



## Whistleblower lawsuit targets JM Eagle

By Clare Goldsberry

Published: February 18th, 2010

JM Eagle and its former parent company, Formosa Plastics Corp. (USA), are at the center of a new "qui tam" (whistleblower) lawsuit filed in Los Angeles, CA by Phillips & Cohen LLP, a law firm specializing in such suits. The suit seeks millions of dollars in damages from JM Eagle and Formosa Plastics Corp. for allegedly supplying "substandard" PVC water and sewer pipe to various states, cities, and municipalities from 1995-2005.

These include Nevada, Virginia, Delaware, Tennessee; the California cities of San Diego, Sacramento, San Jose; and the Los Angeles Dept. of Water and Power; along with 39 other California municipalities and water districts.

JM Eagle denies these allegations, and "stands 100% behind their products," said Marcus Galindo, a company spokesman in a telephone interview.

The whistleblower, John Hendrix, was an engineer in J-M Manufacturing's (the company's name prior to the acquisition of PW Eagle), product assurance division in New Jersey. According to the release from Phillips & Cohen, J-M fired him less than two weeks after he wrote a memo to company management with concerns that the tensile strength of J-M's PVC pipe was below that required by UL to qualify for the UL mark stamped on its pipes. Hendrix, a New Jersey resident, filed his qui tam lawsuit in 2006.

Federal and state false claims laws allow private individuals to sue companies that are defrauding government entities and recover damages on the government's behalf. Under those laws, liable companies may be required to pay as much as three times damages plus penalties.

In a press release sent out on Feb. 16, JM Eagle announced that the Federal District Court in Los Angeles unsealed and publicly released its court order regarding the federal government's decision not to intervene in a qui tam lawsuit challenging the quality of its PVC water pipe products and related processes.

"We are pleased the federal government, after completing its thorough investigation, has decided not to intervene in the lawsuit," said JM Eagle CEO Walter Wang. "We gave our full cooperation during the course of the investigation, and have always been confident that we would be vindicated."

JM Eagle commented in its release that John Hendrix, the whistleblower, is "a disgruntled former employee." After the filing, the federal government is required to investigate and decide whether or not to intervene and take over the case. If there is a recovery from the lawsuit, the private party can receive a substantial share of the recovery.

According to Galindo, the federal government investigated the whistle-blower's complaint for three years, during which time the company fully cooperated, supplying tens of thousands of pages of documentation. The federal government found no wrongdoing. "Throughout the entire investigation, JM Eagle's customers in these states and municipalities never stopped buying the company's pipe. If the federal investigator had found issues, these customers in these states and cities that have decided to move forward in this would have stopped buying our pipe," said the spokesman. "We feel this matter will clear itself up very quickly."

Wang stated that the charges in the lawsuit are "baseless and false," adding that, "Our products meet applicable quality standards."

JM Eagle's pipe products are certified by independent agencies, such as Underwriter's Laboratories and NSF International, to comply with their applicable quality standards. JM Eagle released test reports from CRT Laboratories Inc., a testing laboratory in Orange, CA, which show that in one sample submitted—wherein the company's 18-inch PVC Blue AWWA C905 pipe had failed—the failure was "due to a combination of excessive insertion force and misalignment." Three pipe samples submitted all received a "Pass" on extrusion quality, and other tests—including Izod impact strength, tensile strength, and tensile modulus—produced results well within standards.

Galindo notes that one of the wins for JM Eagle is that the federal government found nothing in its three-year investigation to cause it to intervene. Additionally, there is "nothing in the attorney firm's documentation or in their own press release—not one word—about any pipe having failed in any way," he states.

Phillips & Cohen note in their press release that, "As a result [of the substandard pipes] those PVC pipes will have to be replaced sooner than expected—a budget nightmare for cash-strapped states, cities and local agencies. It is also more likely that the pipes will leak or break."

Galindo says that JM Eagle is the largest manufacturer of PVC pipe in the world, making some two billion lbs. annually. The company operates 23 pipe plants in North America.

Dave Slawson, JM Eagle's VP of operations, a 40-year veteran of the company going back to the Johns Manville days, said in a statement, "Our plants are regularly subjected to unannounced audits in which our products are inspected and selected at random for testing. Beyond that, as part of our regular quality testing, we perform hydrostatic tests on every C900 and C905 water pipe produced to at least double its rated pressure."

Despite the federal government's decision, the former employee has decided to continue with his suit on his own and, according to the press release from his attorneys, has been joined by a number of states and municipalities.

"We find it perplexing that certain states and municipalities have decided to join in this action, especially in light of the federal government's decision," said Wang. "We are a company that has always operated with the highest principles and standards. We will vigorously defend ourselves against any allegation to the contrary. We are confident the truth will prevail." —Clare Goldsberry