

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Post Office Box 193939, San Francisco, CA 94119-3939

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7 Dr. Nira Schwartz dba Jaffa OptroniX)

No: 07-55091

8 Plaintiff,

) Lower Case No.: CV - 06-04010 DDP (JCx);

9 vs.

) Plaintiff's Answer in Opposition to the

10 United States Of America
11 Office of the US Attorney;

) United States Motion for Summary
Affirmance and Stay of Briefing Schedule.

12 MIT Lincoln Laboratory known as)
13 "MIT/LL";)

) Plaintiff's Opening Brief filed with the 9th
Circuit on May 7, 2007 is incorporated by
reference as integrated part of this Answer.

15 Lawrence Livermore National)
16 Laboratory known as "LLNL";)

) Plaintiff's Declaration;

17 Aerospace Corporation known as)
18 "AERO";)

) Proof of service with Defendants' lawyers
Contact information;

19 Defendants)
20)
21)
22)
23)
24)
25)
26)

1 complaint in court of federal claims, and also in the District Court. See Exhibit
2 AA.

- 3 **3)** On 01/07/2003, after receiving the defendant 07/11/2002 and 08/1/2002 letters,
4 I filed again the case 01-168C in the court of federal claims, with same claims,
5 same defendants. This time case 01-168C received a different case number. It
6 became case 03-37C with same Judge Bush, same US defendant, and the same
7 claims. Same claims and defendant linked both cases.
8
- 9 **4)** On 12/29/2004, Judge bush ruled in her opinion that some of my tort claims,
10 and other claims in my complaint of case 03-37C should be addressed to the
11 district court, because she does not have Jurisdiction over these claims. It was
12 despite the fact that on 07/11/2002 and 08/1/2002 the US defendant sent me to
13 court of federal claims. During case 03-37C the defendants did not seek
14 Immunity, and saw their 07/11/2002 and 08/1/2002 letters to me as I have
15 exhausted administrative claims. See defendant's instant Exhibit D pages 90-
16 112, and my Exhibit AA [four pages].
17
- 18 **5)** On 07/05/2005 my appeal case 05-5063, in the United States Court of
19 Appeals for the Federal Circuit was denied. It was an appeal on case 03-37C
20 opinion dated 12/29/2004. On 10/17/2005, William K. Suter, Clerk of the
21 Supreme Court in Washington wrote me that "The petition for a writ of
22 certiorari is denied". I have exhausted all my options in the court of federal
23 claims. The recommendations made by the Government in their letters to me
24 on 07/11/2002 and 08/1/2002, that I should file my claims in court of federal
25 claims was to give me the run around. See Exhibit AA
26
27
28

1 6) On 06/26/2006, as Judge bush advised in her 12/29/2004 opinions, I filed the
2 claims of case 03-37C again in the district court as case 06-4010 Judge DDP. It
3 had the same US defendant, and it had the same tort claims, and other claims
4 that Judge bush had no Jurisdiction over them. For Example employment
5 discrimination as tort claims was filed in case 03-37C and Judge Bush had no
6 jurisdiction over it. It was now filed again in case 06-4010 DDP. Please see
7 defendant entire Exhibit D, especially Exhibit D page 104, and its original page
8 15. This claim was filed again in instant complaint ¶¶ 30, 33, 34, 59, 64, and
9 115. Please review these references. These tort claims in case 06-4010 DDP are
10 linked to the original filing of court of federal claims cases # 01-168C, and
11 03-37C Judge Bush. They are linked to my exhausting administrative claims
12 as defendant's letters to me on 07/11/2002 and 08/1/2002 stated. See Exhibit
13 AA.

14
15 7) On 12/15/2006 the US defendant filed a **false** declaration, denying having any
16 document of theirs that certified I have exhausted administration remedies and
17 claims. In assent the defendant denied their 07/11/2002 and 08/1/2002
18 certified letters to me. See defendant Exhibit E, especially its 6:17-18, and see
19 my Exhibit AA. I have approached the government several times and offered to
20 fix their database and was denied.

21
22 8) The US defendant already admitted that:

23 “ limited waiver of the United States' sovereign immunity is the
24 FTCA: "The Federal Tort Claims Act is a limited waiver of sovereign
25 immunity, making the Federal Government liable to the same extent
26 as a private party for certain torts of federal employees acting within
27 the scope of their employment." United States v. Orleans, 425 U.S.
28 807, 81 3,96 S.Ct. 1971,48 L.Ed.2d 390 (1976)”

1 See Defendants motion to dismiss (Id., 11:16-21).

- 2 9) The defendant failed to identify which of my FTCA be alleged dismissed.
3 Claiming that the dc judge did just that, i.e., a generic dismissal based on
4 Immunity, is grossly in accurate, and even if it was so, it is not a basis for
5 Summary Affirmance motion, but rather an Answer to my Opening Brief,
6 that raised these issues. On 07/05/2007 on appeal to this court I have raised
7 the above issues. See my entire Opening brief and its example on ¶ I page 10, ¶
8 J page 11, and ¶ 6) on page 20. A generic dismissal of my entire tort claims is
9 unjust, prejudice, and should not be accepted under such vague arguments of
10 the Defendant's instant motion, and when appeal raised these issues.
11
12 10) It is too late to seek Immunity and ask me to file again administrative remedies
13 and claims, when the defendant already gave me permission to go the district
14 court for claims in cases # 01-168C, and Jude Bush in case 03-37C advised to
15 go to dc, and when these cases and case 06-4010DDP are linked with same
16 claims, same defendant. Open brief raise these issue on ¶ I page 10, and ¶ J
17 page 11, ¶ 6) page 20. Also See Exhibit AA.
18
19 11) The defendants give me the run around deal. These issues should be addressed
20 by defendant answer to my open brief on appeal that raised these issues. The
21 Defendant's Motion should be denied.
22

23 **C. – D. I contested the dc statement of law in the dc and on appeal;**

- 24 12) In case 01-168C, and case 03-37C I have specified the amount of money I am
25 seeking. But when I filed my claims again in the dc, as case 06-4010DDP, I left
26 it to the court to grant me: “**relief as the Court deems just and proper**”
27
28

1 (highlight added). No place in the complaint of case 06-4010DDP is a request
2 for over \$10,000 for implied contract claim, or copyright claims. I did not
3 specify in the complaint what I seek for punitive damages. See defendant
4 Exhibit A page 43, paragraph 8. Therefore dismissing case 06-4010DDP, and
5 forcing me back to court of federal claims, which already stated it has no
6 jurisdictions over my claims, is unjust, giving me the run around, prejudice,
7 and in violation of Judge Bush opinion dated 12/29/2004. Especially when
8 instant complaint claims are correlated, and should be in one court for one
9 ruling. And because of that I am willing to take a hit for the implied contract
10 claim, to allow all claims to be in one place. These issued raised on appeal.
11 See opening brief ¶ 8 page 18.

- 12 **13)** I am raising this issued on appeal; see my opening brief ¶ 7) on pages 20-21,
13 and I quote:

14 “ 7) My instant complaint left it to the district court to grant me moneys.
15 If the district court cannot grant in excess of \$10,000 for this claim, I
16 accept that and it is not a reason to dismiss my complaint against my
17 wish and complaint’s instructions; I have Contract Claim; also in
18 accordance with section 2 of Pub. L. No. 94-574, which amended 28
19 U.S.C. § 1331(a); [See above ¶ 2.J., page 11]”

- 20 **14)** Again, I am raising this issued on appeal; see my opening brief ¶ 2.J., page 11,
21 and I quote:

22 “ **J. I have a valid Contract Claim; This Dismiss Order alleged (Id. 6:23-**
23 **28, and 7:1-3)** that (and I quote): “Thus, any express or implied contract
24 claim Schwartz has made against the United States in excess of \$10,000
25 must be dismissed”. This is in contradiction to (a) to the complaint
26 instructions to the dc to grant me moneys along its capabilities. If the dc
27 cannot grant over this amount for this claim, it is accepted and not a
28 reason to dismiss my complaint against my wish and complaint’s
instructions;”

1 **15)** The defendant statement that “Dr. Schwartz has not contested the district
2 court’s statement of law in the district court or on appeal”, has no merit, and
3 arbitrarily provided to confuse this Court [See defendant motion in ¶¶ C and D
4 pages 6-7], and this motion should be denied.
5

6 **E. My claims are not barred by Res Judicata and collateral estoppel**

7 **16)** Case 06-4010DDP was given to Judge RSWL for review, to find out whether
8 this case claims were already filed with my prior qui-tam cases 96-3065RSWL
9 and on 01-04973 RSWL. But Judge RSWL that resided on both of my qui-tam
10 cases ruled that case 06-4010DDP is a “**Different case with different**
11 **Defendants and claims**” (Judge handwriting), and therefore Res Judicata and
12 collateral estoppel does not apply on case 06-4010DDP. This issue was raised
13 on appeal. See my opening brief ¶ N. page 14. The defendant ignored this
14 order, and confuses the court.
15

16 **17)** Case 06-4010DD requested to compel the defendant to intervene in my qui-tam
17 case. The Government was NOT a defendant in my qui-tam cases, and
18 therefore Res Judicata and collateral estoppel does not apply on case 06-
19 4010DDP. I have raised this issue on appeal. See arguments in my opening
20 brief ¶ N. page 14, ¶ R. page 17, and ¶ 11) page 21.
21

22 **18)** Res Judicata and collateral estoppel does not apply to tort claims that Judge
23 Bush ruled on 12/29/2004 that she has no jurisdiction over them. This issue
24 was raised on appeal. See opening brief ¶ I. page 10, ¶ o) page 19, and ¶ 6)
25 page 20.

26 **19)** Therefore the defendant motion should be denied, and a defendant answer to
27 my opening brief is proper.
28

1 **F. My Opening Brief raise issue that my rights for due process were violated, and**
2 **the instant motion by the US defendant ignores that, to confuse the court.**

3 **20)** On appeal, and in motions to Judge DDP I have complained that I was deprived
4 of due process at the district court. That “lower dc court and Judge DDP
5 communicate only with the Defendants”. See opening Brief ¶ C. page 3, ¶ 4. a)
6 Page 18, ¶ 4. 1) Page 19.

7 **21)** Now the defendant is coming and filing this motion for summary affirmance,
8 when I was not given the right to due process in the dc. It is unjust, prejudice,
9 and hiding information from the court to confuse the court. See my opening
10 brief ¶ C. page 3, ¶ b. page 4, and its Attachment AA pages, 22, 22A, and 23.

11 **22)** The defendant’s proof of service failed to shows that defendants # 2, 3, and # 4
12 were served with the US defendant instant motion. Which mute their motion.

13 **23)** The defendant failed communication with me for reasonable time extension to
14 reply to my opening brief. They substitute it by filing this motion.

15 **24)** The defendant motion is unjust a try on behalf of the US, to bypass all the
16 issues I have raised on appeal that deserve a reversal, and go back to the dc, or
17 be granted what I have requested.

18 **25)** The defendant motion for summary affirmance should be denied.

19 **I declare under penalty of perjury under the laws of the State of California that the**
20 **foregoing is true and correct, and Attachment is a true copy of my document.**

21 DATED: July 9, 2007

22 *Dr. Nira Schwartz*
23 BY: _____
24 Dr. Nira Schwartz,
25 Plaintiff non-attorney in pro se
26

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

NIRA SCHWARTZ WOODS, Richard Woods, and we do swear or declare that on this date, as required by Supreme Court Rule 29, our address is 2550 PCH # 68, Torrance, California 90505.

On July 9, 2007, we served the foregoing document described as:

**No: 07-55091; Lower Case No.: CV - 06-04010 DDP (JCx);
Plaintiff's Answer in Opposition to the United States Motion for Summary Affirmance and Stay of Briefing Schedule.
Exhibits AA**

Plaintiff's Opening Brief filed with the 9th Circuit on May 7, 2007 is incorporated by reference as integrated part of this Answer.

Plaintiff's Declaration;

Proof of service with Defendants' lawyers Contact information;

on Defendants parties in this action by placing a true and correct copy thereof, enclosed in a sealed envelope **BY FIRST CLASS MAIL** addressed as follows:

- 1) Debra Wong Yang, Jonathan B. Klinck – US Attorney [one copy]
Federal Building, suite 7516, Civil Process Clerk,
300 N. Los Angeles Street, Los Angeles, California 90012
- 2) James J. Gallagher, Mana Elihu –Defendants Attorneys [one copy]
McKenna Long & Aldridge LLP,
444 South Flower Street, 8th Floor, Los Angeles, CA 90071-2901
- 3) United States Court Of Appeals [Original + four copies]
For the Ninth Circuit
Post Office Box 193939, San Francisco, CA 94119-3939

Executed on July 9, 2007, at Los Angeles, California.



Richard Woods



Plaintiff Schwartz

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Exhibit AA



DEPARTMENT OF THE ARMY

US ARMY CLAIMS SERVICE
OFFICE OF THE JUDGE ADVOCATE GENERAL
4411 LLEWELLYN AVENUE
FORT GEORGE G MEADE MARYLAND 20755-5360

AUG 1 - 2002

REPLY TO
ATTENTION OF:

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Western U.S. Torts Branch
02-CO1-T061

Dr. Nira Schwartz
Mr. Richard Woods
2800-187 Plaza Del Amo
Torrance, California 90503-9363

Dear Dr. Schwartz and Mr. Woods:

This notice constitutes final administrative action on your claim against agencies of the United States Army and the Department of Defense, in the amount of \$161,000,000 for consulting services allegedly performed from December 19, 1999, through April 19, 2002.

Your claim is denied. The Federal Tort Claims Act confers jurisdiction upon federal district courts over claims for damages “for injury or loss of property, or personal injury or death” caused by the negligent or wrongful acts or omissions of federal employees. Your claim is not for personal injury or property loss but for the value of personal service allegedly furnished to the Department of Defense. There is no administrative authority to pay such a claim under statutes administered by this Service. You were informed by the Department of Justice that your only possible remedy is through the U.S. Court of Federal Claims. Enclosure.

If you disagree with our interpretation of the governing statutes, you may file in an appropriate United States District Court no later than six months from the date of mailing of this letter, or your remedy will be forever barred. This is not intended to imply that any such suit, if filed, would be successful.

Sincerely,

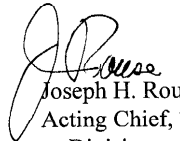

Joseph H. Rou
Acting Chief,
Division

Exhibit AA



U. S. Department of Justice

Washington, D.C. 20530

July 11, 2002

Dr. Nira Schwartz
2800-187 Plaza Del Amo
Torrance, CA 90503

Dear Dr. Schwartz:

This letter responds to materials dated April 19, 2002, that you submitted to the Department of Justice in connection with your request for payment in the amount of \$162.61 million for services you claim you performed in connection with the qui tam action, *Dr. Nira Schwartz, et al. v. TRW, Inc., et al.*, Case No. CV 96-3065 (C.D. CA.).¹

You assert that a Department of Justice attorney made an oral agreement to compensate you for your expert services related to the case. You submitted invoices covering the following periods and amounts.

Invoice Date	Period Covered	Amount
Nov. 18, 1999	May 1996 - March 1999	\$ 1,050,000.00
Dec. 13, 1999	Apr. 01, 1996 - Dec 13, 1999	\$ 560,000.00
Apr. 19, 2002	Dec. 13, 1999 - Apr 19, 2002	\$ 161,000,000.00 ²

The compensation you seek appears to relate to the qui tam action you filed. The False Claims Act specifies the circumstances in which a relator may recover in a successful qui tam action. *See* 31 U.S.C. § 3730(d). As a Contracting Officer, I do not have authority to decide what amount if any you may be due under The False Claims Act.

¹ You apparently submitted the same request to the U.S. Department of Defense, the Defense Criminal Investigation Service, and the Department of the Army. This response is made only on behalf of the Department of Justice.

² Some of the invoice dates overlap, suggesting double billing. Your invoices also do not indicate what services were performed and on which dates. Ordinarily, a contracting officer must have more complete and accurate information in order to assess a claim. However, in view of my disposition of your request, those issues are immaterial.

As a Contracting Officer, it is my responsibility to determine whether your demand for payment is covered by the Contract Disputes Act, 41 U.S.C. § 601, et seq. In so doing I must first decide whether or not it is a claim arising under or related to a contract. After reviewing the pertinent facts, (1) I am satisfied that no written contract existed between you and the Department of Justice for which you have submitted invoices for payment. (2) I am further satisfied that there was no intent on the part of the Department attorney to contract for your services and that the Department of Justice did not agree to compensate you. Therefore, I conclude that no contract existed or exists between you and the Department of Justice. As such, your demand for payment is not subject to the Contract Disputes Act.

To the extent that your claim can be said to come within the Contract Disputes Act, it is denied. This constitutes the final decision of the Contracting Officer on your claim. If you elect to pursue your claim under the Contract Disputes Act, you may appeal this decision to the Department of Transportation (DOT) Board of Contract Appeals, 400 7th Street, S.W., Room 5101-S-20, Washington, D.C. 20590. If you decide to appeal, within 90 days of the date on which you receive this decision, you must mail or otherwise furnish written notice to the DOT Board of Contract Appeals, and provide a copy to the Contracting Officer from whose decision this appeal is taken. The notice must indicate that an appeal is intended, reference this decision, and identify the contract by number. Or, instead of appealing to the DOT Board of Contract Appeals, you may bring an action directly in the U.S. Court of Federal Claims within 12 months of the date on which you receive this decision.

Sincerely,

A handwritten signature in cursive script that reads "Pamela K Bible".

Pamela K Bible
Chief, Contracts and Procurement Branch
Civil Division
1100 L Street, N.W. - Room 9030
Washington, D.C. 20530

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

October 17, 2005

Ms. Nira Schwartz Woods
2550 PCH #68
Torrance, CA 90505

Re: Nira Schwartz Woods
v. United States
No. 05-6194

Dear Ms. Woods:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



William K. Suter, Clerk