

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

UNDER SEAL

Plaintiff

vs.

UNDER SEAL

Defendants

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FILED UNDER SEAL

**FOURTH AMENDED COMPLAINT
PURSUANT TO 31 U.S.C.
§§ 3729-3732, FEDERAL
FALSE CLAIMS ACT**

JURY TRIAL DEMAND

FOURTH AMENDED COMPLAINT

FILED UNDER SEAL

IN THE UNITED STATES DISTRICT COURT

**FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

UNITED STATES OF AMERICA	§	
<i>Ex rel.</i> MICHAEL J. DE KORT, and	§	<u>CIVIL ACTION NO.3-06-CV-1792-R</u>
MICHAEL J. DEKORT, individually,	§	
	§	FILED IN CAMERA AND UNDER SEAL
Plaintiff,	§	
	§	FOURTH AMENDED COMPLAINT
vs.	§	PURSUANT TO 31 U.S.C §§ 3729-
	§	3732, FEDERAL FALSE CLAIMS ACT
INTEGRATED COAST GUARD	§	
SYSTEMS, A JOINT VENTURE,	§	
LOCKHEED MARTIN CORPORATION, A	§	
JOINT VENTURE PARTNER,	§	JURY TRIAL DEMAND
and NORTHROP GRUMMAN, A JOINT	§	
VENTURE PARTNER	§	
	§	
Defendants.	§	

**FOURTH AMENDED COMPLAINT PURSUANT TO
31 U.S.C. §§ 3729-3732, FEDERAL FALSE CLAIMS ACT**

The United States of America, by and through *qui tam* Relator, Michael J. De Kort, brings this action under 31 U.S.C. §§ 3729-3732 (the “False Claims Act”) to recover from Integrated Coast Guard Systems (“ICGS”), a Joint Venture Partner, Lockheed Martin Corporation (“Lockheed”), a Joint Venture Partner, and Northrop Grumman (“Northrop”), a Joint Venture Partner, all damages, penalties and other remedies established by the False Claims Act on behalf of the United States and himself and would show the following:

PARTIES

1. Relator, Michael J. De Kort (“De Kort”), is an individual citizen of the United States and resides at 13502 Hunters View Court, Prospect, KY 40059. He is a former lead engineer for defendant Lockheed on the relevant Deepwater 123s program at issue herein.

2. Defendant ICGS is a Joint Venture owned by Lockheed and Northrop, the latter of which are referred to in the ICGS literature as Joint Venture Partners. ICGS is headquartered in Rosslyn, Virginia. Service may be obtained by service upon either Joint Venture Partner, Lockheed or Northrop.

3 Defendant Lockheed (“Lockheed”) is a Maryland corporation with its principal place of business at 6801 Rockledge Drive, Bethesda, MD 20817. Lockheed Martin Corporation has offices located at 1 Lockheed Street, Fort Worth, Texas 76108 and does business in the State of Texas. The Texas agent for service of process is Corporation Service Company D/B/A+, 701 Brazos Street, Suite 1050, Austin, Texas 78701.

4. Defendant Northrop Grumman (“Northrop”) is a Delaware corporation with its principal place of business at 1840 Century Park East Los Angeles, California 90067-2199. Northrop can be served with process by serving its agent for service of process, CT Corporation Systems, 350 N. St. Paul Street, Dallas, Texas 75201.

JURISDICTION AND VENUE

3. Jurisdiction and venue are proper in this Court for the following reasons:
 - a. Jurisdiction for this Court exists pursuant to the False Claims Act (31 U.S.C. § 3730(b)(1) and 31 U.S.C. § 3732(a)), because Relator’s claims seek remedies on behalf of the United States for Defendant’s multiple violations of 31 U.S.C. § 3729 et seq. Defendants transact business within the Northern District of Texas.
 - b. Venue exists in the United States District Court for the Northern District of Texas pursuant to 31 U.S.C. § 3732(a), because the Defendants transact business within the Northern District of Texas.

GENERAL BACKGROUND

Relator's Employment

5. Relator is aware, and has reported to several governmental authorities, that the government has been cheated, to the extent of millions of dollars, which he learned after being assigned in July 2003 as the Deepwater Lead Systems Engineer for the 123 foot patrol boat operation of the Deepwater Information Technology Systems program. Relator is concerned about (1) national security breaches; and (2) the financial losses to the government as a result of the defendant's dishonesty in the performance of its obligations to the government for the 123 foot patrol boat modifications as part of the overall U.S. Coast Guard's Integrated Deepwater System program.

6. Relator has been pursuing complaints up the chain of command in Lockheed's organization and government. Recently, subsequent to Relator's complaints, the Inspector General of the Department of Homeland Security issued a stinging public report which criticized Lockheed's performance of the modernization of the 123 foot patrol boats. See **Exhibit A** (Report, Office of Inspector General). An active investigation continues on Relator's other complaints.

7. Finally, to Relator's knowledge, he is the Original Source as that term is defined under the False Claims Act, and his Complaint, and his claims are not based upon any public disclosure prior to the date of his filing. Relator has extended cooperation to the government in order to prosecute those responsible for defrauding the government, and he continues, as well, to offer his time and knowledge in order to expedite: (1) the remedial repairs to the 123 foot patrol boats; (2) the securitization of law enforcement and

intelligence agencies communications; and (3) the collection of statutory damages and penalties from the defendant.

8. As ICGS is a Joint Venture, the acts of Lockheed and Northrop are deemed the acts of the other on matters pertaining to the venture. Each of the Defendants have violated the FCA, on some occasions, and have agreed to or acquiesced in violations by the other Defendant, on other occasions. Therefore, the defendants herein shall be referenced herein, cumulatively, as **ICGS**. ICGS has placed profits before contractual compliance in divers and sundry manners in connection with the Integrated Deepwater System (“Deepwater”) contract. The shoddy and fraudulent performance of ICGS has materially undermined the viability of the project and has resulted in extensive waste and has jeopardized the security of the United States and its citizens.

Introduction

9. De Kort’s background in C4ISR (Command, Control, Communications, Computers, Intelligence, Surveillance and Reconnaissance) included six (6) years as a communications technician for the US Navy, one and a half (1.5) years as a communications officer for the US State Department (including over 6 months as a communications engineer for the counter-terrorism group) and over five (5) years in Lockheed as a Systems Engineer. Seven (7) more years were spent in Lockheed in Project, Program and Engineering management roles.

10. Relator complains of several critical security and safety issues that affect not only the US Coast Guard but the general public, key government agencies such as DOD, FBI, CIA and the DEA as well as any foreign governments which the USCG supports.

These deficiencies created by ICGS put our nation at risk and enable our enemies or terrorists to exploit weaknesses, including covert communications surveillance, as a result of corrupted systems that ICGS has created in our newly fielded US Coast Guard systems; especially, the Coast Guards' 123 patrol boat ("WPB 123s") modernization program.

11. ICGS' corruption of Deepwater's assets, cumulatively, will hamper every mission the USCG undertakes. The critical mission areas affected include: (1) drug interdiction; (2) search and rescue; (3) supporting DOD and other government organizations; and (4) the protection of our national resources. The corruptions or deficiencies have manifested themselves as a direct result of knowing, intentional and informed design and implementation choices made by ICGS. Relator advised the US Coast Guard and ICGS representatives of ICGS' knowing failures to perform the contract as ICGS had otherwise represented to the United States. These discrepancies affected not only the eight WPB 123s, but any other efforts for which ICGS may be leveraging these designs. Additionally as these deficiencies have corrupted national agency communications security, there are likely collateral damages to other law enforcement and military organizations, foreign or domestic, that have utilized the same communications systems under the impression that communications were encrypted or protected from eavesdropping, when they were not. Finally, the corruption and deficiencies associated with the Engine Upgrades, Hull Damages and Shaft Alignment ultimately resulted in all **eight (8) 123s being decommissioned**, resulting in total losses under the contract of the amount spent through the date of the decommissioning by the United States or the contractual amount whichever is greater. (It subsequently became known that buckling

hulls caused shaft misalignment problems, rendering the 123s unfit for duty.) The total loss of the boats due to shoddy and deceptive work by ICGS's management likely caused a loss of the total upgrade expenditures of **\$11.75 million** per boat or the cumulative sum of **\$96 million**. Further, as a result of the decommissioning of all eight boats because of improper upgrades and repairs, the loss of each boat's fair market value of \$30 million, on information and belief, or the cumulative sum of \$240 million (or more) had the ICGS contract been honestly and properly performed. In addition, the eight prosecutors ("SRPs") associated with the eight 123s were lost as well at a cost of \$1.3 million. While Relator was an original source on the Engine Upgrade and Shaft Alignment problems occurring at Bollinger [Louisiana], he was a second hand source through a Lockheed employee regarding the Hull Damages.

Relevant Dates

12. ICGS commenced the Deepwater program in 2001. Relator worked ICGS's program for Lockheed as the Deepwater Lead Systems Engineer for the 123s from 7/2003 to 2/2004. Relator wanted to remain on the program, but was removed, because of apparent friction arising from his complaints to his direct management about ICGS's concealed defects and its improper and shoddy work. Since then, Relator has been pursuing various governmental and other channels while seeking a remedy for the ICGS's corruption on the Integrated Deepwater System contract ("IDS contract").

SUMMARY OF ISSUES

Safety issues

13. Relator is aware of the cavalier attitude of ICGS's management regarding its false and fraudulent conduct in the performance of the IDS contract. His personal observations include at least the following crucial safety issues involve three (3) key areas: (1) environmental survivability of external equipment; (2) the FLIR video cable; (3) the proper labeling of all system cables; and, (4) the failure to utilize Low Smoke Cables. His awareness of Engine Upgrade and Shaft Alignment problems was as a result of personal participation in continuous status conferences with Bollinger program managers who complained about those issues. Those managers complained about not being allowed to complete the necessary Engine repairs beyond the "core repairs" to ensure the proper operation of the engines. The same managers complained about receiving substandard Propeller shafts from the associated vendors, thus resulting in improper alignment. Finally, an ICGS manager in Moorestown advised the Relator that the Hulls were not in acceptable condition and were damaged by use, age and corrosion beyond what was expected when the bid was made. As a result of all of the above, ICGS performed service in a manner that predestined the failure of the eight (8) boats due to improper and ineffective retrofitting.

Environmental Survivability of Equipment

14. Additionally, Relator knows that several critical Navigation, Sensor, Command and Control and Communications Systems did not meet environmental specifications. ICGS's associated design and implementation flaws would lead to (1) equipment degradation or (2) premature failure, either of which would result in the boat's **inability to**

navigate or communicate. Clearly, in such situations, serious physical harm could result to the USCG crews, the general public and the U.S. government agencies for which these vessels are providing joint mission critical support. Similarly, the same harm would harm any nation which the mission might be supporting. These failures could easily result in the **loss of life.**

FLIR Video Cable – Forward Looking Infra-Red (FLIR)

15. This system is used for navigation. Relator complained, because the external video cable was **not weatherproofed.** Failure to provide water proofing on WPB 123s would result in premature failure, the loss of system video and the loss of the ability to navigate using the FLIR system. ICGS's failures in this regard could result in **mission failure, the loss of the boat and loss of life.** The consequential damages far outweighed ICGS's desire to cut corners on costs in order to maximize profits.

Cable labeling/Physical Configuration Audit issues

16. Lockheed Martin Quality Assurance organization found that **80%** of the **C4ISR cabling** was **incorrectly marked** on boat number one – the WPB Matagorda. This situation could lead to **mission critical mistakes** being made during routine maintenance or repairs. These mistakes could result in damage to critical systems such as Navigation, Sensor, Command and Control and Communications Systems. These failures could result in the boats inability to perform their missions and the unacceptable consequences that are attendant to the needless loss of a boat and crew.

Security Issues

17. Relator reported critical security issues which involved two key areas:
- (1) Camera/Video Surveillance; and
 - (2) TEMPEST systems – specifically SIPRNET and shielded cabling.

Video/Camera Surveillance System

18. A camera surveillance system was installed on the boats and was supposed to replicate the systems on other boats. That system was intended to provide a **remote 360 degree viewing** of the vessel and its perimeter (Prior to this system the USCG staffed personnel to perform on-boat watches). The camera system that was installed has **two significant blind spots**, at approximately 10 and 2 o'clock as viewed from the pilot house/bridge. These blind spots are significant in size and could permit **undetected access** to the boats. Such undetected access could result in unwanted boarding of the vessel, tampering with the hull or enemy destruction of the boat, all of which pose great danger to the crew, the general public and our national security interests, since the USCG shares critical communications systems with law enforcement, the military and other U.S. government agencies. These failures could result in loss of life and the loss of vessel.

TEMPEST failures - SIPRNET - shielded cabling-Low Smoke Cables

19. The communications systems on the vessel – including secure voice systems radio and data (SIPRNET) require certain parameters (TEMPEST) be met in order to be certified for safe and secure use of the systems. Several significant flaws have corrupted these systems; including the danger of ICGS's use of non-shielded cables when shielded cables were mandated by military and intelligence standards for secure communications

(about 100 on each boat). As a result of these corrupt systems, these communications systems have been compromised, exposing intended secure communications to **unwanted eavesdropping**; including, all communications of law enforcement, intelligence and military organizations that share the same communications systems with the USCG. Further, the failure of ICGS to properly incorporate Low Smoke Cables unnecessarily exposes the system to failure and the personnel to dangerous toxic fumes in the event of fire.

20. Not only is it possible for **terroristic or narco governments to eavesdrop**, but the violation is sufficiently significant to permit these 8 WPB 123 boats to retransmit clear communications traffic from one classified circuit to another; thereby, making it relatively easy for anyone, including our national enemies, to **access classified U.S. communications** within a very large area, without the need to utilize sophisticated eavesdropping equipment. Both of these failures in these circumstances could, or likely has, (1) compromised national security operations, (2) lead to loss of life, (3) compromised the identities of protected individuals; and/or (4) resulted in the loss of life and property. The consequential damages of ICGS's failure to use shielded cables and Low Smoke Cables are significant. In the war on terror, the terrorists could hardly have done more damage to the security of the USCG's "secure communications" than ICGS, all recklessly done, without conscience, in the pursuit of the **undeserved profits**. In fact, TEMPEST design issues have now affected a new group of assets in the Deepwater "system of systems," the National Security Cutters ("NSC"). Lockheed Martin refused to perform the TEMPEST design for the NSCs until 2008—several years late, and, on information and belief (given the predicate conduct on the 123s), not until after they had extracted extra

funding from the Coast Guard to create this design, which should have been completed properly for the 123 cutters. Because of Lockheed Martin's delay, Northrop Grumman proceeded with the NSC vessel design prior to completion of the TEMPEST design. This out-of-order process caused serious problems in the NSCs. In addition, the instrumented TEMPEST testing is now more than one year late. All of these NSC issues are consequences of ICGS failures in connection with the eight 123s.

ADDRESSING THE CORRUPTION

I.

Environmental Survivability of Externally Mounted Equipment

Summary

21. The externally mounted equipment will, in all likelihood, not survive the environmental requirements specified in the contract. These environmental areas include but are not limited to – temperature, humidity, shock and vibration. The systems affected are communications, navigation and sensors. Relator was permitted to evaluate the FLIR thermal imaging equipment, which failed. Relator's team was **not permitted** to evaluate the remaining purchased equipment for compliance; it is now known that most of the remaining externally mounted equipment did not meet standards.¹ A study would need to

1 Classwide 123' WPB issues include: 24 volt grounds; radio direction finder accuracy; electronic engine control design; transducer space installation; engine diverter valve interface; telephone line/multiple line capability; emergency power requirements; AIS software upgrade and non-conforming topside equipment including: stabilized Gimbal assembly; antenna #2 HF/VHF (EMA-1316); antenna #1 UHF (ANT 2030); wind speed and direction sensor; 3.5' open array; gear box; VHF marine antenna (ICOM_954_VW_ANT); GPS antenna (FU_GPSANT_017); DGPS antennas; FURUNO 8' antenna; performance monitor; FURUNO Antenna pedestal; Fwd and Aft exterior pilothouse loudhailer; exterior water-proof two way speakers; camera and housing no. 1, 2, 3, & 4); HF antenna no. 1 & no. 2; VHF antenna no. 1 & no. 2 & VHF Omni antenna; antenna no. 1; broadband Omni antenna; SATCOM antenna; antenna for wireless paging system; active AM/FM/SW/TV Omni receiving antenna; antenna coupler; whip antenna; F77 antenna unit; mini-M antenna; maritime antenna; UHF Omni antenna; 2.4 GHz 8db Omni antenna; Qty.2.

be done to determine the impact. It should be noted that Relator made certain that ICGS's higher management understood the risks and dangers associated with these corruptions and deficiencies, all of which could easily have remedied before the delivery of the first boat.

Impact to the Mission

22. Systems potentially affected: (1) Navigation; (2) Sensor; and (3) Command and Control and Communications Systems. Failures in any one or more of these areas could **render the vessel unable to navigate or communicate**. This risks the lives of the crew, any partnering organizations or vessels and the general public. A catastrophic situation could result in a major loss of life and the loss of the vessel.

Resolution

23. The requirements would have to be changed or the equipment replaced or modified to meet specs. Additional documentation and training changes would have to be incorporated. These activities would include significant material and labor costs.

Cost of Resolution

24. If any equipment has to be modified or replaced, depending on the quantity of those changes, the cost could be tens of thousands or, easily, in the millions of dollars per boat. Damages caused to the mission or any other organizations depending on the WPB 123s to execute assigned missions could be incalculable.

Relevant Details

25. Environmental requirements were not flowed down by the ICGS's Lockheed SoS team. After, not before, the final design review, the equipment was purchased and installation began. Standard engineering processes dictated, however, that the requirements had to be established prior to the design review. ICGS knew this, but disregarded proper design protocol.

26. Upon receipt of this information Relator directed his team to evaluate whether or not the equipment ICGS had purchased and installed met specifications. The first device for which we had a response was the FLIR system – it failed to meet temperature requirements. When Relator informed ICGS's management about the defect, management directed Relator's team **not to review any more of the equipment for compliance.**

27. Later Relator understood that ICGS ordered a topside study to review the rest of the equipment, and that ICGS fixed the FLIR. However, Relator does not know that as a fact.

II

FLIR Video Cable

Summary

28. Relator reported to ICGS's management that the cables used to transfer the FLIR video signal from the externally mounted sensor to the internal systems were not the correct type and were not weatherproof. They were not manufactured to be installed externally; that is, to be exposed to any elements. Again, it should be noted that Relator raised this issue in a timely fashion, and ICGS could easily have remedied the defects

before delivery of the first boat.

Impact to the Mission

29. Failure of the cables will lead to loss of system video. This will render the crucial navigation system inoperable. This situation could leave the vessel incapacitated and unable to carry out the mission. This could result in loss of life and the vessel.

Resolution

30. The requirements would have to be changed or the equipment replaced or modified to meet specs. These activities would include material and labor costs.

Cost of Resolution

31. The costs would require the replacement of the non-indicated cables and changes to documentation. This would involve material and labor charges. Relator's estimate for remedial repairs or modifications is not less than several thousand dollars per vessel.

Relevant Details

32. Notwithstanding to objective dangers, ICGS's management refused to swap out the improper cables and took the position that the cables would simply be replaced when they failed.

III Physical Configuration Audit (PCA) Non-Labeled Cables Boat 1 (Matagorda)

Summary

33. Physical Configuration Audits (PCA) are contractually mandated inspections to ensure that the installation of the systems matches the design, relevant documentation

and equipment/cable labeling. The PCA of the first boat – the Matagorda – showed 80% of the cables were **mislabeled**. This situation could lead to mistakes being made during routine maintenance or repairs, resulting in prospective, critical system failures. Again, Relator put ICGS's management on notice of the non-indicated cables prior to the delivery of the first boat, but ICGS refused to utilize compliant cables.

Impact to the Mission

34. The above mistakes could result in damage to critical systems such as Navigation, Sensor, Command and Control and Communications Systems. These failures could result in the boats' inability to perform their missions and all of the attendant consequential problems and damages.

Resolution

35. Cables must be relabeled.

Cost of Resolution

36. A conservative estimate of labor and material to accomplish the remedial repairs would be \$100,000 per boat.

Relevant Details

37. When notified about this cable corruption, ICGS's management refused to make corrections. Management preferred to assign the problem to the shipyards even though ICGS gave them the incorrect labels. ICGS's management also took the dubious position that the problem would affect only ICGS's personnel, since we were responsible for depot maintenance and repair. In other words, ICGS was not going to correct a corrupted system that it constructed.

IV

Video/Camera Surveillance System

Summary

38. There is a camera surveillance system installed on the boats. It affords remote 360 degree viewing of the vessel and its perimeter. The camera system has two **significant blind spots** at approximately 10 and 2 O'clock as viewed from the pilot house/bridge. These blind spots are significant in size and could permit undetected access to the boats. Again, it should be noted that ICGS was fully briefed by Relator on these issues before the delivery of the first boat, and ICGS could easily have been remedied before the delivery of the first boat.

Impact to the Mission

39. Lockheed's decision resulted in exposing the WPB 123s to undetected [enemy] access which could result in: (1) unwanted boarding of the vessel; (2) tampering with the hull; or (3) sinking the boat. This action could pose a danger to the crew, the general public and our national security interests, because the USCG shares critical communications systems with other US government law enforcement, intelligence and military agencies. These failures could predictably result in loss of life and the vessel.

Resolution: Two options

40. First, the USCG could keep the **flawed system**, as is, and budget for personnel to serve as watch standers to cover the blind spots; that is, as was done before the installation of the system's cameras. This would mean the USCG would have to

maintain a flawed system, sacrificing the benefits of decreased manpower (and costs) previously associated with assigning staff used to watch the boats in a USCG port.

41. Second, the USCG could add the omitted camera on each boat and update the documentation, the latter of which is clearly the preferred remedy.

Cost of Resolution

42. The cost of the first option would need to be assessed by the USCG. There was a material cost savings associated with the use of the surveillance cameras.

43. The cost of the second option, by adding the omitted camera – is estimated to be \$25K per boat.

Relevant Details

44. ICGS received requirements to install 2 mast mounted movable cameras. (an implementation used for quite some time in the USCG)

45. Originally ICGS was supposed to procure the cameras and install them, provide the video and control circuitry and, as well, as the shore connection box

46. The cameras' purpose was to permit remote monitoring of the boat when in a USCG port. No watch standers would be required if the system was properly installed.

47. Internal arguments ensued within ICGS regarding who would buy the cameras.

48. Relator requested that Lockheed take over ICGS's effort in order to stay on schedule.

49. A decision was made to install four (4) fixed cameras on the pilot house. While Relator liked the idea of fixed cameras, as one could 'sneak' around a moving

camera, Relator knew that management was assuming each camera had a 90 degree field of view. (Relator later learned that fixed cameras were selected, because ICGS did not include the control circuitry).

50. Relator asked Ships' Integration to utilize the camera specs and ships' design to plot the views. Ships' Integration responded that: (1) the cameras did not afford a 90 degree field of view; and (2) mounting cameras in favorable locations would be problematic due to other items installed on the pilot house. Relator was told there would be blind spots.

51. These blind spots were at 1 o'clock and 2 o'clock – directly over the pilot house/bridge windows. The **blind spots** were over 10ft wide on the deck and hundreds of yards wide to the horizon. Relator told ICGS's management that Relator's team needed to install one (1) more camera and shift the existing forward camera over to cover the blind spots. ICGS's management said the "Design of Record" was 4 cameras. (No cameras had been purchased or installed at that time).

52. ICGS's management responded by telling Relator that there was no 360 degree requirement. Relator responded that it was known that the USCG currently had ships with 2 masts mounted moving cameras that supplied 360 degree of view. ICGS's management refused to concede the obvious. ICGS did, however, permit Relator to talk to the USCG tech rep about the defective design.

53. The USCG Tech Rep, expressing scheduling pressure, appeared to acquiesce to ICGS's refusals, noting that the blind spots would be covered by the locking of the pilot house/bridge windows. He thought that any covert entry would be discovered by observing broken glass. Relator inquired about how the blind spots and the locked pilot

house/bridge windows would prevent an intruder from planting an explosive charge on the boat, for which neither he nor ICGS offered an acceptable response. The tech rep said ICGS would have to seek a **waiver** for less than 360 degree coverage

54. Relator pointed out that the surveillance defect could have been remedied by simply installing an additional camera at a cost of under \$1,000.

55. Some time after this the USCG security inspector inspected the boat. His report stated the boat didn't have the standard 2 camera mast solution but that he had 4 fixed cameras, and that it appeared that the boat had 360 degree views. (This established that 360 degree view was a requirement).

56. After reading the USCG security inspector's report Relator informed ICGS's management that the 360 degree requirement was, indeed, valid, and that ICGS had an obligation to tell the inspector that the system had two (2), material blind spots of which they were aware.

57. ICGS's management responded it was not ICGS's fault that the inspector missed the blind spots, or that the inspector wrote and conducted a faulty test

58. Unaware of the blind spots and the corrupted surveillance system, the US CG accepted the design. **All 8 boats have the blind spots.**

V.

Classified Communication Certification deficiencies – SIPRNET - TEMPEST Shielded Cabling Requirement Defects

Summary

59. The communications systems on the vessel, including secure voice systems for radio and data (SIPRNET) required certain security parameters (TEMPEST) be satisfied in order to be certified for use. There are several significant flaws in these areas including the use of **non-shielded cables** where shielded cables should have been used (about 100 on each boat). These deficiencies have resulted in corrupted communications systems which are exposed to the unwanted eavesdropping on all governmental organizations (including law enforcement, intelligence and military) that share the same communications systems. National security has probably already been compromised by the absence of non-shielded cables. For instance, the Coast Guard's own press releases have stated that several of the 123s used the classified SIPRNET system on missions to Cuba. As before, these issues were acknowledged, and could easily have been remedied, before the delivery of the first boat.

Impact to the Mission

60. These defects, including the cables could easily: (1) compromise national security; (2) compromise mission operations; (3) compromise identities of protected individuals; and (4) result in the unnecessary loss of life and property. Not only is it possible for other governments to **eavesdrop** on "secure communications," but the defective cables enable these 8 boats to retransmit clear communications traffic from one classified circuit to another, thereby making it **relatively easy for anyone, including the enemies of our**

country, to access classified communications within a very large area, even globally.

Resolution

61. The complete rerunning of the TEMPEST and SIPRNET certification procedures need to be done – visual and instrumented. All failures should be addressed where feasible (small vessels such as the 123s sometimes receive waivers for red/black separation etc). If the visual report from ICGS is accurate and discloses the full extent of the issues (document can be provided), then the estimated cost must include replacing 100 cables and fixing other problems such as but not limited to grounding, bonding and separation failures. Additionally there would have to be documentation changes and more tests would need to be performed. Lastly, if other government agencies (law enforcement, intelligence or military) have already been compromised they would need to perform a damage assessment.

Cost of Resolution

62. If other government agencies “secured communications” have already been compromised, the remedial costs could be significant.

63. If the costs are confined to the errors in the ICGS’s Visual TEMPEST Inspection Report, rather than a full audit, the remedial costs would exceed \$250,000.00 per boat.

Relevant Details

64. Again, **well after** the design review and the equipment was purchased, Relator’s team first received the TEMPEST requirements—the **opposite** of the sequence

which should have occurred. Those requirements called for the standard set of military sea going requirements – shielding, grounding, bonding, separation of equipment etc.

65. ICGS's Chief Engineer on the program had directed, months before, that ICGS not buy the requisite shielded cables because they were too expensive (not bid). The requirements were never changed, and the defect was not disclosed by management.

66. Until this point, ICGS had not involved anyone on the project who had a **TEMPEST background**, despite the fact that ICGS' partners had some employees with that critical background.

67. At the time the 123 Matagorda was being tested, and well after the design had been completed and most of the equipment had been procured, Lockheed technical teams contended in communications with Coast Guard technical teams that there were no TEMPEST requirements for the 123s. The Coast Guard technical authority stated that because the requirements included secret communications radio systems, TEMPEST requirements were inherently included. This is because TEMPEST requirements are standard government and industry-wide in connection with the relevant secure radio communications systems. As such, the TEMPEST standards were “requirements” and not “guidance.” Lockheed's Ship's Integration team prepared a report on what our TEMPEST solutions should be. They did an excellent job, given that the engineer had not previously worked TEMPEST. The TEMPEST engineer whom ICGS's Lockheed had on its staff was not asked to participate. The report clearly reported that **shielded cables, among other noted relevant standards, were required** for the intended use—just standard operations.

68. Management was informed that to remedy the defects ICGS needed to buy and install shielded cables and fix other problems such as but not limited to grounding, bonding and separation failures or seek a change of the requirements. ICGS, however, informed Relator that the design of record would stand, that it would do neither.

69. Thereafter, ICGS arranged for the TEMPEST engineer from Ships' Integration to perform a site inspection. ICGS **failed** several areas, **including the shielded cables issue** and other problems such as but not limited to grounding, bonding and separation failures.

70. Initially, ICGS agreed to fix the "visual failures." ICGS's management asked Relator's team to draft an impact and resolution document. The result was that most of the fixes would add significant cost and schedule. Upon hearing this ICGS's management decided to wait until the instrumented test to see if it could pass. **No effort** was made to buy or install the required shielded cables based on the visual test failure or fix other problems such as but not limited to grounding, bonding and separation failures.

71. Two and one-half (2.5) years later, all 8 boats have had the predictable SIPRNET certification problems. Relator independently confirmed that shielded cables have not been installed and other problems such as but not limited to grounding, bonding and separation failures have not been fixed. Thus, the parade of horrors continues daily.

72. Relator had contacted several TEMPEST inspectors around the country. All of them confirmed that the chances of passing a **bona fide test** were extremely unlikely without shielded cables. Similarly, the boats were unlikely to pass a bona fide test without fixing other problems such as but not limited to grounding, bonding and separation failures.

73. Relator believes that ICGS and the USCG have either: (1) gun decked the tests; or (2) lowered the requirements. On information and belief, Relator is virtually certain that every other USCG or Navy ship in the present fleet has shielded cables in their secure communication systems. Security does not otherwise exist on those ships. **Ironically**, ICGS took shielded cables **off** these boats when Relator's team installed the non-shielded cables.

74. As the USCG now has a requirement to be able to communicate with DOD and several other law enforcement or military organizations, the communications between those entities and the USCG are at severe risk. **Any enemy or foreign government** monitoring these boats – from shore or from "fishing boats" will be able to pick up all the "secured communications" from these boats. Since the USCG has no shielded cables on these patrol boats, the cables will emanate like antennae. Additionally, the boats could retransmit clear bleed-over information from other circuits. The communications heard will be in the clear and easily understood. This is not a good thing, according to Homeland Security. See **Exhibit "B"** (E-mail complaint to CEO of Lockheed from Michael De Kort).

75. Relator has learned recently that related **test result failures were illegally waived** by the test branch of the USCG.

76. Regarding SIPRNET, the Department of Homeland Security IG's report stated that the contractor admitted there were issues, but that they could not be fixed without rendering the system inoperable, without disclosing ICGS's complicity in the corruption of the system.

77. Regarding SIPRNET certification organization, in April 2006, well after the boats became operational, admonished the ICGS that it would allow 45 days to correct the problems, or the **accreditation would be pulled**. Relator does not believe that ICGS has addressed constructively all the indicated problems, the same problems which could easily have been avoided in a time manner.

VI.

Low Smoke Cable Defects

Summary

78. Lockheed Martin failed to install Low Smoke cables on the 123s. At the time Relator left the effort, he was told that ICGS was going to waive the requirement. Since then the DHS IG Report on 123 C4SIR has concluded that granting the waiver was inappropriate and that the cables should be replaced. This defect was disclosed in the report filed by Relator with the Department of Homeland Security Inspector General (“DHS IG”) in February of 2006, because the IG had requested a complete listing of any issues that Relator felt had been handled improperly - even if Relator thought the issue was closed. Information provided by Relator was the basis of the Inspector General’s 123 Report. (The issue was also included in most of Relator’s requests to Lockheed management to fix the problems on the 123s).

Impact to the Mission

79. Failure to use these cables could result in excessive damage to electronic systems even with a small fire due to residue, aid the spread of fire and create a toxic smoke which could poison the crew.

Resolution

80. The cables should be replaced and the documentation updated. This should include, as in other filings, a review of every C41SR asset for any similar C41SR problems.

Cost of Resolution

81. If only the 123s are affected – 80 cables per boat. If any other assets are affected then the cost would increase due to more cables being installed.

Engine Upgrades; Shaft Alignment and Hull Damages

Summary

82. The Relator was aware of the Bollinger Program Managers' complaints to Northrop and the Coast Guard that Bollinger was unable to upgrade any of the equipment attached to the engines while they were rebuilding the engine blocks. Those managers complained that unless they or someone else performed the critical rebuilding services, the engines would not run properly and would fail prematurely. Recent events have revealed that the Program Managers' complaints were not seriously heeded.

83. During those same, continuous status conferences with the Bollinger Program Managers, Relator also became aware of their complaints that the propeller shafts received from the associated vendor were in substandard condition. The Program Managers were extremely concerned that the shafts would not align properly. Recent events indicate that Northrop and ICGS failed to attend to this serious problem, resulting, in part, in the decommissioning of all eight (8) 123s.

84. Finally, the Relator was aware through a Lockheed employee of ICGS in Moorestown, New Jersey, that in the summer of fall of 2004 ICGS was informed that the

hulls were damaged beyond that which was contemplated or bid by ICGS. The damage, from use, age and corrosion, was not addressed in order to prevent the corruption of the eight (8) 123s. Recent events have indicated that ICGS management failed to address these issues, as well.

Impact to the Mission

85. Each of these issues could contribute or directly cause core ship systems failure, which apparently they have.

Resolution

86. Engine issues – Repair or replace all ancillary engine equipment and components which should have been address during the Engine Upgrades.

87. Propeller Issue – Repair or replace the propeller shafts.

88. Hull Damages – Repair, replace or engineer hull components that are required in order to ensure the integrity of the hulls.

Costs of Resolution

89. As each of the eight (8) 123s was decommissioned due to problems on the vessels, primarily associated with the mechanical, electrical and hull issues, the resulting costs would be the greater of the original upgrade cost for each vessel or the amount spent by the United States, whichever is greater; that is, assuming that \$11.75 million was spent on the upgrades on each of the eight (8) 123s.

90. As a result of the decommissioning of all eight (8) 123s, the total cost or damages are, approximately, the cumulative sum of \$96 million.

Relevant Details

91. The extent of Relator's knowledge is being a party to the conversations on these topics. Relator's primary responsibility was C4ISR, not hull, mechanical and electrical.

Overall Costs Associated with Resolution of the Issues

Safety Issues

Environmental Survivability of External Equipment and Cable Labeling

92. Costs associated with the resolution of these issues would primarily involve the vessel on which the discrepancies exist. However, should the vessels be part of a critical event or working jointly with other organizations in a critical event, the boats' capabilities may be degraded to a point where the vessel is unusable, thereby posing serious risks to the mission(s) in which it is actively participating. In such an event the costs would be great, and the consequential costs could be immense. Specific costs will be estimated in following sections. However, due to recent events, Relator is aware that all eight (8) of the 123s have been decommissioned by the Coast Guard, thus resulting in at least the loss of the upgrade funds spent on the eight (8) 123s, or the sum of \$96 million, and the loss of all eight (8) boats, which were previously seaworthy, due to the decommissioning of each of the boats. On information and belief, had the upgrades been properly performed, the fair market value of each of the boats would have been not less than \$30 million, and that sum may be far short of the real value. Thus, the decommissioning resulted in a loss of contemplated benefits of not less than \$30 million or a cumulative sum of \$240 million.

Security Issues

93. Video Surveillance: Costs associated with the resolution of these issues would primarily involve the vessel on which the discrepancies exist. Specific costs will be estimated by discrepancy type below.

94. Classified Communications Issues – TEMPEST – Costs associated with the resolution of these issues would involve the vessels for which these have deficiencies are present, but must also include the costs relating to compromised, classified communications of several law enforcement and military organizations within our government, as well as foreign governments. In order to ascertain this cost each organization would have to evaluate whether communications have been compromised, the likely period of the infraction, as well as estimate the damage to the security of the agency or the nation. Types of information that could have been compromised:

1. Mission parameters;
2. Ship or troop location;
3. Names of protected personnel.

Total Cost Estimates - Labor and Materials

95. Minimum remedial damages for ICGS's objective performance defects are in excess of \$400,000.00 for each of Deepwater's 123 foot patrol boats. Cumulatively, the minimum remedial amount needed to correct known and identified problems with the 123 foot patrol boats is **\$3,200,000.00** for the 8 boats.

96. If the boats' Exterior Equipment Survivability is an issue across a wide array of systems the remedial costs would easily **exceed \$2 million per boat.**

97. Estimated turnkey damages are **\$19,200,000.00** for the eight (8) boats. The damages caused by ICGS may well be an order of magnitude much greater than this sum if the “secure communications systems” of our government have been eavesdropped by criminals and enemies.

98. If these defective designs are being leveraged on **other projects**, per the policy of “System of Systems Requirement,” there will be similar type damages for each of those platforms as well as changes that must be made. A conservative estimate of those projects’ damages, if any, would be the same costs as for the 123s, per platform.

99. If national security has been damaged as a result of breaches of the ostensible “secure communications systems,” each affected organization whose communications have been compromised would have to do an audited damages assessment. This cost would be geometrically greater than the known damages outlined above.

100. Due to recent developments, it is now objectively conceded that the deficiencies and corruption attendant to the upgrades and repairs to the eight (8) 123s has resulted, at least, in the loss of the \$96 million paid by the government for the upgrades and repairs. Moreover, the recent decommissioning of the eight (8) 123s and the eight (8) associated SRPs. On information and belief, if the upgrades and repairs had been properly performed, the fair market value of each of the 123s would have been not less than \$30 million per boat, or, cumulatively, **the sum of \$240 million**. That loss is real, and the United States has suffered that loss. Yet the eight (8) 123s had a pre-ICGS seaworthiness and operational value of an estimated \$10 million each, all of which has been destroyed for

an additional cumulative loss in excess of \$80 million.

FALSE CLAIMS ACT

101. This is an action which has alleged violations of the Federal False Claims Act, 31 U.S.C. §§ 3729-3732, seeking damages and civil penalties on behalf of the United States and Relator as a result of the Defendants' false statements and claims.

102. The False Claims Act provides that any person who knowingly submits or causes to be submitted to the United States for payment or approval a false or fraudulent claim is liable to the Government for a civil penalty of not less than \$5500 and not more than \$11,000 for each such claim, plus three (3) times the amount of damages sustained by the Government because of the false claim.

103. The False Claims Act allows any person having knowledge of a false or fraudulent claim against the Government to bring an action in Federal District Court for himself and for the United States Government and to share in any recovery as authorized by 31 U.S.C. § 3730. Relator claims entitlement to a portion of any recovery obtained by the United States as *qui tam* Relator/Plaintiff is, on information and belief, the first to file and, in any event the original source for the complaints in this action.

104. Based on these provisions, Relator on behalf of the United States Government seeks through this action to recover damages and civil penalties arising from the Defendants' submissions of false claims for payment or approval. In this case, such claims were submitted to Government entities for payment of fraudulently inflated invoices resulting in fraudulent profiteering. As a result of a fraudulent audit process, refusals to adhere to TQM (Total Quality Management), and the concealment of defective services

and goods, *Qui tam* Relator/Plaintiff believes the United States has suffered significant damages, as a result of the Defendants' false claims, jointly and severally.

105. As required under the False Claims Act, *qui tam* Relator/Plaintiff has provided the offices of the Attorney General of the United States and the United States Attorney for the Northern District of Texas a statement of material evidence and information related to this complaint. That disclosure statement, supported by documentary evidence, supports the claims of wrongdoing, much of which has been previously provided to various governmental investigative agencies. The Relator continued to provide supplemental disclosures to the government as appropriate.

FALSE RECORDS AND STATEMENTS

“GUIDANCE” RATHER THAN REQUIREMENTS

106. Relator, a C4ISR expert, was a member of ICGS's proposal-planning group for a short time in 2001 or 2002, prior to the Coast Guard awarding ICGS the Deepwater contract in July of 2002. In proposal-planning meetings, ICGS developed a strategy of persuading the Coast Guard to delete its standard “will” or “shall” language from much of the requirements portions of the Deepwater contract. ICGS's expressed intention was to persuade the Coast Guard to replace “requirements” language with “guidance” language, allowing ICGS nearly unlimited latitude in developing the Deepwater “system of systems.” ICGS planned to promise the Coast Guard that ICGS would deliver superior design and products if the Coast Guard would “untie the contractors' hands” from firm requirements. In the course of these planning meetings, Relator objected specifically to the absence of any other C4ISR experts from the planned staffing of the Deepwater project, and objected to

the substitution of guidance language for requirements. ICGS not only did not staff the Deepwater team with additional qualified C4ISR experts, it removed Relator from the project, virtually guaranteeing the C4ISR would not be a superior design, but a much less adequate one.

107. About a year and a half later, in the summer of 2003, Relator was once again assigned to the Deepwater project. At that time, he learned that ICGS had succeeded with its “guidance” pitch; the contractual project requirements included guidance language rather than firm “shall” or “will” requirements.

108. ICGS did not intend or believe—and this was clear from the discussions at proposal-planning meetings attended by Relator—that guidance language rather than firm requirements language in the Deepwater contract would produce superior design and products. Rather, ICGS simply wanted the contract to give it latitude to conduct the work in whatever manner it saw fit and to limit its responsibility for any problems encountered in the course of the program. Those false statements were material to the United States Coast Guard.

109. Because of these false statements and fraudulent conduct in obtaining the Deepwater contract, every claim or request for payment submitted to the Coast Guard by ICGS under the Deepwater contract constitutes a false claim under the FCA. *See, e.g., United States v. Mackby*, 339 F.3d 1013, 1018 (9th Cir. 2003), *cert. denied*, 541 U.S. 936 (2004); *United States ex. rel. Marcus v. Hess*, 317 U.S. 537, 543 (1943); *Harrison v. Westinghouse Savannah River Co.*, 176 F.3d 776, 787-88 (4th Cir. 1999) (seeking payment on a contract that was "obtained originally through false statements or fraudulent conduct,"

violates the False Claims Act under a "fraud-in-the-inducement" theory); S. Rep. No. 99-345, at 9 (1986), reprinted in 1988 U.S.C.C.A.N. 5266, 5274 ("[E]very claim submitted under a contract, loan guarantee, or other agreement which was originally obtained by means of false statements or other corrupt or fraudulent conduct, or in violation of any statute or applicable regulation, constitutes a false claim.").

VASHON

110. On or about March 9, 2005, ICGS submitted to the Coast Guard an ICGS Certificate of Conformance in connection with its delivery to the Coast Guard of the 123-foot cutter Vashon. ("Vashon Certificate," attached hereto as **Exhibit C** and incorporated herein by reference.) The Vashon Certificate was signed on behalf of ICGS by or for its Domain Program Manager, Quality Assurance Manager, and Director of Contracts. The Vashon Certificate certifies that:

the ICGS Deepwater Program furnished the supplies and/or services called for in accordance with all applicable requirements. I further certify that the supplies and/or services are of the quality specified and conform in all respects with the contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and physical item identification, and are in the quantity shown on the attached acceptance document.

111. The "attached acceptance document" refers to the Material Inspection and Receiving Report (sometimes referred to as "MIRR"), DD Form 250 ("Vashon DD 250"). The DD 250 is essentially a receipt, filled in by the delivering contractor for signature by the government contracting officer. The Vashon Certificate lists under the heading "Exception(s)" several variations from the applicable requirements. These are also reflected on the Vashon DD 250 in the chart in the middle of page 1 (items 15-20), which is

continued on page 2. The DD 250 item 15-20 chart first lists the item delivered—the “WPB 123 conversion, shipset #3” (incorrectly referred to in box 16 as the Nunivak rather than the Vashon, as correctly indicated in box 13), and the contractual unit price. Below this are indicated the exceptions with dollar values, which are subtracted from the contract unit price, yielding the price to be paid by the Government. Neither the Vashon Certificate nor the accompanying Vashon DD 250 reflects any exception for (1) topside/exterior equipment, (2) TEMPEST (Telecommunications Electronics Material Protected from Emanating Spurious Transmissions) items, such as shielded cables, or (3) HME (hull, mechanical, and electrical) issues, including shaft problems.²

112. ICGS knew and failed to disclose, however, that (1) topside equipment did not conform to requirements; (2) TEMPEST items failed to pass visual and instrumental inspections, including, *inter alia*, failure to provide shielded cables; (3) hull, mechanical, and electrical items failed to comply with requirements, including major problems with shaft alignment due to the hulls buckling.

113. At the top of the Vashon DD 250 item 15-20 chart in columns 19 and 20, the “unit price” for the cutter Vashon is reflected--\$6,866,302.00. At the end of the chart, on page 2, the Vashon DD 250 reflects an amount paid to date, \$5,746,168.00, and a handwritten total invoice amount due of \$1,004,738.50, with a handwritten notation, “pd 3/15/05.” These two amounts plus the indicated values of the exceptions total \$6,866,302.00—that is to say, the Government paid in full the contract price for the Vashon

² The Vashon Certificate and DD 250 failed to disclose camera blind spots and the failure to supply low smoke cables as well. The Coast Guard subsequently granted waivers of these failures. The Coast Guard also granted an unlawful, and thus ineffective, waiver of the failure of all TEMPEST items to pass visual and instrumental inspections.

minus the value of the items specifically listed as exceptions from the contract requirements, including those items ICGS knowingly failed to list as exceptions. Box 6 of the Vashon DD 250 provides the related ICGS invoice number, ICGS030048 03/07/05. The final page of **Exhibit C** is a “Payment Approval” authorizing payment for that invoice in the amount of \$1,004,738.50.

114. These documents demonstrate that ICGS made false statements to the Coast Guard in connection with claims for payment, that ICGS made claims for payment in the form of multiple invoices including ICGS030048, and that the Coast Guard paid ICGS \$6,750,906.50 for the cutter Vashon.

115. Because of the undisclosed problems, especially the hull/shaft problems, the total cost paid by the United States for the retrofitting of the Vashon was a total waste. Every penny was wasted, because the Defendants’ failures rendered the boat unfit and so unseaworthy that it cannot be operated safely in any environment. The Vashon reportedly will be scuttled by the Coast Guard, on information and belief, after the resolution of all of the litigation related to the 123 cutters. The Coast Guard would not have paid ICGS for the retrofitting under the contract if ICGS had not concealed its failures and its destruction of the pre-existing seaworthiness of the Vashon.

116. Thus, in addition to the total loss of the Government's payments for the retrofitting of the vessel, the Vashon lost all of its pre-existing market value, estimated at in excess of \$10 million.

MATAGORDA

117. On or about March 1, 2004, ICGS submitted to the Coast Guard an ICGS

Certificate of Conformance in connection with its delivery to the Coast Guard of the 123-foot cutter Matagorda. (“Matagorda Certificate,” attached hereto as **Exhibit D** and incorporated herein by reference.) The Matagorda Certificate was signed on behalf of ICGS by or for its Director of Contracts. The Matagorda Certificate certifies that:

the ICGS Deepwater Program furnished the supplies and/or services called for in accordance with all applicable requirements. I further certify that the supplies and/or services are of the quality specified and conform in all respects with the contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and physical item identification, and are in the quantity shown on the attached acceptance document.

118. In addition, on or about March 1, 2004, in connection with the delivery of the Matagorda to the Coast Guard, Lockheed Martin submitted to the Coast Guard an “External Certification of Conformance” signed by Lockheed Martin Corporation Maritime Systems & Sensors’ (“MS2”) Authorized Quality Representative and Authorized Contract’s Representative. (“External Certificate” attached hereto with Matagorda Certificate as **Exhibit D** and incorporated herein by reference.) The External Certificate applies to “C4ISR Equipment Integration, Installation, Testing & Training for the CGC Matagorda 123.” The External Certificate certifies:

that the material supplied on the referenced purchase order/Contract Number fully conforms to all applicable specifications and requirements. The material is supplied in compliance with the latest ECN’s/Revision noted. All material supplied under this order was originally purchased or manufactured by Lockheed Martin Maritime Systems and Sensors (MS2). All original purchasing and/or incoming inspection data is on file at MS2 and available for review upon request.

119. The Matagorda Certificate lists multiple “Exception(s)” from the certified applicable requirements.

120. These are also reflected on the Matagorda DD 250 in the chart in the middle of page 1 (items 15-20), which is continued on page 2. The DD 250 item 15-20 chart first lists the item delivered—the “Services and Supplies: Matagorda, WPB 123 conversion,” and the contractual unit price. Below this are indicated the exceptions with dollar values, which are subtracted from the contract unit price, yielding the price to be paid by the Government. The Matagorda Certificate, External Certificate, and Matagorda DD 250 do not reflect any exceptions for (1) topside/exterior equipment, or (2) HME (hull, mechanical, and electrical) issues, including shaft problems. They reflect “Tempest and Classified Testing \$121,000” in connection with TEMPEST equipment.³

121. ICGS knew and failed to disclose, however, that (1) topside equipment did not conform to requirements; (2) shielded cables and other required TEMPEST items were not provided and would not pass testing; (3) hull, mechanical, and electrical items failed to comply with requirements, including major problems with shaft alignment due to the hulls buckling.

122. At the top of the Matagorda DD 250 item 15-20 chart in columns 19 and 20, the “unit price” for the cutter Matagorda is reflected--\$14,875,235.00. At the end of the chart, on page 2, the Matagorda DD 250 reflects a total invoice amount due of \$14,211,420.00, reflecting the unit price less the disclosed exceptions. The Coast Guard Contracting Officer, Catherine Martindale, signed the Matagorda DD250 in box 22, indicating that the Matagorda was “received in apparent good condition except as noted.”

³ The Matagorda Certificate, External Certificate, and DD 250 failed to disclose camera blind spots and the failure to supply low smoke cables as well. The Coast Guard subsequently granted waivers of these failures. The Coast Guard also granted an unlawful, and thus ineffective, waiver of the failure of all TEMPEST items to pass visual and instrumental inspections.

Box 6 on page 1 of the Matagorda DD 250 indicates the related invoice number and date “ICGS0300-0008/ 03/01/04.” These documents demonstrate that ICGS made false statements to the Coast Guard in connection with claims for payment, and that ICGS made one or more claims for payment in the form of invoices including ICGS0300-0008/ 03/01/04 for at least \$14,211,420.00.

123. Because of the undisclosed problems, especially the hull/shaft problems, the total cost paid by the United States for the retrofitting of the Matagorda was a total waste. Every penny was wasted, because the Defendants’ failures rendered the boat unfit and so unseaworthy that it cannot be operated safely in any environment. The Matagorda reportedly will be scuttled by the Coast Guard, on information and belief, after the resolution of all of the litigation related to the 123 cutters. The Coast Guard would not have paid ICGS for the retrofitting under the contract if ICGS had not concealed its failures and its destruction of the pre-existing seaworthiness of the Matagorda.

124. Thus, in addition to the total loss of the Government's payments for the retrofitting of the vessel, the Matagorda lost all of its pre-existing market value, estimated at in excess of \$10 million.

METOMPKIN

125. On or about May 13, 2004, ICGS submitted to the Coast Guard an ICGS Certificate of Conformance in connection with its delivery to the Coast Guard of the 123-foot cutter Metompkin. (“Metompkin Certificate,” attached hereto as **Exhibit E** and incorporated herein by reference.) The Metompkin Certificate was signed on behalf of ICGS by or for its Domain Program Manager, Quality Assurance Manager, and Director of

Contracts. The Metompkin Certificate certifies that:

the ICGS Deepwater Program furnished the supplies and/or services called for in accordance with all applicable requirements. I further certify that the supplies and/or services are of the quality specified and conform in all respects with the contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and physical item identification, and are in the quantity shown on the attached acceptance document.

126. The Metompkin Certificate lists under the heading “Exception(s)” several variations from the applicable requirements. These are also reflected on the Metompkin DD 250 in the chart in the middle of page 1 (items 15-20), which is continued on page 2. The DD 250 item 15-20 chart first lists the item delivered—“Services and Supplies: Metompkin, (thru/mod 5w/o lock) WPB 123 conversion,” and the contractual unit price. Below this are indicated the exceptions with dollar values, which are subtracted from the contract unit price, yielding the price to be paid by the Government. Neither the Metompkin Certificate nor the accompanying Metompkin DD 250 reflects any exception for (1) topside/exterior equipment, or (2) HME (hull, mechanical, and electrical) issues, including shaft problems.⁴ “TEMPEST POA&M” (Plan of Action and Milestones) is excepted, but the documents fail to except numerous missing or inadequate TEMPEST items.

127. ICGS knew and failed to disclose, however, that (1) topside equipment did not conform to requirements; (2) numerous TEMPEST items did not meet requirements; and (3) hull, mechanical, and electrical items failed to comply with requirements, including major problems with shaft alignment due to the hulls buckling.

⁴ The Metompkin Certificate and DD 250 failed to disclose camera blind spots as well. The Coast Guard subsequently granted waivers of this failures and the failure to provide low smoke cables. The Coast Guard also granted an unlawful, and thus ineffective, waiver of the failure of all TEMPEST items to pass visual and instrumental inspections.

128. At the top of the Metompkin DD 250 item 15-20 chart in columns 19 and 20, the “unit price” for the cutter Metompkin is reflected--\$7,288,106.00. At the end of the chart, on page 2, the Metompkin DD 250 reflects an amount paid to date, \$5,752,765.00, and a total invoice amount due of \$1,181,807.53. These two amounts plus the indicated values of the exceptions total \$7,288,106.00—that is to say, the Government paid in full the contract price for the Metompkin minus the value of the items specifically listed as exceptions from the contract requirements, including those items ICGS knowingly failed to list as exceptions. Box 6 of the Metompkin DD 250 provides the related ICGS invoice number, ICGS0300-0016/ 05/13/04. These documents demonstrate that ICGS made false statements to the Coast Guard in connection with claims for payment, that ICGS made claims for payment in the form of multiple invoices including ICGS0300-0016/ 05/13/04, and that the Coast Guard paid ICGS at least \$5,752,765.00 for the cutter Metompkin.

129. Because of the undisclosed problems, especially the hull/shaft problems, the total cost paid by the United States for the retrofitting of the Metompkin was a total waste. Every penny was wasted, because the Defendants’ failures rendered the boat unfit and so unseaworthy that it cannot be operated safely in any environment. The Metompkin reportedly will be scuttled by the Coast Guard, on information and belief, after the resolution of all of the litigation related to the 123 cutters. The Coast Guard would not have paid ICGS for the retrofitting under the contract if ICGS had not concealed its failures and its destruction of the pre-existing seaworthiness of the Metompkin.

130. Thus, in addition to the total loss of the Government's payments for the retrofitting of the vessel, the Metompkin lost all of its pre-existing market value, estimated at

in excess of \$10 million.

PADRE

131. On or about June 24, 2004, ICGS submitted to the Coast Guard an ICGS Certificate of Conformance in connection with its delivery to the Coast Guard of the 123-foot cutter Padre. (“Padre Certificate,” attached hereto as **Exhibit F** and incorporated herein by reference.) The Padre Certificate was signed on behalf of ICGS by or for its Domain Program Manager, Quality Assurance Manager, and Director of Contracts. The Padre Certificate certifies that:

the ICGS Deepwater Program furnished the supplies and/or services called for in accordance with all applicable requirements. I further certify that the supplies and/or services are of the quality specified and conform in all respects with the contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and physical item identification, and are in the quantity shown on the attached acceptance document.

132. The Padre Certificate lists under the heading “Exception(s)” several variations from the applicable requirements. These are also reflected on the Padre DD 250 in the chart in the middle of page 1 (items 15-20), which is continued on page 2. The DD 250 item 15-20 chart first lists the item delivered—“Services and Supplies: Padre, (thru/mod 2) WPB 123 conversion,” and the contractual unit price. Below this are indicated the exceptions with dollar values, which are subtracted from the contract unit price, yielding the price to be paid by the Government.

133. Neither the Padre Certificate nor the accompanying Padre DD 250 reflects any exception for (1) topside/exterior equipment, or (2) HME (hull, mechanical, and

electrical) issues, including shaft problems.⁵ “TEMPEST POA&M” (Plan of Action and Milestones) is excepted, but the documents fail to except numerous missing or inadequate TEMPEST items.

134. ICGS knew and failed to disclose, however, that (1) topside equipment did not conform to requirements; (2) numerous TEMPEST items did not meet requirements, including, *inter alia*, failure to provide shielded cables; and (3) hull, mechanical, and electrical items failed to comply with requirements, including major problems with shaft alignment due to the hulls buckling.

135. At the top of the Padre DD 250 item 15-20 chart in columns 19 and 20, the “unit price” for the cutter Padre is reflected--\$7,080,060.00. At the end of the chart, on page 2, the Padre DD 250 reflects an amount paid to date, \$5,746,348.00, and a total invoice amount due of \$1,114,834.29. These two amounts plus the indicated values of the exceptions total \$7,080,060.00—that is to say, the Government was billed the contract price for the Padre minus the value of the items specifically listed as exceptions from the contract requirements, including those items ICGS knowingly failed to list as exceptions. Box 6 of the Padre DD 250 provides the related ICGS invoice number, ICGS030023 06/24/04. These documents demonstrate that ICGS made false statements to the Coast Guard in connection with claims for payment, that ICGS made claims for payment in the form of multiple invoices including ICGS030023 06/24/04, and that the Coast Guard paid ICGS at least \$5,746,348.00 for the cutter Padre.

⁵ The Padre Certificate and DD 250 failed to disclose camera blind spots and the failure to supply low smoke cables as well. The Coast Guard subsequently granted waivers of these failures. The Coast Guard also granted an unlawful, and thus ineffective, waiver of the failure of all TEMPEST items to pass visual and instrumental inspections.

136. Because of the undisclosed problems, especially the hull/shaft problems, the total cost paid by the United States for the retrofitting of the Padre was a total waste. Every penny was wasted, because the Defendants' failures rendered the boat unfit and so unseaworthy that it cannot be operated safely in any environment. The Padre reportedly will be scuttled by the Coast Guard, on information and belief, after the resolution of all of the litigation related to the 123 cutters. The Coast Guard would not have paid ICGS for the retrofitting under the contract if ICGS had not concealed its failures and its destruction of the pre-existing seaworthiness of the Padre.

137. Thus, in addition to the total loss of the Government's payments for the retrofitting of the vessel, the Padre lost all of its pre-existing market value, estimated at in excess of \$10 million.

ATTU

138. On or about August 2, 2004, ICGS submitted to the Coast Guard an ICGS Certificate of Conformance in connection with its delivery to the Coast Guard of the 123-foot cutter Attu. ("Attu Certificate," attached hereto as **Exhibit G** and incorporated herein by reference.) The Attu Certificate was signed on behalf of ICGS by or for its Domain Program Manager, Quality Assurance Manager, and Director of Contracts. The Attu Certificate certifies that:

the ICGS Deepwater Program furnished the supplies and/or services called for in accordance with all applicable requirements. I further certify that the supplies and/or services are of the quality specified and conform in all respects with the contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and physical item identification, and are in the quantity shown on the attached acceptance document.

139. The Attu Certificate lists under the heading “Exception(s)” several variations from the applicable requirements. These are also reflected on the Attu DD 250 in the chart in the middle of page 1 (items 15-20), which is continued on page 2. The DD 250 item 15-20 chart first lists the item delivered—“Services and Supplies: Attu, (thru/mod 3) WPB 123 conversion,” and the contractual unit price. Below this are indicated the exceptions with dollar values, which are subtracted from the contract unit price, yielding the price to be paid by the Government.

140. Neither the Attu Certificate nor the accompanying Attu DD 250 reflects any exception for (1) topside/exterior equipment, or (2) HME (hull, mechanical, and electrical) issues, including shaft problems.⁶ “TEMPEST POA&M” (Plan of Action and Milestones) is excepted, but the documents fail to except numerous missing or inadequate TEMPEST items.

141. ICGS knew and failed to disclose, however, that (1) topside equipment did not conform to requirements; (2) numerous TEMPEST items did not meet requirements, including, *inter alia*, failure to provide shielded cables; and (3) hull, mechanical, and electrical items failed to comply with requirements, including major problems with shaft alignment due to the hulls buckling.

142. At the top of the Attu DD 250 item 15-20 chart in columns 19 and 20, the “unit price” for the cutter Attu is reflected--\$7,016,731.80. At the end of the chart, on page 2, the Attu DD 250 reflects an amount paid to date, \$5,746,168.00, and a total invoice amount

⁶ The Attu Certificate and DD 250 failed to disclose camera blind spots and the failure to supply low smoke cables as well. The Coast Guard subsequently granted waivers of these failures. The Coast Guard also granted an unlawful, and thus ineffective, waiver of the failure of all TEMPEST items to pass visual and instrumental inspections.

due of \$1,163,168.41. These two amounts plus the indicated values of the exceptions total \$7,016,731.80—that is to say, the Government was billed the contract price for the Attu minus the value of the items specifically listed as exceptions from the contract requirements, including those items ICGS knowingly failed to list as exceptions. Box 6 of the Attu DD 250 provides the related ICGS invoice number, ICGS030030 08/02/04. These documents demonstrate that ICGS made false statements to the Coast Guard in connection with claims for payment, that ICGS made claims for payment in the form of multiple invoices including ICGS030030 08/02/04, and that the Coast Guard paid ICGS at least \$5,746,168.00 for the cutter Attu.

143. Because of the undisclosed problems, especially the hull/shaft problems, the total cost paid by the United States for the retrofitting of the Attu was a total waste. Every penny was wasted, because the Defendants' failures rendered the boat unfit and so unseaworthy that it cannot be operated safely in any environment. The Attu reportedly will be scuttled by the Coast Guard, on information and belief, after the resolution of all of the litigation related to the 123 cutters. The Coast Guard would not have paid ICGS for the retrofitting under the contract if ICGS had not concealed its failures and its destruction of the pre-existing seaworthiness of the Attu.

144. Thus, in addition to the total loss of the Government's payments for the retrofitting of the vessel, the Attu lost all of its pre-existing market value, estimated at in excess of \$10 million.

NUNIVAK

145. On or about February 15, 2005, ICGS submitted to the Coast Guard an ICGS Certificate of Conformance in connection with its delivery to the Coast Guard of the 123-foot cutter Nunivak. (“Nunivak Certificate,” attached hereto as **Exhibit H** and incorporated herein by reference.) The Nunivak Certificate was signed on behalf of ICGS by or for its Domain Program Manager, Quality Assurance Manager, and Director of Contracts. The Nunivak Certificate certifies that:

the ICGS Deepwater Program furnished the supplies and/or services called for in accordance with all applicable requirements. I further certify that the supplies and/or services are of the quality specified and conform in all respects with the contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and physical item identification, and are in the quantity shown on the attached acceptance document.

146. The Nunivak Certificate lists under the heading “Exception(s)” several variations from the applicable requirements. These are also reflected on the Nunivak DD 250 in the chart in the middle of page 1 (items 15-20), which is continued on page 2. The DD 250 item 15-20 chart first lists the item delivered—“Services and Supplies: Nunivak, (thru/mod 9) WPB 123 conversion,” and the contractual unit price. Below this are indicated the exceptions with dollar values, which are subtracted from the contract unit price, yielding the price to be paid by the Government.

147. Neither the Nunivak Certificate nor the accompanying Nunivak DD 250 reflects any exception for (1) topside/exterior equipment, (2) TEMPEST (Telecommunications Electronics Material Protected from Emanating Spurious Transmissions) items, such as shielded cables, or (3) HME (hull, mechanical, and

electrical) issues, including shaft problems.⁷

148. ICGS knew and failed to disclose, however, that (1) topside equipment did not conform to requirements; (2) TEMPEST items failed to pass visual and instrumental inspections, including, *inter alia*, failure to provide shielded cables; (3) hull, mechanical, and electrical items failed to comply with requirements, including major problems with shaft alignment due to the hulls buckling.

149. At the top of the Nunivak DD 250 item 15-20 chart in columns 19 and 20, the “unit price” for the cutter Nunivak is reflected--\$6,866,302.00. At the end of the chart, on page 2, the Nunivak DD 250 reflects an amount paid to date, \$5,746,168.00, and a total invoice amount due of \$1,052,972.80. These two amounts plus the indicated values of the exceptions total \$6,866,302.00—that is to say, the Government was billed the contract price for the Nunivak minus the value of the items specifically listed as exceptions from the contract requirements, including those items ICGS knowingly failed to list as exceptions. Box 6 of the Nunivak DD 250 provides the related ICGS invoice number, ICGS030042 02/14/05. These documents demonstrate that ICGS made false statements to the Coast Guard in connection with claims for payment, that ICGS made claims for payment in the form of multiple invoices including ICGS030042 02/14/05, and that the Coast Guard paid ICGS at least \$5,746,168.00 for the cutter Nunivak.

150. Because of the undisclosed problems, especially the hull/shaft problems, the total cost paid by the United States for the retrofitting of the Nunivak was a total waste.

⁷ The Nunivak Certificate and DD 250 failed to disclose camera blind spots and the failure to supply low smoke cables as well. The Coast Guard subsequently granted waivers of these failures. The Coast Guard also granted an unlawful, and thus ineffective, waiver of the failure of all TEMPEST items to pass visual and instrumental inspections.

Every penny was wasted, because the Defendants' failures rendered the boat unfit and so unseaworthy that it cannot be operated safely in any environment. The Nunivak reportedly will be scuttled by the Coast Guard, on information and belief, after the resolution of all of the litigation related to the 123 cutters. The Coast Guard would not have paid ICGS for the retrofitting under the contract if ICGS had not concealed its failures and its destruction of the pre-existing seaworthiness of the Nunivak.

151. Thus, in addition to the total loss of the Government's payments for the retrofitting of the vessel, the Nunivak lost all of its pre-existing market value, estimated at in excess of \$10 million.

MONHEGAN

152. On or about October 3, 2005, ICGS submitted to the Coast Guard an ICGS Certificate of Conformance in connection with its delivery to the Coast Guard of the 123-foot cutter Monhegan. ("Monhegan Certificate," attached hereto as **Exhibit I** and incorporated herein by reference.) The Monhegan Certificate was signed on behalf of ICGS by or for its Quality Assurance Manager, Finance/Business Manager, Domain Program Manager, and Director of Contracts. The Monhegan Certificate certifies that:

the ICGS Deepwater Program furnished the supplies and/or services called for in accordance with all applicable requirements. I further certify that the supplies and/or services are of the quality specified and conform in all respects with the contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and physical item identification, and are in the quantity shown on the attached acceptance document.

153. The Monhegan Certificate lists under the heading "Exception(s)" several variations from the applicable requirements. These are also reflected on the Monhegan DD

250 in the chart in the middle of page 1 (items 15-20), which is continued on page 2. The DD 250 item 15-20 chart first lists the item delivered—"Services and Supplies: Monhegan, (thru/mod 9) WPB 123 conversion, shipset #7" and the contractual unit price. Below this are indicated the exceptions with dollar values, which are subtracted from the contract unit price, yielding the price to be paid by the Government.

154. In addition, on or about October 3, 2005, in connection with the delivery of the Monhegan to the Coast Guard, Northrop Grumman Corporation Ship Systems submitted to the Coast Guard an "NGSS Certification of Conformance." ("NGSS Certificate" attached hereto with Monhegan Certificate as **Exhibit I** and incorporated herein by reference.) The NGSS Certificate *also* certifies:

the ICGS Deepwater Program furnished the supplies and/or services called for in accordance with all applicable requirements. I further certify that the supplies and/or services are of the quality specified and conform in all respects with the contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and physical item identification, and are in the quantity shown on the attached acceptance document.

155. In addition, on or about October 3, 2005, in connection with the delivery of the Monhegan to the Coast Guard, Lockheed Martin submitted to the Coast Guard an "External Certification of Conformance" signed by Lockheed Martin Corporation Maritime Systems & Sensors' Authorized Quality Representative and Authorized Contract's Representative. ("External Certificate" attached hereto with Monhegan Certificate as **Exhibit I** and incorporated herein by reference.) The External Certificate applies to "C4ISR Equipment Integration, Installation, Testing & Training for the CGC Monhegan-123." The External Certificate certifies:

that the material supplied on the referenced purchase order/Contract Number fully conforms to all applicable specifications and requirements. The material is supplied in compliance with the latest ECN's/Revision noted. All material supplied under this order was originally purchased or manufactured by Lockheed Martin Maritime Systems and Sensors (MS2). All original purchasing and/or incoming inspection data is on file at MS2 and available for review upon request.

156. The Monhegan Certificate, the NGSS Certificate, the External Certificate, and the accompanying Monhegan DD 250 fail to reflect any exception for (1) topside/exterior equipment, (2) TEMPEST (Telecommunications Electronics Material Protected from Emanating Spurious Transmissions) items, such as shielded cables, or (3) HME (hull, mechanical, and electrical) issues, including shaft problems.⁸

157. ICGS, Northrop Grumman, and Lockheed Martin knew and failed to disclose, however, that (1) topside equipment did not conform to requirements; (2) TEMPEST items failed to pass visual and instrumental inspections, including, *inter alia*, failure to provide shielded cables; (3) hull, mechanical, and electrical items failed to comply with requirements, including major problems with shaft alignment due to the hulls buckling.

158. At the top of the Monhegan DD 250 item 15-20 chart in columns 19 and 20, the "unit price" for the cutter Monhegan is reflected--\$6,760,196.80. At the end of the chart, on page 2, the Monhegan DD 250 reflects an amount paid to date, \$5,746,168.00, and a total invoice amount due of \$518,966.80. These two amounts plus the indicated values of the exceptions total \$6,760,196.80—that is to say, the Government was billed the contract price for the Monhegan minus the value of the items specifically listed as exceptions from

⁸ The Monhegan Certificate, NGSS Certificate, External Certificate, and DD 250 failed to disclose camera blind spots and the failure to supply low smoke cables as well. The Coast Guard subsequently granted waivers of these failures. The Coast Guard also granted an unlawful, and thus ineffective, waiver of the failure of all TEMPEST items to pass visual and instrumental inspections.

the contract requirements, including those items ICGS knowingly failed to list as exceptions. Box 6 of the Monhegan DD 250 provides the related ICGS invoice number, ICGS0300102 10/03/05. These documents demonstrate that ICGS made false statements to the Coast Guard in connection with claims for payment, that ICGS made claims for payment in the form of multiple invoices including ICGS0300102 10/03/05, and that the Coast Guard paid ICGS at least \$5,746,168.00 for the cutter Monhegan.

159. Because of the undisclosed problems, especially the hull/shaft problems, the total cost paid by the United States for the retrofitting of the Monhegan was a total waste. Every penny was wasted, because the Defendants' failures rendered the boat unfit and so unseaworthy that it cannot be operated safely in any environment. The Monhegan reportedly will be scuttled by the Coast Guard, on information and belief, after the resolution of all of the litigation related to the 123 cutters. The Coast Guard would not have paid ICGS for the retrofitting under the contract if ICGS had not concealed its failures and its destruction of the pre-existing seaworthiness of the Monhegan.

160. Thus, in addition to the total loss of the Government's payments for the retrofitting of the vessel, the Monhegan lost all of its pre-existing market value, estimated at in excess of \$10 million.

MANITOU

161. On or about January 13, 2006, ICGS submitted to the Coast Guard an ICGS Certificate of Conformance in connection with its delivery to the Coast Guard of the 123-foot cutter Manitou. ("Manitou Certificate," attached hereto as **Exhibit J** and incorporated herein by reference.) The Manitou Certificate was signed on behalf of ICGS by or for its

Quality Assurance Manager, Finance/Business Manager, Domain Program Manager, and Director of Contracts. The Manitou Certificate certifies that:

the ICGS Deepwater Program furnished the supplies and/or services called for in accordance with all applicable requirements. I further certify that the supplies and/or services are of the quality specified and conform in all respects with the contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and physical item identification, and are in the quantity shown on the attached acceptance document.

162. The Manitou Certificate lists under the heading “Exception(s)” several variations from the applicable requirements. These are also reflected on the Manitou DD 250 in the chart in the middle of page 1 (items 15-20), which is continued on page 2. The DD 250 item 15-20 chart first lists the item delivered—“Services and Supplies: Manitou, (thru/mod 16) WPB 123 conversion with dry-dock package, shipset #8” and the contractual unit price. Below this are indicated the exceptions with dollar values, which are subtracted from the contract unit price, yielding the price to be paid by the Government.

163. The Manitou Certificate and the accompanying Manitou DD 250 fail to reflect any exception for (1) topside/exterior equipment, (2) TEMPEST (Telecommunications Electronics Material Protected from Emanating Spurious Transmissions) items, such as shielded cables, or (3) HME (hull, mechanical, and electrical) issues, including shaft problems.⁹

164. ICGS knew and failed to disclose, however, that (1) topside equipment did not conform to requirements; (2) TEMPEST items failed to pass visual and instrumental

⁹ The Manitou Certificate and DD 250 failed to disclose camera blind spots and the failure to supply low smoke cables as well. The Coast Guard subsequently granted waivers of these failures. The Coast Guard also granted an unlawful, and thus ineffective, waiver of the failure of all TEMPEST items to pass visual and instrumental inspections.

inspections, including, *inter alia*, failure to provide shielded cables; (3) hull, mechanical, and electrical items failed to comply with requirements, including major problems with shaft alignment due to the hulls buckling.

165. At the top of the Manitou DD 250 item 15-20 chart in columns 19 and 20, the “unit price” for the cutter Manitou is reflected--\$7,719,003.80. At the end of the chart, on page 2, the Manitou DD 250 reflects an amount paid to date, \$6,960,941.80, and a total invoice amount due of \$958,238.80. These two amounts plus the indicated values of the exceptions total \$7,719,003.80—that is to say, the Government was billed the contract price for the Manitou minus the value of the items specifically listed as exceptions from the contract requirements, including those items ICGS knowingly failed to list as exceptions. Box 6 of the Manitou DD 250 provides the related ICGS invoice number, ICGS0300136 01/13/06. These documents demonstrate that ICGS made false statements to the Coast Guard in connection with claims for payment, that ICGS made claims for payment in the form of multiple invoices including ICGS0300136 01/13/06, and that the Coast Guard paid ICGS at least \$6,960,941.80 for the cutter Manitou.

166. Because of the undisclosed problems, especially the hull/shaft problems, the total cost paid by the United States for the retrofitting of the Manitou was a total waste. Every penny was wasted, because the Defendants’ failures rendered the boat unfit and so unseaworthy that it cannot be operated safely in any environment. The Manitou reportedly will be scuttled by the Coast Guard, on information and belief, after the resolution of all of the litigation related to the 123 cutters. The Coast Guard would not have paid ICGS for the retrofitting under the contract if ICGS had not concealed its failures and its destruction of

the pre-existing seaworthiness of the Manitou.

167. Thus, in addition to the total loss of the Government's payments for the retrofitting of the vessel, the Manitou lost all of its pre-existing market value, estimated at in excess of \$10 million.

CAUSES OF ACTION

A. Count I - False Claims (31 U.S.C. § 3729).

168. *Qui tam* Relator/Plaintiff realleges and hereby incorporates by reference each and every allegation contained in preceding paragraphs numbered 1 through 87 of this complaint.

169. Based on the acts described above, Defendants, jointly or severally, knowingly violated one or more of the following:

- a. knowingly presented, or caused to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval;
- b. knowingly made, used, or caused to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;
- c. conspired to defraud the Government by getting a false or fraudulent claim allowed or paid;
- d. knowingly made, used, or caused 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.

170. The United States Government unaware of the falsity of these claims, records, and/or statements made by the Defendants and in reliance on the accuracy thereof, paid the Defendants for the fraudulent claims.

171. Because of the Defendants' fraudulent conduct, the United States Government did not receive the contractual value or contemplated benefits to which it was entitled by law, all of which violated the False Claims Act.

172. Due to the Defendant's conduct, the United States Government has suffered substantial monetary damages of as much as \$240 million for the loss of eight (8) 123s.

RETALIATION AGAINST RELATOR

173. As a result of Relator's disclosures of ICGS's unlawful and related improper conduct to management and to governmental authorities, ICGS took measures, including refusing to cure serious corruption or deficiencies of the systems, to ensure that Relator would not continue on the Deepwater 123s patrol boat program. Relator had a good work record, and he was the victim of **retaliation** for wanting and acting: (1) to ensure that the government got the benefits that it was entitled for the IDS contract for the 123 foot patrol boat program; and (2) to ensure the security and safety of: (1) USCG personnel and property; (3) associated foreign governments in joint missions; (4) national security organizations (including law enforcement, intelligence and military) in view of ICGS's refusals to correct deficiencies and remedy corrupted systems and designs that endangered all those potentially affected by ICGS's improper performance of the IDS contract.

RELIEF

174. On behalf of the United States Government, the Relator/Plaintiff seeks to recover monetary damages from the defendants, jointly and severally, equal to three (3) times the damages suffered by the United States Government. In addition, the

Relator/Plaintiff seeks to receive all civil penalties on behalf of the United States Government in accordance with the False Claims Act.

175. The Relator/Plaintiff seeks to recover from the defendants, jointly and severally, retaliation damages, punitive damages and fees in his own right.

176. The *qui tam* Relator/Plaintiff should, for his contribution to the government's investigation and recovery, be awarded a fair and reasonable amount allowed pursuant to 31 U.S.C. § 3730(b) of the False Claims Act; alternatively, and in addition, his attorney is entitled to a fee from the Common Fund ("settlement") created by filing this cause of action to the extent that the case benefits any non-parties.

177. The *qui tam* Relator/Plaintiff seeks to be awarded all costs and expenses for this action, including statutory attorneys' fees and court costs.

178. Pre-judgment interest at the highest rate allowed by law and post-judgment interest as applicable.

PRAYER

WHEREFORE, Relator/Plaintiff prays that this District Court enter judgment on behalf of the Plaintiff and against the Defendants, jointly and severally for the following:

- a. Damages in the amount of three (3) times the actual damages of \$240 million, or more, suffered by the United States Government as a result of the Defendants' conduct which violated the False Claims Act;
- b. Civil penalties against the Defendants as provided under RICO;
- c. Relator/Plaintiff be awarded attorneys fees from the Common Fund ("settlement"), if any, created for the benefit of any non-parties;
- d. Relator/Plaintiff be recover from Defendants, jointly and severally, all costs and expenses of this litigation, including statutory attorneys' fees and costs of court;

- e. Pre-judgment and post-judgment interest, at the highest rate allowed by law;
- f. Relator/Plaintiff's individual retaliation damages;
- g. All other relief on behalf of the Relator/Plaintiff or the United States Government to which they may be justly entitled, whether at law or inequity, and which the District Court deems just and proper.

Dated: February 10, 2009

**UNITED STATES OF AMERICA, ex rel.
Michael De Kort**

Respectfully submitted:

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ATTORNEYS FOR RELATOR/PLAINTIFF

CERTIFICATE OF SERVICE AND DISCLOSURE

On February 5, 2009 and February 10, 2009, a copy of Relator's Fourth Amended Complaint was formally served pursuant to FRCP 4(i)(1)(b), via Certified Mail, Return Receipt Requested, E-mail and/or First Class Mail.

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