

***United States v. Heckert  
Construction Co., Inc., et al.***

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# Overview

- Background of company
- Overview of statues and regulations
- Initiation of investigation
- Investigation findings
- Settlement

# Heckert Construction

Heckert Construction is a family owned construction company in Southeast Kansas.

- Largest asphalt supplier in the region
  - Overlay projects & resurfacing projects
  - State
  - Federal
  - Private projects
- General contractor

# Heckert Construction

Roger Heckert is the company president and his brother Chuck is the computer “wiz”.

The company owns and operates 4 mobile asphalt plants; 3 of which they built themselves. The fourth was purchased and modified.

All four plants computer operating systems were configured to run the loading program designed by Chuck.

# Heckert Construction

Chuck designed a computer program sometime in 1995 or 1996 that would print a false weight ticket when the F10 key was pressed.

The key, often referred to as the “happy button” or the “F\$#@ you button” was widely talked about by drivers and employees of Heckert over the years.

# F 10 “Fraud Key”

- Subroutine not commercially available, developed by Chuck Heckert.
- Shorted (inflated the total) by one ton when truck was loaded, weight ticket showed one ton more than was loaded.
- Customer, including USA, paid for ton not loaded.
- No other function for the F10 key

# Statutes and Regulations

## **The False Claims Act, 31 U.S.C. § 3729:**

“Any person who . . . (1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government . . . a false or fraudulent claim for payment or approval; (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government . . . is liable to the United States Government for a civil penalty of not less than \$5500 and not more than \$11,000, plus 3 times the amount of damages which the Government sustains because of the act of that person. . . .”

# Statutes and Regulations

- 18 USC 1001 - False Statements
- 18 USC 1020 - False Statements on Highway Projects
- 18 USC 371 – Conspiracy
- 18 USC 1341 & 1343 – Mail & Wire Fraud

# Investigation

- Qui Tam brought forward by two former Heckert employees
- Claims – violation of the false claims act
  - F 10 key
  - Inferior product / product substitution

# Investigation

- Meeting with KDOT
- Interviews
- Search Warrant
- Declination
- Damages Calculations

# Investigation - KDOT

- Met with Kansas Department of Transportation
  - Advise them of the investigation
  - Determine their interest
  - Gather their opinion of the allegations and history with Heckert

# Investigation - Interviews

- DOT OIG agents contacted various former employees, drivers and others who would have knowledge regarding the Heckert's fraudulent activities.
  - The Heckerts would direct the plant operators to use the F10 key whenever loads were rejected by the state.
  - Plant operators would also liberally press the F10 button on high production days and when requested by truck drivers they were friends with

# Investigation - Interviews

KDOT hires third party inspectors – engineers to oversee the projects on their behalf.

Each of the engineering companies overseeing three different Heckert projects was interviewed.

# Investigation – Search Warrant

A search warrant was conducted on each of Heckert's facilities.

- Plant computers were seized at all locations except one.
- Company records were also seized.

# Investigation - Declination

The criminal AUSA assigned to the case made the decision not to prosecute based on statute of limitations concerns.

# Investigation – Damages Theory

In order to move forward a way to determine the amount of the fraud was necessary.

- Oil Content Analysis
- Truck numbers

# Oil Content Analysis

- Mathematical analysis to identify and quantify fraud in billing.
- Focus is on a specific project and uses sample data.
  - Observed discrepancies in line with expectations.
- Based on suggestions by the plant operator cooperating with the investigation and statements by other operators, as well as project inspectors and construction engineers.
- Compares liquid asphalt reported consumed on daily reports against the quality assurance testing quantities observed in the field.

# Oil Content Analysis

- Daily, Heckert prepares a plant production report showing tons produced and materials consumed.
- KDOT inspectors prepare a report reflecting this production.
- Heckert is required to test the delivered material 1 – 750 Mg's to ensure it is within project specification.
- A review of the plant reports on file with KDOT – which are based on Heckert's tests, shows the plant liquid asphalt (AC) consumption is lower than indicated by the field testing for AC quantity.

# Oil Content Analysis

- What could this mean?
  - If the plant final production quantities are inflated, but Heckert uses the AC in the proper percentage for the actual amount delivered, the percent AC on the plant report would be lower because it is being spread over an inflated final product.

# Oil Content Analysis

## HCI Records: 9/17/03

- 1004.6 tons produced (911.36 Mg's)
- 40 Truck loads
- 48.96 tons AC @4.87%
  - 50.77 tons AC @5.32%
- QC Test 5.29% AC
  
- 1004.6 tons @ 5.29% = 53 tons AC
  - reduce by 40 tons
- 964.6 tons @ 5.29% = 51 tons AC
  
- Production for the day was probably between 925-964 tons or 839-874 Mg's
  - (48.96 or 51/5.29%)

## KDOT Records: 9/17/03

- 911.36 Mg's produced
- 4.91% AC (HCI meter)
- 44.76% (calculation)
- QC Test = 5.6%
- 911.36 Mg @ 5.6% = 51 Mg or 56.27 tons AC
- HCI was paid for 904.43 Mg or 997.17 tons. Contract \$34.58 /Mg = \$1037.4 over pay this day.

# Damages Theory

One of the relators said he routinely used the F 10 key for the same drivers.

- Heckert company owned trucks
- Friends of his who were contract drivers

# Damages Theory

- Analyzed 22 federal projects during 2002-04
  - Identified which jobs the three plant operators with knowledge of F 10 key worked on, focused on specific drivers/truck numbers
  - F10 key used 3847 times by these three employees for the specific drivers/truck numbers
- Amounts to \$126,951 in asphalt paid for but not delivered
- Treble damages = \$380,853

# Damages Theory

**Penalties: \$5500 to \$11,000 per false claim**

- FCA imposes liability for “the commission of acts which cause false claims to be presented.” *U.S. v. Bornstein*, 423 U.S. 303, 312 (1976).
- Paperwork flow:
  - company submitted weight tickets to KDOT inspector daily
  - KDOT inspector submitted totals to KDOT daily
  - KDOT submitted progress billing to the Federal Highway Administration weekly
- Arguably, each use of F10 key generates a weight ticket for each truck load and is a false claim; would result in very large penalties

# Damages

**Penalties: \$5500 to \$11,000 per false claim**

- Calculated damages using daily measure
- For these 22 federal projects, estimated number of false claims based on these three employees and the identified trucks = 226 days
- Penalty range: \$1.243 to 2.486 million

# Settlement

- The defense requested a meeting to review the evidence.
- They attempted to counter the computer forensics, but did not offer anything substantive to refute the evidence.
- In December 2007 the defense and prosecution met with a mediator.
- Although they did not admit liability in the settlement; they agreed to pay \$950,000.