

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

Civil Action No. 04-cv-01224-PSF-CBS

UNITED STATES OF AMERICA,
ex rel. BOBBY L. MAXWELL

Plaintiff,

v.

KERR-McGEE CHEMICAL WORLDWIDE, LLC,
f/k/a KERR-McGEE OPERATING CORPORATION,
f/k/a KERR-McGEE CORPORATION, a Delaware corporation;
KERR-McGEE OIL & GAS CORPORATION, a Delaware corporation;
KERR-McGEE WORLDWIDE CORPORATION, a Delaware corporation;
KERR-McGEE CORPORATION,
f/k/a KERR-McGEE HOLDCO, a Delaware corporation;

Defendants.

**MOTION TO FINALIZE AND ENTER JUDGMENT ON BEHALF OF THE UNITED
STATES OF AMERICA**

Richard C. LaFond of LaFond & Sweeney, LLC, and Michael S. Porter, Esq., counsel for Relator, hereby move the Court to Finalize and Enter Judgment on Behalf of the United States of America in this matter, pursuant to the False Claims Act. In support of this Motion, counsel for Relator state as follows:

1. In a False Claims Act case, the United States of America is always the real party in interest, even when it has not intervened in the action. *United States ex rel. Walker v. R&F Properties of Lake County, Inc.*, 433 F.3d 1349, 1359 (11th Cir. 2005), *cert. denied*, 127 S. Ct. 554 (2006); *United States ex rel. Milam v. University of Texas M.D. Anderson Cancer*

Center, 961 F.2d 46, 50 (4th Cir. 1992); *Minotti v. Lensink*, 895 F.2d 100, 104 (2d Cir. 1990).

2. To date, the United States has not intervened in this action. However, it is presently considering intervention. *See* paragraph 13 below. However, the United States did file a Position of the United States on the Contents of Judgment in this case on February 13, 2007.

The United States' Position stated:

“The United States has not participated in this case to date and, in this submission, states its position on certain issues relating to the contents of the judgment based on the assumption that judgment is to be entered consistent with the jury’s verdict.”

However, it appears from the Court’s Order of Dismissal for Lack of Subject Matter Jurisdiction, that the Court intends to enter judgment which is inconsistent with the jury’s verdict. This is clear error.

3. Through the above submission, the United States clearly claimed its entitlement to the proceeds, pursuant to statute, in this False Claims Act case.

4. The Relator’s attorneys in this matter, Richard C. LaFond and Michael S. Porter, represent the interest of both the Relator and the interests of the United States of America. As set forth in 31 U.S.C.A. § 3730(b): “Actions by private persons.—(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.” (Emphasis added). Accordingly, courts have routinely noted that the *qui tam* relator brings a suit in the name of and on behalf of the United States of America. *United States ex rel.*

Foulds v. Texas Tech. Univ., 171 F.3d 279, 289 (5th Cir. 1999), *cert. denied*, 530 U.S. 1202 (2000); *Minotti*, 895 F.2d at 104.

5. The jury verdict entered in this case was a verdict in favor of, and belongs to, the United States of America. Because this case proceeded through trial to a favorable jury verdict, it was transformed from a lawsuit merely alleging that the United States of America was defrauded to a verdict establishing that the United States of America was in fact defrauded.

6. As noted in Judge Figa's Order of Dismissal for Lack of Subject Matter Jurisdiction, "the jury's verdict regarding Kerr-McGee's ultimate liability and the amount the government was allegedly shortchanged are not at issue in this Order." Order of Dismissal, p.7.

7. As made clear by the United States Supreme Court's ruling last week, a False Claims Act verdict belongs to the United States of America, regardless of the Relator's status in the action. *Rockwell Int'l Corp. v. United States*, ___ S. Ct. ___, 2007 WL 895257, at *11 (March 27, 2007).

8. The *Rockwell* Court specifically held that where a Relator was dismissed out of the action for lack of subject matter jurisdiction, the judgment in favor of the United States remained undisturbed, especially where the United States had intervened. *Rockwell*, 2007 WL 895257, at *11.

9. The United States is currently considering whether to formally intervene in this matter. See paragraph 13 below. As well settled by statute, the government can intervene at any stage of a False Claims case upon a showing of good cause. 31 U.S.C.A. § 3730(c)(3). The Government has been copied in on all pleadings in this matter and has filed briefs before the

Court. It seems undisputed that protecting the United States people from fraudulent conduct and ensuring that millions of dollars that are past due to the U.S. Treasury constitutes “good cause” within the meaning of the statute.

10. This case presents a matter of first impression, to the best knowledge of the undersigned, this is the first successful jury verdict in a False Claims Act case in which the Government had not formally intervened prior to trial.

11. Even if the United States does not formally intervene in this matter, Relator and his attorneys remain capable, willing and able to represent the interests of the United States of America.

12. The United States of America, the real party in interest in this case, is entitled to judgment in this matter. The Court is obligated pursuant to the False Claims Act statute to make and enter its findings concerning the doubling/trebling of the jury verdict and applicable penalties to compensate the America people for the fraudulent conduct of Defendants. These matters have been fully briefed by all parties, including the United States of America. If necessary, the matters can certainly be reargued. However, these final matters should be ruled upon and judgment entered in favor of the United States of America.

13. The undersigned has contacted Lisa Christian, Assistant United States Attorney, who stated that the Department of Justice is presently deciding whether to file a formal Motion to Intervene in this matter to protect the Government’s interest.

14. In accordance with D.C. COLO. LCivR. 7.1(A), the undersigned has been in contact with Gregory Goldberg of Defendant Kerr-McGee. Defendant Kerr- McGee opposes

this Motion because the Court has dismissed the case after determining it lacks jurisdiction.

15. Relator Bobby Maxwell fully supports the granting of this Motion and has been advised of any potential conflicts of interest caused by judgment being entered in favor of the United States of America in this matter.

WHEREFORE, the undersigned, on behalf of the interests of the United States of America, respectfully moves the Court to enter an Order concerning the assessment of doubling/trebling of damages and of penalties, and thereafter, enter judgment in favor of the United States of America.

Respectfully submitted this 6th day of April, 2007.

s/ Richard C. LaFond
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CERTIFICATE OF SERVICE

I hereby certify that on April 6, 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses: ggoldberg@hollandhart.com; sbarker@hollandhart.com; dvoorhees@hollandhart.com; porterlaw@comcast.net; Lisa.Christian@usdoj.gov; William.Edgar@usdoj.gov; Peter.Wechsler@usdoj.gov.

s/ Richard C. LaFond

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