

Ethics in Steel Production

Written by Nick Sanders
Monday, 22 June 2020 17:54 -

In 2008—which let us note is 12 years ago—a company called Bradken acquired a foundry in Tacoma, Washington. Bradken, described as a “foundry holding company” is a wholly owned subsidiary of Bradken Ltd., a company based in Newcastle, Australia. Bradken Ltd. is in turn a wholly owned subsidiary of Hitachi Construction Machinery.

This subsidiary of a subsidiary is reportedly “the U.S. Navy’s leading supplier of high-yield steel for naval submarines. Bradken’s Tacoma foundry produces castings that prime contractors use to fabricate submarine hulls.” *Right*. Made in America; owned by Japan. Not dramatically different than Honda, which makes its cars in Ohio; and not dramatically different than BMW, which makes its cars in South Carolina. In other words, the fact that the Navy’s leading supplier of submarine hull steel is owned by a foreign company is not considered to be an issue.

What *is* considered to be an issue is the fact that Bradken allegedly produced castings that had failed lab tests and did not meet the Navy’s standards *for 30 years*. In other words, the Tacoma foundry allegedly

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had been falsifying test records and shipping defective steel to Navy prime contractors for nearly two decades before the acquisition by Bradken and for more than a decade after the acquisition.

As one might guess, the U.S. Government wasn’t pleased when it found out about the situation, and initiated proceedings under the civil False Claims Act. Bradken was on the hook for a *really* big dollar value, as perhaps it should have been. In addition, the government initiated criminal proceedings against the company, charging Bradken with Major Fraud Against the United States.

That’s not good.

With respect to the civil False Claims Act allegations, the government alleged that—

... some of the castings Bradken produced did not conform to the Navy’s specifications. In addition to the allegations concerning the altered test results, the United States contended that Bradken invoiced shipbuilders for the parts as if they were made to the demanding military specification when they were not, causing the shipbuilders to invoice the Navy for parts that did not meet specifications.

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Bradken was able to reach a settlement with the Department of Justice that addressed the civil False Claims Act allegations. The settlement was announced [here](#) . The settlement cost the company \$10.8 million. As part of [the settlement](#) , the government agreed to give Bradken a [deferred prosecution agreement](#) with respect to the criminal charges. So that part of the case was resolved.

But how did this alleged fraud get perpetrated for 30 years?

According to the Department of Justice, “Elaine Thomas, as Director of Metallurgy, falsified test results to hide the fact that the steel had failed the tests. Thomas falsified results for over 200 productions of steel, which represent a substantial percentage of the castings Bradken produced for the Navy.” Allegedly, Ms. Thomas altered “test cards” and other records that would have shown the steel did not meet specifications. According to the Department of Justice, Bradken’s management was unaware of the actions of its Director of Metallurgy until 2017, when “a lab employee discovered that test cards had been altered and that other discrepancies existed in Bradken’s records.” At that point, Bradken notified the Navy—as it was required to do under contract clause 52.203-13 (“Contractor Code of Business Ethics and Conduct”). However, in its disclosure the company “made misleading statements suggesting that the discrepancies were not the result of fraud.” As part of its deferred prosecution agreement, Bradken admitted that “these misleading statements hindered the Navy’s investigation and its efforts to remediate the risks presented by Bradken’s fraud.”

The deferred prosecution agreement required Bradken to make significant changes to its operations. Bradken was required to:

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Make changes to the Tacoma foundry management team

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Create new positions focused on lab testing oversight and tracking

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Enter into a compliance agreement with the Navy

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Create an audit and risk committee to oversee the compliance issues

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Implement a new lab information system with anti-fraud controls

Bradken also agreed to publish a detailed account of its missteps in the *Casteel Reporter*, a trade publication, to educate other government contractors.

If Bradken successfully implements the above steps, then the government will dismiss the criminal charges against the company after three years.

In the words of the U.S. Attorney:

The Navy has taken extensive steps to ensure the safe operation of the affected submarines. Those measures will result in increased costs and maintenance. Our agreement with the company is aimed at ensuring they improve their procedures and inform their peer companies about how their systems failed to detect the fraud. We hope such steps will improve the military procurement system.

What about Ms. Thomas?

First, she is now described as a “former employee” of Bradken. But that’s not her real problem. She is still facing criminal charges. She has been charged with Major Fraud against the United States. Major Fraud against the United States is a criminal charge under Title 18 of the United States Code. Ms. Thomas will make her initial appearance in federal court in Tacoma on June 30, 2020. If convicted, she is facing up to 10 years in prison (per count) and a fine of up to \$10 million.

¹ Note that Bradken admitted to the allegations as part of its civil settlement and DPA with the government. On the other hand, the individual involved is still facing criminal charges. We acknowledge that, with respect to the upcoming criminal proceedings, those accused are presumed innocent until proven guilty.