TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

OVERVIEW

The brief of the defendant-appellees, Applied Research Associates et al., (ARA Brief) constitutes a fundamental misstatement of the "information" upon which this qui tam case is based. Hence, the ARA Brief is inadequate to withstand this appellate challenge to the order of dismissal rendered by the district court.[1]

At pg. 14 of the ARA Brief, it is acknowledged that "[f]inally, the District Court correctly concluded that the allegations underlying Relator's claims were publicly disclosed in NCSTAR 1. (J.A.1240)." Yet, the very same ARA Brief admits and obliquely comments upon the fact (by using two footnotes, numbered 5 and 7) that the fraud that plaintiff-appellant, Dr. Wood, exposed resulted from what was omitted from investigation, and hence, not disclosed at all. Here is how this works:

At footnote 5, pg. 19, the ARA Brief states "[r]elator makes the novel argument that she is an original source because her RFC caused NIST to

[1] As of the date hereof, January 26, 2009, this court has not ruled on Wood's Motion to Strike one or the other of the two briefs filed by defendant-appellees Applied Research Associates, Inc., et al and by Simpson, Gumpertz & Heger, Inc. and Computer Aided Engineering Associates, Inc (SGH/CAE Brief), respectively. Each of the briefs contain similar arguments. However the SGH/CAE Brief references 15 U.S.C. § 281 (SGH/CAE Brief at pg. 43) for the proposition that Wood is precluded from "using any part of the NCSTAR report as evidence . . .". That argument violates public policy, if interpreted in the manner proposed in the SGH/CAE Brief, because doing so would serve to excuse fraud. See, for example, U.S. ex rel DeCarlo v. Kiewit /AFC Enterprises Inc., et al, 937 F.Supp 1039, 1043 (SDNY 1996)

admit that it limited the scope of its investigation in contravention of its mandate…" And, at footnote 7, pg. 26, the ARA Brief completes its thought by claiming "[t]he fact that NIST did not investigate 'the collapses themselves' is not a contravention of its mandate." Thusly stated, the ARA Brief merely engages in factual argumentation of the type that should result in denial of a motion to dismiss because it places "at issue" whether the mandate was fraudulently violated or not.

The crux of this case may be said to consist in the following:

1. NIST did not investigate the collapses of the Twin Towers and there is clearly no dispute about that fact in this litigation because that much is admitted as per the quoted elements of footnotes 5 and 7, even though NCSTAR 1 is entitled "Final Report on the Collapses of the Twin Towers of the World Trade Center, NCSTAR 1." (J.A. 246)

2. The Request For Correction (RFC) of Dr. Wood is a forensic examination of the collapses that provides an abundance of information confirming that the improperly named 'collapses' of the Twin Towers was caused by use of some type of directed energy weaponry (DEW)[2] to destroy them.

[2] J.A. 874

3. The ARA Brief openly acknowledges that the District Court "…concluded that the allegations underlying Relator's claims were publicly disclosed in NCSTAR 1. (J.A.1240)."

4. Elements of legal reasoning, of law, and of fact clearly mandate that it is not possible for something that was 'not investigated' (point 1) by a given party (herein NIST) to have been disclosed to someone (herein Dr. Wood) who did engage in investigation (point 2); leading, then, to the inevitable conclusion that point 3, a claim of prior disclosure, is erroneous; IF, that is, the matter is one that is to be determined by law, fact and logic.

5. And, therein (point 4) lies the actual crux of this case. We have already indicated that we are not naïve. We realize that addressing this issue calls into question the common perception of what happened on 9/11. But the work of these contractors should have been based on scientific evidence, not popular "belief." To base an outcome on emotional or political beliefs when they contradict scientific evidence is fraud. Taxpayer money was allocated for a *scientific* investigation of how and why the towers collapsed. These

defendants have defrauded the American people. We stated early on, in the Memorandum of Law in opposition to defendant-appellees' motion to dismiss, as follows:

> "Dr. Wood is not naïve concerning the gravity of the claims and assertions she is making. After all, Dr. Wood has accused ARA and the other defendants of fraud in connection with their work on NCSTAR 1 and has claimed that they were willfully blind to the plain as day facts confirming the WTC was destroyed by directed energy weapons (hereinafter sometimes referred to as DEW). However, refutation occurs when facts are presented, not slurs." (J.A. 593)

Perhaps this is a case involving whether or not strongly-held common perceptions about what may or may not have happened on 9/11 can be challenged as yet, but it *should* be about whether or not there was fraud. Put simply, there are reasons for not wanting to confront the possibility that what we have been led to believe about 9/11 is false because doing so could be painful. Perhaps someone initially got it wrong, and everyone else followed along, and it did not happen the way we thought it did. The purpose of a scientific investigation is to determine what happened, scientifically. Let us also note that confronting the possibility that it did not happen the way we thought it did does not implicate any particular individual, group, organization, or country. It merely addresses the question of what happened, namely how and why WTC1 and WTC2 collapsed. The

mandate from congress was for such an investigation using taxpayers' money. As presented above, there is no dispute that NIST and its contractors performed no such investigation.

We base this case, by and large, upon the points illustrated above and numbered 1. through 5. Dr. Wood, a materials engineering scientist,[3] has forensically analyzed what destroyed the Twin Towers and the evidence confirms it was DEW.[4] Dr. Wood has also disclosed to NIST that among the defendant-appellees, ARA and SAIC are each charter members of the Directed Energy Professional Society (DEPS)[5]; are manufacturers, developers and testers of the lethality effects of such weapons[6] and therefore knew, or should have known, as should all of the defendants, that a type of DEW destroyed the Twin Towers.

We understand the desirability of being able to say that Dr. Wood is wrong. However, NIST did not respond to her in that manner; and, instead, NIST merely backed off by acknowledging they did not investigate the collapses of the towers and did not challenge the validity of Dr. Wood's assertions in any meaningful way. How could they? They did not investigate.

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[3] J.A. 808-09
[4] J.A. 809-10
[5] J.A. 961, 968

Dr. Wood vetted her claim that a type of DEW destroyed the Twin Towers by specifically asking the United States Directed Energy Directorate, a joint command of the U.S. military and the directorate that has the responsibility for maintaining the United States' arsenal of directed energy weapons, whether the Twin Towers were destroyed by DEW and accompanying that query with excerpts of Dr. Wood's analytical evidence.[7]

The U.S. Directed Energy Directorate did not assert that Dr. Wood's claim was "delusional" and neither should the defendant-appellees, ARA et al. be allowed to do that, without providing one shred of proof of a claimed delusion. Instead, this is how the U.S. Directed Energy Directorate responded to Dr. Wood in part:

> "While on a personal level I may find Dr Wood's investigation interesting and worthy of further consideration, on a professional level we are unable to devote our limited resources to activities outside of our charter, I wish you success in your endeavor and am available to answer whatever directed energy questions may arise."[8]

At this early juncture of this case, one can fairly and properly draw inferences from the quoted reply from the U.S. Directed Energy Directorate:

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[6] J.A. 961-67, 969-73
[7] J.A. 662-76
[8] J.A. 667-78

- If DEW did not destroy the Twin Towers, it is reasonable to infer that the Directed Energy Directorate's spokesperson would have clearly said so.
- And, if asserting that DEW destroyed the Twin Towers was "delusional", that same spokesperson can reasonably be expected to have said so.
- Or, at a minimum, no response at all might have been the outcome of the query submitted on Dr. Wood's behalf since public officials are not obliged to respond to delusional claims submitted to them.
- Here, however, the evidentiary record consists in a written response from the Directed Energy Directorate to Dr. Wood that neither ridiculed the query nor, for that matter, did it even deny the claim that DEW destroyed the Twin Towers!
- Instead, the spokesperson for the U.S. Directed Energy Directorate stated to Dr. Wood that:

> "While on a personal level I may find Dr Wood's investigation interesting and worthy of further consideration. . . .[I] am available to answer whatever directed energy question may arise."

That is extraordinary.

Far from delusional, Dr. Wood's information is both original and not publicly disclosed, other than by her having disclosed it; and officials

charged with knowledge of DEW have not ridiculed that information but have encouraged further assessment and volunteered assistance. As a matter of law, then, neither should the defendant-appellees be permitted to short circuit this case with an improperly-supported motion to dismiss, as doing so violates the presented evidence.

This case involves the 'cream' of the 'military industrial complex' crop. J.A. 968 confirms that DEPS comprises the top tier corporate entities of the military industrial complex, of which some of the defendant-appellees herein are founding members and founding sponsors. We have also alluded to the admonition about the danger of the military industrial complex given to the American people by then President Dwight D. Eisenhower, as a part of his farewell message to the nation in 1961 (J.A. 637, footnote 1). Given the gravity of President Eisenhower's warning, it follows that the False Claims Act, as here invoked, is a proper vehicle for dealing with the fraud that such contractors might have engaged in. Their disproportionate influence in national policy should not allow them to circumvent this claim of fraud.

Subject Matter Jurisdiction – Public Disclosure

The parties in this case have profoundly different approaches to the issue of "public disclosure" as that issue relates to the processing of a case

brought under the False Claims Act 31 U.S.C. § 3729 et seq. (2000). At pg. 1 of the ARA Brief that group of appellees claims that "…the information underlying Relator's claims was publicly disclosed before she filed suit, and Relator was not the original source of that information." The already demonstrated incorrectness of that assertion is further confirmed by acknowledgment in the ARA Brief at pg. 17 wherein they base "public disclosure" upon Relator's Request for Correction (RFC) (J.A. 874) filed with the National Institute for Standards and Technology (NIST).

The information underlying Dr. Wood's qui tam complaint was either not publicly disclosed and/or if it was, she is the original source of it. The ARA Brief completely misconstrues and misstates what "information" this case is based on as well as where and how that information came about.[9]

It must be clearly understood that the information upon which this case is based is Dr. Wood's Request for Correction (RFC) (J.A. 874-956). Yet, right at pg. 9 of the ARA Brief, confirmation that the court below misconstrued the nature of Dr. Wood's information is found. That court had stated, and the ARA Brief confirmed at pg. 9 thereof that:

[9] At pg. 14 of the ARA Brief, it is incorrectly asserted that NCSTAR 1 (J.A. 1240) is the "information" upon which this case is based. Moreover, that assertion contradicts the claim that the RFC of Dr. Wood is the "public disclosure" made at the very next page of the ARA Brief.

> "…the public disclosure bar applied because Relator's claims were 'based entirely on information made publicly available through NIST's administrative investigation, the administrative report resulting therefrom (*i.e.*, NCSTAR 1), a prior civil action and various media accounts'. (J.A. 1240)"

That quoted statement does not include any mention of Dr. Wood's RFC as the information upon which this case is based and that is why the "public disclosure" issue has been erroneously treated. That is the reason this case mandates reversal and/or remand.

The information and complaint in this case consists in a Joint Appendix of some 1274 pages. That information has not been given the opportunity for proper development from a factual perspective. The ARA Brief is devoid of any attempt whatsoever to relate the nature of the information they reference to the allegations of fraud in Dr. Wood's complaint and/or the allegations contained in her information and the Joint Appendix.

Instead, the ARA Brief plainly misinterprets "information" so as to claim a public disclosure if virtually any one or two words in the English language are found in Dr. Wood's information and in the public record. That is not the proper analysis for purposes of determining whether public disclosure has occurred or not.

Thus, in joining Kevin Ryan's Title VII lawsuit with a misstatement of what Dr. Wood's case entails, it is clear even on that basis that the case of Kevin Ryan has nothing whatever to do with the fraud alleged here and cannot, therefore, serve as a way of establishing the element of "public disclosure." It is easy to see that the comparisons are not apt by examination of the RFC of Dr. Wood (J.A. 874) and the complaint of Kevin Ryan (J.A. 158 to 168), something that was not done by the court below.

Firstly, in the ARA Brief at pg 10 the following misstatement of what Dr. Wood's case entails is found:

> "Specifically, the allegation that the NIST Investigation was fraudulent and that the collapse of the WTC towers was not caused by aircraft impacts was publicly disclosed in Ryan v. Underwriters Labs., Inc., No. 1:06-cv-1770-JDT-TAB (S.D. Ind. Filed November 16, 2006) (the "Ryan Suit"). (J.A. 158-68)."

Dr. Wood does not claim as a part of her information of fraud that no 767 jetliners hit the World Trade Center (even though she may agree that evidence confirms that assertion) nor that she was wrongfully terminated. In fact, it is quite clear in her RFC that Dr. Wood's case deals with the ample information that she and she alone uncovered that directed energy weapons (DEW) destroyed the Twin Towers and that the defendants herein, including ARA and SAIC are manufacturers, developers and testers of such weapons and that, accordingly, they knew or should have the effects of destruction

they cause. Moreover, by participating in a project that resulted in the publication of NCSTAR 1, a 10,000 page tome that Dr. Wood demonstrated was fraudulent, the defendants herein engaged in fraud in lending their names, expertise and services (for pay) to that publication. The ARA Brief simply misstates what Dr. Wood's information of fraud actually is.

Dr. Wood's combined RFC submittal treats the issue of fraud comprehensively, to and including "particulars" for the defendant-appellees (J.A. 807-1025) and see infra. Dr. Wood treats the issue of DEW throughout her RFC. She vetted her findings by verbal and written communications with the United States Military at the Directed Energy Directorate (DED) which is located at Kirtland Air Force Base, Albuquerque, NM. J.A. 662-74. DED's response is at J.A. 677-78. ARA is also headquartered in Albuquerque, NM, as is the Directed Energy Professional Society (DEPS), of which ARA and defendant-appellee Science Applications International Corp. (SAIC) are founding sponsors (J.A. 679).

These defendants are not excused from committing fraud simply by saying NIST published NCSTAR 1, not them, not with their direct link to directed energy weaponry and to the preparation of NCSTAR 1. The fundamental fact that ARA and SAIC cannot and have not denied is that a

principal part of their business consists in the manufacture and the development and the lethality testing of DEW.

Indeed, they and all of the defendants-appellees continue to seek to avoid having to acknowledge the evidence that DEW destroyed the Twin Towers. But, development of DEW is what some of them engage in. And, therein lies the basis for fraud. ARA and SAIC know, first hand, what sort of destruction results from DEW and the remaining defendant-appellees know that kerosene and purported impact damage could not have caused the near-instantaneous pulverization of steel and of concrete. They also knew that far from being a "final report on the collapses" of the towers, NCSTAR 1 was fraudulent. That is why this case cries out for discovery.

Merely claiming that information has been publicly disclosed is not sufficient. One must also look at the information to determine what, if anything, the alleged publicly disclosed information has in common with the allegations being made by the qui tam Relator. In engaging in that actual process of comparison, rather than simply declaring a prior public disclosure has occurred, without anything more, we see that the ARA Brief is woefully inadequate.

We need only to quote from the ARA Brief at pg. 10 to confirm, without any doubt, that there is no relevant connection between the

employment practice lawsuit Kevin Ryan commenced and the information of Dr. Wood. The ARA Brief asserts:

> "…Plaintiff Ryan sued Underwriters Laboratories (also a defendant in the instant case) for wrongful termination when Ryan was terminated after sending an electronic message to NIST claiming that the NIST Investigation was flawed and did not support the conclusion that aircraft impacts and subsequent fires caused collapse of the WTC Towers. *Id.* At 162). Ryan's complaint publicly disclosed the allegation that: "[t]he official government explanation of the WTC building collapses was flawed, i.e., the government's explanation that the impact of the aircraft and the fires from the jet fuel caused the unprecedented collapse of the steel framed WTC Twin Towers and the WTC Building 7 was not supported by a scientific analysis of the evidence.' (*Id. a*t 160)."

The quoted statement about the Ryan case has nothing in common with Dr. Wood's information and, moreover, the quote is misleading. The letter referred to at J.A. 162 was written before NCSTAR 1 was published and cannot, therefore, refer to the fraud alleged by Dr. Wood.[10] Merely declaring the investigation was flawed while the investigation was pending, as Ryan did, is not an allegation of fraud. Moreover, Ryan was simply asking NIST to conduct a proper investigation. That, and nothing more.

The only connection, and it is a tenuous one at most, between Ryan and Wood is that they both may be said to refer to incongruities in the common understanding of what happened on 9/11/01. However, there is no other connection or valid comparison between the two and that comparison

is not what Dr. Wood's claim of fraud involves. The allegations in Dr. Wood's RFC are not found in Ryan's complaint in any relevant way and the ARA Brief has not shown otherwise. On the contrary, Dr. Wood has shown that her information is unique to her. In short, Kevin Ryan does not claim fraud has occurred, rather he merely implores NIST, in 2004, to do its job of analyzing what happened. For that, he alleges his employment was terminated and he brought a Title VII case. It was left to Dr. Wood to disclose that, despite Ryan's admonitions that NIST do so, that NIST did not investigate what happened (as admitted by NIST to Dr. Wood) and that fraud occurred.

The same holds true with respect to both of the other two specific references made in ARA Brief to what they seek to assert constitutes prior disclosure; namely, that upon analysis, the references have nothing to do with Dr. Wood. Neither the Popular Mechanics[11] article nor the Scientific American[12] article have anything to do with DEW as a causal source; and likewise nothing at all to do with the fraud of the NIST work performed by the defendant-appellees, ARA et al., as alleged by Dr. Wood.

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[10] November 11, 2004
[11] See ARA Brief pg. 12
[12] See ARA Brief pg. 12

The two remaining references wherein the ARA Brief claims, but does not prove, that the DEW claim against NIST and its contractors was made by someone other than Dr. Wood are each false.

The 2002 article beginning at J.A. 169 was published before the fraud herein occurred. The ARA Brief disingenuously asserts that no precedent was cited for the proposition that a prior disclosure cannot occur prior to the commission of the fraud.[13]

At first glance, it seems astonishing that the defendant-appellees would make such an assertion. That is akin to asking for confirmation of the proposition that twice two is four. However, on second thought, the request for precedent is consistent with other aspects of their analysis wherein they put forward claims of prior disclosure based on the existence of one or two words, such as "directed energy," as if that is what is meant in qui tam jurisprudence by public disclosure of fraud. It is clear that the allegations of a complaint and the information upon which it is based is what must have been previously disclosed and not otherwise. See, for instance, United States ex rel. Kreindler & Kreindler v. United Technologies Corp. 985 F.2d 1148 (2d Cir 1993), discussed infra.

[13] See ARA Brief pg. 13

The Jim Hoffman[14] article does not specifically relate to NIST or the defendants herein. His interview on radio consisted in a discussion about what is referred to as the "FEMA report,"[15] barely acknowledging that NIST was conducting an investigation and which interview aired before the fraud was committed. Note, too, that there is nothing in the lower court's decision referencing any of this. The underlying facts upon which this case is based simply have not had a chance to be developed. That requires discovery.[16]

The case authorities that are cited in ARA Brief on this issue are not at all persuasive. The ARA Brief seeks to broaden and, in so doing, to misstate the relevant standard for determining whether or not public disclosure has occurred. They state at pg. 13 that the "…relevant standard, as noted above, is whether Relator's action is based 'in any part upon publicly disclosed allegations or transaction' that occurred before Relator filed suit".

By that standard, Dr. Wood's information has not been publicly disclosed prior to her having done so. That standard incorporates the logic offered in plaintiff-appellant's brief and referenced by the ARA Brief in connection with references to public information before fraud occurred. It is not logically possible for information published prior to the occurrence of

[14] See ARA Brief pg. 12
[15] J.A. 176

fraud to serve as a basis for Dr. Wood's information against these defendant appellees.

The case authorities that are cited in the ARA Brief do not actually stand for the propositions for which they were cited in very crucial, one might even say, outcome determining ways.

We turn to that issue of inappropriate citation now:

Inappropriate Citation

The ARA Brief references United States ex rel. Lissack v. Sakura Global Capital Markets, Inc., 2003 WL 21998968, n.25 (S.D.N.Y. 2003). That reference is of minimal significance because the cited decision was superseded by a subsequent appellate decision in the same case found at United States ex rel Lissack v. Sakura Capital Markets Inc. et al., 377 F.3d 145, (2nd Cir.2004). Not only was the prior decision that ARA Brief sought to rely on superseded, the subsequent decision specifically articulated that the issue of "public disclosure" was not the issue that was actually dispositive of that case and this Court did not, therefore, address that issue. Hence, that decision at the lower court level cannot serve as precedent for that issue in this Court. The subsequent decision stated:

[16] In this respect, it is noted that Kreindler was decided on the basis of a motion for summary judgment in sharp contrast to the handling of this case thus far.

> The District Court found in the alternative that a number of claims at issue were barred by the "Public Disclosure Bar" of the False Claims Act, 31 U.S.C. § 3730(e)(4)(A), and ordered the remaining claims dismissed for failure to plead fraud with particularity as required by Federal Rule of Civil Procedure 9(b). We express no view on either of these rulings." U.S. ex rel Lissack v. Sakura Capital Markets Inc. et al., supra, 377 F.3d at 147.

That quotation, at a minimum, means that from an appellate perspective, it is not all certain that citing the lower court's decision carries significant weight. We here assert that for the reasons set forth in this Reply, reliance on the lower court's decision in Lissack is to no avail.

The same sort of incorrect emphasis occurs in the ARA Brief in connection with the case that it might be said ARA seeks to rely on most. We refer here to United States ex rel. Kreindler & Kreindler v. United Technologies Corp. 985 F.2d 1148 (2d Cir 1993). In the ARA Brief, the claim is made that "the relevant standard, as noted above, is whether Relator's action is based in any part upon publicly disclosed allegations or transaction" that occurred before Relator filed suit.

However, that is not what Kreindler actually stands for when that statement is considered in proper perspective. In addition, at pgs. 1157-58, the following is found in Kreindler:

> "UTC contends that discovery material containing all of the information upon which Kreindler's claim is based was filed with the district court in the Bryant litigation." (Underlining emphasis supplied) Kreindler, supra, 948 F2d at 1157-58

It is true that the words "in any part…" are found in Kreindler, but those words are found in a broader context wherein they reference "publicly disclosed allegations or transactions" of fraud where the allegations refer to the same claims as are found in the qui tam complaint, obviously meaning claims of fraud.

No one other than Dr. Wood claimed NIST's contractors engaged in fraud by concealing that the cause of the destruction was some type of DEW and that such contractors, by virtue of their expertise, knew or should have known that some type of DEW destroyed the towers. Thus, as actually applied, "public disclosure," as one would expect, refers to the allegations or claims of fraud that are found in the complaint and in the prior disclosure and not in some undifferentiated, free word association, sort of way as is being touted by defendant-appellees in the ARA Brief.

Let us turn to Kreindler to examine the context of the public disclosure holding. In Kreindler, there was a specific prior case where the qui tam Relator had represented a party who sued one of the prior defendants in the subsequent qui tam case. Information in that prior case was used in the subsequent qui tam case. Clearly, then, the information referenced or involved was the same in both cases.

It is here asserted, and appellate guidance requested as to whether, indeed, the level of information similarity should refer to commonality of evidence to be adduced in the subsequent qui tam case?

It is respectfully offered that the answer to the query should be in the affirmative because if information does not rise to the level of admissible evidence, or, at a minimum, information leading to admissible evidence, then, from a legal perspective, it is useless. There is nothing, not one item, of evidence in any of the examples put forward in the ARA Brief that would be even remotely relevant, not to mention admissible as evidence, in this case. And there has been no analysis showing otherwise.

Note, too, that the Kreindler case, despite involving the same claims as in a prior case, was not resolved at the motion to dismiss stage; rather, that case was resolved pursuant to a motion for summary judgment;[17]presumably after some discovery was permitted to take place and after an accurate factual basis was established with respect to the nature and the content of the information upon which the case was based had occurred. That sort of factual development has not been allowed to take place as yet in this case. Thus, in a very real sense, Kreindler is inapplicable.

[17] Kreindler, supra, 985 F.2d at 1148

Kreindler does not stand for that proposition that "public disclosure" can arise from the mere fact that the words "directed energy" have been uttered and to the mere fact that some people have challenged or defended the common myth of what happened on 9/11 on some basis or other, very broadly defined.

There are obviously references to "directed energy" found somewhere in the public record, but that has nothing whatever to do with the allegations of Dr. Wood who proves that such weapons were a causal factor in the destruction of the Twin Towers; who put NIST on notice to that effect and who informed NIST that it had contracted with manufacturers of such weapons, which was a conflict of interest, as there may be a motive to engage in the fraud of hiding the cause of the destruction and, who, crucially informed NIST that its report -- that did not investigate the collapses -- was fraudulent which fraud was enabled by the defendant-appellees herein who have DEW and other relevant expertise that should not have been used to comport fraud.

Public Disclosure in the RFCs

ARA Brief next seeks to establish public disclosure based on the actual RFC filed by Dr. Wood! Doing so might be considered as an

admission that Dr. Wood's information is not publicly disclosed; or, if it is, then she is the obvious original source of it, as she is the author of it.

What can be fruitfully added however is another example wherein ARA Brief uses a quotation from a case that is taken completely out of context, yet again. We refer here to U.S. ex rel. John Doe v. John Doe Corp., et al, 960 F.2d 318 (1992). ARA Brief references a quotation from pg. 323 of the Doe v. Doe decision. However, just below the quote relied on by ARA Brief, the following is found:

> "Having determined that the **allegations of fraud** were publicly disclosed, we next consider whether they were disclosed in a manner set forth in the statute." (emphasis supplied) Doe v. Doe, supra, 960 F.2d at 324.

The above quote confirms that it is the allegations of fraud that are the subject of the public disclosure analysis and bar. The ARA Brief goes to great lengths to make the expanded and astonishingly broad claim that public disclosure can consist in as little as their being able to find the words "directed energy" published years before the fraud involved in this case was committed and to use the publication of those words as a basis for prior disclosure of the highly detailed forensic work subsequently done by Dr. Wood. ARA Brief misstates the law of public disclosure because they offer no cogent argument that the allegations of fraud are the subject of public disclosure analysis.

Reliance by the ARA Brief on the Doe v. Doe case is questionable for another reason. That case contains a dissent by then Chief Judge Walker that is noteworthy for indicating that the issue of public disclosure cannot be dealt with merely by claims made by a qui tam defendant. Rather, and to the extent those claims are challenged, then it is incumbent upon the district court to do a more thorough factual assessment. Nothing of the kind occurred in this case; and, in any event, the decision of the lower court makes no actual reference to Dr. Wood's information. In Doe v. Doe, then Chief Judge Walker stated in dissent:

> "The majority finds a public disclosure in the fact that FBI agents interviewing potential witnesses advised "innocent employees" of John Doe Corporation of the fraud. I have two difficulties with this conclusion. First, the factual record does not support the claim that the FBI interviewed "innocent employees" and for that reason this case at least should be remanded for further factual development." Doe v. Doe , supra, 960 F.2d at 324.

That quotation is highly significant to this case. The lower court did not properly treat the factual information put forward by Dr. Wood in her complaint and in her information. None of the claims or assertions made by the defendant-appellees has been tested or verified. We have also seen how, as a matter of misinterpretation, the defendant-appellees, ARA et al., engage in dubious legal reasoning and interpretation in their attempts to deflect attention away from the actual information that comprises Dr.

Wood's allegations of fraud. Hence, and as Chief Judge Walker has admonished: ". . .this case should be remanded for further factual development" at a minimum.

Direct and Independent Knowledge

Assuming Dr. Wood must qualify as an original source, she easily does so. There is nothing in the lower court's decision to confirm otherwise because her information has not been dealt with. And, yet again, the ARA Brief takes considerable liberties with the actual law associated with what "direct and independent knowledge" actually is and, in so doing, misstates that law.

The ARA Brief acknowledges on one hand that a qui tam Relator who is seeking to qualify as an original source must have ". . . shown that she has 'first hand knowledge of fraudulent misconduct or that she is a 'close observer' or otherwise involved in the fraudulent activity." Now let us examine the context in which that quote must be considered on the other. It is clear, based even on the sole district court case that ARA Brief references United States ex rel DeCarlo v. Kiewit/AFC Enterprises, Inc., 937 F.Supp. 1039, 1048 (S.D.N.Y. 1996), that the concept of direct and independent knowledge means:

> "For purposes of this paragraph, "original source" means an individual who has direct and independent knowledge of the information on

> which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information." DeCarlo, 937 F.Supp. at 1047.

Dr. Wood has direct and independent knowledge of the claims of fraud she is making and it is clear that she voluntarily provided the information to the Government in the guise of her RFC. The ARA Brief goes to the ridiculous length to assert that being present in New York City on September 11, 2001 was a prerequisite to direct and independent knowledge. See ARA Brief at pg. 19. The near instantaneous destruction of the Twin Towers was baffling. That outcome was not expected and it took the materials engineering expertise of Dr. Wood to determine what actually transpired.

The ARA Brief seems totally unable to actually engage in a proper analysis of the underlying legal issue. The issue is that of fraud arising from what the defendant-appellees did in furtherance of a false and fraudulent report, NCSTAR 1. Unearthing that fraud did not depend on being in any particular place on 9/11/01.

Alcohol Found., Inc. Case

The ARA Brief also seeks to rely on the Alcohol Found., Inc. case, United States ex rel. Alcohol Found., Inc. v. Kalmanovitz Charitable Found., Inc. 186 F.Supp.2d 458 (S.D.N.Y. 2002), to rally support for its contention that Dr. Wood cannot qualify as an original source. That reliance fails.

There is no valid comparison between what happened in Alcohol Found. and Dr. Wood's RFC. Her information is unique to her. It would not exist but for her having prepared it. Much of it consists in actual calculations, analysis and the process of forensic examination done by a materials engineering scientist. That is to say, someone whose training goes to the issue of what can reasonably be expected to happen when materials of one sort or another interact. Moreover, there has not been any opportunity for "factual development" of the type that then Chief Judge Walker referred to in Doe v. Doe, supra. The "compilation" done in Alcohol was not comparable; and equally significant, the ARA Brief does not show otherwise. We are not here obliged to refute what has not been shown in the first place.

Dr. Wood's expertise is of the precise kind that could have had a reasonable chance of uncovering the clever and expensive fraud engaged in by these defendant-appellees. She is a materials engineering scientist. Another kind of expertise that would lend itself to recognition of what destroyed the Twin Towers is expertise in the lethality effects of DEW. Still another would involve analysis of steel. And, as we know from Dr. Wood's allegations, that is the exact kind of expertise that ARA, SAIC and UL,

among others, have. Because they did not reveal the fraud, they can be properly accused of "willful blindness."

At a very minimum, further processing and some actual fact finding is needed before it can be asserted that the analysis of Alcohol Found. applies to this case. There is no surface connection between the kind of information that is said to have been relied on in Alcohol Found. and the specifics of Dr. Wood's RFC. And, on the basis of the record as it currently exists, all we have is the rather voluminous appendix submitted in the course of this case that has not been mentioned in the lower court's prior decision, not even the RFC, let alone the copious backup information.

This case cries out for reversal and/or remand. As it is, the ARA Brief would have this court merely accept, ipso facto, that this case has something in common with Alcohol Found. without any current, not to mention, prior assessment of why or how that can possibly be true. And, for what it is worth, it is not true to say that Dr. Wood merely compiled public data. That assertion is false. The Joint Appendix, in its entirety, not just Dr. Wood's RFC, proves that this case is based on far more than a mere compilation.

Speculative Conspiracy Theory

Dr. Judy Wood is a materials engineering scientist. Her RFC is a forensic and scientific document that discloses fraud. Her claim is valid and

has not been shown to be otherwise than that. Instead the U.S. Directed Energy Directorate states that:

> "While on a personal level I may find Dr Wood's investigation interesting and worthy of further consideration, on a professional level we are unable to devote our limited resources to activities outside of our charter, I wish you success in your endeavor and am available to answer whatever directed energy questions may arise."

Rules 12(b)(1),(6) and 9b

The underlying appellant's brief dealt adequately with that part of the motion to dismiss based on Rules 12(b)(1),(6) and 9b. We will limit our reply to the observation that it would be inappropriate, in light of all of the information that Dr. Wood has provided, to find that her complaint cannot pass muster under the analytic framework associated with those rules.

However, if it is found that defendant-appellees are entitled to more particulars, the cure for any such technical defect would be dismissal without prejudice that would provide an opportunity to provide particulars.

With respect to "particularity," the Joint Appendix contains an abundance of information that could serve to provide particulars. Here is a non-exhaustive sampling:

1. NIST and its contractors failed to fulfill its mandate to "Determine why and how WTC 1 and WTC 2 collapsed following the initial

impacts of the aircraft and why and how WTC 7 collapsed." [p. xxxv (p. 37)], [J.A. 875]

2. NIST and its contractors, such as ARA, should have detected evidence of the use of exotic weaponry even in the context of NIST's intentional and improper limitation of its investigation to "the sequence of events leading up to the collapse…" [J.A. 986-987]

3. Rate of destruction not consistent with a "collapse" (BBE). [Figure 3, J.A. 882], [Figure 5-8, J.A. 883], [Figure 1, J.A. 814], [J.A. 881], Gilsanz Murray Steficek LLP (GMS) [J.A. 1171]

4. The physical impossibility of a gravity collapse when the ground shook for only 8 seconds (WTC1). [Figure 3, J.A. 882], [Figure 5-8, J.A. 883], [J.A. 881-882, 883], Gilsanz Murray Steficek LLP (GMS) [J.A. 1171]

5. The tipping top of WTC2, contradicting a symmetrical gravity-driven "collapse". [J.A. 884-887], , Gilsanz Murray Steficek LLP (GMS) [J.A. 1171]

6. Buildings were largely turned to dust, violates the laws of physics. The two laws of physics that are violated to such a degree that they are ignored altogether by NIST, in complete and total derivation of the requirements of the DQA are: Law of Conservation of Momentum;

and Law of Conservation of Energy [J.A. 874-916 for equations.], [Figure 1, J.A. 814], [Figure 4, J.A. 882]

7. Fuming (ongoing for years). [J.A. 898, 900], [Figure 19, J.A. 974], [Figure 20, J.A. 975], [Figure 26-27, J.A. 977], [Figure 36-38, J.A. 980], [Figures 2-3, J.A. 818], [Figures 29-86, J.A. 825-840], Science Applications International Corp. (SAIC) [1156]

8. Dirt at the site. "The WTC plaza level had been covered with cement blocks before 9/11, and the photo dated 9/13/01 shows it covered with dirt. A 'collapse' does not cause a building to turn into dirt and ARA should know this". [Figure 29-32, J.A. 978], [Figures 4-5, J.A. 818], [J.A. 844], [Figure 98, J.A. 844], [J.A.869-870], [Figures 102-161, J.A. 869-870] Applied Research Associates, Inc. (ARA) [J.A. 978], Science Applications International Corp. (SAIC) [J.A. 831]

9. Nearly instant "rustification." and ongoing rusting. [J.A. 834-843], [Figures 61-95, J.A. 834-843], Applied Research Associates, Inc. (ARA) [J.A. 840], Wiss, Janney, Elstner Associates, Inc. [J.A. 840]

10. UL's fire testing did not produce a "failure to support load". [J.A. 845], [Figure 99, J.A. 845], Rolf Jensen & Associates, Inc, [J.A. 845], Underwriters Laboratory, Inc. [J.A. 845]

11. ARA is a manufacturer of DEW, a conflict of interest. [J.A. 815], [J.A. (917)], [J.A. 815]

12. ARA is contracted by the US Government to know about any Weapon of Mass Destruction (WMD) that exists. [J.A. 965], [J.A. 840]

13. ARA knows that a "collapse" does not turn a building into powder, nor do bombs. [Figures 7-9, J.A. 965-966]

14. How the use of DEW to destroy the WTC is proven by wrinkled beams, curled beams. [J.A. 934-947], [Figure 111, J.A. 853], [Figure 111-154, J.A. 853-866], Teng & Associates, Inc., [J.A. 853], Skidmore, Owings & Merrill LLP [J.A. 853], Wiss, Janney, Elstner Associates, Inc. [55-58, J.A. 861-864]

Conclusion

Dr. Wood has presented herself to the courts as a serious qui tam Relator who has done a significant public service in bringing this case, despite all attempts by the defendant-appellees to ridicule her. If there are technical faults, then she merits an opportunity to cure them. However, as to

the jurisdictional challenge, it is clear that this case either passes muster or, at a minimum, requires reversal for further pretrial processing.

Respectfully submitted,

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