

No. 19-55891

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

DAVID LILLIE,
Plaintiff-Appellant,

v.

MANTECH INT'L CORP.
Defendant-Appellee.

On Appeal from the United States District Court
for the Central District of California
No. 2:17-cv-02538-CAS-SS
District Judge Christina A. Snyder

FURTHER EXCEPTS OF THE RECORD

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE CHRISTINA A. SNYDER, U.S. DISTRICT JUDGE

DAVID LILLIE,

Plaintiff,

vs.

Case No. CV 17-2538-CAS

MANTECH INTERNATIONAL
CORPORATION,

Defendants.

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS
TRIAL DAY 2
WEDNESDAY, FEBRUARY 20, 2019
9:30 A.M.
LOS ANGELES, CALIFORNIA

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1 So we would have to waive the rest of them.

2 Q The following December 8th e-mail from John Klohoker to
3 yourself, Ray Perez, and the other individuals on the exhibit,
4 did you have any other meetings -- were there any other
5 meetings in December 2014, regarding the DADs closure project?

6 A Regarding the DADs closure project? No.

7 Q Let me restate.

8 Were there -- did you have any other meetings in December
9 of 2014, regarding your work with JPL?

10 A Yes.

11 Q When would that meeting take place?

12 A December 16th.

13 Q Who was at the meeting?

14 A Just me and John Klohoker.

15 Q Where did this meeting take place?

16 A In John Klohoker's office.

17 Q What was the subject matter of that meeting?

18 A It was a strange meeting.

19 John Klohoker invited me over there at 10 o'clock in the
20 morning, and he asked am I being treated well. Is anybody
21 mistreating me.

22 Q During your work with John Klohoker or on the InSight
23 mission, had he ever asked you that question before?

24 A I have never seen anything like this before.

25 Q Had he ever -- had you had any conversation like that with

1 him?

2 A I don't think I had that conversation with anybody.

3 Q And Mr. Lillie, who initiated that meeting?

4 A John Klohoker.

5 Q And did you -- to get to that meeting, where did you
6 travel from to go to JPL?

7 A I was in the Montrose Building. I went to the meeting as
8 scheduled, it was a long walk from the parking lot.

9 Q What is the Montrose -- what does the Montrose Building
10 mean?

11 A That is the ManTech facility.

12 Q So you traveled from -- John Klohoker asked you to come to
13 JPL from your office at ManTech, is that what happened?

14 A That was it. It was a very short meeting. He thanked me
15 for showing up, and it was adjourned.

16 Q And, Mr. Lillie, was that on December -- approximately,
17 what date was it in December?

18 A I believe December 16.

19 Q Approximately a week after that, what was your work status
20 with ManTech?

21 A Friday of the same week I was sent home on involuntary
22 furlough to begin effective on December 22nd.

23 Q Now, we discussed the Mathcad files in this case.

24 When you were sent home on December 22nd, did you -- what
25 was the status of you being -- what was the status of the

1 A All right.

2 MR. AUNE: Your Honor, I would like to show
3 Exhibit 17 to the witness as previously been admitted into
4 evidence.

5 THE COURT: All right.

6 (Exhibit 17 received into evidence.)

7 BY MR. AUNE:

8 Q Are you there, Mr. Lillie?

9 A I'm there.

10 Q I want you to go down to the second e-mail from the
11 bottom. It's an e-mail from John Klohoker to Mark Boyles, an
12 individual cc'd on the e-mail.

13 Mr. Lillie, who is Mark Boyles?

14 A Mark Boyles is the manager of Five X.

15 Q And please look at the subject line of the e-mail.

16 It says, re: InSight Delta -- and it has FMECA holes-need
17 to plug.

18 What does FMECA stand for?

19 A Failure Modes Effects and Criticality Analysis.

20 Q What type of work is that?

21 A It's a high-level reliability analysis of how a spacecraft
22 can fail and how it propagates the failure throughout the whole
23 spacecraft.

24 Q What is your understanding of the phrase, "need to plug"?

25 What is your understanding of the phrase, "need to plug"?

1 MS. DAVIS: Objection. Hearsay. Failure to lay a
2 foundation.

3 Mr. Lillie is not included on this e-mail.

4 THE COURT: All right. You need at least to lay a
5 foundation, and then it cannot be received for the truth of the
6 matter asserted.

7 BY MR. AUNE:

8 Q For the FMECA work, Mr. Lillie, had you ever -- how is
9 that acronym pronounced?

10 A FMECA.

11 Q Had you performed FMECA work?

12 A Quite often.

13 Q And do you have experience -- strike that.

14 What type of FMECA work had you performed as of
15 January 15, 2015?

16 A For several different assemblies on landers on spacecraft.

17 Q For a statement such as FMECA holes need to plug, did you
18 have experience doing that type of work?

19 MS. DAVIS: Objection. Calls for speculation.

20 THE COURT: Sustained. But you may rephrase.

21 BY MR. AUNE:

22 Q Have you ever done -- have you ever -- as of the
23 January 15th, 2015, had you ever performed any FMECA work that
24 involved plugging holes?

25 A The whole phrase is Delta FMECA holes need to plug.

1 Q As of December 15th, 2015, had you ever performed any work
2 that involved Delta FMECA -- plugging Delta FMECA holes?

3 A I have. Delta implies a change from a previous state.
4 FMECA, Failure Effects Criticality Analysis. Holes are
5 analyses that were left undone.

6 Q So if there had been work -- if there had been work -- if
7 there had been Delta FMECA holes work that involved Delta FMECA
8 holes, would you have been able to do it?

9 MS. DAVIS: Objection. Calls for speculation.

10 THE COURT: Sustained.

11 BY MR. AUNE:

12 Q Mr. Lillie, please wait for an objection.

13 If there had been Delta FMECA holes that needed to be
14 plugged that was similar to the Delta FMECA holes plugging work
15 that you had previously done, would you have been available to
16 do it?

17 A Yes.

18 Q And that e-mail was January 16th, 2015.

19 Was there anything on January 16th, 2015, as you were --
20 where were you -- what was your employment status as of
21 January 16th, 2015?

22 A I was on furlough from ManTech, but I believe I'm still
23 employed.

24 Q And was there anything going on in your life that would
25 have prevented you from coming back to ManTech to work on any

1 task they had for you?

2 A No.

3 Q So you were ready, willing, and able to return to work?

4 A Correct. I'm looking at page 2 of the same exhibit.

5 MS. DAVIS: Objection.

6 THE COURT: There is no question pending,

7 Mr. Lillie. You have got to wait for a question.

8 THE WITNESS: I'm trying.

9 BY MR. AUNE:

10 Q Mr. Lillie, you just testified that your employment status
11 in January -- on January 16th, 2015, was you were on furlough.

12 What was your employment status with ManTech in February
13 of 2015?

14 A Laid off.

15 Q What was your approximate date of your layoff?

16 A I believe February 6th, I was terminated with a couple of
17 weeks after that of some pay.

18 Q Okay. And were you notified in any way of your
19 termination?

20 A With e-mail.

21 Q And after you were terminated on February 6th, 2015, did
22 you attempt to look for new employment?

23 A Oh, I wallpapered Southern California with my resume.

24 Q And in what month did you start sending out your resume?

25 A January.

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1 BY MR. AUNE:

2 Q Have you ever seen the NDA that Ms. De Benedictis was
3 referring to?

4 MS. DAVIS: Objection. Calls for speculation.

5 THE COURT: Overruled. The question is had he ever
6 seen it.

7 THE WITNESS: Yes.

8 BY MR. AUNE:

9 Q And how did you obtain access to it?

10 A It was provided during discovery in this case.

11 Q And is that NDA for you?

12 A It's combination of two NDAs. One for ManTech and a
13 second one for me.

14 Q And when we discussed during your direct examination the
15 expiration of your NDA, when did that NDA expire?

16 A It was to expire at the conclusion of the RESS I contract
17 which was expected October 1, 2009.

18 Q And I want you to look -- I'm going to go down to the --

19 A Which exhibit is this?

20 Q We are still on Exhibit 4.

21 A Okay.

22 Q You testified yesterday during cross-examination after you
23 were asked if there was language in this document that was
24 insubordination, and I believe you answered yes.

25 What is your understanding about the question -- what part

1 of this document you were being asked as insubordination?

2 A If I refused to sign the IOM.

3 The final sentence, if this issue -- or this issue needs
4 to be resolved before I can sign and release the IOM.

5 Q Did you sign the IOM?

6 A I did.

7 Q And why did you sign the IOM?

8 A I was led to believe that the issue had been resolved.

9 MR. AUNE: Your Honor, I have a copy of the
10 document. It has not been admitted into evidence. It was
11 shown by the defendant to plaintiff during cross-examination
12 yesterday.

13 And my first question is does everyone -- who does not
14 have a copy of this document?

15 THE COURT: Are we talking about what was marked?

16 THE WITNESS: This one.

17 THE COURT: Yeah, marked as 148? It's not admitted
18 but it's marked.

19 BY MR. AUNE:

20 Q Mr. Lillie, could you turn to Exhibit 148?

21 A Yes.

22 Q What is the date of this document?

23 A August 26th, 2014.

24 Q You were asked yesterday during cross-examination why
25 didn't you tell Erik Berg that at this time on August 8th--

CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Date: June 17, 2020

Respectfully submitted by:

/s/ Richard R. Renner

Richard R. Renner

Attorney for Appellant David Lillie