

During that period, the brief says, the federal government spent as much as \$6.2 billion denying SSDI claims, many of them false claims submitted at the behest of Unum and other disability insurers.

The FCA provides for treble damages plus civil penalties of \$5,000 to \$11,000 per false claim.

Expert witnesses for Loughren eventually whittled down thousands of potential allegations against Unum to claims involving 62 beneficiaries. Last October U.S. District Judge Patti B. Saris ordered six of the 62 claims severed and tried in separate bellwether jury trials that could set the direction for the litigation going forward.

Loughren won two verdicts, Unum won two, a jury hung at one trial and the judge directed a verdict in favor of Unum at a sixth trial.

Unum appealed the two adverse verdicts to the 1st Circuit.

Loughren says the two verdicts should stand because the juries correctly based their rulings on evidence that showed Unum acted with *scienter*, or intent to deceive, when it required the two policyholders to file for SSDI even though they did not qualify.

"The jury's verdict is well supported with substantial evidence of Unum's fraudulent scheme and should be affirmed," Loughren's brief argues.

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#### INDEMNIFICATION

## U.S. Owes \$2.1 Million For Suit Costs, Contractor Says

***Texas Instruments Inc. v. United States*, No. 09-CV-701, complaint filed (Fed. Cl. Oct. 15, 2009).**

A contractor that handled nuclear materials for the Atomic Energy Commission claims that the government must pay the costs it is incurring to defend against two toxic-tort lawsuits.

In its complaint, pending in the U.S. Court of Federal Claims, Texas Instruments says the government must indemnify it for defense costs under the terms of its federal contracts.

The company also says the government must pay costs incurred to investigate additional threatened litigation by the Justice Department.

TI says its predecessor entities, Metals & Controls Corp. and M&C Nuclear Inc., had several federal contracts to fabricate nuclear fuel for the Atomic Energy Commission.

M&C and Metals & Controls performed the work in Attleboro, Mass., under contracts from the early 1950s until 1981, the plaintiff says.

According to the complaint, the Justice Department notified TI in October 2007 that the government may sue the company to cover the cost of environmental cleanup measures for land near the Attleboro worksite.

The land, called the Shpack Superfund site, is an abandoned dump that contains radiological contaminants, the suit says.

TI says it has incurred legal and investigatory expenses in preparation for the threatened lawsuit and is defending two toxic-tort cases concerning the Shpack land in the U.S. District Court for the District of Massachusetts.

These suits were filed in 2008 by two people who claim personal injuries from exposure to nuclear materials while living in the area, the complaint says.

The Justice Department's threatened litigation and the toxic-tort suits are based on TI's predecessors' nuclear fuel work for the government, the company claims.

To the extent that any hazardous substances at the Shpack land originated from its predecessors, these materials would have been government-owned, TI says.

According to the complaint, the contracts provide that title to all property, including nuclear material, supplied by the government stays with the United States. They also require the government to indemnify TI for the expense stemming from the lawsuits and the Justice Department matter.

M&C and Metals & Controls did all their contract work for the benefit of and under the supervision and control of the United States, TI insists.

In addition, the government directed and approved all waste disposal practices at the Attleboro facility, the plaintiff adds.

TI is seeking an order directing the government to pay \$2.1 million plus interest to cover the litigation and expenses related to the Justice Department matter.

It also seeks costs and attorney fees.

TI is represented by John McGahren of Patton Boggs in Newark, N.J.

 See Document Section D (P. 51) for the complaint.