigations launched a Wanted Fugitives Web page to elicit credible tips from the public to locate and bring

fugitives from OIG cases to justice. Since its publication, the Wanted Fugitives page has expanded to include more than just household goods fugitives. The 36 fugitives currently listed have outstanding warrants for their arrest in connection with a variety of DOT-related offenses.

In April 2014, our Wanted Fugitives Web page led to the capture of its first fugitive, Jovan Balknight. On the run for nearly 2 years, Balknight was arrested in Philadelphia, PA, after being featured on the Web page. In July 2012, Balknight and two accomplices were indicted by a grand jury in Harris County, TX, for luring moving customers with extremely low price quotes. After taking possession of customers' household goods, they increased the price significantly and withheld delivery of customers' belongings until they paid the inflated price. If customers could not or would not pay, they also threatened to auction customers' possessions.

Our Wanted Fugitives web page can be accessed at: <http://www.oig.dot.gov/wanted-fugitives>. We encourage anybody with knowledge of the fugitives' whereabouts to contact OIG's Hotline. Do not attempt to apprehend anyone you suspect to be a fugitive.

- **Online OIG Hotline Complaint Form:** <https://www.oig.dot.gov/DOT-OIG-hotline-complaint-form>
- **Call:** 1-800-424-9071 (toll free).
- **E-mail:** [hotline@oig.dot.gov](mailto:hotline@oig.dot.gov)
- **Mail:** 1200 New Jersey Ave SE, West Bldg, 7th Floor, Washington, DC 20590



**CAPTURED**  
**Ricardo Amador**  
 Baltesteros Garcia  
 DOB: 08.14.1984  
 Height: 6' 0"  
 Weight: 220 lbs.  
 Wanted For: Operating an Aircraft Without an FAA License



**CAPTURED**  
**Jovan H. Balknight**  
 DOB: 08.02.1979  
 Height: 5' 11"  
 Weight: 210 lbs.  
 Wanted For: Fraud Involving Moving Company



**ARMED AND DANGEROUS**  
**Barak Braunschtein**  
 DOB: 08.25.1975  
 Height: 6' 2"  
 Weight: 178 lbs.  
 Wanted For: Fraud Involving Moving Company



**ARMED AND DANGEROUS**  
**Amit Ezyoni**  
 DOB: 11.28.1971  
 Height: 6' 0"  
 Weight: 220 lbs.  
 Wanted For: Fraud Involving Moving Company

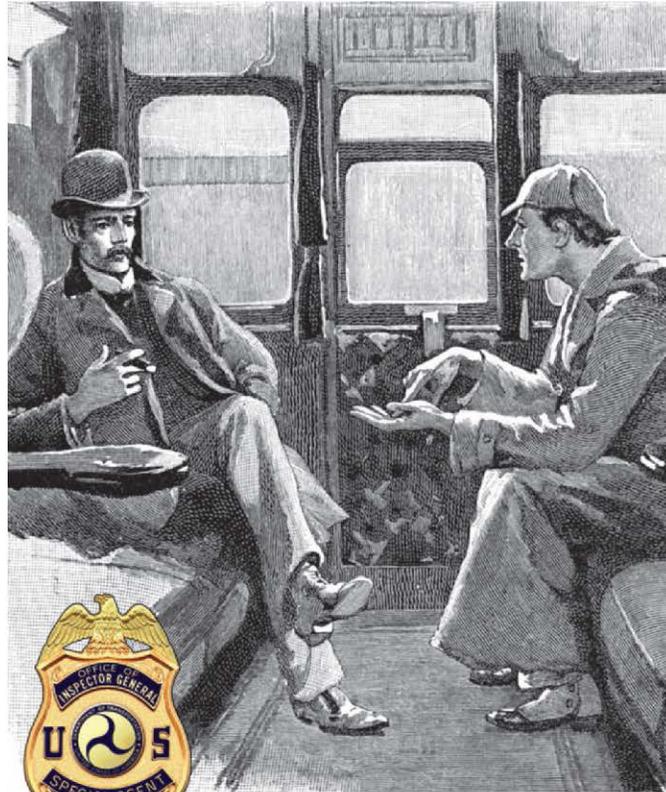


**ARMED AND DANGEROUS**  
**Eli Kaupp**  
 DOB: 02.23.1981  
 Height: 6' 11"  
 Weight: 178 lbs.  
 Wanted For: Fraud Involving Moving Company



**Asaf Nass**  
 DOB: 01.05.1974  
 Height: 5' 9"  
 Weight: 175 lbs.  
 Wanted For: Fraud Involving Moving Company

OIG's Wanted Fugitives Web page.



*"It's elementary my dear Watson..."*

Fraud is deliberate deception to secure an unfair gain.

**Recognize and Report Fraud in  
Federally Funded Programs,  
Contracts, and Grants**

**(800) 424-9071**

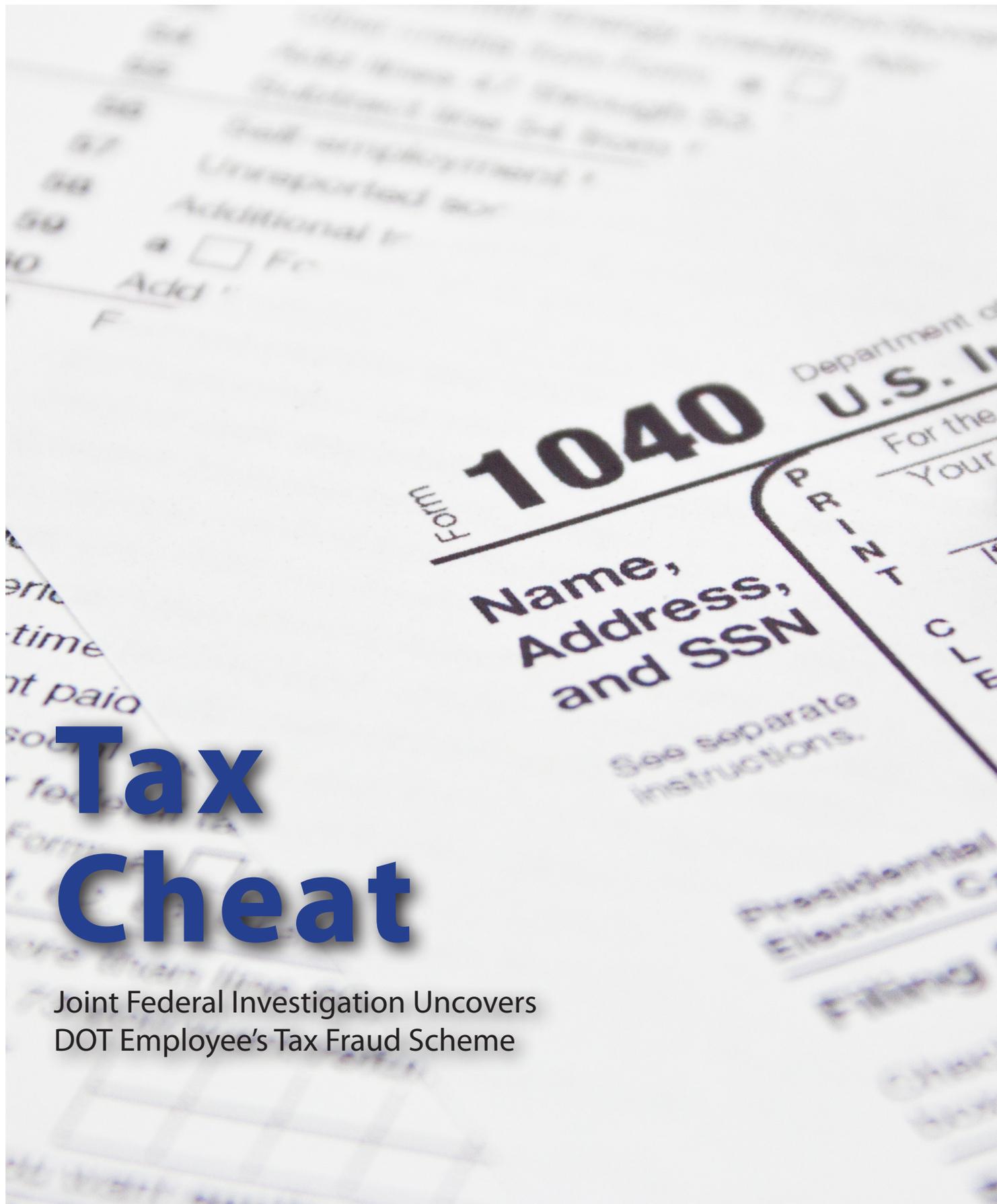
*U.S. Department of Transportation  
Office of Inspector General*

## Owner of Pennsylvania Aircraft Repair Business Sentenced to 5 Years in Prison

On November 4, 2014, Jay Stout, of Harrisburg, PA, was sentenced in U.S. District Court, Philadelphia, PA, to 60 months incarceration, 36 months of supervised release, over \$500,000 in restitution, and a \$2,000 fine. Additionally, Flying Tigers Inc., the now-defunct aircraft maintenance company he was president of, was sentenced to 12 months of probation and ordered to cease operation.

After a 9-day trial in April 2014, a Federal jury returned a guilty verdict, convicting Jay Stout and Flying Tigers Inc. of conspiracy, fraud involving aircraft parts, mail fraud, and obstruction of justice.

The investigation revealed that in 2003, the Federal Aviation Administration (FAA) suspended Jay Stout's authority to conduct aircraft inspections and in 2004, revoked both his maintenance and inspection authority. Jay Stout's FAA inspection authority lapsed in March 2006. However, between October 2003 and January 2010, Flying Tigers charged customers for annual inspections of their aircraft despite having no mechanic with inspection authority. This 6-year investigation revealed that the defendants routinely altered logbooks. When Jay Stout learned of the investigation, he altered aircraft logbooks to conceal the false certifications, obstructing the investigation. In total, Flying Tigers conducted more than 100 questionable aircraft inspections and repairs between 2003 and 2010, affecting over 40 aircraft.



# Tax Cheat

Joint Federal Investigation Uncovers DOT Employee's Tax Fraud Scheme

PHOTOGRAPH: "IRS 1040 TAX FORM BEING FILLED OUT" / KEN TEGARDIN / CC-BY-SA 2.0



BY PAMELA CASTLEBERRY  
Washington, DC

**F**OR MOST AMERICANS, filing taxes elicits a certain dread. The complex regulations, encroaching deadlines, and latent audits are stressful. Yet for victims of tax preparers who file false returns and defraud their clients, that dread can quickly turn into anguish—especially since the taxpayer is ultimately responsible for the information on the return. When one taxpayer contacted her local Internal Revenue Service (IRS) office with questions about an unusually large return, she learned that her tax preparer, Sheila Anderson-Cloude, had committed fraud using her return. In fact, Anderson-Cloude filed returns that generated illicit refunds totaling over half a million dollars.

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In 2010, Anderson-Cloude, a financial management specialist with the Federal Motor Carrier Safety Administration (FMCSA), along with friend Tonia Lawson devised a plan to benefit from manipulating others' tax returns. Anderson-Cloude contacted individuals who had little or no earned income and did not owe taxes, and convinced them to file a Federal tax return with the promise of a refund. Without obtaining any income information from the individual, she would create false wages and educational expenses to claim tax credits.

As the business grew, Lawson brought a few other trusted people into the fraud—including her daughters, Kiara Skipwith and Jasmine Thomas. Lawson, Skipwith, and Thomas were primarily responsible for recruiting clients and even paid a referral fee to anyone who brought a client to them. Together, Anderson-Cloude,

Lawson, Skipwith, and Thomas misled clients by telling them that the refunds were smaller than the amounts Anderson-Cloude listed on the fraudulent returns. This netted a “profit” for Anderson-Cloude and her partners. They

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**OIG's Computer Crimes Unit tracked IP addresses from the fraudulent tax returns, leading investigators to the DOT-issued laptop computer assigned to Anderson-Cloude.**

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kept the difference between the refund claimed on the tax return and the smaller amount paid to the client.

Following up on a questionably large tax return, IRS Criminal Investigation Division (CID) notified OIG in January 2012 that a DOT employee was suspected of defrauding the Department of Treasury. OIG and IRS CID investigators teamed up to conduct a joint investigation.

Anderson-Cloude never reported the outside employment to FMCSA and used Government-issued equipment to communicate with clients and process tax returns. This left an easy trail for investigators to follow.

OIG's Computer Crimes Unit (CCU) tracked Internet Protocol (IP) addresses from the fraudulent tax returns, which led them to the DOT-issued laptop assigned to Anderson-Cloude. This provided the necessary information to obtain warrants to search Anderson-Cloude's personal and work computers. CCU collected

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and decrypted media acquired from her computers, and identified multiple individual tax returns; pictures of W-2 forms sent to Anderson-Cloude by co-conspirators; and other documents of evidentiary value. The forensic data and analyses were provided to investigators for review.

Investigators found that one of the two IP addresses where fraudulent tax returns were submitted included Anderson-Cloude's FMCSA address. She had not only used the Government-issued computer, Government networks, and a Government email address to prepare and submit fraudulent tax returns to the IRS, she committed this fraud during work hours.

The investigators determined that between 2009 through 2012, Anderson-Cloude prepared at least 90 fraudulent tax returns for clients referred by Lawson, Skipwith, Thomas, and others. The returns generated illicit refunds

totaling more than \$500,000. In 2011 alone, Anderson-Cloude received at least \$100,000 in profits from her role in the conspiracy.

On June 11, 2013, U.S. District Court in Baltimore, MD, charged Anderson-Cloude with false,

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### The 90 fraudulent tax returns generated illicit refunds of \$546,785.

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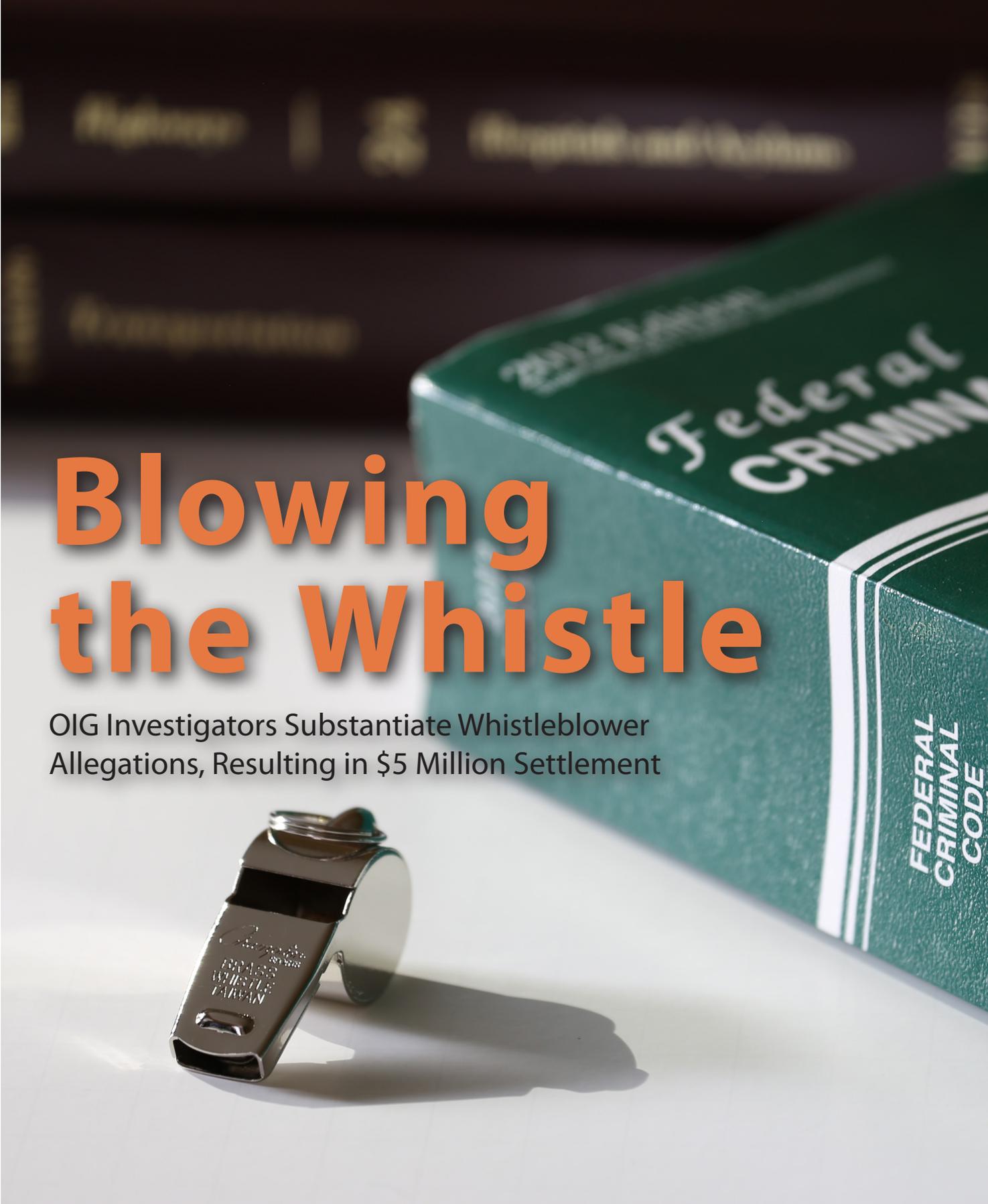
fictitious, or fraudulent claims; aggravated identity theft; theft of public money; and false statements. On January 22, 2014, additional charges were added.

On February 26, 2014, Anderson-Cloude pleaded guilty to conspiracy to defraud the Government with her scheme. As part of her plea agreement, she acknowledged her role in the

tax fraud and admitted that she, Lawson, Skipwith, Thomas, and others netted illicit tax refunds of more than \$500,000. Lawson, Thomas, and Skipwith also pleaded guilty for their roles in the scheme.

On July 30, 2014, Anderson-Cloude was sentenced to 15 months in prison, 3 years of supervised release, and ordered to pay restitution equaling the illicit refunds from the 90 fraudulent returns. FMCSA also removed Anderson-Cloude from Federal service.

Lawson was sentenced to 10 months in prison, 3 years of supervised release, and ordered to pay restitution of over \$500,000; Thomas was sentenced to 3 years of probation and ordered to pay restitution of over \$90,000; and Skipwith was sentenced to 3 years of probation and ordered to pay restitution of almost \$200,000.

A photograph of a silver whistle and a green book titled 'Federal Criminal Code'. The whistle is in the foreground, casting a shadow. The book is in the background, with the title 'Federal Criminal Code' visible on its cover. The background is blurred, showing other books on a shelf.

# Blowing the Whistle

OIG Investigators Substantiate Whistleblower Allegations, Resulting in \$5 Million Settlement



BY RON ENGLER  
Washington, DC

**I**N AUGUST 2009, the Washington Metropolitan Area Transit Authority (WMATA) awarded a contract to Virginia-based Metaformers Inc. to assess WMATA's financial system. The contract, valued at approximately \$256,000, was awarded under competitive procedures. However, less than a year later, WMATA used non-competitive procedures to award Metaformers a \$14 million contract, more than half of which was funded through a Federal Transit Administration (FTA) grant, to integrate its financial and business systems.

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Non-competitively awarding the far more lucrative contract to Metaformers gave the contractor an advantage over other potential contractors—a violation of Federal procurement conflict of interest rules governing the use of FTA grant funds. Further, WMATA’s conduct allegedly violated its certification and commitment to administer the FTA grant funds using full and open competition.

After Shahiq Khwaja, a WMATA employee involved in upgrading the financial management system, “blew the whistle” on alleged waste of DOT funds, WMATA fired him. Khwaja responded by filing a whistleblower lawsuit against WMATA in Federal court. In his suit, Khwaja alleged that the work performed under the \$14 million contract could have been done at a much lower cost had WMATA solicited bids. He also alleged that WMATA officials tried to steer about \$40 million worth of work to the contractor.

Khwaja sued WMATA under the qui tam, or whistleblower provisions, of the False Claims Act. The act allows private citizens to bring lawsuits on behalf

of the United States and share in any recovery obtained by the Government. Khwaja also sued WMATA under the retaliation provisions of the False Claims Act and the American Recovery and Reinvestment Act, claiming he was fired because of his

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**After Shahiq Khwaja, a WMATA employee, “blew the whistle” on alleged waste of DOT funds, WMATA fired him.**

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allegations.

When OIG investigators found substantial evidence supporting Khwaja’s allegations, the Department of Justice joined his lawsuit. Although conceding no wrongdoing, WMATA agreed to pay \$4.2 million to the Federal Government, about \$600,000 to the DC Government, and about \$155,000 to Khwaja to settle the no-bid contract matter. Khwaja also received almost \$1 million

of the Federal Government’s \$4.2 million settlement.

OIG investigators also determined the evidence indicated that Khwaja’s disclosures contributed to his termination, and Metro failed to show clear and convincing evidence it would have fired him otherwise. Rather than fight his claim, WMATA agreed to pay \$390,000 to Khwaja to settle.

OIG Special Agent-in-Charge Kathryn Jones noted, “This investigation and settlement agreement demonstrates our commitment to ensuring the integrity of the acquisition process and protecting taxpayer dollars from waste, fraud, and abuse, which is a top priority for both the Office of Inspector General and the Department of Transportation.”

Khwaja was the catalyst in cracking the case and protecting the American taxpayer. As Khwaja’s attorney told *The Washington Post*, “The Government would not have recovered these funds...without Mr. Khwaja stepping forward,” and the settlement is a “testament to Mr. Khwaja’s courage...in the face of resistance and hostility from his superiors.”



## U.S. DEPARTMENT OF TRANSPORTATION OFFICE OF INSPECTOR GENERAL

# WHISTLEBLOWERS KNOW YOUR RIGHTS

On February 17, 2009 the American Recovery and Reinvestment Act (ARRA) was signed into law by President Obama to improve public welfare. If you protect America's interests by reporting fraud, abuse, or mismanagement of ARRA funds at your workplace, and are retaliated against as a result, know that America is here for you.

*American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, Title XV, Subtitle D, Section 1553*

### **A**DMINISTRATIVE REVIEW:

You have the right to file a complaint with the Office of Inspector General and receive a timely investigation and response.

### **R**EPRISAL-FREE:

You have the right to be free from discharge, demotion, or discrimination as a result of disclosing:

- *Gross mismanagement of a stimulus-funded project.*
- *Gross waste of stimulus funds.*
- *Danger to public health and safety related to a stimulus-funded project.*
- *Violation of the law relating to stimulus funds or a stimulus-funded project.*
- *Abuse of authority related to the implementation of stimulus funds.*

### **R**EMEDIES:

You have the right to receive remedies if the Office of Inspector General determines you were subjected to an unlawful reprisal. Your employer may be ordered to abate the reprisal, reinstate your employment, and you may receive compensation to reimburse you for your attorney fees and other financial suffering experienced as a result of the reprisal.

### **A**LTERNATIVES:

You have the right to take action against your employer in civil district court if the Office of Inspector General does not respond within 210 days or determines that there was not an unlawful reprisal.

## ... **OIG HOTLINE** ...

[www.oig.dot.gov/recovery/whistleblower\\_protections.jsp](http://www.oig.dot.gov/recovery/whistleblower_protections.jsp)

Phone: 1-800-424-9071

Email: [hotline@oig.dot.gov](mailto:hotline@oig.dot.gov)



# Federal Laws Protect Whistleblowers

**W**histleblowers are an invaluable resource to help Inspectors General perform their Government oversight role. Their disclosures of wrongdoing are critical in keeping the Government honest, efficient and accountable. Recognizing that whistleblowers root out waste, fraud, and abuse, and protect public health and safety, Federal laws encourage employees, both Federal and non-Federal, to disclose wrongdoing and protect them from retaliation. Here are some of the most important Federal whistleblower laws for Federal employees, as well as Government contractors, subcontractors and other non-Federal employees.

## **LAWS FOR CURRENT AND FORMER FEDERAL EMPLOYEES AND JOB APPLICANTS**

### **Whistleblower Protection Act**

Under the Whistleblower Protection Act of 1989, it is unlawful for Federal agencies to take, fail to take, or threaten to take a personnel action against a current or former Federal employee or Federal job applicant because he or she disclosed information related to a violation of law, rule or regulation; gross mismanagement; gross waste of funds; abuse of authority; or a substantial and specific danger to public health or safety. Personnel actions include poor performance review, demotion, suspension, or termination.

### **Whistleblower Protection Enhancement Act**

The Whistleblower Protection Enhancement Act of 2012 strengthens protections for

Federal employees who disclose evidence of waste, fraud, or abuse and modifies rules on the use of non-disclosure policies or agreements by Government agencies. It makes it clear these agreements do not override employee rights and obligations created by existing statute or Executive Order relating to classified information, communications with Congress, or to reporting violations and/or misconduct to an Inspector General or any other whistleblower protection.

If an employee believes an agency has retaliated against him or her because of whistleblowing, the employee can file a complaint with the U.S. Office of Special Counsel (OSC), the agency's Inspector General or appropriate management officials. Under the act, OSC has authority to seek a stay of a personnel action pending investigation of the complaint and, ultimately, corrective action for the whistleblower by negotiating with the agency. If that is unsuccessful, OSC, unlike Inspectors General, can petition for a stay and file a complaint for corrective action with the Merit Systems Protection Board (MSPB). Also, unlike Inspectors General, OSC can initiate disciplinary action at the MSPB against the individual responsible for the retaliation.

Under the act, if the employee suffered whistleblower retaliation, the corrective actions available include reinstating the employee's job, reversing a suspension, and providing back pay. The individual responsible for the retaliation is also subject to disciplinary action, including removal.

## **LAWS PROTECTING WHISTLEBLOWING RELATED TO FEDERAL CONTRACTS AND GRANTS**

### **The National Defense Authorization Act of 2013**

Under the National Defense Authorization Act of 2013, employees of defense contractors, subcontractors, and grant recipients who blow the whistle on illegal conduct by their employers are entitled to protection from retaliation by their employers. Similar to the whistleblower protections for Federal employees, this act protects those employees for disclosing gross mismanagement of a Federal contract or grant; gross waste of Federal funds; abuse of authority relating to a Federal contract or grant; a violation of law, rule, or regulation related to a Federal contract or grant; or a substantial and specific danger to public health or safety. Those disclosures are protected if made to a member of Congress or a representative of a committee of Congress; an Inspector General; the Government Accountability Office; a Federal employee responsible for contract oversight or management at the relevant agency; an authorized official of the U.S. Department of Justice or other law enforcement agency; a court or grand jury; or a management official or other employee of the contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct.

The Act also temporarily covers contracts and grants executed by most other Federal agencies, including DOT, under a 4-year pilot

program. Thus, employees of these contractors, subcontractors, and grant recipients are, at least temporarily, entitled to whistleblower protection. They may file a retaliation complaint with the relevant Inspector General, which then must conduct an investigation and make recommendations to the respective agency head.

### **False Claims Act**

The False Claims Act prohibits false or fraudulent claims for payment by contractors to the Government. The prohibition may also be enforced in suits, known as *qui tam* suits. *Qui tam* is an abbreviation for the latin term, *qui tam pro domino rege quam pro se ipso in hac parte sequitur*, which means “[he] who sues in this matter for the king as well as for himself.” In essence, private individuals bring the suit on behalf of the Government. In many instances, the individuals with information leading to a False Claims Act suit are employees who find their employers may be submitting false or fraudulent claims and who proceed to blow the whistle. This act encourages private persons to provide information regarding false or fraudulent claims by allowing them between 15 and 25 percent of any settlement or judgment on behalf of the government in a suit under the act. However, such employees may become targets for discharge or other adverse actions by their employers. Under the act, whistleblowers may be entitled to reinstatement, back pay, and other damages and costs if the employer retaliates or discharges him for this lawful activity.

### **The American Recovery and Reinvestment Act**

The American Recovery and Reinvestment Act provides protections for employees of non-Federal employers receiving recovery funds, including State and local governments, contractors, subcontractors, grantees, or professional membership organizations acting in the interest of recovery fund recipients who make specified disclosures relating to Recovery Act funds. Covered employees are protected from being discharged, demoted, or otherwise discriminated or retaliated against as a reprisal for making a protected disclosure. To be protected, the disclosure must be made by the employee to the Recovery Accountability and Transparency Board, an Inspector General, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee, a court or grand jury, or the head of a Federal agency or his or her representatives. Allegations of reprisal may be reported to the appropriate Inspector General. For example, whistleblower retaliation claims involving Recovery Act funds administered by DOT are investigated by the DOT Office of Inspector General.

### **The Occupational Safety and Health Act**

The Occupational Safety and Health Act prohibits employers from discriminating against their employees for exercising their rights under the Occupational Safety and Health Act. These rights include filing a U.S. Department of Labor, Occupational Safety and Health

Administration (OSHA) complaint, participating in an inspection or talking to an inspector, and raising a safety or health complaint with the employer. Protection from discrimination means an employer cannot retaliate by taking an adverse action, such as firing or laying off workers, demoting them, or denying them overtime or promotion. OSHA's Directorate of Whistleblower Protection Programs enforces this act and other whistleblower protection laws.

### **LAWS PROTECTING WHISTLEBLOWING RELATED TO TRANSPORTATION SAFETY**

Since the passage of the Occupational Safety and Health Act, Congress has expanded OSHA's whistleblower authority to protect workers from discrimination under 21 Federal laws. Rights afforded by these whistleblower acts include reporting a work related injury, illness or fatality, or reporting a violation of the statutes. Protection from discrimination means that an employer cannot retaliate by taking adverse action against workers. Many of these laws apply to transportation industry employees:

- **Federal Railroad Safety Act.** Protects employees of railroad carriers and their contractors and subcontractors who report a hazardous safety or security condition, a violation of any federal law or regulation relating to railroad safety or security, or the abuse of public funds appropriated for railroad safety.

- **International Safe Container Act.** Protects employees involved in international shipping who report to the Coast Guard the existence of an unsafe intermodal cargo container or another violation of the act.
- **Moving Ahead for Progress in the 21st Century Act.** Prohibits retaliation by motor vehicle manufacturers, part suppliers, and dealerships against employees for providing information to the employer or DOT about motor vehicle defects, noncompliance, or violations of the notification or reporting requirements enforced by the National Highway Traffic Safety Administration.
- **National Transit Systems Security Act.** Protects transit employees who report a hazardous safety or security condition, a violation of any Federal law relating to public transportation agency safety, or the abuse of Federal grants or other public funds appropriated for public transportation. The act also protects public transit employees who refuse to work when confronted by a hazardous safety or security condition or refuse to violate a Federal law related to public transportation safety.
- **Pipeline Safety Improvement Act.** Protects employees who report violations of Federal laws related to pipeline safety and security or who refuse to violate such laws.
- **Seaman's Protection Act.** Protects employees who report to the Coast Guard or another Federal agency a violation of a maritime safety law or regulation. The act also protects seamen who refuse to work when they reasonably believe an assigned task would result in serious injury or impairment of health to themselves, other seamen, or the public.
- **Surface Transportation Assistance Act.** Protects truck drivers and other employees who refuse to violate regulations related to the safety of commercial motor vehicles or who report violations of those regulations.
- **Wendell H. Ford Aviation Investment and Reform Act for the 21st Century.** Protects employees of air carriers and contractors and subcontractors of air carriers who, among other things, report violations of laws related to aviation safety.

# follow



## @DOTInspectorGen

## Maine Man Sentenced for Embezzlement From a Federally Funded Program

On May 21, 2013, Thomas Nelson, former chief executive officer of York County Community Action Corporation (YCCAC), was sentenced in U.S. District Court in Portland, ME, to 30 months incarceration and 36 months supervised release, and ordered to pay more than \$1 million in restitution for conspiracy, embezzlement from a federally funded program, and tax evasion. Some of the embezzled funds came from grants through the American Recovery and Reinvestment Act (ARRA).

YCCAC provides social service, health, educational, and transportation-related assistance to York County individuals and families living in poverty. From 2006 to 2010, YCCAC received in excess of \$30 million in Federal funds, including approximately \$7 million in Federal Transit Administration (FTA) grants. Some of the FTA grants were funded by ARRA.

Between 2004 and 2010, Nelson embezzled approximately \$900,000 from YCCAC. He diverted \$413,000 to a consulting company that submitted only one invoice for \$8,700. In exchange for the fraudulent payments, the consulting company kicked cash back to Nelson and paid more than \$20,000 of Nelson's personal expenses, including his home mortgage. He also diverted more than \$400,000 to a defunct non-profit, New England Community Action Agency (NECAA), and recorded those payments as donations or consulting expenses. After transferring these funds to NECAA, Nelson used more than \$300,000 to pay his credit card bills and home mortgage and to gamble. He also prepared and signed NECAA tax returns, which suggested the organization had revenue and assets, when it did not.

We investigated this case with the Internal Revenue Service, as well as the OIGs for the Departments of Health and Human Services, Housing and Urban Development, and Agriculture.

## The Virtual World of the Computer Crimes Unit

**I**n an era when businesses and individuals rely heavily on computers, cell phones, and other digital devices to conduct daily business, OIG investigators must often sift through massive volumes of electronic forensic evidence to support allegations of fraud, waste, and abuse. In 2013 alone, OIG's Computer Crimes Unit (CCU) seized over 500 digital devices containing 105 terabytes of electronic data—roughly 43 billion single-spaced typewritten pages. To help case agents quickly acquire, extract, and analyze electronic evidence—CCU's primary mission—CCU created the revolutionary Virtual Forensic Server Environment (VFSE) and an automated media data extraction (MDE) process.

Through the MDE process, CCU can recover files of potential investigative interest, typically within 2 weeks, and provide the files to case agents on VFSE, along with

the tools necessary to view them. Ultimately, case agents can quickly search large volumes of seized documents, emails, financial records, and databases. Agents can also identify important investigative information, while maintaining the forensic integrity of the evidence. Navigating VFSE's virtual desktop environment is easy because it is similar to case agents' daily desktop environment. From a security perspective, VFSE complies with applicable Federal regulations and directives, and only OIG employees with valid credentials can log on to the system.

CCU's MDE and VFSE capabilities have enhanced collaboration between case agents and forensic examiners, who can better target digital evidence that supports OIG's investigative work. Moreover, by streamlining the search process and leveraging existing software licensing and open source technologies, VFSE allows CCU to provide timely

and effective support to investigators nationwide, which creates significant cost savings for OIG. Most importantly, the capabilities enable OIG agents to quickly stop criminals from stealing Government funds and from putting the safety and lives of citizens at risk.

In one case, agents investigated allegations of a 20-year scheme to defraud DOT's Disadvantaged Business Enterprise (DBE) program—a scheme involving more than \$24 million in DBE subcontracts on over 290 federally funded highway construction projects. This type of criminal activity not only represents blatant misuse of Federal funds, but diverts millions of dollars from legitimate DBEs and increases the risk of substandard and faulty road, tunnel, and bridge construction. The case agent on this investigation noted that a VFSE search “quickly provided key evidence that corroborated specific allegations and directly led to

a defendant's cooperation, which in turn led to five plea agreements.”

Over the past year, CCU presented OIG's MDE process at several digital forensics conferences. Participants included representatives from Federal, State, and local governments; the private sector; and international law enforcement agencies, including the Israeli and the Greek National Police. As a result of these and other outreach efforts, CCU's MDE process is being recognized by other U.S. and international investigative and law enforcement agencies. Some are considering adopting MDE to strengthen their computer analysis services. Recently, a representative from the National Insider Threat Task Force noted that MDE is “perfect for monitoring classified networks” and that MDE's automation is an invaluable addition to the task force's Malicious Insider Iterative Risk Analysis process.

## Trucking Company Manager Sentenced for Falsifying Logbooks

On February 21, 2014, Dariusz Szteborowski, manager of Wisla Express LLC in New Britain, CT, was sentenced in U.S. District Court in Hartford, CT, to 14 months in prison, 3 years supervised release, and a \$20,000 fine for his role in falsifying and destroying driver logbook entries submitted to the Federal Motor Carrier Safety Administration (FMCSA). Szteborowski was also ordered to divest himself of all ownership interests in Wisla and cannot reacquire any ownership during his supervised release. Moreover, neither Szteborowski nor his wife is permitted to work for Wisla or any other DOT-regulated entity during the supervised release period.

OIG's investigation showed that Szteborowski created and maintained false driver time records or caused others to create false and fraudulent driver logs in order to meet FMCSA's prescribed reporting requirements. In creating the logs, Szteborowski violated Federal regulations, requiring drivers to create the logs. Szteborowski and others working with him at Wisla often assigned drivers to trips, knowing that the drivers would exceed the limits of on-duty driving time. To hide these violations from FMCSA, Szteborowski instructed Wisla drivers and other employees to falsely record in the logs that the driver was off-duty during those times. Szteborowski then submitted these logs to FMCSA inspectors.

The investigation was conducted with assistance from FMCSA.

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## Toyota Team Receives Top Honors



The Toyota investigative prosecutive team winning the CIGIE Gaston L. Gianni, Jr., Better Government Award.

**A**t a DOT-wide ceremony, the Secretary officially recognized the Toyota Investigative Prosecutive Team with a Secretary's award. The team was also recognized by the Council of Inspectors General on Integrity and Efficiency (CIGIE), which awarded it the Gaston L. Gianni, Jr., Better Government Award.

The multi-agency team—comprised of law enforcement personnel and prosecutors—conducted a 4-year criminal investigation of Toyota Motor Company that resulted in a deferred prosecution agreement, under which Toyota admitted that it misled U.S. consumers and Federal regulators by concealing and making deceptive statements about two safety issues affecting its vehicles.

The investigation also led to a \$1.2 billion civil forfeiture—the largest criminal penalty

ever imposed by the Department of Justice on an automobile manufacturer.

During the course of the investigation, the team reviewed over 400,000 documents, interviewed more than 100 individuals, and closely reviewed Toyota officials' congressional testimony as compared to their public statements and statements made during interviews. The team overcame a significant hurdle when it discovered that nearly 50 percent of the documentary evidence was in Japanese, as was several of the witnesses' testimonies.

The team's exceptional efforts not only brought about the largest civil penalty of its kind, but reinforced consumers' rights to expect auto manufactures to deliver vehicles that are safe.

# DOT OIG Investigators Receive Awards for Outstanding Investigative Work



Special Agent Todd Collins, left, receives a U.S. Attorney's Award for the successful prosecution of a charter bus operator.

## U.S. Attorney's Award Presented to Special Agent Todd Collins for Wisla Express Investigation

On June 19, 2014, DOT OIG Special Agent Todd Collins was presented with a U.S. Attorney's Award for his investigative work on the successful prosecution of Wisla Express LLC, a charter bus operator, and the company's manager Dariusz Szteborowski. While employed as a special agent with the Federal Motor Carrier Safety Administration (FMCSA), Collins uncovered a scheme that allowed Wisla drivers to exceed and willfully conceal the number of hours actually being driven in violation of prescribed Federal regulations. As a result of the successful joint investigation with DOT OIG both the company and Szteborowski pleaded guilty to false statement charges in connection with their roles in presenting falsified documents to FMCSA.



From left to right: Special Agent Richard McGrade, New York State Inspector General Catherine Leahy Scott, and Special Agent-in-Charge Doug Shoemaker.

## Special Agent Richard McGrade Recognized

On September 30, 2014, New York State Inspector General Catherine Leahy Scott presented a certificate of appreciation to Special Agent Richard McGrade for his outstanding efforts in the investigation and prosecution of the New York State Department of Motor Vehicles commercial driver's license (CDL) test cheating scandal. The investigation determined that test takers were willing to pay from \$1,500 to \$4,500 to fraudulently obtain the answers to the test. To date, the investigation has resulted in 12 Federal arrests, 11 Federal indictments, and 1 guilty plea concerning the members of the test cheating ring. In addition, the State has arrested 21 of the CDL applicant drivers who participated in this scheme.



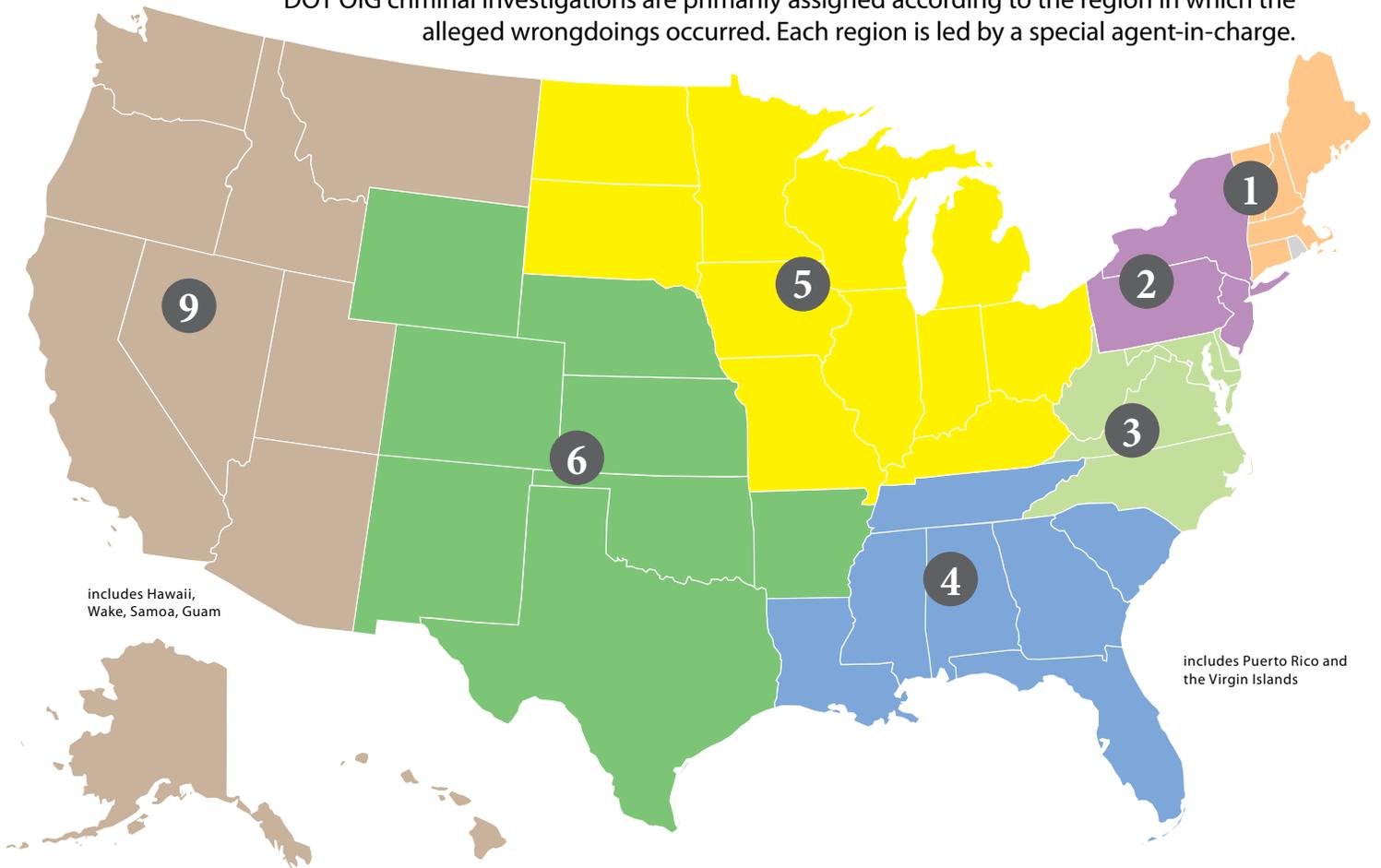
Special Agent Robert Stanek from OIG's New York Regional Office was recognized by Loretta E. Lynch, the then U.S. Attorney for the Eastern District of New York.

## **U.S. Attorney's Office Recognizes Special Agent Robert Stanek for Work on Embezzlement Case**

On March 24, 2014, Special Agent Robert Stanek was recognized by Loretta E. Lynch, the then U.S. Attorney for the Eastern District of New York, for his investigative efforts on the criminal prosecution of brothers Gerardo and Vincent Fusella, co-owners of a New Jersey trucking company involved in an embezzlement scheme on the Federal Transit Administration-funded World Trade Center Transit Hub Project. In October 2013, Gerardo and Vincent were sentenced to terms of imprisonment (46 months and 2 months, respectively), in addition to being ordered to pay restitution and forfeiture totaling over \$1 million dollars. During the March 24 ceremony, Special Agent-in-Charge Douglas Shoemaker presented Assistant U.S. Attorney Whitman Knapp with a plaque in recognition of his dedication to the prosecution of the case, which was worked jointly with the Department of Labor OIG and the Internal Revenue Service Criminal Investigation Division.

# DOT OIG INVESTIGATIVE REGIONS

DOT OIG criminal investigations are primarily assigned according to the region in which the alleged wrongdoings occurred. Each region is led by a special agent-in-charge.



## CONTACT INFORMATION FOR SPECIAL AGENTS IN CHARGE

REGION 1		<b>Todd Damiani</b> (617) 494-2240	REGION 5		<b>Thomas Ullom</b> (312) 353-0106
REGION 2		<b>Doug Shoemaker</b> (212) 337-1257	REGION 6		<b>Max Smith</b> (817) 978-3979
REGION 3		<b>Kathryn Jones</b> (202) 366-1415	REGION 9		<b>Bill Swallow</b> (562) 467-5372
REGION 4		<b>Marlies Gonzalez</b> (954) 382-6645			

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