

## Fired Mars Lander Whistleblower Awarded \$1.5M

By **Cara Salvatore**

Law360 (March 4, 2019, 9:37 PM EST) -- A federal jury in Los Angeles has awarded \$1.5 million to a former NASA Mars mission engineer who claimed he was fired by his employer, contractor ManTech, in retaliation for raising concerns about the use of Lockheed Martin-owned engineering files.

The jury awarded \$1.5 million to David Lillie, a longtime employee of ManTech International Corp. who was helping design the Mars InSight lander in 2014 when he became concerned that ManTech might not have permission to access certain files belonging to co-contractor Lockheed Martin — files that Lillie had been relying on in his work. The award could increase under the False Claims Act.

Lillie said that after he expressed his concerns to ManTech higher-ups, he was placed on furlough and, within a matter of weeks, he was fired.

Those statements landed well with the jury. Asked whether Lillie proved ManTech was aware that he "was engaged in 'protected activity' under the False Claims Act" when it fired him, and whether he proved ManTech decided to fire him "because of that 'protected activity' of which ManTech was aware," the jury answered yes, according to the Feb. 28 verdict, which was filed on the court docket March 4.

Lillie is owed nearly \$522,000 for past lost pay, nearly \$340,000 for future lost pay, nearly \$322,000 for past emotional distress, and nearly \$322,000 for future emotional distress, totaling nearly \$1.51 million, the jury found. The \$522,000 in back pay could be as much as doubled under the False Claims Act, but a judge will decide on the number, according to Lillie's lawyer, Jan Aune, who will also be asking for interest and attorney fees of over \$250,000.

The jury also said ManTech didn't show that it would have fired Lillie regardless of the "protected disclosure" that he made under the Defense Contractor Whistleblower Protection Act. Similarly, under California labor laws relating to retaliation, ManTech proved no "legitimate, independent reasons" for which it could have fired Lillie when he was terminated, the jury said.

According to Aune, some jurors wanted to award punitive damages as well, but the eight-person group ultimately deadlocked on that point.

With work beginning on NASA's InSight lander in the summer of 2004, Lillie was assigned to work as an engineer on the craft's High Efficiency Power Supply, or HEPS. Lillie says he needed a certain set of HEPS files that he believed contractor Lockheed Martin possessed in the Mathcad program format.

But Lillie also knew there were "unusually strict" information-sharing barriers in place on this particular project, according to his pretrial brief. He asked around in the fall of 2014 and never got a clear answer as to whether ManTech had permission to get this set of files.

In early October 2014, a recent JPL hire and former independent consultant told Lillie he'd obtained the files and uploaded them to a shared server that ManTech could access. Lillie went ahead and used the files, producing an analysis report he was assigned to complete, including references to the files.

When a JPL mission assurance manager saw the references, she asked Lillie to remove them, he told the court. That made him more worried. He asked the JPL manager whether the use was authorized,

and was told she didn't know but to go ahead and use them, he said.

Lillie then contacted JPL Ethics Enforcement with the issue, and went to supervisor Erik Berg at ManTech, he said.

Ten days after he contacted Berg — a period during which Lillie says no meeting occurred with Berg, which ManTech disputes — Lillie was allegedly sent home without pay. He says he was told the next month that he was officially on furlough, effective retroactively. In late January 2015, a letter arrived terminating him effective in early February.

"There is [a] causal link between plaintiff's whistleblowing and his termination because shortly after he advised Berg of the Mathcad issue he was furloughed and then terminated," Lillie said in court filings.

ManTech, meanwhile, argued that Lillie's job was vulnerable to funding fluctuations and he had been terminated and rehired at least once before for funding reasons. The early-2015 firing was a similar situation, ManTech said, and it initially kept Lillie eligible for rehire as before.

But in April 2015, ManTech said it found out that Lillie had "tak[en] confidential data" in the form of a CD containing the HEPS Mathcad files, and revised his status to "ineligible for rehire."

A representative for ManTech was not immediately available for comment.

Lillie is represented by Jan Aune of The Law Office of Jan T. Aune.

ManTech is represented by Jina Lee and Alison Davis of Littler Mendelson PC.

The case is Lillie v. ManTech, case number 2:17-cv-02538, in the U.S. District Court for the Central District of California.

--Editing by Cole Hill.