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Reese Marketos Wins Rare, Multimillion-Dollar False Claims Jury Verdict

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Josh Russ



Andrew Wirmani

Two former Texas federal prosecutors-turned-civil trial lawyers scored an eight-digit jury verdict Friday afternoon in a False Claims Act trial against a military defense contractor.

Josh Russ and Andrew Wirmani, partners at the Dallas litigation boutique Reese Marketos, were part of a multi-state legal team representing two whistleblowers who worked six years and overcame huge hurdles to get the case to trial. And now the final judgment will likely surpass \$100 million.

An eight-person federal jury in Alabama returned a unanimous \$36 million damage award Friday to former workers of MD Helicopters who alleged that their former employer submitted false claims and made materially false statements in the process of obtaining government contracts for the manufacture of helicopters for the U.S. Army's Non-Standard Rotary Aircraft Wing Project (NSRWA) Office.

Because False Claims Act cases allow treble damages, the verdict could grow to at least \$108 million before attorneys' fees and costs, lawyers for the whistleblowers said.

The nine figure judgment-to-be represents a rarity in the world of FCA cases because only 1% of qui tam lawsuits make it to trial, according to Russ, a former prosecutor in the Eastern District of Texas who headed the district's civil division and litigated many FCA cases on behalf of the government during his four-year tenure.

The federal government declines to join roughly 80% of FCA cases filed by whistleblowers, which means most are dismissed pretrial or end up settling, Russ said.

In the case against MD Helicopters, whistleblowers Philip Marsteller and Robert Swisher suffered an early blow when the U.S. Attorney for the Northern District of Alabama declined to pursue the case with the plaintiffs. Another setback occurred for Marsteller and Swisher in 2016, when U.S. District Judge Abdul Kallon of Birmingham dismissed the entire case.

The plaintiffs gained new life in 2018 when the U.S. Court of Appeals for the 11th Circuit reversed the lower court and ordered the case be tried.

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Because the government declined to take the case, Marsteller and Swisher will receive up to 30% of the amount the court ultimately awards to the government.

"We're just really happy for our clients," Russ, the lead attorney for Marsteller and Swisher, told *The Texas Lawbook*. "It's a testament to the fact... that standing up to do the right thing is always the right thing to do."

MD Helicopters' lead trial counsel, Alabama lawyers Kim Martin and Rudy Hill of Bradley Arant Boult Cummings, declined to comment on the verdict.

Beyond the outcome, the case has personal significance for Russ, who is a whistleblower himself. Russ recently went public about becoming a whistleblower against the U.S. Department of Justice for what he believed was political interference and special treatment regarding a case that the civil and criminal divisions the Eastern District of Texas were building against Walmart for its role in the opioid crisis. The MD Helicopters case marks Russ' first trial since returning to private practice in November 2019.

It's also the first case tried by Wirmani since he left the U.S. Attorney's office for the Northern District of Texas this summer to join Reese Marketos. Wirmani, who spent nearly a decade at DOJ prosecuting white collar crime, was the lead criminal prosecutor in the high-profile Forest Park Medical Center healthcare fraud trial in 2019 that led a Dallas federal jury to convict seven individuals, including four doctors, for their role in a \$40 million kickback scheme.

Marsteller and Swisher's trial team also included Reese Marketos associate Allison Cook, a former clerk for NDTX District Judge Karen Gren Scholer who recently joined the firm from Jackson Walker. Russ said RM name partner Pete Marketos flew to Alabama to handle voir dire for the plaintiffs, and that even the judge praised his efficiency in picking a jury, a process in which the plaintiff's side utilized none of their strikes.

The firm got involved in the case last November to conduct discovery and take the case to trial.

In their verdict, the jury ruled that MD Helicopters fraudulently induced the U.S. Army to authorize foreign military sales contracts to manufacture helicopters for three allies: the El Salvador Air Force, the Saudi Arabia National Guard and the Costa Rican government. Earlier in the litigation, Marsteller and Swisher had also raised issues with two FMS contracts for the Afghani Air Force.

Former MD Helicopters CEO Lynn Tilton, who was originally a defendant, was dismissed from the case Sept. 3. Tilton was instrumental to the fact pattern that Marsteller and Swisher laid out in the litigation, alleging that she had groomed Col. Norbert Vergez,

the NSRWA project manager, as a future MD employee and influenced him to act in MD's favor by offering him a lucrative job with the company. In 2015, Vergez pleaded guilty to three counts of making false statements and felony conflict of interest — which happened as a result of Marsteller Swisher blowing the whistle and filing their lawsuit.

Russ said Tilton still testified at trial, and under cross-examination, "she collapsed on some very key points.

"She's very smart, but we had the facts and and knew they were right, and the jury believed us," Russ said. "We argued to the jury that you can't lie, cheat and steal your way into government contracts ... and pretend like there's no harm, no foul."

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