

JM Eagle alleges kickback scheme in PVC pipe whistle-blower suit

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LOS ANGELES (Feb. 19, 12:25 p.m. ET) -- JM Eagle is fighting back against a whistle-blower lawsuit that alleges the company knowingly made substandard PVC water and sewer pipe.

In a Feb. 18 news conference, JM Eagle's lawyers said none of the governmental bodies that have joined the suit had complained about leaking pipe. The lawyers also released a sworn statement from a pipe buyer who said the whistle-blower, John Hendrix, offered him a kickback deal.

"We are referring this letter and sending it to federal, state and local criminal prosecutors, and we will leave it to them to decide if any crime has been committed," said Lanny Davis, a lawyer for JM Eagle.

Stuart Rennert, a lawyer for the whistleblower case, called the kickback suggestion false and "an utter distraction" from the case, which is about faulty pipe.

The sweeping case became public Feb. 8, when it was unsealed in U.S. District Court in Los Angeles, where JM Eagle is based. Hendrix, a former JM Eagle engineer, filed the suit in 2006. Joining the suit are Nevada, Virginia, Delaware and Tennessee, plus 43 California cities and water districts.

Allegations of the kickback deal are JM Eagle's first direct attack on Hendrix.

Hendrix claims he was fired shortly after he wrote a memo to management expressing his concern that the tensile strength of the company's pipe was below the level required by standards. Washington law firm Phillips & Cohen LLP has advised Hendrix not to comment on the case.

Meanwhile, JM Eagle officials are touting a list of government officials who are not joining the whistle-blower suit: the U.S. Justice Department and attorneys general in California and Florida.

Walter Wang, JM Eagle's president and CEO, said the company provided tens of thousands of pages of documents to federal authorities over a three-year investigation. Wang posted a letter to customers on JM Eagle's Web site that said, "Our confidence never wavered that we would be victorious in this investigation," and, "The truth has set us free on the federal level." The case, he said, "was initiated by a disgruntled former employee in an attempt to defame us and gain financially."

But the suggestion that JM Eagle is vindicated by the federal government's decision prompted Phillips & Cohen to release a Feb. 8 letter from the Justice Department that said the decision not to intervene "should not be construed as a statement about the merits of this case," adding that the federal government retains the right to get involved later "upon a showing of good cause."

The 70-page lawsuit alleges that from 1997 through 2005, JM Eagle made pipe with tensile strength below the level required by standards. That pipe could have a shorter life span than properly made pipe, costing governments money if the pipes break, the suit said.

JM Eagle officials continue to insist their pipe meets or exceeds all standards and is a high-quality product. JM was formerly owned by Taiwanese resin giant Formosa Plastics Group.

JM Eagle has 23 pipe plants and is the biggest North American pipe maker, with annual sales estimated by *Plastics News* at \$1.6 billion. The public release of the suit pits the normally low-key manufacturer against Phillips & Cohen, an aggressive law firm specializing in whistle-blower suits, in which individuals can sue companies that allegedly defraud the government.

Whistle-blowers represented by Phillips & Cohen have recovered more than \$5.3 billion, the firm claims.

JM Eagle went on the offensive in the news conference. Davis, the pipe maker's lawyer, said none of the governmental entities that joined the suit had ever registered a complaint with JM about leaks. "They never contacted us, and never reported any complaints," he said.

Nevada officials did have to replace leaky JM pipe at a prison south of Las Vegas, but JM Eagle contends that was because of improper installation, not bad pipe.

JM Eagle's release of the statement alleging a kickback arrangement brings a hint of scandal to the legal and public relations battle.

In the sworn statement, William Sheldon, president of Sheldon Site Utilities Inc. in Poway, Calif., said he bought water pipe in 2005 from a JM Eagle distributor for a San Diego apartment project. After installing some pipe, he identified some leaks, and it cost about \$30,000 to fix it. (Davis said an investigation later showed that vandals drilled holes in the pipe).

Sheldon said JM Eagle denied any liability for damages, but later, Hendrix called him and said that if Sheldon inflated his claim to between \$95,000 and \$103,000, "he would be able to get me a settlement amount of \$75,000-\$76,000 within two weeks."

During a later telephone call with Hendrix, Sheldon asked Hendrix why he was proposing this. "Mr. Hendrix responded with words to the effect that, 'After getting your money and cashing the check, I will send you my address so you can compensate me for my efforts on your behalf,'" Sheldon wrote in his statement. Sheldon said he would not falsify his claim.

Rennert, the lawyer representing the whistle-blower side, blasted the attempt to discredit Hendrix, but said it's a common practice. "It's typical in cases like that. It's an attempt to smear him," he said.

"This case is not built on John Hendrix's word, this case is built on the evidence from JM and Formosa's own records. And there is overwhelming evidence of false claims being submitted to federal, state and local governments around the country," Rennert said.