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PRELIMINARY STATEMENT: NAME OF JUDGE and CITATION

Before, Hon. George B. Daniels, USDJ, SDNY. The Memorandum/ Decision and Order dated June 26, 2008, in this case, 07cv3314 (GBD), is unreported.

JURISDICTIONAL STATEMENT

The United States District Court, Southern District of New York had jurisdiction over this case under and pursuant to 31 U.S.C. 3730(b) in that a complaint was filed, under seal, and thereafter, was unsealed when the Attorney General declined to intervene. This Court has jurisdiction under 28 U.S.C. § 1291. The district court's Memorandum and Decision, granting certain motions to dismiss, with prejudice, constituting a final judgment, was entered on June 26, 2008, followed by a modification entered and filed on June 30, 2008. Notice of appeal was timely filed on July 25, 2008.

STATEMENT OF ISSUES PRESENTED

I.

Does the submission of a Request for Correction (RFC) to the National Institute of Standards and Technology (NIST) by Dr. Judy Wood challenging as fraudulent a document prepared by NIST purporting to demonstrate "why and how the Twin Towers were destroyed" but which resulted in an admission by NIST that it "did not investigate the actual collapse" of the Towers overcome the public disclosure bar of under 31 U.S.C. § 3730(e)(4)(A) (because she disclosed the information) or constitute "original source" information for qui tam relator purposes per 31 U.S.C. § 3730(e)(4)(B); and under the edict of Rockwell v. US, 549 U.S. 457; 127 S. Ct. 1397 (2007)?

II.

Does the submission of payment claims for professional services rendered in connection NIST's preparation of NCSTAR 1 which is shown by Dr. Wood, the qui tam relator, to have been purposefully fraudulent in not fulfilling the mandated objective constitute a false or fraudulent claim by the appellees under the False Claims Act, 31 U.S.C. § 3729(a)(1)?

III.

Did the lower court err by not mentioning or considering the actual information upon which Dr. Wood's status as a qui tam relator such that, at a minimum, remand for further proceedings in the court below is required?

STATEMENT OF THE CASE and RELEVANT FACTS

The appellant, Dr. Judy Wood, (Dr. Wood), instituted this qui tam action on behalf of the United States against the defendant/appellees (named infra), asserting claims for violations of the False Claims Act ("FCA"), 31 U.S.C. § 3729 et seq. (2000). After the government declined to intervene (Docket #3, Appendix 6) in the case, plaintiff filed a complaint (Appendix 24) and an amended complaint (Appendix 57). The lower court, Hon George B. Daniels, granted defendant/appellee's motion to dismiss the amended complaint for failure to state a cause of action under Rules F.R.Civ.P 12(b)1 and 6 and failure to plead her claims with sufficient particularity, with prejudice. See Memorandum and Decision dated June 26, 2008 (6/26 Memorandum/Decision), (Appendix 1234).

The complaint was filed on April 25, 2007, (Appendix 24) and was plainly and unequivocally based on information consisting in a Request for Correction (RFC) submitted to the National Institute of Standards and Technology (NIST), on March 16, 2007, and twice supplemented on March 29, 2007 and April 20, 2007 (See Appendix 874, 917, 929, respectively). The submittal by Dr. Wood of that information constitutes the basis for the information upon which her status as a qui tam relator is based and is to be

determined. An Amended Complaint was filed on December 26, 2007. (Appendix 57).

Starting on January 23, 2008, Applied Research Associates, Inc. (ARA), Science Applications International Corp. (SAIC), Skidmore Owing & Merrill. LLP (SOM), Simpson Gumpertz & Heger, Inc. (SGH), Hughes Associates, Inc. (Hughes), Underwriters Laboratories, Inc. (UL), and the other defendants/appellees, (hereinafter collectively referred to as the "ARA Group") began the filing of motions to dismiss this case See Docket ## 12, 18, 25, 37, 42, 46, 52, 55 and 65 (Appendix 89, 221, 580, 575) . Opposition memoranda and affidavits were filed on February 29, 2008, March 3, 2008 and March 21, 2008 (See Docket ## 57, 58, 59, 60, 61, 62, 90 and 91 and Appendix 582, 632, 807, 1026, 1126, 1143).

Because NIST did not investigate the actual destructive phase associated with the destruction of the Twin Towers of the World Trade Center (WTC 1 and WTC 2), by its own admission issued to Dr. Wood, despite having a clear and unequivocal mandate to do so, it follows that neither NIST nor any of the ARA Group of defendant/appellees can deny (at this early stage) the legitimacy or the accuracy of the proof put forward by Dr. Wood in her RFC and in her amended complaint, and in the rather

comprehensive record already submitted in this case that makes causal allegations and claims of fraud.

Based on the forensic proof Dr. Wood, and Dr. Wood alone, has submitted, it is she, rather than NIST, that can make a factual statement about what caused the destruction of WTC 1 and WTC 2. In addition to that ample record, set forth in the entirety of the Appendix, Dr. Wood has also submitted herewith an affidavit providing a narrative guide through the many and various forms of proof of her contention that directed energy weaponry destroyed WTC 1 and WTC 2.

Dr. Wood is a materials engineering scientist (Appendix 808), as is the lead investigator of ARA for the NIST project, Steven Kirkpatrick, that Dr. Wood challenges as fraudulent, Affirmation of Jerry V. Leaphart dated February 28, 2008, (Appendix 634). The lead investigator of appellee Science Applications International Corp. (SAIC) is John Eichner, and he is, upon information and belief, primarily trained in the use and development of exotic weapons (Appendix 1127). In addition, both ARA and SAIC, as primary parts of their respective businesses, are developers, testers and manufacturers of directed energy weaponry (Appendix 814). Hence, the NIST investigation team that "did not investigate the actual collapses" of WTC 1 and WTC 2 consists primarily in those who have expertise in exotic

weapons and in their lethality effects, which, according to the vast information submitted by Dr. Wood, is the actual causal source of the destruction of WTC 1 and WTC 2. It should be reiterated that Dr. Wood did not start out expecting to come to the conclusion that exotic directed energy weapons destroyed WTC 1 and WTC 2. Rather, that is the conclusion mandated by the evidence.

That information provides a basis for demonstrating Dr. Wood either did not need to qualify as an "original source" for qui tam jurisdictional purposes; or, in the alternative, if she did, then her RFC submittals provided proof of her assertion that she was the original source of the information.

However, the decision of Hon. George B. Daniels, in the court below, did not reference, let alone consider, the "information" upon which Dr. Wood, the qui tam relator, based her case and her entitlement to relief under the False Claims Act. 31 U.S.C. § 3729 et seq. The Memorandum and Decision dated June 26, 2008 (Appendix 1234) (herein after "6/26 Memorandum/Decision") by virtue of not mentioning the RFC filed by Dr. Wood, let alone subjecting it to the analytic framework required for making a qui tam jurisdictional finding as to whether the case is based upon (i) a public disclosure or not; and, if so, (ii) whether the relator is the "original source" and so on, simply has not been done. The decision is therefore

erroneous and requires reversal and/or remand. The 6/26 Memorandum/Decision makes mention of one Request for Correction, but the one mentioned is not the one filed by Dr. Wood. (Appendix 960-61)[1]

The closest the 6/26/ Memorandum/Decision comes to recognizing the nature of Dr. Wood's information is conjoined with the other two cases that the 6/26 Memorandum/Decision disposes of, but does so in a way that clearly does not assess the nature of Dr. Wood's RFCs as "information".[2] The Court states at pg. 8 of the 6/26 Memorandum/Decision (Appendix 1241):

> "Their personal hypothesis about what should be concluded from publicly disclosed information does not qualify either of them as an original source of information in order to sustain an individual FCA claim on behalf of the Government. See, Kreindler, 985 F.2d at 1159; see also, New York Med. Coll., 252 F.3d at 121-22. Federal jurisdiction over a private FCA action is not created simply by arguing that the review of publicly disclosed information spurs plaintiffs to advance a different theory. Such an argument, based solely on publicly available information, could no more support a federal lawsuit to advance an alternative theory regarding the assassination of President Kennedy, or whether men ever actually landed on the moon."

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[1] The one and only reference in the 6/26 Memorandum/Decision to the filing of a "Request for Correction" is at footnote 10 (Appendix 1239). That one referenced there is that of "plaintiff Haas".

[2] The three related cases that are pending before this Court are: Wood v. Applied Research Associates, Inc., *et al,* 07 CV 3314 (GBD); Reynolds v. Science Applications Int'l, *et al,* 07 CV 4612 (GBD) and Haas v. Gutierrez, *et al,* 07 CV 2623 (GBD).

In fact, the 6/26 Memorandum/Decision disposes of three cases, but in so doing, it clearly fails to address Dr. Wood's RFC. As a result of that failure, it cannot be said that the court below has addressed her status as a qui tam relator, let alone taken her complaint into consideration on the basis of the standards applicable to Rule 12(b) motions.

It is now more fully understood, after March 27, 2007, when the U.S. Supreme Court handed down its decision in the case entitled Rockwell Intl. Corp v. U.S. 549, U.S. 457; 127 S. Ct. 1397 (2007), that:

> "First, does the phrase "information on which the allegations are based" refer to the information on which the relator's allegations are based or the information on which the publicly disclosed allegations that triggered the public-disclosure bar are based? The parties agree it is the former. See Brief for Petitioners 26, n 13; Brief for United States 24, and n 8; Brief for Respondent Stone 15, 21. But in view of our conclusion that § 3730(e)(4) is jurisdictional, we must satisfy ourselves that the parties' position is correct. Though the question is hardly free from doubt, we agree that the "information" to which subparagraph (B) speaks is the information upon which the relators' allegations are based." (footnote omitted) Rockwell v. U.S., supra, 127 S. Ct. at 1407

The 6/26 Memorandum/Decision is a compilation of three (3) separate cases, of which two were based on the False Claims Act and one was not. The decision is noteworthy for not differentiating between the three and for

not mentioning the information upon which this case is based. That exclusion is erroneous. This appeal followed.

SUMMARY OF ARGUMENT

- The False Claims Act (31 U.S.C. §§ 3729 et seq.), 31 U.S.C. § 3730(e)(4)(A) provides that "[n]o court [would] have jurisdiction over an action under this section" that was based on the "public disclosure of allegations or transactions" unless (1) the action was brought by the United States Attorney General, or (2) the person bringing the action was an "original source" of the information. In turn, 31 U.S.C.S. § 3730(e)(4)(B) defined "original source" as a person who (1) had "direct and independent knowledge of the information on which the allegations [were] based," and (2) voluntarily provided the information to the government before filing an action based on the information.
- The "information" giving rise to this case consists in a detailed assessment of what caused the destruction of the World Trade Center, prepared by Dr. Wood, entitled "Request for Correction" and submitted to NIST on three dates: March 16,

2007 (Appendix 874), March 29, 2007 (Appendix 917) and April 20, 2007 (Appendix 929).

- It is maintained that there is no public disclosure bar here because Dr. Wood is the person who provided the information.
- However, even if publication by her of the information is to be deemed a public disclosure for False Claims Act analytical purposes, it follows that Dr. Wood is, at a minimum, the "original source" of the information giving rise to her case; namely, her RFCs filed with NIST beginning on March 16, 2007 as aforesaid.
- In that information, Dr. Wood alleges that NIST issued a false and fraudulent document NCSTAR 1 (See Appendix 874).
- Much of the ARA Group's claim to entitlement to dismissal treated NCSTAR 1 as if it, rather than Dr. Wood's RFCs, was the information upon which this case is based.
- Furthermore, as the lower court's decision makes no mention whatsoever of Dr. Wood's RFCs, it is clear that her qui tam claim, and the key element that could allow a False Claims Act analysis to take place, has simply not been done.

- Dr. Wood further alleges that NIST's contractors knew or should have that NCSTAR 1 was false and fraudulent and that they engaged in fraudulent work in preparing that fraudulent document and having their names, professional reputations and expertise added to NCSTAR 1 to make it seem legitimate and non-fraudulent when per Dr. Wood's RFCs, it is fraudulent. (See Appendix 874).
- The essential problem in this case is that Dr. Wood's information, in both its source and its nature, was not considered and not mentioned, let alone analyzed, in the 6/26 Memorandum/Decision in the context of either 31 U.S.C.S. § 3730(e)(4)(A) or 31 U.S.C.S. § 3730(e)(4)(B) .
- The RFC is noteworthy for its painstaking and comprehensively documented detail in reaching the conclusion that exotic Directed Energy Weapons (DEW) were a causal factor in the destruction of the Twin Towers of the World Trade Center (WTC 1 and WTC 2).
- The RFC also points out that some of the appellees herein, including ARA and SAIC are, themselves, manufacturers or developers of exotic weaponry, including DEW, and that those

parties have familiarity with the lethality effects of such weapons (Appendix 960).

- Precisely because they were also participants in the preparation of NCSTAR 1, they either knew or should have that DEW destroyed those structures and that, accordingly, NCSTAR 1 was not only false and fraudulent, but the ARA Group are participants in that scheme of fraud.
- The first contract entered into by the ARA Group dates, upon information and belief, from June 9, 2003, making that date the beginning of the "false claim" period. (Appendix 691)
- Up until now, Dr. Wood has not been able to receive a review of her case and of her essential contentions. And, Dr. Wood understands, acknowledges and accepts that her information is startling, to say the least, and that acceptance of the factual information she has put forward requires consideration of very painful implications. That said, this case is not about the "painful implications" that her information gives rise to. Indeed, Dr. Wood makes no claim or assertion concerning "who" destroyed WTC 1 and WTC 2. She only details, describes and proves "what" caused their demise and "who"

(the ARA Group) knew or should have known what the destructive cause was. This case makes no contention whatsoever about who destroyed WTC 1 and WTC 2. Despite painstakingly so stating, (see Appendix 598), the lower court, nonetheless, further demonstrated its refusal to consider the actual merit and content of this case by stating:

> "The implausibility of plaintiffs' theories warrants no further consideration by this Court beyond the insufficiency of the legal claims upon which plaintiffs attempt to advance those theories in the lawsuits."

- In contrast, plaintiff's Memorandum of Law in Opposition to Defendants' Motions to Dismiss stated that:

> "[T]his case does not entail proof of who destroyed the WTC, does not 'blame Bush' or anyone else." Appendix 598.

- This case was commenced shortly after the U.S. Supreme Court issued its decision on what constitutes "information" for qui tam relator purposes in the case entitled Rockwell Int'l Corp. vs. U.S., supra, 127 S.Ct. 1397 (2007)

ARGUMENT

I.

Does the submission of a Request for Correction (RFC) to the National Institute of Standards and Technology (NIST) by Dr. Judy Wood challenging as fraudulent a document prepared by NIST purporting to demonstrate "why and how the Twin Towers were destroyed" but which resulted in an admission by NIST that it "did not investigate the actual collapse" of the Towers overcome the public disclosure bar of under 31 U.S.C. § 3730(e)(4)(A) (because she disclosed the information) or constitute "original source" information for qui tam relator purposes per 31 U.S.C. § 3730(e)(4)(B); and under the edict of Rockwell v. US, 549 U.S. 457; 127 S. Ct. 1397 (2007).

A. OVERVIEW:

This qui tam case was based on "information" prepared and submitted by Dr. Judy Wood, appellant herein, (Dr. Wood), consisting in a Request for Correction[3] (Appendix 874) alleging fraud, among other things, that was submitted to an agency of the U.S. Department of Commerce known as the National Institute of Standards and Technology (NIST), starting on March 16, 2007. Dr. Wood's said RFCs were submitted in response to a document published by NIST in or about the month of October, 2005, entitled "Final Report on the Collapses of the Twin Towers of the World Trade Center" (NCSTAR 1). (Appendix 247)

[3] The Request for Correction consists in three submittals to NIST, dated, respectively, March 16, 2007, March 29, 2007 and April 20, 2007. See Appendix 874, 917, 929).

Dr. Wood's RFC submittals resulted in responses received from NIST on July 27, 2008 (Appendix 957) and January 10, 2008 (Appendix 1015). The response dated July 27, 2007, is noteworthy for the following admission contained therein:

> "…NIST only investigated the factors leading to the initiation of the collapses of the WTC towers, not the collapses themselves" (Appendix 957).

In addition to serving as confirmation that Dr. Wood, either did not rely on publicly disclosed information; or, if she did, that she is the original source of the information upon which her claim of fraud is based, the filed RFCs and the quoted statement-admission from NIST should serve to give rise to a state of apoplexy in all who read the statement based on what NIST was mandated by Congress to do; namely, determine why and how the Twin Towers of the World Trade Center (hereinafter referred to as WTC 1 and WTC 2) collapsed. NCSTAR 1 itself states:

> "The specific objectives were:
>
> > 1. Determine why and how WTC 1 and WTC 2 collapsed following the initial impacts of the aircraft and why and how WTC 7 collapsed;"
> > (Appendix 271)

That mandate notwithstanding, NIST did not investigate the actual collapses as per its written admission given to Dr. Wood! (Appendix 957)

By admitting that NIST and its contractors, the defendants/appellees herein, did not do what they were mandated to do, apoplexy and recognition that fraud has been committed, should occur in the recipients of that information, rather than result from the nature of Dr. Wood's factual information.

Instead, however, apoplexy appears to result in connection with Dr. Wood's amply documented particulars of what actually destroyed WTC 1 and WTC 2; namely: what she refers to as Directed Energy Weapons (DEW).[4] In a very real and factual sense, the only "on the record" investigation of what caused the destruction of WTC 1 and WTC 2 is contained in the RFCs submitted by Dr. Wood. Clearly, NIST did no such investigation.

We have seen what is here being referred to as a response of "apoplexy" in the briefs submitted by the ARA Group. In its memorandum in support of its motion to dismiss, ARA used the word "delusional" two times. (See Appendix 106 and 118). In responding on the basis of incredulity, without consideration of the merits of Dr. Wood's assertions,

[4] Or, as Dr. Wood has stated on pg. 4 of her Affidavit of 2/29/08 "[T]he evidence I have gathered indicates that exotic weapons systems involving directed energy were used to destroy the WTC on 9/11. I refer to these weapons generically as 'DIRECTED ENERGY WEAPONS' (DEW), meaning it involves energy that is directed and is used as a weapon. I also consider 'energetics' to be part of this definition." (Appendix 810)

error has occurred. Unfortunately, the same incredulity found its way into the 6/26 Memorandum/Decision from which this appeal seeks relief. As noted in more detail in connection with Issue III, below, that decision basically did not address Dr. Wood's actual case and, instead, sought to disregard the information without considering it; or, to again quote from the 6/26 Memorandum/Decision:

> "The implausibility of plaintiffs' theories warrants no further consideration by this Court beyond the insufficiency of the legal claims upon which plaintiffs attempt to advance those theories in the lawsuits."

Dr. Wood, a materials engineering scientist, (See Appendix 996) did not assemble and analyze many thousands of pages and other items of data as a part of a delusion. Her RFC submittal, the information upon which her case is based, is not delusional and was not treated as such by NIST. See NIST's responses, Appendix 957 and 1015, which amply demonstrate that her information was considered seriously and responded to as such by NIST. In contrast, neither the ARA Group nor the lower court have taken her information seriously. Indeed, the lower court did not consider it at all by choice. Once again, Dr. Wood is a materials engineering scientist who, in her RFC submittals, has produced a stunningly effective forensic scientific discourse on what destroyed WTC 1 and WTC 2.

Dr. Wood engaged in her "whistleblowing" work in order to demonstrate proof of what caused the destruction of WTC 1 and WTC 2; something that NIST was mandated to do and something that NIST and the ARA Group of appellees, by written admission to Dr. Wood, did not do, despite mandate and pay to do so. The foregoing sentence is the one that should give rise to apoplexy. In any event, Dr. Wood is a litigant who has presented a valid qui tam case that deserves to be considered on its merits and not otherwise.

This appeal results from the granting, with prejudice, of motions to dismiss. The standard applicable to appellate review is that of de novo review:

> This Court reviews "de novo a district court's dismissal of a complaint pursuant to Rule 12(b) (6), construing the complaint liberally, accepting all factual allegations in the complaint as true, and drawing all reasonable inferences in the plaintiff's favor." Chambers v. Time Warner, Inc., 282 F.3d 147, 152 (2d Cir. 2002).

B. QUALIFICATION AS A QUI TAM RELATOR

The lower court did not consider this case on its merits as is evidenced by its wording, which totally excluded any mention whatsoever of the actual information, and its source, upon which this case is based. The 6/26 Memorandum/Decision sets its tone right at its beginning by stating:

> "In separate actions,[1] three different plaintiffs, who are all represented by the same attorney, commenced individual lawsuits attempting to challenge the investigative findings, of the National Institute of Standards and Technology ("NIST"), as to how and why the World Trade Center buildings collapsed on 9/11. The focus of the NIST investigation was on the sequence of events "from the instance of aircraft impact to the initiation of collapse for each tower." Plaintiffs claim that a terrorist attack was not responsible for the destruction of the World Trade Center complex ("WTC"). According to plaintiffs, the evidence demonstrates that the destruction of the World Trade Center Towers was caused by a United States secret military "directed energy weapon."[2] Plaintiffs' attorney argues that "the defendants knowingly participated in the fraud of furthering the false claim that two wide-body jetliners hit the World Trade Center on 9/11/01."[3] (Reynolds Opp'n Mem. at 1)." (footnotes omitted) (Appendix 1235)

The above consolidation of three separate cases into one analytic framework served to misstate, completely, the nature of Dr. Wood's case, her complaint and the information upon which it is based. The issue to be decided was not dependent upon "plaintiff's attorney" but, rather, was based on what the complaint in the case alleged and what information gave rise to Dr. Wood's status as a qui tam relator. No analysis of that issue was contained in the 6/26 Memorandum/Decision. Likewise, the norms of analysis applicable to whether or not a qui tam relator has satisfied the rigorous elements mandated by the False Claims Act 31 USC § 3729 et seq. are not applied in the lower court's decision to Dr. Wood's information.

In this respect, Dr. Wood amply and fully articulated in her opposition to the ARA Group's motions to dismiss that her RFC satisfied the

requirements of being either non-disclosed information; or, if disclosed, that she was the original source thereof. Dr. Wood also articulated that her complaint was sufficiently particular to apprise the ARA Group of the nature of the fraud they are alleged to have committed and Dr. Wood likewise showed that her complaint, based on her RFC, was sufficient to withstand dismissal on the basis of the rigors (applied against the moving party) for obtaining dismissal under F.R.Civ.P Rule 12(b) (1) and/or (6). This Court's attention is respectfully directed to the Memorandum in Opposition submitted to the lower Court with request that it be deemed incorporated hereby by reference (Appendix 582)

Generally, analysis for purposes of whether or not Dr. Wood's case could survive a motion to dismiss would start with a determination of whether or not a public disclosure had occurred. We turn now to that issue.

1. Public Disclosure

In her memorandum of law opposing dismissal (Appendix 582), Dr. Wood relied on a case entitled U.S. ex rel Winslow v. Pepsico, Inc. et al. 2007 U.S. Dist. LEXIS 40024 (SDNY) (Appendix 595, 603, 604 and 654-61), for the proposition that it was inappropriate to refer to NIST's publication of NCSTAR 1 for purposes of asserting there had been public disclosure because NCSTAR 1 does not allege that it is fraudulent. The

document that alleges fraud is Dr. Wood's RFC. The late Judge Brieant was quoted as follows:

> "The 2003 RFI simply requested PepsiCo to "provide a sample of the imported merchandise ... along with the lab sample label enclosed herewith to the US Customs Laboratory", and to "Submit descriptive information, including component breakdown with percentages by weight and CAS #'s (if available)." It also stated that it was in regard to "Soda Concentrate" imported from Ireland under an HTS subheading of 330210100. The 2003 RFI simply contained no allegations or suggestions of fraud that were accessible to the public. See Rockwell Intern. Corp. v. U.S., 127 S. Ct. 1397, 1402, 167 L. Ed. 2d 190 (2007) (the parties conceded that there was public disclosure when the media reported toxic leakage of Defendant's concrete blocks) U.S. v. New York Medical College, 252 F.3d 118, 120 (2d Cir. 2001) an audit by a public benefit corporation specifically found that Defendant had overcharged the corporation by over $2 million). **The mere request for a sample of the imported substance, without more, is not sufficient to inform anybody of a fraud being imposed on the United States. Because there was no public disclosure of the allegations of fraud, the Court does not reach the issue of whether or not the Relator was an "Original Source" of such information, within the 1986 amendment."** (emphasis supplied) U.S. ex rel Winslow v. Pepsico, Inc. et al. 2007 U.S. Dist. LEXIS 40024, see Exhibit A, pg. 5

The claim was that the ARA Group had failed to show any prior disclosure of claims of fraud in steering NCSTAR 1 away from the conclusion that DEW destroyed the WTC. That is the essential error appealed from. Whether a public disclosure had occurred or not, in the context of what status is to be accorded to Dr. Wood's RFC, has simply not been addressed.

2. Original Source

It was also noted that the ARA Group had made an assumption that plaintiff must qualify as an original source, and then sought to disqualify her by ridiculous assertions that publications dating from as early as 2002, that might have mentioned the words "directed energy" can somehow qualify as a prior disclosure of fraud that had not even been committed as yet (Appendix 112). As noted, the "False Claim period" did not begin until June 9, 2003 a date that is derived from the earliest contract entered into (Appendix 696).

The ARA Group also sought to use NCSTAR 1, itself, as the publicly disclosed information (Appendix 109). Clearly, that is not Dr. Wood's information. NCSTAR 1 does not declare itself to be fraudulent. Dr. Wood's RFCs claim that NCSTAR 1 is fraudulent and this is entirely consistent with the now clarified, by Rockwell and applied by Brieant, definition of information for qui tam purposes.

The ARA Group also referenced an article they say is found in "The American Free Press" dating from the year 2002, yet again predating the false claims period, which further confirmed that they are misapplying Rockwell. See pg. 10 of ARA's memorandum of law in support of motion to dismiss (ARA's memorandum) dating from 2002. (Appendix 112)

That reference and all others made by the ARA Group in their various submittals, including, by way of example, reference to Kevin Ryan's Title VII employment practice case, to Jim Hoffman, etc.[5] have nothing whatever to do with Dr. Wood's specific claims of fraud; all and in the same way as the late Judge Brieant explains in Winslow above.

The ARA Group completely ignores what the claim of fraud is and where it arises from. The specific claim of fraud arises from what Dr. Wood stated in her RFC. That source is the information; and here is what the information entails: That NCSTAR 1 is fraudulent and violated the False Claims Act by virtue of the fact that it and NIST's contractors intentionally ignored that the WTC was destroyed by DEW thus issuing a false and deceptive report. Among the fraudulent tactics used were that of curtailment of investigation such that it excluded investigation of "the collapses", and other deceptions.

Here is exactly what Dr. Wood stated, in relevant part:

> "As noted on page 4 above, mention has been made of NIST's 4 objectives, set out at pgs xxxv-vi of the Executive Summary of NCSTAR 1 NIST then declares that in-house expertise and an "array of specialists in key technical areas," totaling [over] 200 staff contributed to the Investigation.
>
> With that level of expertise, it seems highly likely that some among them will have information that substantiates the claims that are made

[5]See, generally, pgs. 9 to 11 of ARA's memorandum. (Appendix 111-113)

> in this RFC. Indeed, starting with the premise that World Trade Center buildings 1 and 2, the Twin Towers, (WTC 1,2) were massive, strongly built structures, made of steel that should not have been significantly harmed by kerosene generated fires (jet fuel is kerosene), should have been apparent to some among the assembled bevy of experts.
>
> It is not yet clear why so many people failed and failed utterly to avoid the issuance of a deceptive and fraudulent report. Perhaps some among them will come forward in a timely manner to rectify this situation.
>
> The construction of WTC1,2, as illustrated above provide but the first clue that they could not have self-destructed in the manner seen, absent significant energy inputs of an unusual kind."

Dr. Wood's assertions have solely to do with fraud arising from the manner in which NCSTAR 1 was prepared and its willful ignorance of the actual cause; namely DEW. Neither NIST nor any member of the ARA Group can even argue against, let alone refute, Dr. Wood's actual claim of fraud because we now know that:

> "[A]s stated in NCSTAR 1, NIST only investigated the factors leading to the initiation of the collapses of the WTC towers, not the collapses themselves." (Appendix 957)

It was also acknowledged that the ARA Group might seek to claim that NIST did acknowledge that it had <u>not</u> investigated the actual "collapses" of the WTC by so stating in NCSTAR 1. However, that is not what NCSTAR 1 actually says (still more fraud).

NCSTAR 1 contains two (2) similar, but not identically worded, footnotes that may tacitly admit that no investigation of the actual collapses took place; and, in fact, plaintiff's RFC specifically referenced those footnotes making the accusation that NIST had not investigated the destructive interval. But the language of the footnotes is deceptive because the actual wording can more readily be understood as meaning NIST was merely choosing not to include analysis of the actual collapses, not because it had not done the investigation at all, (as it admitted to Dr. Wood); but, rather, was not including the analysis of the collapses for the sake of being brief or concise.

The first instance of what might be (but is not) a truthful statement is footnote 2 stating:

> "The focus of the Investigation was on the sequence of events from the instant of aircraft impact to the initiation of collapse for each tower. For brevity in this report, this sequence is referred to as the "probable collapse sequence," although it includes little analysis of the structural behavior of the tower after the conditions for collapse initiation were reached and collapse became inevitable".[6]

The second footnote is similarly worded, stating:

> "The focus of the Investigation was on the sequence of events from the instant of aircraft impact to the initiation of collapse for each tower. For brevity in this report, this sequence is referred to as the "probable collapse sequence," although it does not actually include

[6]NCSTAR 1, pg. xxxvii, footnote 2 (Appendix 279)

> the structural behavior of the tower after the conditions for collapse initiation were reached and collapse became inevitable". [7]

In both footnotes, NIST states "...for brevity in this report..." as the reason for not providing an explanation for why and how the twin towers were destroyed. In that first one (footnote 2), they actually imply some investigation was done using the phrase "…it includes little analysis…" which implies that the analysis was done, merely not included or edited out, perhaps. In the other (footnote 13), they again engage in subterfuge stating "…it does not actually include the structural behavior…" which, yet again, implies an editing choice for sake of brevity, not total absence of any investigation at all.

Once again, as of July 27, 2007 we know that:

> "[A]s stated in NCSTAR 1, NIST only investigated the factors leading to the initiation of the collapses of the WTC towers, not the collapses themselves." (Appendix 957)

It is respectfully submitted that now that we know of the three separate and divergent explanations given, two in NCSTAR 1 and one in the NIST response to Dr. Wood dated July 27, 2007, that fraud and deception were committed and this claim is thereby proven in the way the three statements on what was actually investigated (and more importantly, what was <u>not</u> investigated) are worded.

[7]NCSTAR 1, pg. 82, footnote 13 (Appendix 366)

There was no public disclosure other than by virtue of what Dr. Wood published in an official challenge known as Requests for Correction under the Information Quality Act[8], that led to the disclosure of fraud.

3. Direct and Independent Knowledge

Not surprisingly, the ARA Group sought to rely on this court's decision entitled United States ex rel. Kreindler & Kreindler v. United Technologies Corp., 985 F.2d 1148 (2nd Cir. 1993) in opposition to Dr. Wood being able to qualify as a qui tam relator. However, the language of Kreindler, as it relates to what constitutes "direct and independent knowledge" is not applicable to the case at bar. Indeed, the Kreindler approach to the issue of direct and independent knowledge consisted in the conclusion that the qui tam relator therein did not meet that standard when conjoined with another requirement that we now know is not applicable, as a result of the U.S. Supreme Court's decision in Rockwell. This court stated in Kriendler that:

> "In assessing the pertinent language of the statute, we note that "original source" is expressly defined in [*1159] § 3730(e)(4)(B). A straightforward reading of § 3730(e)(4)(B) indicates that to be an "original source" a qui tam plaintiff must (1) have direct and independent knowledge of the information on which the allegations are based, and (2) have voluntarily provided such information to the government prior to filing suit. A close textual analysis combined

[8]Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106-554).

> with a review of the legislative history convinces us that under § 3730(e)(4)(A) there is an additional requirement that a qui tam plaintiff must meet in order to be considered an "original source," namely, a plaintiff also must have directly or indirectly been a source to the entity that publicly disclosed the allegations on which a suit is based." U.S. ex rel. Kreindler & Kreindler v. United Technologies Corp., supra, 985 F.2d at 1159

More specifically to the issue of "direct and independent knowledge," this court, in Kreindler, then went on to say:

> "Kreindler had no significant direct knowledge regarding the Black Hawks independent of the disclosures made to Kreindler by UTC, and certainly was not a source of that information to UTC. The fact that Kreindler conducted some collateral research and investigations regarding the Black Hawk situation, as would be customary in such litigation, does not establish " direct and independent knowledge of the information on which the allegations are based" within the meaning of § 3730(e)(4)(B); UTC was clearly the source of the core information. Nor does the fact that Kreindler's background knowledge enabled it to understand the significance of the information acquired in the Bryant action make its knowledge independent of the publicly disclosed information. If that "were enough to qualify the relator as an 'original source,' then a cryptographer who translated a ciphered document in a public court record would be an 'original source,' an unlikely interpretation of the phrase." U.S. ex rel. Kreindler & Kreindler v. United Technologies Corp., supra, 985 F.2d at 1159

The above is clearly and fundamentally distinguishable from this case that depends, for its source of information, upon a detailed RFC document that is the essence of original work that embodies scientific acumen of an original, albeit alarming, sort. Dr. Wood is clearly the original source of information that she and she alone has developed.

Here, we need to incorporate an observation of this court's sister circuit, the Tenth Circuit:

> "A relator 'need only possess' direct and independent knowledge of the information on which the allegations are based."'" We also declined to create a restriction limiting an original source to only insiders, finding no valid reason to do so. Lastly, we refused to "adopt any bright-line rule disqualifying a relator as an original source when the relator examines public records." Rather, we recognized that detailed investigations of fraud on the Government may often require at least some reliance on public information; "it is the character of the relator's discovery and investigation that controls this inquiry." (internal quotations and citations omitted) U.S. ex rel. Grynberg v. Praxair, Inc. 389 F.3d 1038, 1053 (10th Cir. 2004)

The key concept quoted above is that it is "the character of the relator's discovery and investigation that controls this inquiry" [namely: direct and independent knowledge]. That language is, indeed, useful to consider in conjunction with the work done by Dr. Wood in presenting herself as a qui tam relator. Her RFCs are stunning in their precision and in the depth and the quality of the causal claims concerning what actually destroyed WTC 1 and WTC 2. And, her information comes in a context where NIST and the ARA group deliberately curtailed their investigation so as to avoid having to come face to face with the truth of the destruction of the World Trade Center. Not only did Dr. Wood expose what had actually destroyed that complex, she also got NIST to admit, in writing, that it had avoided engaging in the investigatory process that should have resulted in

that finding. And, she advised NIST that it had surrounded itself with the very companies that know exactly what lethal effects are brought about by the use of that weaponry that Dr. Wood defined as DEW.

In short, Dr. Wood not only has direct and independent knowledge of her claims, she has demonstrated that information in stunning fashion.

4. Non-Exclusion of RFC as Information

Under the terms of the FCA, an RFC is a form of informing the government and a source of information that, by clear and unequivocal definition, is not excluded by the FCA, meaning that RFCs can serve as a source for original source, direct and independent information if need be. The lower Court can be said to have sidestepped this issue by not referencing Dr. Wood's RFC.

The FCA only excludes two categories of information; namely: those (1) based on allegations that are the subject of a civil suit or administrative civil money penalty proceeding[9] and those (2) based on the public disclosure of allegations or transactions unless the person bringing the action is an original source of the information.

The first exclusion category set forth in 31 U.S.C. § 3730(e)(3) is most interesting here. Clearly, the exclusion of allegations "that are the

[9]31 U.S.C. § 3730 (e)(3).

subject of a civil suit or administrative civil money penalty proceeding . . ." serves to exclude the "normal" type of legal proceeding, since civil suits and those seeking monetary relief are the most numerous, presumably. Precisely because the "Request for Correction" process is neither, its use for 31 U.S.C. § 3730(e)(3) purposes is not excluded.

The ARA Group might have been a bit more forthright had they admitted that there is no case law authority indicating that RFCs either are or are not a valid source or way to invoke a qui tam case.[10] It is also respectfully submitted that a review of the legislative history of the 1986 amendments to the False Claims Act will confirm the congressional intent to include cases like the instant one and to deem such cases not to be parasitic.[11]

ARA appears to argue in its Rule 12(b)1 and also its Rule 12(b)6 section (Appendix 107-118 and 118-126 respectively) that plaintiff's DEW assertions are speculative. It is here asserted that ARA should know full

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[10] No case precedent on whether or not Requests for Correction are either within or without the parameters of the 31 U.S.C. §3730(e)(3) exclusion could be found. Indeed, this issue may be one of "first impression".

[11] Guidance concerning congressional intent arising out of the FCA's 1986 amendments can be found in Francis E. Purcell, Jr., Comments: "Qui Tam Suits under the False Claims Amendments Act of 1986: the Need for Clear Legislative Expression" 42 Cath. U.L. Rev. 935 (1993). See, especially, section " II. Judicial Interpretation of the False Claims Amendments Act of 1986: Citizen as Relator or a Return to Marcus?" et seq., 42 Cath. U.L. Rev at 953

well that DEW destroyed the WTC, hence, they cannot make a statement that would deny that claim. Instead, all they appear to do is demand more proof. However, this is an appeal from the granting of a motion to dismiss, mandating that Dr. Wood's claims are to be accepted as asserted. ARA does say, at pg. 15 of its memorandum, (Appendix 117) that "a relator cannot satisfy the original source requirement with baseless speculation and conjecture" however, that is merely being argumentative. They do not actually say that that is what Dr. Wood has engaged in, and we here and now assert that ARA cannot make any such specific claim with any statement that would be put under oath. For one reason, absent any investigation done by them, they lack a necessary condition for denying Dr. Wood's claims; to wit: knowledge of what happened during the collapses, as ARA chose willful blindness instead of knowledge. And that assertion has been proven by NIST's already quoted admission of what was "not investigated". Dr. Wood investigated the destruction of WTC 1 and WTC 2 and published her findings in her RFCs.

For another reason, ARA is a manufacturer, developer and tester of DEW and is a founding member of the Directed Energy Professional Society that is dedicated to the development of such weapons (Appendix 592)

The ARA Group has offered not one iota of fact or of proof that in any way refutes Dr. Wood's claim that DEW destroyed the WTC, other than epithets. No affidavit, no reasoning, nothing, has been presented in rebuttal of that claim.

Finally, even if Dr. Wood can be shown ultimately to be incorrect, which is unlikely, her case cannot be dismissed at this early stage because Rockwell recognizes that, on the basis of present law, a prediction of fraud is sufficient at this early stage of the case where plaintiff's contentions are deemed true. This analysis is confirmed correct by Rockwell:

> "Of course a qui tam relator's misunderstanding of why a concealed defect occurred would normally be immaterial as long as he knew the defect actually existed. But here Stone did not know that the pondcrete failed; he predicted it. Even if a prediction can qualify as direct and independent knowledge in some cases (a point we need not address), it **assuredly does not do so when its premise of cause and effect is wrong.** Stone's prediction was a failed prediction, disproved by Stone's own allegations. As Stone acknowledged, Rockwell was able to produce "concrete hard" pondcrete using the machinery Stone said was defective. According to respondents' allegations in the final pretrial order, the insolidity problem was caused by a new foreman's reduction of the cement-to-sludge ratio in the winter of 1986, long after Stone had left Rocky Flats." Rockwell Int'l Corp. v United States, supra, 127 S. Ct. at 1410.

Clearly, this appeal has merit.

5. Rule 12(b)(6)

The ARA Group, including both ARA and SOM, moved alternatively to dismiss Dr. Wood's Amended Complaint pursuant to Fed. R. Civ. P. Rule 12 (b)(6), arguing in substance that 1) Dr. Wood failed to plead a "false statement", as is required by the FCA; and 2) failed to meet the heightened pleading requirements of Rule 9(b).

The requirements of Rule 12(b)(6) are well known. In order to state a claim under the FCA for a "reverse false claim", the Relator must allege (1) that the defendant made, used, or caused to be used a record or statement to conceal, avoid, or decrease an obligation to the United States; (2) that the statement or record was false; (3) that the defendant knew that the statement or record was false; and (4) that the United States suffered damages as a result." United States v. Raymond & Whitcomb Co., 53 F. Supp. 2d 436, 444-445 (S.D.N.Y. 1999)(Motley, J.) (Internal citations omitted).

ARA argued that the complaint should be dismissed because Dr. Wood had not pled the requisite false statement required by the FCA. ARA's argument is futile in this respect because Dr. Wood is operating in an environment where the type of fraud perpetrated involves willful indifference to the truth and the publication of a false and misleading document that has and will have tremendous significance on an ongoing

basis as a result of the fraud committed; namely, deceiving the public into the belief that NIST, assisted by the defendants herein, had determined why and how the Twin Towers were destroyed when, as we now know, all they did was produce more than 10,000 pages of mind-numbingly detailed (and expensive) reportage and verbiage that explained anything and everything ***except*** the event they were paid to explain.

Dr. Wood specifically alleged that each and every defendant committed fraud by being willfully blind and indifferent not only to the fact that DEW destroyed the WTC, but that that indifference now extends to the ongoing danger to the public by not disclosing the true nature of the difficulty of cleanup of the after effects of DEW, something that continues to the present day with at least one of the appellees herein, namely, SAIC, being in the "cat bird's seat" with respect to the cleanup at GZ. Other of the appellees are likely involved as well. We know, for instance, that ARA continues to be involved in the NIST investigation of what caused the destruction of WTC 7, which is also a flawed and fraudulent investigation (Appendix 1137).

6. Rule 9(b)

The ARA Group also argues that Dr. Wood's complaint fails to meet the heightened pleading requirements of F.R.Civ.P. Rule 9(b). ARA argues

that an FCA complaint must "…allege details regarding specific false claims submitted to the government". See ARA memorandum pg. 26 (Appendix 128).

Federal Rule of Procedure 9(b*)* requires that "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." The Second Circuit holds that, because "[i]t is self-evident that the FCA is an anti-fraud statute," the heightened pleading requirements of Rule 9(b) apply. Gold v. Morrison-Knudsen Co.*,* 68 F.3d 1475, 1476 (2d Cir. 1995). In order to meet this standard, a complaint must "(1) specify the statements that the plaintiff contends were fraudulent, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were fraudulent." Mills v. Polar Molecular Corp., 12 F.3d 1170, 1175 (2d Cir. 1993).

Dr. Judy Wood has done that and far more. She has identified the alleged false statements, and has identified when and where they were made, together with the ongoing danger posed by the fraud that was committed. The ARA Group has clearly ignored the information and the particulars already provided to them who intentionally premised their argumentation upon a claim of entitlement to ignore her claims. Doing so should constitute a bar towards their being allowed to request protection under F.R.Civ.P Rule

9(b). Since they have ignored her claims, how can they, in good faith, claim they are insufficiently particular?

Certainly, every slur that the ARA Group has made about Dr. Wood and her counsel ignore the facts upon which the this case is based. Each claim by them that this or that assertion is "widely speculative" (one of their more polite phrases, Appendix 117) is, in actuality, backed by factual information in this record.

It is well settled that a complaint satisfies the particularity requirements of Rule 9(b) if it identifies the circumstances of fraud with sufficient particularity that defendant can prepare an adequate answer. Semegen v.Weidner, 780 F.2d 727, 735 (9th Cir. 1985). Moreover, since this case alleges corporate fraud, the burden on plaintiffs is relaxed as to information particularly within the knowledge of corporate defendants. Wool v. Tandem Computers, Inc., 818 F.2d 1433, 1439 (9th Cir. 1981). However, plaintiffs must still allege the time, place and content of an alleged false representation. Id. at 1440. Plaintiffs must also allege facts indicating why the statement is false. Luce v. Edelstein, 802 F.2d 49, 54 (2d Cir. 1986). Plaintiff herein has done that with abundant detail.

Clearly, the request for particulars is disingenuous. Dr. Wood has also forced out into the open the startling admission by NIST that it did not

"investigate" (note that quoted term) the actual "collapses" of the WTC, despite issuing a report that included 10,000 pages of data that bore the title: "Final Report on the collapses of the Twin Towers of the World Trade Center (NCSTAR 1)." When NIST's language of admission of what they did and did not do is compared to the title of the report they issued, listing each and every defendant herein as a participant, it, quite frankly, results in a visceral personal reaction; one that invokes the statement: That is fraud.

Specifically, Dr. Wood has attached a list (Appendix 931) of every contract that is publicly available, together with the responses to her RFCs containing the admission that NIST did not investigate the actual collapses. These allegations are adequate to satisfy Rule 9(b); and, if they are not, then Dr. Wood has certainly demonstrated that the lack of specifics can be remedied in an amended complaint, assuming the defendants would not continue to ignore it. Certainly, her affidavits and other materials show that if a complaint were intended to be highly detailed, rather than, ultimately, a form of "notice" then she could have done that; namely, she could have provided a much more highly detailed complaint all as is confirmed by her prior Affidavits and their attachments which are a part of the record submitted in the lower Court. (Appendix 807-1004, 1143-1228).

Excessive detail is also a format whereby obfuscation can occur. The ARA Group knows that much. They know that NCSTAR 1 (Appendix 382) contains 10,000 pages[12] of information that serves not one shred of purpose when what it contains is compared to the title that states what it was intended to do. Their request for "particulars" is then, doubly disingenuous. That claim of (disingenuousness on the ARA Group's part) is all the more valid since the fraudulent scheme they engaged in consisted, in part, in the obvious attempt to confuse and confound based on excessive and misleading technical detail. Dr. Wood here asserts that her complaint is far more than a mere bare-bones notice-pleading of the type governed by Fed.R.Civ.P. Rule 8(a), see generally Swierkiewicz v. Sorema N.A., 534 U.S. 506, 513, 152 L. Ed. 2d 1, 122 S. Ct. 992 (2002); Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, 507 U.S. 163, 168, 122 L. Ed. 2d 517, 113 S.Ct. 1160 (1993).

Dr. Wood concurs that this case is governed by the heightened pleading requirements of Rule 9(b) and she also asserts she has pled sufficient particularity because defendants know what they are called upon

[12] Only the 298 pg Final Report is included in the Appendix. NCSTAR 1 contains multiple sub-parts totaling 10,000 pages and can be accessed at http://wtc.nist.gov/reports_october05.htm

to defend; or could know once they stop ignoring what has already been provided to them.

Particularity is not a proper issue here; and, if it were, then Dr. Wood merits leave to further amend her complaint to provide additional, available particularity.

The Amended Complaint adequately alleges the requisite intent required by 9(b), and alleges facts sufficient to raise the inference of fraud. This court has held that the "requisite intent [for liability under the FCA] is the knowing presentation of what is known to be false" as opposed to negligence or innocent mistake." Mikes v. Straus, 274 F.3d 687, 703 (2d Cir. 2001) (quoting Hagood v. Sonoma County Water Agency, 81 F.3d 1465, 1478 (9th Cir.1996)). The FCA provides that:

For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to information--

1) has actual knowledge of the information;

2) acts in deliberate ignorance of the truth or falsity of the information; or

3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required. See 31 U.S.C. § 3729 (b)

Reading the Amended Complaint in the light most favorable to Dr. Wood, as the Court needed to have done on a motion to dismiss, it tells us

that the ARA Group purposely turned a blind eye towards the fraud of not explaining what caused the destruction of the WTC, while purportedly doing just that. Furthermore, ARA, as a manufacturer of DEW, had a clear conflict of interest and/or knowledge of the fraud they were engaging in and so did all other members of the ARA Group, like SAIC.

The ARA group of contractors entered into a form of "public-private-partnership" with NIST. Accordingly, they cannot shield themselves from liability for willful blindness or indifference to fraud by claiming they were not responsible for the decisions and conclusions reached by NIST. Were they allowed to do that, then they could commit fraud with impunity.

They knew, or certainly should have, that DEW destroyed WTC 1 and WTC 2. They also knew that by curtailing the investigation so as to exclude from any consideration whatsoever the actual destruction that occurred at the World Trade Center on 9/11/01 that they were engaging in fraud. Once again, NCSTAR 1 is a 10,000pg document that was supposed to have explained why and how the WTC "collapsed." It did no such thing. And, equally significant, the ARA group has within it those, at a corporate and at an individual level, who know full well that DEW destroyed the WTC.

And, as was maintained in the court below, no member of the ARA group has denied that DEW destroyed the WTC. (Appendix 598)

Furthermore, to the extent that they sought to address that clear shortcoming, the ARA group engaged in subterfuge in the form of non-denial denials. (Appendix 1054)

In other words, it can be asserted that as the record in this case stands, the ARA group of defendant/appellees have submitted written information consistent with the admission that DEW destroyed the World Trade Center. Without a doubt, as ARA and SAIC are manufacturers and developers and testers of directed energy weapons, they knew full well that the lethality effects seen at the World Trade Center could only have been caused by such weapons. They engaged in willful indifference to the truth. Doing so is fraudulent. At a bare minimum, this case merits reversal and remand for further discovery. Perhaps the discovery will reveal an adequate defense, but, as yet, none has been provided.

It is not fatal to the complaint that Dr. Wood does not specify who exactly made the certification on behalf of each of the companies, or who in ARA (and all other defendants/appellees), if anyone, provided what information to NIST in furtherance of their contractual obligations that are summarized in the affirmation of Jerry V. Leaphart, see Exhibit 7 of Affirmation. (Appendix 683) This court has stated: "[d]espite the generally rigid requirement that fraud be pleaded with particularity, allegations may be

based on information and belief when facts are peculiarly within the opposing party's knowledge". Wexner v. First Manhattan Co., 902 F.2d 169, 172 (2d Cir. 1990). That is a main factor here and should be dispositive of the issue of particularity. The ARA Group's reliance upon particularity ignores the fact that the 10,000 pages from which particularity could be further culled is "peculiarly within their control". That is so because "detail" to a faretheewell was the essence of the fraudulent scheme. We were expected to get lost in the detail.

II.

> Does the submission of payment claims for professional services rendered in connection NIST's preparation of NCSTAR 1 which is shown by Dr. Wood, the qui tam relator, to have been purposefully fraudulent in not fulfilling the mandated objective constitute a false or fraudulent claim by the appellees under the False Claims Act, 31 U.S.C. § 3729(a)(1)?

The standard applicable to appellate review is that of de novo review:

> This Court reviews "de novo a district court's dismissal of a complaint pursuant to Rule 12(b) (6), construing the complaint liberally, accepting all factual allegations in the complaint as true, and drawing all reasonable inferences in the plaintiff's favor." Chambers v. Time Warner, Inc., 282 F.3d 147, 152 (2d Cir. 2002).

The ARA Group comprise, in the aggregate, a variety of professional disciplines that were deemed to be relevant to a forensic examination

undertaken by statutory mandate by NIST having, as its primary purpose, that of determining why and how the Twin Towers of the World Trade Center were destroyed, as aforesaid. The ARA Group of defendant/appellees received significant remuneration for engaging in an examination process that was fraudulent in that it set out to obfuscate and otherwise falsify the explanation for what caused the destruction of the Twin Towers of the World Trade Center and to rely on the aggregated expertise, reputation and clout of the ARA Group to buttress the seeming validity of that report, known as NCSTAR 1 (Appendix 246).

It should have been apparent to any and all thinking people that the utter annihilation of two 110 story buildings should not have occurred on the basis of two supposed smacks from hollow, aluminum jetliners containing a few thousand gallons of nonflammable but combustible kerosene (that is what jet fuel essentially is). There are many who, inwardly at least, know this to be true, some of whom have communicated as much to Dr. Wood. However, the implications of recognizing that the Twin Towers were intentionally destroyed are too much for most to bear. For many, a response of fear is generated by the recognition that the Twin Towers were intentionally destroyed by exotic weaponry, rather than as a result of the

common version of what happened, no matter how contrived that explanation actually is, upon reflection.

Sooner or later, the truth of the destruction of the WTC will be revealed. In looking back upon the current generation, it may be wondered by our progeny why more of us did not come forward and challenge the accuracy of the official but highly improbable version of events concerning the destruction of the WTC. At a minimum, our successors may come to know that Dr. Wood did, in fact, challenge the official myth and did, in fact, make a valid, factually supported claim that DEW destroyed the WTC. And she did so as a matter of record.

> Liability under the FCA requires that a defendant
>
> "knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government." 31 U.S.C. § 3729 (a)(7).

This Court has noted that "the term ‘false or fraudulent’ is not defined in the Act," Mikes v. Straus, 274 F.3d 687, 696 (2d Cir. 2001). However, the Supreme Court has held that the Act is “intended to reach all types of fraud, without qualification, that might result in financial loss to the Government." United States v. Neifert-White Co., 390 U.S. 228, 232, 88 S. Ct. 959, 19 L. Ed. 2d 1061 (1968).

If the ARA Group knows or should have known that the WTC was destroyed by DEW, then their certifications to NIST are false and fraudulent. It is likewise false and fraudulent to provide detailed analysis of everything but the actual destruction of the WTC. What defendants did herein is of the worst sort of fraudulent behavior imaginable.

ARA's memorandum of law attempted to challenge Dr. Wood in a few other ways under the guise of Rule 12(b)6, none of which have any merit. Those contentions were addressed in Dr. Wood's memorandum of law starting at pg. 26 thereof. (Appendix 613)

III.

> Did the lower court err by not mentioning or considering the actual information upon which Dr. Wood's status as a qui tam relator such that, at a minimum, remand for further proceedings in the court below is required?

The standard applicable to appellate review of the issue here presented does not appear to be well settled. However, in view of the fact that the alleged failure of the court to consider the information giving rise to Dr. Wood's status as a qui tam relator results in an erroneous decision, this issue should be deemed to invoke de novo review:

> This Court reviews "de novo a district court's dismissal of a complaint pursuant to Rule 12(b) (6), construing the complaint

> liberally, accepting all factual allegations in the complaint as true, and drawing all reasonable inferences in the plaintiff's favor." Chambers v. Time Warner, Inc., 282 F.3d 147, 152 (2d Cir. 2002).

As aforesaid, the 6/26 Memorandum/Decision plainly does not address the particulars of Dr. Wood's RFC, which is the information upon which her status as a qui tam relator is based. Instead, the court below responded in what can only be described as a generalized and apparently emotionally driven way, perhaps encouraged to do so by the equally emotionally driven submittals of the ARA Group of defendant/appellees. An example of the language used in the 6/26 Memorandum/ Decision confirming the degree to which it responded on an apparent emotional basis is:

> "Plaintiffs' attempted analysis of that information constitutes pure speculation that the NIST participants were involved in a cover-up to conceal the true cause for the towers' collapse. They merely disagree with NIST's investigative findings, and specifically wish to reject the basic factual premise that terrorist destroyed the Twin Towers using passenger-filled airplanes as missile-like weapons. Plaintiffs, understandably, offer nothing more than conjecture and supposition to support their claim that the towers were struck by high powered energy beams. Their personal hypothesis about what should be concluded from publicly disclosed information does not qualify either of them as an original source of information in order to sustain an individual FCA claim on behalf of the Government." (Appendix 1242)

That characterization is decidedly not correct and has nothing whatever in common with Dr. Wood's detailed RFC, let alone the additional

proof submitted in her prior affidavits, and further elaborated in her affidavit submitted here on appeal. The latter affidavit provides guidance through the details of her earlier submittals. Moreover, there is no recognition of the requirement, for Rule 12(b) purposes, of taking as true the allegations in the complaint and construing them favorably to Dr. Wood.[13] The lower court then added other extraneous observations that are deemed improper:

> "A belief, no matter how incredible, that the WTC was destroyed using secret exotic weaponry, does not give rise to even a colorable claim for relief. All plaintiffs, as well as the attorney for the plaintiffs here, are hereby warned that filing further successive untenable actions may result in the imposition of monetary or other serious sanctions." (Appendix 1249)

That and similar language in the 6/26 Memorandum/Decision indicates that Dr. Wood, a materials engineering scientist, has not been accorded the status the law mandates at this stage.

Dr. Wood has asserted, based on the forensic evidence she has submitted to NIST, that DEW destroyed WTC 1 and WTC 2. For its part, NIST did not respond to Dr. Wood in an emotionally driven way. Instead, NIST merely admitted that it did not investigate the collapses of the Twin Towers, as previously shown. Accordingly, it would have been absurd for NIST to deny that DEW destroyed WTC 1 and WTC 2 precisely because

[13] Katz et al. v. Klehammer, et al., 902 F.2d 204, 206 (2nd Cir. 1990)

NIST has not got the foggiest clue what destroyed those buildings, nor could it have. After all, NIST "did not investigate the collapses". (Appendix 957). As NIST did not investigate the event in question, it follows they could not comment on Dr. Wood's findings, and certainly not in a dismissive manner.

NIST also expressed surprise that ARA was involved in the manufacture and development of DEW (Appendix 958). NIST did not respond directly to the ample evidence provided by Dr. Wood showing that DEW destroyed WTC 1 and WTC 2 (Dr. Wood's RFCs). However, NIST also did not ridicule the information or treat it lightly.

In effect, it can be asserted, at this early stage in this litigation, (pre-discovery) that NIST, via some of its employees, may have known fraud was being committed and its submittals to Dr. Wood may be taken, at this stage, as acknowledgment that its report is, indeed, fraudulent. That is certainly one reasonable interpretation of their candid admission, submitted in writing to Dr. Wood and to no one else, that they did not investigate the actual destruction of the World Trade Center.

The closest the 6/26 Memorandum/Decision comes to addressing Dr. Wood's complaint is found in a section starting on pg. 6. (Appendix 1239) [14]

[14] See heading "NO COURT HAS SUBJECT MATTER JURISDICTION OVER PLAINTIFFS' CLAIMS."

The court, at pgs. 6 to 8, provides a brief overview of the False Claims Act and mentions the Rockwell decision. However, there is no reference to Dr. Wood's actual information; namely, her RFC at all. It is quite clear that, at a bare minimum, this case requires reversal and remand for further proceedings that should result in discovery, or an opportunity to further amend the complaint, if needs be.

CONCLUSION

There is no doubt that a very strong case can be made that Dr. Judy Wood does not have to satisfy the original source rule because her claims were not publicly disclosed, other than by virtue of her making them. This issue was not addressed in the court below. Plus, even if her disclosures that were subsequently published at NIST's Office of Information Officer website[15], can be deemed to be a public disclosure, then, in that event, Dr. Wood is an obvious original source of the information under and pursuant to the FCA as defined by Rockwell.

The ARA Group engages in subterfuge with respect to how they seek to characterize the circumstances that give rise to Dr. Wood's contentions. This memorandum has shown that her contentions are valid and validly

[15]http://www.ocio.os.doc.gov/ITPolicyandPrograms/Information_Quality/PROD01_002276

made. Similarly, ARA Group cannot be said really to seek particularity in that they have ignored what has already been presented. Plus, excessive use of detail was a part of the scheme of fraud in this case. Reliance upon excessive detail enabled the ARA Group to hide the fraud committed and make it difficult to expose.

However, in what is clearly a document of historical magnitude, Dr. Wood's RFCs, along with her complaint, affidavits and other information of record before this court in the Appendix, provide details and demonstrate what each member of the ARA Group did in and with respect to their areas of expertise that should have resulted in the disclosure that DEW destroyed the WTC. (Appendix 837, 840, 845, 853, 860-61)

Based upon all of the foregoing, the 6/26 Memorandum/Decision should be reversed and this case remanded for further proceedings, including discovery.

Respectfully submitted,

By _/s/Jerry V. Leaphart_____
Jerry V. Leaphart jl4468
JERRY V. LEAPHART & ASSOC., PC
8 West Street, Suite 203
Danbury, CT 06810
(203) 825-6265 - phone
(203) 825-6256 - fax
jsleaphart@cs.com

Dated: Danbury, CT
October 23, 2008

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS AND TYPE STYLE REQUIREMENTS

1. This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because this brief contains 11,761 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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_/s/Jerry V. Leaphart_____
Jerry V. Leaphart jl4468
Attorney for Plaintiff/Appellant
JERRY V. LEAPHART & ASSOC., PC
8 West Street, Suite 203
Danbury, CT 06810
(203) 825-6265 - phone
(203) 825-6256 - fax
jsleaphart@cs.com

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