



For immediate release

Federal Judge Rules Plaintiffs Who Sought Billions Against JM Eagle During 14-year Qui Tam Lawsuit Should Get Zero Damages

Municipal Water Districts failed to provide evidence of damages

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Los Angeles, CA – July 10, 2020 -- U.S. District Court Judge George H. Wu, who presided over a Qui Tam lawsuit that spanned 14-years and sought billions of dollars in damages, ruled that the plaintiffs failed to prove that they suffered any damages and granted JM Eagle’s motion for Judgment as a Matter of Law (JMOL) effectively ending the litigation in the company’s favor.

The Court found that five exemplar municipal water districts who claimed that JM Eagle sold them sub-standard water pipe used in 26 pipeline projects did not prove that they had suffered any damages whatsoever. JM Eagle is the world’s largest maker of plastic pipe.

The case, No. 5:06-cv-00055-GW-PJW, was heard in U.S. District Court for the Central District of California.

The JMOL ruling states “there is no ‘real world’ evidence of defects as to the pipe.”

“Plaintiffs have presented no evidence that they have removed or contracted for the replacement of all (or any portion) of the JM pipe in the ground; and it is undisputed that they have not ceased the use of that pipe and thereby have obtained, retained (for many years), and continue to receive value from it,” the June 5 ruling states.

“There was no testimony from any Plaintiff that it had, in fact, ever had any of J-M’s pipe from the 26 projects removed and tested, even though there were statements from experts on both sides that testified such testing could be done,” the ruling states, noting that “none of Plaintiffs’ experts conducted any experiments, tests or undertook any other means of attempting to establish a longevity figure for compliant PVC pipe. Instead, they merely assumed some figure for purposes of this litigation.”

“JM Eagle believes this case should never have been brought,” said the company’s General Counsel Frank Fletcher. “The case was plaintiffs’ attorney-driven. The evidence used against JM Eagle was created for this litigation and did not reflect reality or industry practice.



“JM Eagle delivered high quality pipe to the plaintiffs,” Mr. Fletcher said. “There was no evidence of defects or noncompliance with standards in the pipe installed and placed in service by the exemplar plaintiffs, nor was there any evidence ultimately presented at trial that the pipe at issue had failed while in service. Our JMOL victory confirms what we have known all-along, that none of the plaintiffs received anything less than the quality pipe they were promised.”

Six years ago, plaintiffs’ attorney Eric Havian (then of Phillips & Cohen LLP) issued a press release that said, “*JM Eagle faces billions in damages.*” Today’s ruling sets the amount of damages at zero. Now, 14 years after the qui tam lawsuit was filed, JM Eagle can claim victory.

“JM Eagle has always been determined to see this matter through to its just conclusion,” said Walter Wang, JM Eagle President and CEO. “We were determined to demonstrate that this case was baseless and that we had done nothing wrong. We also wanted to demonstrate that companies unjustly attacked must stand up and fight for what is right and not settle just to make the problem go away.

“If JM Eagle would have settled, we felt it would have encouraged future frivolous litigation against other blameless companies, putting hundreds or thousands of jobs, their reputations, and even the companies themselves at risk,” he said. “With our victory in the JMOL, we would hope that plaintiff attorneys are strongly discouraged from bringing similar baseless litigation.”

The JM Eagle case was filed under seal in 2006 under the False Claims Act (FCA), a Civil War-era federal law that allows private individuals to file qui tam suits under seal on behalf of the government and receive up to a third of any money recovered. The promise of large financial payouts has given rise to a surge of these types of suits in recent years prompting calls for reform. Critics have termed qui tam suits a “false claims gold rush” and a “government-tort bar treasure hunt.”

The long-running case was tried in two phases with five exemplar plaintiffs chosen by the plaintiffs’ attorneys from a broader pool of more than 190 intervening plaintiffs and real parties in interest. The jury in Phase I rendered a verdict in November 2013 that JM Eagle did not prove that every single stick of pipe it produced was 100% in strict compliance with industry standards, although no JM pipe at issue in the Phase I trial was shown to not conform to industry standards.

After JM Eagle argued that this was an impossible standard that no pipe manufacturer could reach, Judge Wu ruled that the Phase I verdict would apply only to the five exemplar plaintiffs.

In Court, Judge Wu said, “My problem with the Phase I trial, it was unclear during major portions of the trial what exactly was being litigated.” And he described the Phase I trial as follows: “I am not saying a train wreck as to one side or the other. I am just calling it a train wreck because that is really what it was.”



Phase II of the trial ended in November 2018 with a hung jury and Judge Wu’s declaration of a mistrial. JM Eagle’s attorneys then filed a motion asking the Court to issue an order granting JM Eagle a Judgment as a Matter of Law (JMOL).

The JMOL order states: “Plaintiffs have clearly and indisputably received value from the J-M pipe in the 26 projects that are the subject of the Phase Two trial. As to those projects, there has never been any failure of the pipe after between 12 to 22 years since their installations—starting in 1996 and ending in 2006, up through the end of the Phase Two trial in 2018. Thus, for every day that the J-M pipe is in the ground and functioning without incident, the Plaintiffs have gotten (and are continuing to get) the benefit of their bargain.”

The JMOL ruling states that the Phase I verdict on compliance with industry standards was based on three tests of pipe materials, not on the longevity of finished pipe. “All three tests concern the thermoplastic pipe materials; they are not tests of the manufactured pipe itself operating in real world conditions,” it states.

“Further, none of Plaintiffs’ experts conducted any experiments, tests or undertook any other means of attempting to establish a longevity figure for compliant PVC pipe. Instead, they merely assumed some figure for purposes of this litigation,” the JMOL order states. “At various points during and after the Phase Two trial, Plaintiffs’ counsel virtually conceded their inability to quantify any purported diminution of value of the J-M pipe during the relevant periods.”

Judge Wu’s order states “the Court concludes that Plaintiffs failed to provide evidence at the Phase Two trial from which a reasonable jury could make a finding of an award of actual damages under the FCA that would not be erroneous as a matter of law, be totally unfounded and/or be purely speculative.”

The Court had a telephonic status conference for on June 22, 2020 regarding scheduling of the remaining portion of the trial pertaining to civil penalties that might be assessed relating to the jury’s finding in Phase I of the trial. According to stipulations by both sides, the total penalties could range from \$0 to a maximum of \$260,000, far from the billions originally claimed.

JM Eagle’s 14-year legal odyssey

The story of JM Eagle’s 14-year legal odyssey was fraught with unfounded allegations, betrayal by a disgruntled former employee and even the disqualification of its own former outside attorneys.

JM Eagle leaders at first viewed the matter as a frivolous lawsuit with unfounded allegations, but it became “the lawsuit from hell,” said Mr. Fletcher. “In hindsight this attorney-driven litigation, in our view, ultimately reflected the worst of the legal profession,” he said. “We faced false accusations, unfair and erroneous media coverage. Furthermore, we encountered the



disqualification of our legal counsel on the eve of trial because they concealed from to us and the court that they were also representing one of the exemplar plaintiffs, albeit on a different matter.”

The saga actually began in January 2006, when a disgruntled former JM Eagle employee who had been fired on suspicion of operating an illegal kickback scheme filed the “qui tam” lawsuit under the FCA. During the first four years of the case, while it remained under seal, JM Eagle didn’t know what was in the complaint or even who had filed it.

The company was forced to respond to numerous Justice Department subpoenas without knowing details of the complaint. Government investigators at times working with plaintiffs’ attorneys seized numerous samples of JM Eagle pipe for laboratory testing. After receiving and analyzing the results, the United States Department of Justice declined to intervene in the case.

“Bursting pipes” that didn’t exist

The unsealing of the complaint in February 2010 opened the door under the FCA for the plaintiffs to proceed on their own. The first thing the plaintiffs’ attorneys did was give the complaint to *The New York Times*. **“Bursting Pipes Lead to a Legal Battle,”** read the Feb. 12, 2010 sensational headline.

The headline caught the company by surprise because JM Eagle was and is the industry leader with the finest manufacturing facilities and quality control systems and had sold at that time more than 11.4 billion linear feet of pipe in the previous decade, while receiving gross defects claims on less than 0.1% of the pipe it had sold.

The U.S. Attorney’s office in Los Angeles had investigated the allegations for three years before declining to join the case. The state attorneys general of California, Delaware and Tennessee had publicly stated that their own investigations of JM pipe yielded no issues.

None of the pipe in service that was at issue in the litigation was defective, bursting or anything close. To date, the pipe supplied to the exemplar plaintiffs has performed while in service – for the time periods between 13 and 23 years -- without failure. Cross-examined under oath, certain of the plaintiffs admitted that the pipe that JM sold them might be fully compliant with industry standards. And they admitted none of them had ever tested the installed pipe and they had no plans to test it or replace it.

The unsealing of the complaint was also the first time JM Eagle learned that it had been filed by a former employee who had been fired in 2005 on suspicion of an illegal kickback scheme. The former employee was the person at the company who handled claims. JM Eagle had received a sworn statement from a contractor stating that this former employee had urged the contractor to triple the \$30,000 claim he had against the company, and that the employee said “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.”

Document theft and secret tape recordings

Digging further into the evidence, JM Eagle was dismayed by other actions the employee had taken before he was fired. According to JM Eagle’s later court filing, the former employee “had engaged in a months-long scheme to embezzle confidential and trade-secret documents from J-M” to further the qui tam litigation.

The court filing continues: “Moreover, while engaged in the document-theft scheme with [his attorneys], [the employee] fabricated evidence for the explicit purpose of bringing the instant litigation against J-M. This included unlawful, secret tape recordings of J-M employees, self-help ‘requests for admissions’ in the form of set-up emails [the employee] sent to J-M personnel, and [the employee’s] misrepresentation of himself as a current J-M employee to J-M’s outside laboratory (after he already had been fired) in an attempt to secure confidential test reports.”

None of this information was available to the jury at the Phase 1 trial.

Several plaintiffs’ systems didn’t even have JM Eagle pipe

The plaintiffs’ attorneys had added dozens of plaintiffs to the case without their knowledge or consent, which is allowed by the FCA. During the pendency of the case, the federal government, District of Columbia and seven states withdrew or declined to join it. Two of the largest plaintiffs added by the attorneys, the cities of Los Angeles and Washington D.C., found that they didn’t even have any plastic pipe in their municipal systems.

Eight years after the qui tam was filed under seal, and three years after JM Eagle first learned of the nature of the claim, the case was set for trial in federal court in Los Angeles.

JM Eagle’s first law firm is disqualified

But as the trial neared, the company’s law firm, Sheppard, Mullin, Richter & Hampton, was disqualified after one of the exemplar plaintiffs, the South Tahoe Public Utility District, asserted it was also a Sheppard Mullin client in an unrelated matter and demanded the firm’s disqualification. Sheppard Mullin knew of the conflict, but did not disclose it, when it was engaged by JM Eagle.

“Our company trusted Sheppard Mullin to help us get this frivolous litigation dismissed,” said Mr. Wang, JM Eagle’s President and CEO. “Then shortly before the case went to trial, South Tahoe successfully moved to disqualify Sheppard Mullin from representing us. This was how we



first learned of the conflict. We felt so betrayed and could not believe that the legal profession allowed this to happen.”

After incurring \$4 million in legal fees with Sheppard Mullin, JM Eagle was forced to hire a new law firm to prepare for the Phase I trial.

“Having to get another law firm up to speed going into the Phase I trial was a disadvantage,” said Mr. Wang. “We didn’t have the fair start that our justice system promises.”

The Phase I verdict

Although none of the pipe at issue was found to be non-complaint with industry standards, in November 2013, the Phase I jury rendered a verdict finding that JM Eagle had falsely represented uniform compliance with select industry standards.

The verdict was yet another surprising blow to the company, because during the trial witnesses from certifying agencies including Underwriters Laboratories, the global safety certification agency, testified that JM Eagle had always maintained its pipe certifications in good standing and there was no evidence the company had ever sought to mislead the agencies.

Certifying agencies such as Underwriters Laboratories and NSF International had conducted unannounced inspections at JM Eagle’s plants on average 400 times a year, totaling more than 10,000 inspections since the company’s inception in 1983. Over that period, JM Eagle pipe had been continuously certified to American Water Works Association (“AWWA”), American Society for Testing and Materials (“ASTM”), and UL standards by UL and NSF.

Plaintiffs’ attorney: “JM Eagle faces billions in damages”

In the wake of the Phase I verdict, the plaintiffs’ attorneys issued the press release that said, “*JM Eagle faces billions in damages.*” The press release falsely claimed that the verdict meant JM Eagle had been “making and selling faulty water system pipes,” despite the fact that plaintiffs’ attorneys repeatedly argued at trial that plaintiffs did not have to prove that a single piece of pipe was faulty.

“JM Eagle was incredulous when the plaintiffs’ attorney made false statements, misrepresented the facts both in their press release and to the media -- we believe in an effort to force our company to settle,” said Chuck Clark, JM Eagle’s Vice President of Operations. “We worked every day to produce good pipe. We could not believe that some news media lent credibility to the falsehoods.”



JM Eagle immediately asked the judge to throw out the verdict. “Cross-examined under oath,” JM Eagle argued, “plaintiffs admitted that the pipe that J-M sold them might be fully compliant with industry standards; indeed, two of them continued to buy J-M pipe long after this suit (was filed).”

In subsequent proceedings, Judge Wu said the first verdict was “unclear.” Addressing the plaintiffs, he said, “it was my understanding – and obviously, I was wrong – that you were proceeding on a false certification claim. And, now, you have since told me that wasn’t what you tried even though, even during the trial, that is what I thought you were trying...so I was under a misunderstanding as to what the plaintiffs were doing.”

The judge then ruled that the verdict in the first trial would apply to only the five exemplar plaintiffs, who would have to prove in the second trial that they had suffered actual damages and the amount of any such damages. The ruling barred any other plaintiffs from seeking damages based on the Phase I verdict.

The Phase II trial before a different jury ended in November 2018 with the jury announcing twice that it could not reach a verdict. Judge Wu declared a mistrial and on June 5, 2020 issued the JMOL order.

JM Eagle seeks to recover legal fees

But there is more to the story. In 2012, even after its unseemly disqualification earlier, Sheppard Mullin sued JM Eagle in state court to recover the outstanding balance of the legal fees it had billed JM Eagle during its conflicted representation.

JM Eagle countersued arguing it should not have to pay the \$1.3 million in fees that Sheppard Mullin claimed it was owed, and also that the law firm should return the \$2.7 million in fees that JM Eagle had already paid, plus interest. JM Eagle further believed that Sheppard Mullin’s misconduct warranted the imposition of punitive damages.

Six amicus briefs had been filed in this case by a total of 51 law firms, legal associations and other parties supporting Sheppard Mullin’s position that it acted ethically because its engagement with JM Eagle contained an “advanced waiver” clause. However, despite the other law firms’ arguments made in these amicus briefs, the California Supreme Court ruled that Sheppard Mullin had violated the State’s Rules of Professional Conduct.

After a six-year battle, the California Supreme Court ruled unanimously (7-0) that the firm’s attorney-client contract was invalid and “unenforceable in its entirety.” The Court returned the matter to district court to settle the fees issues without the engagement contract in effect.



In its landmark opinion, the state Supreme Court wrote, “The transaction was entered under terms that undermined an ethical rule designed for the protection of the client as well as for the preservation of public confidence in the legal profession....(I)f a conflict of interest is known to a law firm at the time it seeks a waiver, the attorney is not allowed to hide that conflict.” Stating that “clients should not have to investigate their attorneys” the Court placed the burden of disclosure squarely upon the law firm regardless of the size or sophistication of the client.

In December 2019, with a trial date set, the parties reached a settlement in non-binding mediation. The terms of the settlement were not disclosed. However, JM’s Mr. Fletcher said the company was very pleased with the settlement. He also said the company was pleased that the Supreme Court victory stands as a warning to large law firms across the U.S. that they must be more transparent about disclosing known conflicts with prospective clients.

JM Eagle’s California Supreme Court victory called a “landmark” case

Legal scholars agree that the Supreme Court decision, which sharply defined attorneys’ duty of loyalty attorneys owed to their clients, represents a “seminal” case in legal ethics and that will be discussed for years in law schools and Bar Association meetings.

UCLA law professor Adam Winkler, a specialist in American constitutional law said, "The California Supreme Court decision in Sheppard, Mullin vs. J-M Manufacturing is a landmark in legal ethics, clarifying the duties that lawyers owe to their clients to avoid conflicted representation. The case will be studied in law schools nationwide, and lawyers and law firms will look to the decision for guidance in securing advance waivers to potential conflicts."

After the settlement agreement was reached, former U.S. Magistrate Leo S. Papas, who presided over the mediation proceedings, said “an attorney’s duty of loyalty to clients is nothing new, but the Supreme Court decision really addressed the responsibility of law firms to address client conflicts quickly and in a forthright manner.”

“It was a seminal decision in terms of legal ethics,” Judge Papas said. “The Supreme Court decision made it crystal clear that the duty of loyalty to the client is paramount.”

Judge Papas praised JM Eagle’s Walter Wang for his courage and determination to pursue the case for years. “I found him to be someone guided by honor and principle,” Judge Papas said. “He has a moral compass that lets him pursue what he thinks is right. He has to be commended for that.”

Reflecting on the victories at the California Supreme Court relating to legal conflicts of interest, and in U.S. District Court relating to the qui tam case, Mr. Fletcher said, “I take great pride in working for a company that would choose to take this fight to its conclusion, not because it was



economical to do so, but because it was the right thing to do to ensure that the same abuses do not occur in the future.”

“If you are going to fight this long and hard, you must have faith that justice will prevail,” said Mr. Wang. “Of course, there were risks and there were setbacks along the way. But we had set our course and the key was we would persevere and not give up.”

The attorneys who represented JM Eagle in the qui tam litigation include David M. Bernick of Paul, Weiss, Rifkind, Wharton & Garrison LLP Paul S. Chan and Ekwan E. Rhow of Bird, Marella, Boxer, Wolpert, Nessim, Dooks, Lincenberg & Rhow, P.C. James R. Rosen of Rosen & Saba, LLP James R. Rosen of Rosen & Saba, LLP and Kent Richland and Jeffrey Raskin of Greines, Martin, Stein & Richland LLP represented the company in the conflict of interest litigation.

With 20 manufacturing plants throughout North America, JM Eagle manufactures the widest array of high-grade, high-performance polyvinyl chloride and high-density polyethylene pipe across a variety of industries and applications including utility, solvent weld, electrical conduit, natural gas, irrigation and water/sewage. More information can be found at www.jmeagle.com