

https://www.postregister.com/news/government/battelle-employee-says-he-was-forced-out-for-fraud-complaint/article_874ad465-3089-5033-855f-4688a137d77e.html

FEATURED

Battelle employee says he was forced out for fraud complaint

By NATHAN BROWN nbrown@postregister.com Jun 4, 2019



Bill Gates, Microsoft co-founder

AP Photo/Nati Harnik

A longtime former Battelle Energy Alliance employee is suing the government contractor and a nuclear reactor design company owned by Bill Gates, saying he was forced out of his job when he complained Gates' company TerraPower was breaking its agreement with the U.S. government.

Battelle is the contractor that operates Idaho National Laboratory. In 2011, Battelle entered into a Cooperative Research and Development Agreement with the Washington state-based TerraPower LLC to develop and test metallic fuel irradiation behavior, fabrication and fast reactor structural materials. The contract involved \$17 million in contributions of materials, including nuclear material, and services from the U.S. Department of Energy over five years.

Doug Toomer, who had worked at INL and its predecessors for several decades and was an expert in the operation and management of nuclear material and spent nuclear fuel, was involved in drafting the agreement. According to Toomer’s complaint, in 2015 he learned TerraPower had applied for a patent for a “duplex liner” developed under the agreement and didn’t disclose it to the government as required. Toomer also said TerraPower intended to sell it abroad, another violation of the agreement.

“By not having the entitled rights under the CRADA, the Government and U.S. Taxpayer are deprived of jobs and benefits that would be obtained from the manufacturing of the Subject Invention (i.e. nuclear fuel rods) in the United States and the worldwide licensing of such rights for current reactors and for next generation advanced nuclear reactors, which is hundreds of millions of dollars per reactor,” Toomer’s complaint says. “Recognizing that this will likely affect (tens) if not (hundreds) of reactors, this equates to the loss of billions of dollars in jobs and benefits for the Government and U.S. Taxpayer. In addition, allowing these nuclear fuel rods to be manufactured outside of the United States, including China, India and Russia, would result in potential liability and harm to national security of the United States.”

 Download PDF

Case 4:16-cv-00226-DCN Document 71 Filed 04/29/19 Page 1 of 21

Nathan M. Olsen
Petersen Moss Hall & Olsen
485 “E” Street, Idaho Falls, ID 83402
Telephone: (208) 523-4650
E-mail: nolsen@pmhollaw.com
Fax: (208) 524-3391
ISBN: 7373
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

THE UNITED STATES OF AMERICA, <i>et al.</i> Douglas V. Toomer; and DOUGLAS V. TOOMER, individually Plaintiffs, vs. TERRAPOWER, LLC; and BATTELLE ENERGY ALLIANCE, LLC; Defendants.	RELATOR’S COMPLAINT PURSUANT TO THE FEDERAL FALSE CLAIMS ACT, 31 U.S.C. §§ 3729 <i>Et Seq.</i> FILED UNDER SEAL <u>DO NOT PLACE ON PACER</u> <u>DO NOT PLACE IN PRESS BOX</u> CIVIL ACTION NO. 4:16CV00226-DCN
---	--

COMPLAINT PURSUANT TO
THE FEDERAL FALSE CLAIMS ACT, 31 U.S.C. § 3729 *Et Seq.*

I. INTRODUCTION

1. Douglas V. Toomer (Toomer), on behalf of the United States and its agency the United States Department of Energy (DOE), brings this action against TerraPower, LLC (TerraPower) and Battelle Energy Alliance, LLC (BEA) for violations of the *Federal False Claims Act* (False Claims Act or FCA) to recover all damages, civil penalties and all other recoveries provided for under the *False Claims Act*.

COMPLAINT UNDER SEAL 1

According to court documents, TerraPower maintained the invention was “background intellectual property,” not a “subject invention” covered by the agreement. Documents say BEA reviewed the issue and thought it was a subject invention, but TerraPower didn’t change its stance and BEA didn’t recommend any action be taken. The complaint says Toomer brought his concerns to the attention of his superiors, who didn’t do anything.

“Toomer received repeated indications that BEA was particularly enamored with TerraPower, and its founder Bill Gates, and did not want to jeopardize BEA’s relationship with them,” the complaint says.

The complaint says Battelle’s lawyer told Toomer “his (the lawyer’s) job was to protect BEA and not to look out for me (Toomer), DOE

or the taxpayer,” and told Toomer to be prepared for “ramifications” if he kept pushing. Toomer was, according to the complaint, then denied a year-end bonus, stripped of his responsibilities at his 2015 year-end review and told to find work elsewhere in Battelle. He quit in May 2016.

“He was basically blacklisted by his supervisors there, and it became a hostile environment, intolerable,” said Nathan Olsen, Toomer’s lawyer. “He was isolated from management and his co-workers kept their distance. Ultimately, he resigned. He really had no choice for his own health and wellbeing. It was, in effect, a constructive discharge.”

Toomer filed his claim in June 2016 under the False Claims Act, which lets people file claims on behalf of the government alleging defrauding of government programs. It was sealed for more than two years as it worked its way through the courts, and was only recently unsealed. The U.S. Attorney’s office urged U.S. District Judge David Nye to dismiss the case. Nye dismissed the False Claims Act claims in October 2018 but said Toomer could move forward with his retaliation claim.

 Download PDF

Case 4:16-cv-00226-DCN Document 14 Filed 11/20/17 Page 1 of 3

BART M. DAVIS, ID STATE BAR NO. 2696
UNITED STATES ATTORNEY
WILLIAM M. HUMPHRIES, WA STATE BAR NO. 44452
ASSISTANT UNITED STATES ATTORNEY
DISTRICT OF IDAHO
800 E. PARK BLVD., SUITE 600
BOISE, IDAHO 83712-7788
TELEPHONE: (208) 334-1211
FACSIMILE: (208) 334-1414
EMAIL: bill.humphries@usdoj.gov

Attorneys for the United States of America

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA ex rel.
DOUGLAS V. TOOMER,

Plaintiffs,

v.

TERRAPOW, LLC and BATTELLE
ENERGY ALLIANCE, LLC,

Defendants.

Case No. 4:16-CV-00226-DCN

**UNITED STATES’ MOTION TO
DISMISS RELATOR’S COMPLAINT**

FILED UNDER SEAL

The United States moves this Court to dismiss the above-captioned action and Relator’s Amended Complaint Pursuant to the Federal False Claims Act, 31 U.S.C. § 3729 *Et Seq.*, filed under seal, (ECF No. 10) (“Complaint”) pursuant to 31 U.S.C. § 3730(c)(2)(A), except for cause of action eight in the Complaint seeking relief for retaliation. Claim eight is an individual cause of action of Douglas V. Toomer. The United States has filed a memorandum in support of this motion contemporaneously with this motion.

//
//
//

UNITED STATES’ MOTION TO DISMISS RELATOR’S COMPLAINT - 1

“From the time Battelle Energy Alliance ... first became aware of Mr. Toomer’s lawsuit, BEA has denied all claims asserted against BEA by Mr. Toomer, who voluntarily resigned his employment with BEA in May of 2016,” INL Chief Counsel Mark Olsen said in an email. “As can be seen by examination of the court’s docket report of this case, on Nov. 20, 2017, the United States Government filed its motion to dismiss the seven fraud-related claims in Mr. Toomer’s complaint. On Oct. 10, 2018, the court granted the Government’s motion to dismiss, resulting in the dismissal of all fraud-based claims, thereby leaving only Mr. Toomer’s employment claim, which BEA will defend vigorously.”

TerraPower didn’t respond to a request for comment, and a Battelle spokeswoman referred the Post Register to INL.

Nye's ruling cites several reasons for dismissing the fraud complaint. It says the government hasn't lost anything yet, since TerraPower's patent application hasn't been approved and the agreement between TerraPower and Battelle is effect until 2023, giving the government time to pursue it if it wishes. Federal attorneys also argued the case would waste government time and resources and hinder DOE's work with Battelle and TerraPower.

Download PDF

Case 4:16-cv-00226-DCN Document 40 Filed 10/10/18 Page 1 of 17

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

THE UNITED STATES OF AMERICA,
ex rel. DOUGLAS V. TOOMER,

Plaintiff,

v.

TERRAPOWER, LLC and BATTELLE
ENERGY ALLIANCE, LLC,

Defendants.

Case No. 4:16-cv-00226-DCN

**MEMORANDUM DECISION AND
ORDER**

I. INTRODUCTION

This is a False Claims Act ("FCA") case. As is typical in FCA cases, an individual, Douglas Toomer ("Toomer"), has asserted FCA claims against Defendants TerraPower, LLC ("TerraPower") and Battelle Energy Alliance, LLC ("BEA") on behalf of the United States government. As required by the FCA, Toomer has only served the Complaint on the government. The FCA does not permit Toomer to serve the Complaint on the Defendants until the government decides what course of action to take. Usually, the government chooses to either intervene or permit the whistleblower to proceed on his own. In this case, the government has moved for dismissal. That motion is currently pending before the Court (Dkt. 14), as is Toomer's Motion for an Evidentiary Hearing and to Unseal the Case. Dkt. 23.

MEMORANDUM DECISION AND ORDER- 1

Nathan Olsen said Toomer's ultimate hope is that the False Claims Act complaint will be reinstated and taxpayers reimbursed for what he calls "TerraPower's fraud."

"He's a 40-year-plus employee at the INL, and he cares very deeply about the mission of the INL," Olsen said. "He has always felt that these recent activities with TerraPower and the violation of their agreements and the public trust jeopardizes the mission of the INL. As he expressed to his superiors, and is still deeply concerned about, when the people or the public hears about this, they're going to question as to why we're spending precious resources on someone like Bill Gates and not getting anything for it."

Reporter Nathan Brown can be reached at 208-542-6757. Follow him on Twitter: @NateBrownNews.

Nathan Brown

Reporter, government and politics