

Delaware drops out of JM Eagle whistle-blower case

PLASTICS NEWS REPORT

Posted October 15, 2010

LOS ANGELES (Oct. 15, 12:15 p.m. ET) -- Delaware has withdrawn from the whistle-blower lawsuit against PVC pipe extruder JM Eagle -- sparking a battle of spin control by lawyers for both sides.

Delaware is one of the original group of states to join the lawsuit filed by whistle-blower John Hendrix, a former employee of the Los Angeles-based pipe maker. In the suit, which was unsealed in February in U.S. District Court in Los Angeles, Hendrix charges the company knowingly made substandard PVC water and sewer pipe. JM Eagle officials deny the allegations.

Delaware filed a motion to withdraw on Oct. 8. Several other states have dropped out of the case, and Delaware's one-paragraph motion includes some phrasing that has been included in some of the other filings — the state's lawyers reserve the right to intervene at a later date, and request that the whistle-blower "to proceed with the action on its behalf."

One sentence does stick out: "We simply do not have the resources to litigate this case."

In a story published when the lawsuit was unsealed, a spokesman for the Delaware Attorney General's office told Plastics News that the state had experience "no known failures of the pipe."

Both sides issued dueling news releases on Oct. 12.

Phillips & Cohen LLP, a Washington law firm that specializes in whistle-blower cases, called the Delaware withdrawal "a vote of confidence." Lawyer Mary Inman blasted the pipe company: "JM Eagle has conducted a scorched-earth litigation strategy against the governmental entities that have intervened in the case, demanding millions of pages of documents. Delaware simply decided that it did not have the resources to fight JM Eagle on its own."

JM Eagle lashed back, saying Phillips & Cohen "has attempted to spin this good news for the company into something negative."

"The idea that an intervening state withdrawing its intervention is a positive development for [the whistle-blower side] is preposterous," said a lawyer for JM Eagle, Bryan Daly of Sheppard Mullin Richter & Hampton LLP in Los Angeles.