

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**RICHARD F. MILLER,**  
**Plaintiff,**

**v.**

**PHILIPP HOLZMANN *et al.*,**  
**Defendant.**

**Civil Action No. 95-1231 (RCL/JMF)**

**ORDER**

Currently pending and ready for resolution is Bilhar International Establishment's Memorandum in Support of its Motion for Judgement on the Pleadings Regarding the United States' Second Amended Complaint and the Relator's Fourth Amended Complaint. ("Bilhar's Mot.") In order to resolve the motion, an evidentiary hearing must be held. Prior to an in preparation for the hearing, the parties are, hereby,

**ORDERED** to show cause, in writing by December 4, 2006, why the Court should not find that there is no genuine issue as to the following proposed stipulated findings of fact.

The court will hold an evidentiary hearing on December 7, 2006 at 9:00 a.m. pertaining to the intentions of counsel when they filed the documents described in paragraphs 9-25. Since I anticipate that counsel will testify, they are obliged to make sure that other counsel are prepared to conduct the direct examinations of the lawyers involved.

**Proposed Stipulated Findings of Fact**

1. On September 21, 1993, Harbert International Establishment changed its name to Bilhar

International Establishment. United States' Opposition to Defendant Bilhar International Establishment's Motion for Judgment on the Pleadings at 3.

2. On June 30, 1995, relator filed his original complaint. Complaint for False Claims Act Violations and Demand for Jury Trial. The following parties were named:

- a. Philipp Holzmann, A.G.
- b. Bill Harbert International Construction, Inc.
- c. Harbert International Establishment, Inc.
- d. Harbert Corporation
- e. Harbert International, Inc.
- f. Harbert U.K. Services, Ltd.
- g. J.A. Jones Construction Co.
- h. Fru-Con Construction Corp.
- i. Sabbia A.G.

Id. at 1-2.

3. Defendant Harbert International Establishment, Inc. was described in relator's original complaint as "a Liechtenstein corporation which, upon information and belief, has its principal place of business in Birmingham, Alabama." Id. at 3.
4. On June 28, 1999, relator filed his first amended complaint. The following parties were added:
- a. American International Contractors, Inc.
  - b. George A. Fuller Co.
5. On July 20, 1999, a partial seal was lifted as to relator's first amended complaint

regarding:

- a. Philipp Holzmann, A.G.
- b. J.A. Jones Construction Co.
- c. Fru-Con Construction Corp.
- d. Parent Corp. of Fru-Con

Order (July 20, 1999) at 1.

6. On October 19, 1999, a partial seal was lifted as to relator's first amended complaint regarding:

- a. American International Contractors, Inc.
- b. George A. Fuller Co.
- c. Parent Corp. of George A. Fuller Corp.

Order (Oct. 19, 1999) at 1.

7. On December 6, 2000, US AID sent notice of suspension to Harbert International Establishment. Bilhar International Establishment's Reply in Support of its Motion for Judgement on the Pleadings, Attachment 2, Part A at 2.
8. On December 14, 2000, counsel for Bill L. Harbert, Bill Harbert International Construction, Inc., and Harbert International Establishment responded to USAID's notice of suspension. Id., Attachment 2, Part A. In its response, counsel provided USAID with detailed descriptions of the various Harbert entities.
- a. Harbert Construction Corporation, a company involved in the construction business, was organized in 1949. The company was owned primarily by John M. Harbert. Bill L. Harbert owned up to 6.5% of the company. Id., Attachment 2,

Part A at 4.

- b. Harbert Corporation, a holding company, was formed in 1981, when Harbert Construction Corporation sold certain assets. The company was owned primarily by John M. Harbert. Bill L. Harbert owned up to 6.5% of the company. Bill L. Harbert sold his interest in the company back to Harbert Corporation in 1994. Id., Attachment 2, Part A at 4-5.
- c. Harbert International, Inc. was formed in 1981 to carry on the construction business of Harbert Construction Corporation. It was 100% owned by Harbert Corporation. Id., Attachment 2, Part A at 5.
- d. Harbert International Establishment (“Old HIE”) was formed in 1975 in Liechtenstein. Harbert International, Inc. owned 58% of the company and Bill L. Harbert owned 42%. In 1989, Harbert International, Inc. owned 50% of the company and Bill L. Harbert owned 50%. In 1991, Bill Harbert International Construction, Inc. owned 79% of the company and Bill L. Harbert owned 21%. In 1993, the name of Harbert International Establishment was changed to Bilhar International Establishment. The ownership stayed the same. Id., Attachment 2, Part A at 5.
- e. Bill Harbert International Construction, Inc. was formed in 1991, when the name was given to an Alabama corporation, BLH Enterprises, Inc., which was originally incorporated in 1986. Bill L. Harbert owned 100% of both BLH Enterprises, Inc. and Bill Harbert International Construction, Inc. In 1992, BLH Enterprises, Inc., which was primarily involved in real estate development,

changed its name to Bill Harbert International Construction, Inc. Its corporate domicile was changed to Delaware. In 1992, Bill Harbert International Construction, Inc. began its involvement in construction. Id., Attachment 2, Part A at 6.

- f. Harbert International Establishment (“New HIE”) was established in 1993 in Liechtenstein. Bill L. Harbert owned 51% and Billy Harbert owned 49%. Id., Attachment 2, Part A at 6.
- g. B. L. Harbert International, L.L.C. was established in 1999 in Delaware. Initially, Billy Harbert owned 95% and Bill L. Harbert owned 1%. As of December 1, 2000, Billy Harbert owned 99% and B. L. Harbert International, L.L.C. owned 1%. Id., Attachment 2, Part A at 6-7.

- 9. On January 16, 2001, relator filed his second amended complaint. Second Amended Complaint for False Claims Act Violations and Demand for Jury Trial. The following parties were added:

- a. Bill L. Harbert
- b. Roy Anderson

Id. at 2.

- 10. On February 12, 2001, the seal was lifted as to relator’s second amended complaint. Order (Feb. 12, 2001) at 1.

- 11. On March 13, 2001, the government filed its complaint in intervention. United States’ Complaint in Intervention. The following parties were named:

- a. Philipp Holzmann, A.G.

- b. Bill Harbert International Construction, Inc.
- c. Harbert International Establishment, Inc.
- d. Harbert Corporation
- e. Harbert International, Inc.
- f. Harbert U.K. Services, Ltd.
- g. J.A. Jones Construction Co.
- h. Sabbia A.G.
- i. Roy Anderson

Id. at 3-4.

- 12. Defendant Harbert International Establishment, Inc. is described in the government's complaint in intervention as a Liechtenstein corporation that has its principal place of business in Birmingham, Alabama. Id. at 3.
- 13. On July 12, 2001, the government served Harbert International Establishment, Inc. a copy of the complaint in intervention. Relator Richard F. Miller's Memorandum in Opposition to Bilhar International Establishment f/k/a Harbert International Establishment's Motion for Judgment on the Pleadings ("Relator's Opp.") at 4 n.1.
- 14. On July 25, 2001, a grand jury sitting in the Northern District of Alabama issued an indictment against the following parties:
  - a. Bill Harbert International Construction, Inc.
  - b. Bilhar International Establishment f/k/a Harbert International Establishment
  - c. Roy Anderson

Relator's Opp. at 3.

15. On July 31, 2001, Harbert International Establishment filed a motion for an extension of time to file an answer on behalf of “Harbert International Establishment (incorrectly captioned as Harbert International Establishment, Inc.)” Motion for Extension of Time to File Answer on Behalf of defendants Bill Harbert International Construction, Inc., Harbert International Establishment, Inc., and Harbert U.K. Services, Ltd., and Supporting Memorandum at 1.
16. On February 4, 2002, Bilhar pled guilty to conspiracy in the Alabama bid-rigging case. Relator’s Opp. at 3.
17. On May 30, 2002, Harbert International Establishment, Inc. filed its answer to the government’s complaint in intervention. Answer of Defendant Harbert International Establishment, Inc.
18. On December 6, 2002, relator moved to amend his complaint. Opposition to Defendants’ Motion to Dismiss and Memorandum in Support of Relator Richard F. Miller’s Motion for Leave to File Third Amended Complaint for False Claims Act Violations. What was the purpose of this amendment?
19. On December 18, 2002, the government moved to amend its complaint. Plaintiff United States’ Opposition to Defendants Harbert Construction Services (U.K.) Ltd. And Bill Harbert International Construction, Inc.,’s Motion to Dismiss Plaintiff’s Complaint in Intervention and Plaintiff’s Motion for Leave to File First Amended Complaint. Specifically, the government sought to substitute Bilhar International Establishment for Harbert International Establishment. Id. at 30.
20. On March 9, 2006, relator filed his third amended complaint. Third Amended Complaint

for False Claims Act Violations and Demand for Jury Trial. The following parties were added:

- a. Bilhar International Establishment f/k/a Harbert International Establishment
- b. ABB ASEA Brown Boveri, Ltd.
- c. ABB SUSA, Inc. f/k/a Sadelmi USA, Inc.

Id. at 1-2.

The following parties were omitted:

- a. Harbert International Establishment, Inc.
- b. Fru-Con Construction Corp.

Id.

21. On March 9, 2006, the government filed its first amended complaint. United States' First Amended Complaint. The following parties were added:

- a. Bilhar International Establishment f/k/a Harbert International Establishment
- b. Harbert International Establishment
- c. Harbert Construction Services (U.K.), Ltd.

Id. at 3-6.

The following parties were omitted:

- a. Harbert International Establishment, Inc.
- b. Harbert UK Services Ltd.

Id.

22. On April 24, 2006, relator filed its fourth amended complaint. Relator's Fourth Amended Complaint for False Claims Act Violations and Demand for Jury Trial. Harbert



Construction Services (U.K.), Ltd. was added and Harbert UK Services Ltd. was omitted.  
Id. at 1-2.

23. On April 24, 2006, the government filed its second amended complaint. United States’  
Second Amended Complaint. Harbert International Establishment was omitted. Id. at 3-  
7.

24. On May 22, 2006, counsel for Bilhar accepted service of the government’s summons and  
second amended complaint and of relator’s summons and fourth amended complaint.  
Bilhar’s Mot. at 2.

25. On June 12, 2006, Bilhar filed its answer to the government’s second amended  
complaint. Bilhar International Establishment’s Answer to the United States’ Second  
Amended Complaint.

**SO ORDERED.**

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JOHN M. FACCIOLA  
UNITED STATES MAGISTRATE JUDGE

Dated: