

# ZUCKERT SCOUTT & RASENBERGER, L.L.P.

ATTORNEYS AT LAW

888 Seventeenth Street, NW, Washington, DC 20006-3309  
Telephone [202] 298-8660 Fax [202] 342-0683  
www.zsrlaw.com

## **Government Transportation Corruption; Get Ready for the Orange Suit**

Published in the November 2006 issue of *Logistics Today*

*By James A. Calderwood\**

The civilian transportation officer (“TO”), working for the Department of Defense, probably never thought the payments would stop. But then came along a disgruntled carrier who could not figure up why it was not receiving more transportation business from the DOD facilities where the TO worked. The carrier complained to DOD which opened a criminal investigation that included the FBI, DOD’s Inspector General’s Office and the Department of Justice.

As the matter unfolded, the TO was sentenced to over three years in prison for receiving unlawful gratuities from a logistics company. The logistics company was often awarded traffic by the TO when there were rates available from other transportation service providers that were much lower than the selected carrier. The investigation has resulted in at least one other logistics company who dealt with the TO also being examined.

This case illustrates a new trend in the provision of transportation services to government shippers – criminal prosecutions. Until recently criminal actions against those abusing the government’s transportation procurement systems were rare. Now they are common.

In addition to the criminal actions involving the TO, another logistics provider is under investigation by the DOD Inspector General’s Office, and a grand jury, for overcharging the government for claiming payments for freight shipments by air that were actually moved by truck. In the past such overcharge matters were often handled through offset processes where overcharges discovered by the government would be administratively deducted from future payments. Now criminal action may be on the horizon.

A transportation service provider does not have to be under direct contact with the government to run the risk of criminal action. A carrier servicing a government prime contractor as a subcontractor may be at risk. In another recently reported matter, an official with a logistics company entered a guilty plea after he was accused of overcharging a DOD contractor to which his company provided

---

\* Mr. Calderwood is a partner with the law firm of Zuckert, Scoutt & Rasenberger, L.L.P., in Washington, D.C., where he concentrates in transportation matters. Mr. Calderwood can be reached at [jacalderwood@zsrlaw.com](mailto:jacalderwood@zsrlaw.com). This column is designed to provide information of general interest. It cannot substitute for in-depth legal analysis of particular problems. Readers are urged to seek counsel concerning individual situations.

services. As is common, the prime contractor had passed the charges on to the government.

In still more recent actions, five ocean forwarders have entered guilty pleas in a series of criminal cases related to rigging bids on ocean transportation services for DOD. So far, \$10 million in fines has been imposed. The investigation is continuing.

DOD pays private transportation companies over \$1.5 billion a year for hauling services. Unlike large weapons systems, transportation payments are doled out over time in relatively small amounts for hundred of thousands of shipments during a year. The transportation services procurement systems used by DOD and other government agencies are often arcane and difficult to fathom. They can be perplexing to the uninitiated because they do not resemble the processes for procuring transportation in the civilian commercial sector.

DOD's Surface Deployment and Distribution Command ("SDDC") has decided to go after abuse via criminal prosecutions by recently adding to its staff investigators and attorneys who specialize in procurement fraud. All SDDC personnel are now mandated to undergo ethics and fraud training. As a result, the number of criminal cases related to transportation matters should increase.

Criminal actions for fraud are not the only thing that transportation service providers have to be concerned with. Whistle blower suits are on the increase. The False Claims Act contains a provision that allows private parties who became aware of fraud being practiced on the government to institute a private law suit on behalf of the United States. These often accompany government prosecutions.

Generally, these private law suits must be based on inside information. Employees, competitors and suppliers have been known to bring such suits. If the whistle blower is successful in court, he or she will receive a sizeable portion of the recovery plus attorney's fees. Several whistle blower suits have been instituted against transportation service providers alleging that they somehow defrauded the government.

Criminal convictions result in prison terms for participating individuals and heavy fines for corporations. Of significance can be the debarments that often accompany such criminal actions. Transportation service providers found to have committed fraud on the government may be barred from future government procurement activity. Further, debarment by one agency runs to all agencies so that debarment is government-wide.

All those involved with providing transportation services for federal agencies need to be certain that none of its operations are in anyway fraudulent. Those orange suits really glow.