

November 17, 2014

U.S. Office of Special Counsel
Attn: Kevin Wilson
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

RE: OSC File No. DI-13-0405

Dear Mr. Wilson:

I have received a copy of a report of investigation and attachments in the above referenced matter. I have reviewed the documents provided. I appreciate that the United States Patent and Trademark Office (USPTO) and Department of Commerce (DOC) conducted this investigation and have acknowledged that there is a lack of evidence to show that I was responsible for mismanagement of the asbestos program. However, I am very disappointed to find that the USPTO Administrative Inquiry Report concluded that “the whistleblowers’ allegations have no effect on the ultimate impact of the (2011) report.” It appears that the investigators did not take into account any of the additional evidence provided that clearly called into question the integrity and validity of the report. How can the conclusions of a report based on fabricated evidence, false statements, inaccuracies, and omissions even be considered? The DOC did not attempt to address the false statements, conflicts of interest, misconduct or question the integrity of the report.

According to the report, DOC asked the USPTO to conduct an inquiry to assist in the response to the 2013 Office of Special Counsel (OSC) referral and ultimately asked the USPTO to conduct a record review and respond to three questions. I am unclear why the DOC only referred three questions to the USPTO and I would like to know what is being done to investigate the rest of my whistleblower complaint. I am specifically concerned that the report does not in any way address the false statements provided by numerous witnesses, the conflict of interest with Mr. Lee and Ms. Barnett, and the misconduct of the DOC IG. I am requesting that these issues be addressed as part of my whistleblower complaint.

With regards to the three questions, I have the following comments:

Question 1: According to the USPTO report, OAS officials did not conduct testing for airborne asbestos in the attic in 2003 despite receiving a GSA contractor report recommending that the 8th floor be restricted. Who was the leadership at that time and why have they not been identified? If DOC mismanaged asbestos, why have they not been identified as having responsibility for mismanagement?

The USPTO report appears to heavily rely on sampling data to support the conclusion that DOC mismanaged asbestos. However, the only actual sampling results that would support this conclusion are the results provided by Ms. Monica Barnett. I pointed out in my whistleblower complaint the ethical concerns surrounding Ms. Barnett and the conflict of interest with her and Mr. Lee. Mr. Lee readily admitted to paying Ms. Barnett \$40,000 as part of his asbestos claims against DOC. In addition, they were business partners in an environmental consulting company with Mr. Lee serving as the President. Shouldn't this at least raise some questions about the integrity of the sampling results? Her results were even discredited by two independent Certified Industrial Hygienists (CIHs). Further, independent testing that was conducted in concert with Ms. Barnett's failed to replicate her initial results. However, this report continues to rely on her statements and her air testing results for concluding that asbestos was mismanaged. For example, page 6 of the report continues to reference Ms. Barnett and states that "the January 20, 2011 report indicated that the contractor concluded that the high levels of in-air fibers found by the February 23, 2007 and April 17, 2007 PCM tests were **specifically asbestos fibers** because of observing visibly damaged asbestos-containing materials in proximity to the testing." However, there is no way to draw that conclusion and absolutely no evidence to support that because the in-air fibers could have easily been dust. Only specific testing could support that conclusion. How did the USPTO investigators come to the conclusion that this was a valid statement? Further, the report states that outside laboratory fiber analysis showed that the April 25, 2007 test results contained asbestos fibers in air above the OSHA PEL. While it may initially appear that an outside independent laboratory was used, the report does not acknowledge that the samples were COLLECTED by Ms. Barnett which she sent to outside laboratory that she selected. In addition, as disputed by the two CIH reports, there is no way that the OSHA PEL can be exceeded because the PEL is for an 8-hour exposure and cannot be used to compare to the grab samples that Ms. Barnett collected. Despite being provided the two CIH reports, the USPTO report concludes that the 2007 air sample tests should be taken **at face value**. What evaluation did the investigators use to determine that the two independent CIH reports should be disregarded and Ms. Barnett's results be taken at face value?

Question 2: According to the report, when pushed by OSC to identify the management officials responsible for the mismanagement of asbestos, the DOC IG explained that they "made no determination as to the percentage of overall responsibility for the management of asbestos to each individual but that each of the three employees had had at least some responsibility for the management of asbestos at DOC at some point during the relevant time period." Why did the DOC IG initially only identify these three former employees? Why did they not identify employees who were actually working at DOC during the "relevant time"? Mr. Jim Woods readily admitted in his testimony that he knew of the asbestos on the 8th floor and he was actually in a management position during the relevant time. Why was he not considered responsible? Mr. Pete Wixted, the DOC Environmental Program Manager and Mr. Lee's supervisor, admitted in his testimony that Mr. Lee accompanied him on the 8th floor prior to 2007. Why was Pete Wixted not named as a responsible official? If DOC mismanaged asbestos, why have other individuals not been named as the management officials responsible for mismanaging asbestos?

Question 3: Question 3 asks if Mr. Lee was KNOWINGLY potentially exposed to IMPERMISSIBLE levels of airborne asbestos. The USPTO report does not answer the question of whether Mr. Lee was KNOWINGLY exposed to IMPERMISSIBLE levels. If there are no

sampling results from 2003-2007 showing elevated levels of asbestos fibers in the air, how could anyone have KNOWINGLY been exposed? Is there evidence that shows asbestos fibers in the air from 2003 to 2007? What evidence is there to show that management officials knew there were impermissible levels of airborne asbestos in the air and knowingly exposed their employees?

Further, the USPTO report on page 12 states “However, if, as OIG states in its report, the test results from 2007 can support a finding that individuals who accessed the attic anytime between 2003-2007 were potentially exposed to impermissible levels of asbestos, we believe the evidence supports a conclusion that Lee was potentially exposed because...”. Part of my whistleblower complaint is that the OIG report CANNOT support a finding that individuals who accessed the attic between 2003-2007 were potentially exposed to impermissible levels. Where are the sample results and what were the levels? What evidence is there to show that there were impermissible levels of airborne asbestos? Where is the evidence for this and what facts or results are the DOC and USPTO using to support this conclusion? The only sampling results that could possibly be used to make this determination were the 2007 results provided by Ms. Barnett. No other results support this conclusion. However, the USPTO investigators failed to make an independent determination stating that they are “not technical experts in asbestos testing.” There are numerous resources and subject matter experts available to the USPTO investigators and they apparently did not use any of those resources. Instead, they simply fell back to the fabricated January 20, 2011 report findings without seeking any technical subject matter support. This is despite the fact that two independent reports completed by CIHs who are indeed subject matter experts refute Ms. Barnett’s findings. Why did the USPTO not review these reports? There is no mention of them in the USPTO report.

Finally, the agency report does not address the specific instances that OSC referred to them including the fact that agency reports in response to the January 2010 referral relied upon fabricated evidence, inaccuracies, and omissions and that the air sampling testing relied upon by the agency was of questionable validity and did not follow proper procedures. I believe there was a conspiracy to commit fraud against the government by corrupt DOC IG investigators and disgruntled employees who made false statements, fraudulent claims, and fabricated evidence and this report fails to address any of those concerns. The initial whistleblower, Mr. Lee, has admitted to paying the primary witness, Ms. Barnett, \$40,000. Why was this not investigated? My reported testimony to the OIG investigators was fraudulent and forged. Why was this not investigated? Why have the DOC IG, the DOC investigators, Mr. Lee, Ms. Barnett, and former DOC employees not been held accountable for fraud and making false statements?

Regards,

Jana Brooks