

November 3, 2011

Defense Nuclear Facilities Safety Board [DNFSB]  
625 Indiana Ave NW Suite 700  
Washington, DC 20004

Dear Andrew L. Thibadeau,

**Subject:** DOE 9/19/11 Response to DNFSB 8/12/11 Letter [Re: Recom 2011-1] Lacking Credibility Due to its Ongoing 8-Year Cover-up of Contractor Battelle Misconduct via DOE Retaliation and Witness Tampering [Perjury to Suppress Evidence] by Office of Science [HQ, Pacific Northwest & Oak Ridge], Office of General Counsel & Office of Inspector General [IG].

Energy Dept. [9/19/11 response](#) to DNFSB [8/12/11 Letter](#) [Re: DOE [6/30/11 response](#) to DNFSB Recommendation [2011-1](#) regarding WTP safety, security, witness tampering, tech. information suppression, retaliation, confidentiality and Tamosaitis-v-Bechtel issues] **lacks credibility because DOE [with Inspector General's consent] continues churning taxpayers by funding litigation fraud/perjury, retaliation, security breach, and other violations to cover up Battelle's criminal misconduct** [False Claims ([31 USC §3729](#)), False Statements ([18 USC §1001](#)), Perjury ([18 USC §1621](#)), False Declarations ([18 USC §1623](#)) and Security Breach ([10 CFR §710](#) - Accessing Classified Mat.)].

For the benefit of DNFSB, taxpayers and those reporting misconduct and to illustrate current health/safety/security risks at DOE sites, this ongoing cover-up of contractor misconduct by DOE senior officials [Chu, Poneman, Podonsky, Koonin and Friedman (IG)] necessitates a factual public comment consisting of the following sections presented below with attachments and links to evidence of misconduct:

- 1. DOE's safety assertions in its 9/19/11 letter to DNFSB are discredited by its ongoing 8-year cover-up of contractor misconduct [condoned by IG]. DOE is funding abusive personal-injury defense lawyer tactics [condemned by courts] and suborning perjury [falsifying research & ventures] to suppress technical information from the federal courts, e.g., evidence of research fraud, false claims, security breach and other violations by Battelle [Operating 6 DOE national labs].**
- 2. For 5 years, HSS [Podonsky...] disregarded contractor security/safety violations. Such conduct further discredits DOE assertions of safety [e.g., "given our *steadfast commitment* to safety...That is why we have asked HSS to conduct follow-on safety culture review at WTP as part of its broader extent-of-condition review across the DOE complex."'] All of Pulver emails to HSS were ignored as shown by DOE continuing to suborn perjury by PNNL scientist doing classified work.**
- 3. Comments on Specific "Safety Culture" Assertions Refuted by DOE Cover-Up of Contractor Misconduct & IG Retaliation**
- 4. Aug. 2011: Chu rewards the ongoing 8-year fraud by extending the 48-year-uncompeted PNNL contract to Battelle, thereby preempting GAO investigations and protests by 3\* bidders previously identified by DOE. Such complicity to conceal criminal misconduct, security breaches, and taxpayer-funded perjury [to suppress technical information] negates DOE assertions that it's strengthening "efforts to promote a strong safety culture...across the DOE complex."**
- 5. Aug. 2011: Friedman rebuffs Pulver FOIA evidence sent to DNFSB implicating IG Office of Investigations in complicity with contractor perjury, leaking DOJ documents, cover-up & retaliation, thus refuting Chu assertion of strong safety culture.**
- 6. Closing Points Re: DOE Discredited/Disingenuous Safety-Related Assertions/Responses to DNFSB 8/12 Letter**

**1. DOE's safety assertions in its 9/19/11 letter to DNFSB are discredited by its ongoing 8-year cover-up of contractor misconduct [condoned by IG]. DOE is funding abusive personal-injury defense lawyer tactics [condemned by courts] and suborning perjury [falsifying research & ventures] to suppress technical info. from federal courts, e.g., evidence of research fraud, false claims, security breach & other violations by Battelle [Running 6 labs]. Some relevant details follow:**

**1a. Prior Misconduct to Conceal – Then,** DOE-funded counsel Miller's firm was fined/sanctioned [record \$325K] by WA Supreme Court for discovery abuse, i.e., [concealing smoking-gun evidence of dangerous toxicity](#) of a drug that permanently brain damaged a 3-year old. His firm was later fined by a federal judge for [withholding NHTSA personal-injury data](#) for a Subaru seatback design. **Now,** Battelle's own evidence shows that DOE is funding (i) This attorney to repeat such abuses and (ii) Battelle to suborn [perjury](#) [falsify research & hide ventures] to suppress evidence [technical info. & software] that implicates it in [again violating the False Claims Act](#) [defrauding/skimming small business assistance research] and [falsifying inventions to patent office](#). [[Attach. 5](#) details abuses & cites news articles.]

**1b. DOE 8-Year Suppression –** By authorizing such abusive/fraudulent concealment tactics, DOE has confirmed its practice of misappropriating taxpayers by funding litigation fraud/perjury against individuals or small businesses suing contractors due to fraud, negligence, or other misconduct. **Notably, the GAO reports [\[04-148R\]](#) that most lawsuits against DOE contractors pertain to "radiation and/or toxic exposure, personal injury and wrongful discharge."** Thus, DOE's cover-up [~\$1M] of Battelle misconduct via litigation fraud [Authorized by Friedman, Chu, Poneman...] has dangerous implications for those suing for injury, HAZMAT/radiation exposure, wrongful termination, or other tortuous/negligent contractor misconduct at Hanford or any site in the DOE complex. [Details at [evidence site](#)]

**2. For 5 years, HSS [Podonsky...] disregarded contractor security/safety violations. Such conduct further discredits DOE assertions of safety [“given our steadfast commitment to safety...That is why we have asked HSS to conduct follow-on safety culture review at WTP as part of its broader extent-of-condition review across the DOE complex.”] All of Pulver emails to HSS were ignored as shown by DOE continuing to suborn perjury by scientist doing classified work. Key examples follow:**

**2a. 2010 Security Violations** – Chu and Podonsky ignored Pulver’s [1/13/10 email](#) regarding (i) 2009 Christmas Day bombing and (ii) Security breach, i.e., Battelle granting access to counter-terrorism and other classified research by PNNL scientist implicated in [criminal violations](#) [e.g., perjury, false claims (pocketing research from small business) and falsifying inventions to patent office]. Excerpts follow:

“Many compelling reasons necessitate that DOE address the issues detailed in emails below and hold Battelle accountable for criminal misconduct [False Claims ([31 USC §3729](#)), False Statements...Perjury ([18 USC §1621](#)) & violating [10 CFR §710](#) (Accessing Classified Mat.)].”

“The 12/25/09 terrorist attack underscores that Science is putting national security at risk by covering up Battelle’s misconduct by funding and suborning perjury of top-secret Q-clearance holder Kevin Dorow who’s involved with DHS air cargo explosives and other classified work; in an 8/27/08 email [below], Science refused to take any action on this security breach, violating [10 CFR§710](#). Its *complicity* to ‘protect’ its largest contractor is far worse than the systemic failure situations of DHS [Detroit (12/25/09)] & [SEC \[Madoff\]](#)”.

“DOE’s refusal to revoke/suspend Dorow’s clearance emboldens Battelle nationally to suborn perjury [or possibly [espionage](#)] by top-secret clearance holders when ‘needed’ to protect/promote its corporate interests (domestic/foreign).”

**2b. 2009 Safety/Security Concerns to HSS** – Excerpts of Pulver’s [11/23/09 email](#), ignored by HSS and Science, are as follows:

“Congress has been concerned/outraged that DOE reimburses litigation costs for wrongdoing contractors. [[GAO Report d04148r](#)] In this case, DOE Office of Science has gone a giant step further by funding Battelle and attorney Miller to willfully misrepresent research [[RPMP](#)], hide commercial investments and invoke [litigation fraud/perjury](#) to conceal smoking-gun evidence. [See [Doc. 5](#) citing Miller’s prior firm sanctioned for...*withholding toxicity data on a drug causing brain damage* to 3-year old.] With this ongoing cover-up, DOE set a precedent that jeopardizes others who may later file lawsuits for injury, illness, cancer, toxic or radiation exposure, hostile work environment, wrongful termination [whistleblower]...due to Battelle’s conduct at Office of Science labs.”

“Sources show distinct parallels between [DOE/Battelle and SEC/Madoff](#). However, DOE conduct is more egregious because it is... Funding-directing Battelle’s litigation fraud to obstruct justice [conceal evidence]...churning taxpayers...Unlike Madoff, Battelle’s violations threaten national security, research & patenting integrity, economic development, entrepreneurs, [whistleblowers](#), and other issues relevant to safely running a national lab.” [See [details](#) including oversight concerns/outrage by Congress (hearings).]

**2c. 2008 Health/Safety Warnings to HSS** – HSS [Podonsky et al.] ignored this [9/29/08 email](#) which stated in pertinent part:

“**Staff health/safety/security at Office of Science labs is at greater risk going forward.** DOE’s authorizing Battelle to violate [48 CFR 970.5228-1](#) [Litigation in “good faith”] via “personal-injury defense” tactics to withhold smoking-gun evidence is relevant to staff at DOE labs which entail HAZMAT, radiation, machinery, high-temperature apparatus, and other work hazards. **These abusive fraudulent litigation tactics put at risk staff that may later file lawsuits for wrongful injury, illness, cancer, death, termination or other causes of action due to Battelle’s negligent or tortuous conduct...Your decision eliminates/mitigates Battelle’s legal and financial risk of violating staff health/safety/security procedures...incentives them to relax procedures to increase profit** [See Westbrook–Battelle-ORNL case in [8/24 email](#) (*radiation dose alarm levels*)]...employees at the five national labs run by Battelle could be adversely effected.”

In sum, as shown by Battelle/DOE ongoing perjury [research falsification] since, HSS ignored these and [all evidence-based emails](#). This many-year disregard of security/safety concerns discredits the HSS “extent-of-condition review across the DOE complex”. For 8 years, DOE put Battelle corp. interests ahead of safety; Tamosaitis case & DNFSB interviews show DOE’s doing this for Bechtel.

### **3. Comments on Specific “Safety Culture” Assertions Refuted by DOE Cover-Up of Contractor Misconduct & IG Retaliation**

**3a. Excerpt:** “...[Safety Culture](#) at the Waste Treatment and Immobilization Plant (WTP). As you know, because [this issue](#) is of such great importance to the Department of Energy, I have designated Deputy Secretary Poneman as the Responsible Manager for this Recommendation, and he has already begun our efforts to address the issues our staffs have discussed.”

**Comment:** The record shows Poneman & Chu permit contractor safety/security breaches; they ignored my detailed [4/28/10 email](#) showing the Inspector General authorized practices with adverse health and safety consequences as shown by this excerpt:

“Doesn’t Friedman [IG] realize he’s jeopardizing health/safety at DOE labs by waiving oversight of [litigation fraud](#) and allowing Science to retain injury defense lawyers with [records of concealing evidence](#) [e.g., radiation dosage, HAZMAT, equipment safety maintenance records, surveillance logs] or *witness tampering* if Battelle is sued for exposure, injury or wrongful death due to negligent or other misconduct? Now knowing that...Battelle may relax health/safety procedures to increase lab profits.”

[2011 DOE cost data](#) confirms Poneman [et. al.] continues funding litigation fraud/perjury [witness tampering] and security breach. His complicity-in-concealing [refutes Chu’s argument that Poneman’s lead role shows safety is of “great importance” to DOE](#).

**3b. Excerpt:** “In developing our Implementation Plan on Recommendation 2011-1, the DOE therefore will continue to work to establish a strong safety culture” and “are enthusiastic about our work toward the shared goal of safety excellence throughout the DOE complex.”

**Comment:** Logically, DOE can’t work to establish a strong safety culture while it continues covering up contractor fraud and security breaches cited above, i.e., funding injury defense lawyer tactics to falsify technical information and suppress evidence of fraud by Battelle. [See also [Attach. 5](#) (DOE Repeating Tactics Used to Suppress Technical Safety-Related Docs)]. **DOE’s ongoing cover-up to hide evidence of contractor misconduct renders absurd statements that DOE is enthusiastically establishing a “strong safety culture”.**

**4. Aug. 2011: Chu rewards the ongoing 8-year fraud by extending the 48-year-uncompeted PNNL contract to Battelle, thereby preempting GAO investigations and protests by 3+ bidders previously identified by DOE. Such complicity to conceal criminal misconduct, security breaches, and taxpayer-funded perjury [to suppress technical information] negates DOE assertions that it's strengthening "efforts to promote a strong safety culture...across the DOE complex."**

Despite [receiving prima facie evidence](#) implicating Battelle-PNNL in criminal misconduct & security breach that would disqualify all other bidders, Chu [extends](#) [Att. 2] this national lab contract, un-competed since 1964 [longest in nation - All others re-bid since 2000.]. By handing the contract to Battelle, he denied the opportunity to [others expressing interest to bid PNNL](#) [Att. 3] and instead continues the cover-up after warned [in [2009 email](#)] of consequences of competing PNNL while funding & concealing Battelle's misconduct:

"Battelle's ongoing DOE-funded litigation fraud will trigger bid protests, lawsuits, media/watchdog scrutiny & GAO investigations when Battelle is awarded PNNL...Losing bidders, after spending millions competing in good faith, will conclude that Battelle keeping the lab was a pre-determined result because DOE site offices funded a cover-up of the following misconduct that would disqualify any other bidder: Misrepresenting PNNL's largest project [[RPMP](#)] to conceal fraud; withholding technical assistance research from small business; [false declarations and perjury](#) by Q-clearance holder accessing [classified work](#) [e.g., DHS air cargo explosives detection]; [patent fraud](#); obstruction of justice; and, other violations contrary to managing a national lab." [See other Pulver-DOE emails at the [evidence site](#).]

The *Washington Post* [["Stimulus dollars going to accused contractors"](#)] has similar concerns of Chu, citing Battelle as prime example.

**5. Aug. 2011: Friedman rebuffs Pulver FOIA evidence sent to DNFSB implicating IG Office of Investigations in complicity with contractor perjury, leaking DOJ documents, cover-up & retaliation, thus refuting Chu assertion of strong safety culture.**

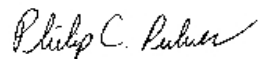
- Greg Friedman, in response to Pulver's [8/7/11 email](#) [Re: comments to DNFSB], refused to investigate *any* of his substantiated allegations, e.g., suppressing & falsifying technical information, admitted patent fraud, witness tampering (perjury), forcing taxpayers to fund abusive injury defense lawyer tactics, violating national security, breaching confidentiality of complainants, and DOE retaliation.
- [DOE documents implicate](#) an IG Office of Investigations armed field agent in leaking confidential case material that Pulver sent to a US Attorney regarding legal matters and evidence of contractor fraud. [The agent not only divulged that material to Battelle's legal advisors but also provided them legal advice; 3 weeks later, Battelle's perjury began and continues with Friedman's consent.](#) Such collusion shows the current IG retaliates against complainants and protects contractor interests at expense of oversight, confidentiality, taxpayers, health/safety/security, research integrity, etc. [Friedman's 8-year complicity is detailed at [InspectorGeneralMisconduct.info](#) (Att. 1)]
- Friedman exposes his complicity in concealing misconduct by his abject refusal to investigate credible allegations that his agent colluded with an accused contractor and General Counsel against a complainant reporting fraud per [DOE Order 221.1](#). [A proper IG would diligently address such concerns to preserve trust in his office by whistleblowers, taxpayers, Congress and the President.] His refusal (a) Confirms DOE will continue funding litigation fraud/perjury, retaliation or other tactics to hide contractor abuse exposed by Pulver, Tamosaitis, [Westbrook](#), [Laul](#) et al. and (b) Negates/contradicts DOE claims of strengthening efforts to "promote strong safety culture".
- Because the IG himself authorizes DOE contractors, at taxpayer expense, to conceal evidence, perjure and make false statements to gov. officials, it follows that DOE will suppress/misrepresent safety-related information to DNFSB in order to protect its contractors. In sum, Friedman's misusing IG office has these & other implications for Tamosaitis or others exposing contractor misconduct:
  - [DOE contractor staff are directed to obstruct justice](#) [e.g., perjured testimony to conceal evidence from courts or law enforcement.] [This includes suborning perjury by national lab top-secret Q clearance holders accessing classified material from any US government agency (DHS, DOD, DOE, State, White House...), thus violating [10 CFR §710](#) and jeopardizing national security at any of these agencies.]
  - Complainant/plaintiff's confidential case documents [sent to DOJ et al.] will be [leaked back to the accused contractor's legal team](#).
  - [Taxpayers and complainants/plaintiffs will be financially drained/churned by DOE-funded protracted litigation](#) [e.g., appeals] via Friedman-condoned perjury, suppression and retaliation against those reporting contractor safety violations or other misconduct.

**6. Closing Points Re: DOE Discredited/Disingenuous Safety-Related Assertions/Responses to DNFSB 8/12 Letter**

- DOE's assertions of promoting and improving a strong safety culture is soundly discredited by Sec. Chu, Poneman, Friedman and Koonin who continue as accessories to Battelle's taxpayer-funded perjury, material suppressions, national security breach, research misconduct and false claims, all done to conceal contractor fraud against a small business, courts, patent office, et al.
- DOE's suborning [perjury](#) to protect Battelle's interests demonstrates it will similarly suppress technical safety information and engage in witness tampering to protect Bechtel's interests, e.g., keeping WTP performance bonus. [DOE's nearly-decade-old cover-up of misconduct by Battelle emboldens Bechtel to repeat such taxpayer-funded litigation fraud/abuse against Tamosaitis.](#)
- Instead of holding tax-exempt billion-dollar contractor Battelle accountable for misconduct proven by PNNL & DOE evidence, Sec. Chu and senior staff, with consent of the IG, are churning taxpayers [[~\\$1M](#)] in protracted litigation [via perjury by Q-clearance holder] in an attempt to financially bury and retaliate against a small business who reported fraud per [DOE-IG Order 221.1](#) in 2003.
- While Friedman is the IG, DOE statements to DNFSB re: contractor health/safety can't be trusted and must be independently verified. [While acting on Solyndra, he 'protects' Battelle that also received \\$500M Stimulus](#)(Att. 4) *but costs taxpayers over \$5B yearly & has [prior fraud finding](#) (DOJ).*
- Chu/Poneman/Friedman & General Counsel misconduct confirms there's no independent oversight of contractors in \$30B DOE.

Mr. Thibadeau, if you or other members of the DNFSB have questions or need more information, please contact me. Thank you.

Sincerely,



Philip C. Pulver, Owner [\[NationalLabSafetyRisk.com\]](#) [\[OfficeOfScienceFraud.com\]](#) [\[PNNLfraud.com\]](#) [\[NationalLabSecurityThreat.com\]](#) [\[PatentFraud.org\]](#)  
[Attachments](#) [\[Click to Download\]](#)

## Attachments

to

**Philip Pulver's 11/3/11 Public Comments**

to

**Defense Nuclear Facilities Safety Board** [[www.DNFSB.gov](http://www.DNFSB.gov)]

**Re: DOE 9/19/11 Response to DNFSB 8/12/11 Letter**

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- Attachment 1** - Homepage of [www.InspectorGeneralMisconduct.info](http://www.InspectorGeneralMisconduct.info) [Friedman Fraud Cover-Up 2003-11]
- Attachment 2** - *Tri-City Herald* [8/18/11]: "PNNL: DOE authorizes 5 more years for Battelle contract"
- Attachment 3** - *Tri-City Herald* [10/20/07]: "3 companies interested in lab contract" (PNNL)
- Attachment 4** - *Columbus Dispatch* [1/11/10]: "Battelle's labs share in stimulus bonanza"
- Attachment 5** - DOE-Funded Counsel's Prior Firm Misconduct: *Concealing Safety Evidence – Condemned by Courts*
- Attachment 6** - *Washington Post* [10/29/09]: "Stimulus dollars going to accused contractors"

More Evidence and Exhibits of Battelle/DOE Misconduct at [www.NationalLabSafetyRisk.com](http://www.NationalLabSafetyRisk.com)



**Misconduct of Energy Dept. Inspector General Greg Friedman  
Authorizing, Participating and Concealing DOE Contractor Fraud 2003-11**  
**Taxpayers Fleeced, Perjury, Retaliation [Leaking US Attorney Emails to Battelle] & Security Breach**  
**[Battelle-PNNL Defrauding Small Business, Taxpayers, Patent Office, Federal Judge & 9th Circuit]**

**Timeline: Friedman 8-Year Complicity to Cover Up Contractor (Battelle) Defrauding Small Business**

- **2003-04:** In response to fraud complaint, he simply let Battelle investigate itself despite clear conflict of interest. Ignored that Battelle is repeat violator of False Claims Act. [Prior Inspector General recommended Battelle be “criminally prosecuted for fraud...theft conspiracy and false statement”, litigation cost taxpayers \$1M → entered in *Congressional Record*.]
- **June 2006:** IG Office of Investigations field agent (Newton) divulged confidential documents to accused contractor, e.g., email to US Attorney [Evidence of Battelle fraud [skimmed/withheld DOE-funded research from small business].  
**July 2006:** Battelle began 5-year perjury with filings that falsified research & hid ventures to conceal evidence.
- **Retaliation:** Friedman misusing IG Hotline by issuing DOE Orders [under false pretenses] to report fraud/abuse and then authorizing litigation fraud/perjury against complainant to suppress evidence of contractor misconduct.
- **2006-07:** Closed case after requesting & receiving preponderance of prima facie evidence of Battelle defrauding DOE small business assistance program, breaching security & suborning perjury [taxpayer expense] in cover-up. Friedman had to close case, otherwise his agent would've been criminally implicated in the investigation.
- **Breached national security [10 CFR §710]:** Granting perjuring scientist [with Q Clearance who violated False Claims Act and defrauded Patent Office] access to classified material [DHS air cargo explosives counter-terrorism research, DOD, FBI...].
- **2009:** Concealed Battelle/DOE misconduct & Misled Congress [Testimony on fraud prevention, oversight, retaliation...].
- **9/2010:** Refused to investigate Battelle's admitted patent fraud [misrepresenting DOE-funded inventions to USPTO].
- **10/2010:** Taxpayers must fund Battelle & Office of Science misconduct [Perjury (18 USC §1621), False Claims (31 USC §3729), False Statements (18 USC §1001), False Declarations (18 USC §1623) and National Security Breach (10 CFR §710 - Classified Material)]  
Authorized Science to churn taxpayers \$1M by suborn perjury [falsify research] in order to conceal contractor fraud.
- **8/18/11:** Friedman refused to investigate substantiated allegations sent to Defense Nuclear Facilities Safety Board that cited evidence of IG-Investigations retaliation [e.g., leaking confidential information back to accused contractor].
- Other extensive emails/evidence [2006-11] sent to DOE implicate Friedman in condoning Battelle fraud/perjury.
- Friedman/Battelle/DOE misconduct worse than SEC/Madoff → Harmed US taxpayers and national security/safety.

See Evidence site chronicling Battelle/DOE misconduct that Friedman is whitewashing at taxpayer expense.

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Thursday, Aug. 18, 2011

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## PNNL: DOE authorizes five more years for Battelle contract

By Annette Cary, Tri-City Herald

**Richland** -- The Department of Energy has agreed to extend the contract for Battelle to manage and operate Pacific Northwest National Laboratory in Richland for five more years.

That would extend the contract until Sept. 30, 2017. [\[52-years: Longest uncompleted lab in nation\]](#)

The extension depends on the successful completion of negotiations between DOE and Battelle, said PNNL director Mike Kluse in a message to employees today.

That includes discussions on how Battelle will make facilities it owns available to DOE.

"This is great news," Kluse told employees. "Battelle has demonstrated the ability to nurture core capabilities and reinvent PNNL as national needs emerge."

See Friday's Herald and tricityherald.com for the full story.

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**Find a Job****Keywords:****Location:**[Search](#)[careerbuilder.com](#)**3 companies interested in lab contract***This story was published Saturday, October 20th, 2007*

Annette Cary, Herald staff writer

AECOM Government Solutions and BWXT Services are interested in managing and operating Pacific Northwest National Laboratory, according to a list released by the Department of Energy.

Although Battelle is not on the list, continuing to manage and operate the national lab in Richland is its top priority, said Katy Delaney, a Battelle spokeswoman. Battelle has operated the lab since 1965.

"We want people of the community and DOE to know we are interested," Delaney said.

Seven other companies also are on the list, although not all indicated whether they were interested in being the prime contractor or playing a secondary role.

Jacob's Engineering Group of Oak Ridge, Tenn.; Rumora Enterprises of Tampa, Fla.; and Washington Group International, which is known in the Tri-Cities for its work at the Hanford nuclear reservation and the Umatilla Chemical Depot, are on the DOE list of interested companies.

None of the three said whether they were seeking the prime contract at the national laboratory.

The other four companies said they were interested in being part of a contracting team or serving as a subcontractor. They include EnergySolutions, which does Hanford cleanup work; Fluor Corp., which is one of the prime contractors for Hanford cleanup; Northrop Grumman, a global defense and technology company; and Deloitte & Touche, a financial and consulting firm.

DOE asked for "expressions of interest for the PNNL contract to be submitted by Oct. 9 to help it identify companies with the expertise to manage the lab. The subsequent list DOE released could be significantly different than the final list of bidders on the contract.

Companies could opt to keep their names off the list that was made public. In addition, expressing interest in the project does not obligate companies to bid on the contract.

BWXT, based in Lynchburg, Va., operated at Hanford from 1996 to 1998 as Babcock & Wilcox.

"We're very excited about an opportunity to become a bigger part of the Tri-Cities community," said Joe Cruz, BWXT senior business development manager in Richland.

BWXT is part of the team named in May to manage and operate the Lawrence Livermore National Laboratory. It is responsible for the operations of DOE's National Nuclear Security Administration's Pantex Plant in Texas and Y-12 National Security Complex in Tennessee. It has a role in nuclear operations at the Idaho National Laboratory and is a member of the management team at the Los Alamos National Laboratory.

The company also has privately owned and operated nuclear manufacturing and laboratory facilities. It has 11,000 employees in 11 states and is a subsidiary of McDermott International, an engineering and construction company.

AECOM, with headquarters in Los Angeles, describes itself as a global provider of professional technical and management support services. It has 31,000 employees in 60 countries and revenues of \$4 billion in the last year.

There was no answer Friday afternoon at its Richland office, which it gave DOE as its contact for the PNNL contract. Employees did not respond to e-mails.

Battelle is well known not only in the Tri-Cities, but also in the DOE complex, for leading the management teams at four national labs and participating in the management of two others. It is a nonprofit company with about 20,000 employees.

The next step for DOE is releasing a draft request for proposals. It plans to do that by Dec.

31, said John Shewairy, a DOE spokesman. DOE's goal is to award a contract in fall 2008.

Battelle's contract to operate the lab would have expired last month, but DOE extended it for two years to give it time to award the next contract.

According to DOE, about \$830 million will be spent at the lab in the fiscal year that began this month. The lab has about 4,200 employees.



# Battelle's labs share in stimulus bonanza

By [Doug Caruso](#)

*The Columbus Dispatch* Monday January 11, 2010 7:34 AM

Comments: 0

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Battelle is managing nearly \$500 million in federal stimulus contracts at the national labs it operates.



Battelle and its partnerships held the third-largest share of federal stimulus contracts through Sept. 30, according to a federal database of the contracts. The database does not include stimulus grants and loans or money for stimulus tax breaks and welfare programs.

The two largest contractors -- companies cleaning up former U.S. Department of Energy nuclear sites -- each received more than \$1.3 billion.

Most of the money the Columbus-based Battelle is receiving -- \$478 million -- will be spent at U.S. Department of Energy laboratories that the nonprofit research giant operates in Tennessee and Washington state.

In Ohio, Battelle has been awarded contracts worth about \$2.4 million -- a small fraction of the total -- according to the federal data. At least half of that amount won't be spent locally, said Katy Delaney, a Battelle spokeswoman.

About \$1.2 million was awarded under an existing contract with the Transportation Security Administration to test explosives-detection equipment, she said.

"Those funds will be used to purchase equipment to be tested," she said. "The actual work usually happens at the manufacturer's factory, or we do site testing at the airport where it will be installed."

Other contracts worth about \$450,000 are paying for researchers to set up databases of information to track Federal Highway Administration stimulus projects across the nation and to estimate how many jobs they create.

A \$680,000 contract with the U.S. Indian Health Service will help the agency develop an electronic patient-management system, Delaney said.

The biggest winner among Battelle's programs was its partnership with the University of Tennessee, UT-Battelle, which oversees the Oak Ridge National Laboratory for the Department of Energy.

There, \$338 million in contracts includes a high-tech replacement for a 1952 lab building, demolition and cleanup of another lab that handled nuclear material for the Manhattan Project and upgrades to the lab's supercomputer that make it the fastest in the world, said Bill Cabage, spokesman for the lab.

"We were just really well-positioned when (the stimulus) happened because there was a lot of work out here to do," Cabage said.

The \$95 million lab building, for example, already was designed. All that was needed was funding.

"Work started last June," he said. "We were ready to go."

The latest report sent to the government in the fall said that project and others created or retained 44 jobs at the lab, but Cabage said that's likely to grow as construction hits its peak. He estimated that 120 to 150 people will be working to build just the laboratory.

When it's done, the lab will house 300 researchers and their support staffs.

In Richland, Wash., the Department of Energy's Pacific Northwest National Laboratory received about \$140 million in contracts.

Most of that will go to two labs: the Environmental Molecular Sciences Laboratory and the Atmospheric Radiation Measurement Climate Research Facility, said Staci West, a spokeswoman for the national laboratory.

The molecular-sciences laboratory had planned to purchase about \$60 million in powerful scientific instruments through 2013, West said, but it now will be able to do so more quickly. The lab studies proteins and other molecules, including bacteria that could aid in environmental cleanup.

The climate-research facility also will purchase about \$60 million in equipment to help researchers study the effects of aerosols and cloud formations on the climate.

[dcaruso@dispatch.com](mailto:dcaruso@dispatch.com)

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**DOE-Funded Counsel's Prior Firm Misconduct: *Concealing Safety Evidence – Condemned by Courts*****Then: WA Supreme Court Imposed Record Sanctions/Fines on Firm for Discovery Abuse [Suppressing toxicity documents].****Now: Miller and Battelle Falsifying Research & Commercial Ventures to Conceal Smoking-Gun Evidence via Perjury. Funding this perjury for 5 years, Dept. of Energy [Science] Charged Taxpayers ~\$1M to cover up Battelle Fraud.****Overview**

DOE-funded Attorney Delbert Miller was the partner managing the litigation practice at now defunct Bogle & Gates law firm which engaged in fraud [discovery abuse] to conceal smoking-gun evidence [drug toxicity warnings, crash injury data...]. Tactics used by the firm's attorneys to wrongfully withhold evidence are cited below because they are now being repeated via Battelle and Miller's material misrepresentations [perjury] to the court [i.e., DHS Radiation Portal Monitor Project (RPMP) research & Battelle commercial ventures] being used to conceal smoking-gun evidence [e.g., RPMP-funded versions of the MDM (Mobile Data Manager) software] which would further implicate Battelle in: (i) Misusing/defrauding/skimming DOE small business Technical Assistance Program [TAP] [withholding the DOE-funded software [MDM] from government's intended TAP recipient (Pulver's small business), thereby violating the False Claims Act (31 USC §3729)], (ii) Falsifying inventions [18 USC §1001] to the patent office, and (iii) Defrauding businesses licensing follow-on versions [BlackBerry...] of MDM software funded by TAP and exclusively licensed to Pulver. Currently being used by Battelle and DOE at great taxpayer expense [~\$1M], Bogle tactics to obstruct justice by concealing smoking-gun evidence were condemned by the WA Supreme Court and federal judge [both imposed sanctions for litigation fraud (discovery abuse)] and gained national notoriety.

[Media & court sources excerpted below and Battelle/DOE documents/testimony at all evidence sites confirm the following:](#)

- (1) DOE-funded counsel Miller and Battelle top-secret Q clearance holder scientist Dorow are now using the same type of abusive litigation fraud, but at taxpayer expense, to conceal smoking-gun evidence [e.g., DHS versions of MDM software re: Battelle ventures].
- (2) DOE is financing and suborning this litigation fraud/abuse/perjury and covering up Battelle's defrauding both a small business and patent office [USPTO] to ensure Battelle 'wins' the upcoming PNNL re-bid [country's longest un-competed national lab (48 years)].
- (3) DOE Offices of Science, Inspector General and General Counsel will fund & suborn such litigation misconduct when a whistleblower, small business, university, injured staff or others sue contractor Battelle [running 6 national labs (PNNL, ORNL, INL, NREL & BNL) costing billions].

Attracting national media scorn was Bogle's attorney misconduct in two notorious discovery abuse cases involving tactics that DOE Office of Science is now funding in order to conceal evidence of Battelle defrauding DOE's small business assistance program and patent office. In the Fisons case, the WA Supreme Court unanimously sanctioned/fined Bogle & Gates a record \$325K for rampant discovery abuse because its lawyers repeatedly withheld smoking-gun toxicity documents on a drug [theophylline] that permanently brain damaged a 3-year old. In the Subaru injury case, a federal judge sanctioned Bogle because it "obfuscated, stonewalled and gave answers that were just plain wrong" to wrongfully withhold rear-impact crash data [National Highway Transportation Safety Admin.].

News articles and the WA Supreme Court's detailed Fisons decision are excerpted below and explicitly illustrate Bogle's discovery abuse tactics to conceal evidence [obstruct justice] and the legal community's outrage over such egregious attorney misconduct. As shown at the evidence sites, Office of Science, by hiring Miller to invoke/repeat Bogle court-condemned concealment tactics has confirmed its practice of misappropriating taxpayer funds for such abusive/fraudulent litigation tactics against individuals or small businesses suing due to fraud, injury or other contractor misconduct. **DOE's ongoing cover-up of Battelle fraud, funded by Sec. Chu, Poneman & Koonin, has dangerous implications for those suing for injury, HAZMAT/radiation exposure, wrongful death, fraud or other tortuous/negligent misconduct throughout the entire DOE complex.** Excerpts of an article cited below are as follows:

**Clout of State's Big Law Firms Wards Off Misconduct Cases**

"In one of the sharpest penalties ever levied against a law firm, the Washington State Supreme Court fined the Seattle firm Bogle & Gates and its client, the drug company Fisons, \$325,000 in 1993. [The Supreme Court found that Bogle & Gates and Fisons withheld documents that conclusively showed that Fisons knew one of its products was dangerous if used in conjunction with other drugs.](#)

Two years later, Bogle & Gates was sanctioned by a federal court judge for a similar violation. Representing Subaru of America, Bogle & Gates was asked to provide warranty and personal-injury claims relating to the seatback design of the Subaru Justy. The company responded that it had no records that would answer those questions. Later depositions revealed that the information did, in fact, exist. Bogle & Gates had to pay the other side's legal fees and the case was later settled."

**Index to Attached Exhibits Below**

- Exhibit 5-1:** Articles Excerpts re: Bogle & Gates Discovery Abuses and Court Sanction [\$325K] for Misconduct
- Exhibit 5-2:** Excerpts of WA Supreme Court Decision Detailing Many Discovery Abuses [Concealing Evidence] Currently Being Used by Battelle DOE-Funded Counsel to Falsify DHS Research & Conceal Fraud
- Exhibit 5-3:** Link to Complete WA State Supreme Court Decision: Imposition of Sanctions for Discovery Abuse
- Exhibit 5-4:** Link to Electronic Code of Federal Regulations 48 CFR 970.5228-1 Insurance--Litigation and claims. Excerpt: "[DOE Contractor] shall proceed with such litigation in good faith."
- Exhibit 5-5:** Miller-Bateman Law Firm Web Page Confirming Delbert Miller's 30 years with Bogle & Gates where he was Senior Partner in Firm's Litigation Practice Group

## Exhibit 5-1 [Citing DOE-Funded Counsel Prior Abusive Tactics Now Used to Conceal Battelle-PNNL Fraud]

Articles: **Bogle & Gates Discovery Abuses** → **Court Sanctions/Fines** [Fisons & Subaru Injury Cases]

[http://findarticles.com/p/articles/mi\\_m1295/is\\_n4\\_v61/ai\\_19254733](http://findarticles.com/p/articles/mi_m1295/is_n4_v61/ai_19254733) [¶9]

**No Contest: Corporate Lawyers and the Perversion of Justice in America.** The Progressive, April, 1997 by Morton Mintz

"No Contest's most devastating section focuses on the **obstruction of justice by corporate executives and their attorneys who withhold, alter, or destroy documents.** Consider Jennifer Pollock of Everett, Washington. In 1986, when Jennifer was two, she suffered seizures that caused irreversible brain damage after taking an asthma medication, Somophyllin Oral Liquid...In 1990, an anonymous source sent the Pollocks' lawyer a "Dear Doctor" letter from Fisons conveying a **stark warning about the drug's key ingredient, theophylline: A study had confirmed report that children with asthma were vulnerable to "life-threatening theophylline toxicity** -- the very same toxicity suffered by Jennifer. Fisons had prepared the letter in 1981 -- more than four years before Jennifer was stricken -- but sent it to only a limited group of "influential" physicians...(Fisons also omitted mention in product's package insert of the risk of disabling or fatal harm.)

The company failed to produce the letter even after the Pollocks and [Dr.] Klicpera filed a discovery motion in 1986, which sought "any letters sent by your company to physicians concerning theophylline toxicity in children."...Bogle & Gates **admitted it had reviewed the smoking guns by 1987 and advised Fisons not to produce them**"

<http://www.law.com/jsp/law/LawArticleFriendly.jsp?id=900005514051>

**THE MORAL COMPASS: Calculated Malfeasance, The ongoing abuse of discovery requires stronger, surer sanctions**

Richard Zitrin & Carol Langford, Law News Network

"May 7, 1999 *Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 858 P.2d 1054 (Wash. 1993) exposes the **disturbing behavior of Seattle's Bogle & Gates**, one of the Pacific Northwest's largest firms. Starting in 1986, Bogle represented the drug company Fisons in a case filed by the parents of a **three-year-old girl named Jennifer, who was permanently brain damaged from a dose of theophylline**, the active ingredient in Fisons' Somophyllin Oral Liquid. The parents also sued the girl's pediatrician for prescribing the drug. Theophylline can be toxic when given to children like Jennifer who are also suffering from a viral infection. Although Fisons knew of this problem, the pediatrician didn't, because the company had never warned him. The doctor filed a counter-claim against Fisons, saying he never would have prescribed the drug had he been told.

During discovery, Jennifer's lawyers requested all documents pertaining to any warning letters -- including "Dear Doctor" letters or warning correspondence to the medical profession regarding the use of Somophyllin Oral Liquid. Bogle & Gates knew of a 1981 letter addressed "Dear Doctor" on the subject of "**Theophylline and Viral Infections**" that had been sent to 2,000 physicians, but not to Jennifer's doctor...**law firm advised Fisons not to produce either that letter or a 1985 memo documenting theophylline's danger...**

On appeal, the Washington Supreme Court unanimously reversed the trial court on the discovery issue. "It appears clear", wrote Chief Justice James Anderson, "that no conceivable discovery request could have been made by the doctor that would have uncovered the relevant documents." The higher court then remanded the case to the trial court with instructions to punish Bogle with an **amount severe enough to deter these attorneys and others from engaging in such conduct again.**

Bogle agreed to pay \$325,000, made a public admission of its mistake, and said it had taken steps to ensure that all attorneys at Bogle & Gates understand that the rules must be complied with in letter and spirit. But apparently Bogle's lawyers hadn't taken their lesson to heart.

Less than 2 years after *Fisons*, their litigators were **in trouble again.** This time Bogle & Gates represented **Subaru of America** on charges that the driver's **seatbacks in Subaru's Justy could collapse backwards when hit from the rear, potentially causing grave injury.** In the view of federal Judge Robert Bryan, **Bogle obfuscated, stonewalled, and gave answers that were just plain wrong.**

In one request, plaintiffs had asked for **National Highway Traffic Safety Administration records** that showed the collapse of driver's seats from a rear-impact force of 30 miles per hour. Bogle's response was that the request was "vague, confusing and unintelligible...Specifically, 30 miles per hour is a velocity, not a force, and due to this confusion of technical terms, no meaningful response can be given." **Judge Bryan called this "lawyer hokum," and forced Bogle to pay the other side's attorneys' fees."**

<http://community.seattletimes.nwsourc.com/archive/?date=19980503&slug=2748582>

**Clout Of State's Big Law Firms Wards Off Misconduct Cases.** By Alex Fryer, Seattle Times Business Reporter

"In one of the sharpest penalties ever levied against a law firm, the Washington State Supreme Court fined the Seattle firm Bogle & Gates and its client, the drug company Fisons, \$325,000 in 1993. **The Supreme Court found that Bogle & Gates and Fisons withheld documents that conclusively showed that Fisons knew one of its products was dangerous if used in conjunction with other drugs.**

Two years later, **Bogle & Gates was sanctioned by a federal court judge for a similar violation.** Representing Subaru of America, Bogle & Gates was asked to provide warranty and **personal-injury claims** relating to the seatback design of the Subaru Justy. The company responded that it had no records that would answer those questions. Later depositions revealed that the information did, in fact, exist. Bogle & Gates had to pay the other side's legal fees, and the case was later settled."

<http://co-mdm.com/seattlepi-9309190036.asp.pdf>

**LEGAL CONDUCT DECRIED COURT RULES LAW FIRM, CLIENT FAILED TO SUPPLY EVIDENCE**

"In a **landmark ruling** on attorney ethics, the Washington state **Supreme Court has denounced the conduct of a major Seattle law firm** and a New York drug company **for failing to produce "smoking gun" documents** in a lawsuit involving a 3-year-old girl left brain-damaged by a controversial asthma medication."



<http://doug4justice.org/Lawyers/Sleazy.htm>

**Sleazy In Seattle, by Stuart Taylor, Jr.** American Lawyer Newspapers Group, Inc.

"The covered-up corporate document that the whistleblower leaked in March 1990 led to an agreement this January by Seattle's 200-lawyer Bogle & Gates and its client Fisons Corp. to pay \$325,000 in sanctions for discovery abuse, one of the largest such awards ever. By misleading its adversaries to avoid producing damning documents in its client's files, Bogle provided a textbook example of the need for discovery reforms..."

The seven justices [unanimously] held that Bogle & Gates and its client, a British-owned pharmaceutical company with U.S. headquarters near Rochester[NY], had used "misleading" discovery responses to **hide two "smoking gun documents" from lawyers for a 3-year-old girl who suffered permanent brain damage** as a result of taking a Fisons asthma drug in 1986, as well as from lawyers for the girl's pediatrician, who had filed a cross-claim against Fisons.

Since the decision, Bogle has been forced to admit for the first time that it had the smoking gun documents since 1987 and had advised Fisons to withhold them -- while at the same time, in the supreme court's words, making statements to opposing counsel "that all relevant documents had been produced."...

In January 1986, 3-year-old Jennifer Pollock, a child with multiple health problems, suffered seizures and permanent brain damage as a result of being treated with Fisons' Somophyllin Oral Liquid for her severe lung disease (including asthma) at a time when she also had a viral infection. The **product's main active ingredient is a generic drug called theophylline. The cause of Jennifer's brain damage was (the litigation established) that the theophylline in her blood soared to toxic levels as a result of her viral infection.**

### The Supreme Court Rules

The Washington Supreme Court would have no part of Bogle's arguments on the discovery issues, however..."The drug company avoided production of these theophylline-related materials, and avoided identifying the manager of medical communications [Cedric Grigg] as a person with information about the dangers of theophylline, by giving evasive or misleading responses to interrogatories and requests for production," the court held.

It refused to accept the if-it-isn't-in-the-right-file-under-the-right-name-we-won't-produce-it ploy, noting that none of the parties had ever specified that the discovery would be limited to documents in the "Somophyllin Oral Liquid files," or that **documents concerning theophylline risks would be withheld** if they were filed elsewhere or did not contain the words "Somophyllin Oral Liquid."...

The court also cut through the twisted argument that the Grigg documents regarding the dangers of theophylline-based drugs were not documents "regarding Somophyllin Oral Liquid" because they were not in that product's file, saying that **"a document that warned of the serious dangers of the primary ingredient of Somophyllin Oral Liquid is a document regarding Somophyllin Oral Liquid."** After all, the court pointed out, Fisons marketed this and its three other Somophyllin products as brand-name embodiments of theophylline.

It added that, **in light of the elaborate series of pretexts offered by Fisons and Bogle for their acts of concealment, "it appears clear that no conceivable discovery request could have been made by the doctor that would have uncovered the relevant documents.** The objections did not specify that certain documents were not being produced. Instead, the general objections were followed by a promise to produce requested documents. These responses did not comply with either the spirit or the letter of the discovery rules."

[http://www.citizen.org/congress/article\\_redirect.cfm?ID=918](http://www.citizen.org/congress/article_redirect.cfm?ID=918)

**Discovery Abuse: How Defendants in Products Liability Lawsuits Hide & Destroy Evidence** David Halperin, Congress Watch

"In 1990, the Pollocks' attorneys received an envelope in the mail from an **anonymous source**. Inside was a Fisons document, a 1981 "Dear Doctor" letter sent by Cedric F. Grigg, Fisons' Manager of Marketing and Medical Communications...The letter **proved that Fisons knew its medication had a potential lethal defect** that could disable or kill children and yet continued to market the drug anyway without warning most doctors of the danger...The court found that Fisons had carried out a **prolonged shell game, replete with "misleading" answers that were "contrary to the purposes of discovery and...most damaging to the litigation process."** The Court added, "Having read the record herein, **we cannot perceive of any request that could have been made to this drug company that would have produced the smoking gun documents."**

<http://community.seattletimes.nwsources.com/archive/?date=19940130&slug=1892566>

**Fines Say It's Not OK To Withhold Evidence**

"One of Seattle's biggest law firms and a national pharmaceutical company will pay \$325,000 as a penalty for **withholding evidence** in a lawsuit involving a 3-year-old Everett girl left brain-damaged by one of the company's drugs..."

The penalty is apparently the largest sanction ever imposed for attorney misconduct in Washington state...it was only when documents were leaked to Klicpera's attorneys that they learned how much Fisons knew about potential problems with the drug.

The documents showed **Fisons knew the key ingredient could cause seizures or even death in some circumstances.** The company has stopped selling it...state Supreme Court said lawyers must turn over all relevant information to the opposing side, even if it is damaging to their clients. **Bogle & Gates admitted in the agreement that their lawyers advised Fisons to withhold documents."**

<http://www.thefreelibrary.com/Landmark+court+sanction+may+herald+new+era+in+pre-trial+discovery.-a015213415>

**Landmark court sanction may herald new era in pre-trial discovery.**

"During discovery, the plaintiffs sent several sets of interrogatories requesting information on Somophyllin and theophylline. **Bogle & Gates criticized every request as vague, overbroad, or irrelevant.** Then an anonymous party sent the plaintiffs a copy of a "smoking gun" -- a warning letter Fisons had sent to a few influential pediatricians...With this letter the plaintiffs were also able to pry loose a July 10, 1985, **company memo** referring to an **"epidemic of theophylline toxicity."**



## Exhibit 5-2 [Citing DOE-Funded Counsel Prior Litigation Abuse Tactics Now Used to Conceal Battelle Fraud]

### Excerpts of WA Supreme Court Decision

Showing Similar Discovery Abuses by Battelle DOE-Funded Counsel

**WASHINGTON STATE PHYSICIANS INSURANCE EXCHANGE & ASSOCIATION, d/b/a Physicians Insurance, and James A. Klicpera, M.D., Respondents,**

**v.**

**FISONS CORPORATION, Appellant.**

*[Complete court decision is linked in Exhibit 5-3.]*

"We are also asked to rule that the trial court erred in denying sanctions against the drug company for [certain abuses in the discovery process](#).

The physician's action began as part of a malpractice and product liability suit brought on behalf of a child who was the physician's patient. [On January 18, 1986, 2-year-old Jennifer Pollock suffered seizures which resulted in severe and permanent brain damage. It was determined that the seizures were caused by an excessive amount of theophylline in her system.](#) The Pollocks sued Dr. James Klicpera (Jennifer's pediatrician), who had prescribed the drug, as well as Fisons Corporation (the drug manufacturer and hereafter drug company) which produced Somophyllin Oral Liquid, the theophylline-based medication prescribed for Jennifer....

The doctor and his insurer, Washington State Physicians Insurance and Exchange Association (hereinafter referred to collectively as "the doctor"), [asked the trial court to sanction the drug company and its lawyers for discovery abuse](#). This request was based on the fact that at least two documents crucial to the doctor's defense as well as to the injured child's case were not discovered until March of 1990--more than 1 year after the doctor had settled with the child, nearly 4 years after the complaint was filed and approximately 1 month before the scheduled trial date. [The two documents, dubbed the "smoking guns" by the doctor, show that the drug company knew about, and in fact had warned selected physicians about, the dangers of theophylline toxicity in children with viral infections at least as early as June 1981, 4 years before Jennifer Pollock was injured.](#)

Although interrogatories and requests for production should have led to the discovery of the "smoking gun" documents, their existence was not revealed to the doctor until one of them was anonymously delivered to his attorneys...

[Although other documents were relevant to the case, the two smoking gun documents were the most important.](#) The first, a letter, dated June 30, 1981, discussed an article that contained a study confirming reports "of life threatening theophylline toxicity when pediatric asthmatics ... contract viral infections." The second, an interoffice memorandum, dated July 10, 1985, talks of an "epidemic" of theophylline toxicity and of "a dramatic increase in reports of serious toxicity to theophylline."

[Both documents contradicted the position taken by the drug company in the litigation, namely, that it did not know that theophylline based medications were potentially dangerous when given to children with viral infections...](#)

The [drug company avoided production of these theophylline-related materials, and avoided identifying the manager of medical communications as a person with information about the dangers of theophylline, by giving evasive or misleading responses to interrogatories and requests for production...](#)

Somophyllin and its primary ingredient, theophylline, were not distinguished in discussions between the attorneys or in drug company literature...and marketing brochures refer to the names Somophyllin and theophylline interchangeably.

The drug company's responses to discovery requests contained the following general objection:

*Requests Regarding Fisons Products Other Than Somophyllin Oral Liquid.*

"Fisons objects to all discovery requests regarding Fisons products other than Somophyllin Oral Liquid as overly broad, unduly burdensome, harassing, and not reasonably calculated to lead to the discovery of admissible evidence."...

[Example of Bogle & Gates Discovery Response is below]

*"Request for Production No. 4:* Please produce copies of any and all seminar materials, regardless of their source, in Fisons' possession on or before January 16, 1986 regarding asthma...allergy.

*Response:* Fisons objects to this discovery request as overbroad, burdensome, and not reasonably calculated to lead to the discovery of admissible evidence...Fisons has no documents regarding theophylline and otherwise responsive to this discovery request."

These requests, and others of a similar tenor, should have led to the production of the smoking gun documents...

The drug company's responses and answers to discovery requests are misleading...

It appears clear that no conceivable discovery request could have been made by the doctor that would have uncovered the relevant documents, given the above and other responses of the drug company...These responses did not comply with either the spirit or letter of the discovery rules and thus were signed in violation of the certification requirement...

If the discovery rules are to be effective, then the drug company's arguments must be rejected...

Second, the drug company argues that the smoking gun documents and other documents relating to theophylline were not documents *regarding* Somophyllin Oral Liquid because they were intended to market another product. No matter what its initial purpose, and regardless of where it had been filed, under the facts of this case, a document that warned of the serious dangers of the primary ingredient of Somophyllin Oral Liquid **is** a document *regarding* Somophyllin Oral Liquid...

If the drug company did not agree with the scope of production or did not want to respond, then it was required to move for a protective order. In this case, the documents requested were relevant. The drug company did not have the option of determining what it would produce or answer, once discovery requests were made.

Fourth, the drug company further attempts to justify its failure to produce the smoking guns by saying that the requests were not specific enough. Having read the record herein, we cannot perceive of *any* request that could have been made to this drug company that would have produced the smoking gun documents...

Fifth, the drug company's attorneys claim they were just doing their job, that is, they were vigorously representing their client. The conflict here is between the attorney's duty to represent the client's interest and the attorney's duty as an officer of the court to use, but not abuse the judicial process. Vigorous advocacy is not contingent on lawyers being free to pursue litigation tactics that they cannot justify as legitimate...

Sanctions are warranted in this case...

Misconduct, once tolerated, will breed more misconduct and those who might seek relief against abuse will instead resort to it in self-defense."

## Exhibit 5-3

[DOE-Funded Counsel Prior Litigation Abuse Tactics Now Used to Conceal Battelle Fraud]

### Web Link to the Complete WA Supreme Court Decision

[Condemning Discovery Abuse Tactics Now Funded by DOE Office of Science]

WASHINGTON STATE PHYSICIANS INSURANCE EXCHANGE & ASSOCIATION, d/b/a  
Physicians Insurance, and James A. Klicpera, M.D., Respondents,

v.

FISONS CORPORATION, Appellant.

*This landmark WA Supreme Court ruling is downloadable from Cornell Law School:*

[http://ww3.lawschool.cornell.edu/faculty-pages/wendel/Law%20Governing%20Lawyers\\_files/fisons.pdf](http://ww3.lawschool.cornell.edu/faculty-pages/wendel/Law%20Governing%20Lawyers_files/fisons.pdf)

**Note:** DOE-funded counsel Delbert Miller, managing partner in Bogle & Gates Litigation Practice Group during Fisons, is invoking the very same discovery abuse tactics to conceal smoking-gun evidence of Battelle violating False Claims Act, defrauding entrepreneur and falsifying inventions to USPTO.

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## Exhibit 5-4

[DOE-Funded Counsel Prior Litigation Abuse Tactics Now Used to Conceal Battelle Fraud]

### Web Link to Electronic Code of Federal Regulations

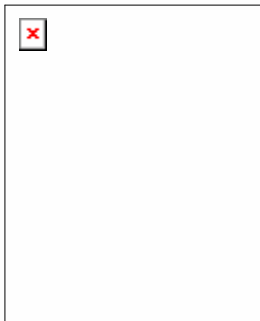
Title 48: Federal Acquisition Regulations System

970.5228-1 Insurance – litigation and claims.

<http://ecfr.gpoaccess.gov/cglt/text/text-idx?c=ecfr&sid=515fae029c178b9b7199da0b8084aa70&rqn=div8&view=text&node=48:5.0.3.26.40.31.1.40&idno=48>

Excerpt: “[DOE Contractor] shall proceed with such litigation in good faith”

**Exhibit 5-5 [Miller Prior Web Site]** *Source:* <http://web.archive.org/web/20010503053216/www.millerbateman.com/miller.html>



Delbert D. Miller

**Direct Line** 206.903.8082

**E-Mail** [dmiller@millerbateman.com](mailto:dmiller@millerbateman.com)

**Position**

Mr. Miller is a Partner with Miller Bateman LLP. Mr. Miller formerly practiced for over 30 years with Bogle & Gates P.L.L.C. where he was **Senior Partner in the Litigation Practice Group.**

## Attachment 6

# The Washington Post

## Stimulus dollars going to accused contractors

More than \$1.2 billion awarded to firms on watchdog's list

By Kimberly Kindy  
Washington Post Staff Writer  
Thursday, October 29, 2009

President Obama and members of Congress told federal agencies earlier this year to avoid awarding funds under the American Recovery and Reinvestment Act to contractors with troubled histories of work for the federal government.

But that isn't happening at numerous agencies, a Washington Post analysis shows. So far, 33 federal departments and agencies have awarded more than \$1.2 billion in stimulus contracts to at least 30 companies that are ranked by one watchdog group as among the most egregious offenders of state and federal laws.

Government records show that as a group, these contractors have sold defective products, manufactured safety tests, submitted false travel claims and padded contracts with fraudulent fees.

"Even a simple Google search could raise red flags about some contractors' performance," said [Rep. Carolyn B. Maloney](#) (D-N.Y.).

Honeywell International, for example, is defending itself against a Justice Department lawsuit accusing it of selling defective shields for bulletproof vests to the Defense and Homeland Security departments, costing the federal government tens of millions of dollars. But that did not prevent the company from winning \$2.9 million in stimulus contracts from the Air Force.

On a larger scale, UT-Battelle, a partnership of the University of Tennessee and Battelle Memorial Institute, has been awarded 43 Recovery Act contracts worth more than \$331 million by the Department of Energy for work at the Oak Ridge National Laboratory. In every instance, competitive bidding rules were waived, but officials said the contracts were largely extensions of competitively bid work that was already underway at the site.

Obama explicitly warned against awarding contracts without competitive bidding in [a memo released to agency heads](#) weeks after he signed the act, saying they create "a risk that taxpayer funds will be spent on contracts that are wasteful, inefficient, subject to misuse." (So far, half of the \$16 billion awarded under the stimulus has gone to contractors that did not have to compete for the work.)

The administration followed up on Obama's memo Tuesday, instructing agencies to cut contract spending by 7 percent in the next two years and hire at least 5 percent more contracting officers in the next five years to manage the large contracts. Agencies must also cut 10 percent of their "high risk" or non-competitive contracts this fiscal year.

UT-Battelle was cited in 2005 for serious nuclear safety violations at the former Cold War site. And last year, the inspector general cited the company for using \$600,000 in federal money for unapproved expenditures on cigars, wine and gifts, including a pen with a built-in USB flash drive, given to guests at a scientific conference. Officials said the firm has resolved past problems and believes the Recovery Act awards were appropriate.

"UT-Battelle has worked with the Department to address any previous concerns that have been raised about the company," Michael Bradley, a UT-Battelle spokesman, said in a statement.

The Project on Government Oversight, a government watchdog group, compiled data on Honeywell, Battelle and other

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contractors that have had legal or regulatory issues with federal agencies. For its analysis, The Post compared a list of companies receiving stimulus grants with POGO's data and examined reports from the Government Accountability Office, court records from the Justice Department and other public documents.

In an attempt to curtail contract awards to companies with prior problems, Maloney last year authored a law that requires creation of a government database to track past performance.

The database would include civil and criminal actions in which the contractor lost. None of this information, however, would be made publicly available, and government officials would have to only log and check information. Nothing in the law compels them to use it when awarding contracts.

Honeywell and other large government contractors said using such databases to shape decision-making is simplistic. Business relationships, they said, are uneven. "From time to time, as in all commercial relationships, there are misunderstandings or even disputes between parties that are inevitably resolved," said Honeywell spokesman Peter Dalpe.

Government contract officials said many factors must be considered when awarding work, including a company's expertise. Concerns over federal contracts are acute now because even before the stimulus bill passed, taxpayers in 2008 financed \$500 billion in such work, a doubling of the amount spent in 2001.

That figure is expected to climb to at least \$525 billion for 2009, and oversight of those dollars will heavily rely on whistleblower reports. With Recovery Act contracts in particular, the public is asked to report any abuse of funds by calling a hotline or filling out an anonymous online form.

Whistleblowers said that for the hotline to work, contractors need to feel a sharper sting when they are caught.

Judith Neal called a hotline and exposed Honeywell for fabricating tests on at least \$7 million in ammunition it manufactured and sold in 1987, according to a court finding. She's watched as similar incidents have continued for two decades.

At the time, both Neal, who worked in the company's personnel department, and the Justice Department prevailed in court against Honeywell. However, the federal government secured \$2 million from the company and \$400,000 in ammunition, not even half the value of the faulty ammunition, records show. Such disparities in cost recoveries continue and are common.

"It is not punitive at all," said Neal, now director of the Tyson Center for Faith and Spirituality in the Workplace at the University of Arkansas. "When you talk about repeat offenders, there are too many profits involved to stop them from doing it again. They just get their hands slapped."

*Database editor Dan Keating and staff writer Ed O'Keefe contributed to this report.*

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