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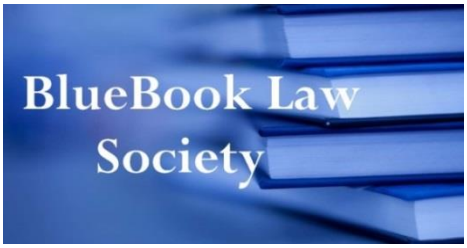

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Andrews, et. al. v. Lawrence Livermore National Security, LLC.

A Federal Nuclear Research Facility, A Greedy Corporation & Mass Layoffs: A Breach of Contract & Wrongful Termination Lawsuit in California Settlement: $37.25 M dollars

Making the Case for Persistence, Tenacity, and Integrity
Oakland, California Civil Litigation Attorney, Gary Gwilliam

Let's face it. There are many great lawyers "out there," and there are many that perhaps are not so great. However, there are far fewer truly exceptional ones, and they aren't always the easiest to find, unless you know where and how to look for them. These are the attorneys who take on the big giants—and win. These are the ones putting their necks on the line to see a case through. They take risks, they read between the lines, they understand legal implications that no one else fully sees. When other lawyers turn you away, these are the attorneys you are referred to. They have landmark cases. You'll know one when you meet one by their highly distinctive, 'Let's get this done' attitude. Furthermore, they are committed—emotionally and financially—to their clients. They are courageous, fearless, passionate, compassionate—the strongest of allies—but deadly opponents, and they know what it takes to see your case through to the very end with persistence, tenacity, and integrity. Who are they? They are the warriors found at the upper echelons of the legal community who made their way to the very top through their uncanny and consistent ability to achieve the very best outcome for those who have had cases just as difficult as yours. Gary Gwilliam is one of these lawyers. Let's tell you about one of his most recent and significant successes.

In May of 2008, the phones at Gwilliam, Ivary, Chiosso, Cavalli & Brewer, in Oakland California started ringing…and they kept ringing. Now, the phones ringing at their office was not an unusual circumstance, of course—they have a very successful law practice. But this was different. The callers were contacting them for pretty much the same reason: earlier in the month, and just seven months after Lawrence Livermore National Security, LLC (LLNS) won the contract from the Department of Energy to manage Lawrence Livermore National Laboratory—DOE's national nuclear laboratory in Livermore, California—LLNS engaged in a massive layoff of more than 430 of its employees. They said at the time that the employees were laid off because the Lab was dealing with a national recession, a budget "shortfall," and a change of focus away from nuclear weapons development. This was the first layoff at the Lab in almost forty years. These employees were told to clear out their offices, collect their belongings, and leave the premises on one hours notice. This was all done under the cold supervision of management personnel, and then they were escorted off the grounds by armed guards. Many of them said they felt like they were treated like criminals. This was basically an outrageous "slap in the face" to the hundreds of loyal employees who had devoted

their time, talents, and lives to the lab. These employees lost their homes, savings, livelihood, and financial security—forcing many into bankruptcy.

Taking on the Giant: Gary and the Lab

Gary had "history" with the Lawrence Livermore—he had taken them on in the past. One case was a very high profile one which had received a lot of publicity. He explains how he got involved with the case, "The Union knew who I was; so in short, I was the only lawyer in the Bay area that had ever taken on Livermore Lab—and taken them on successfully—my name was well known out there. Elaine Andrews who was the lead plaintiff in the case, had been a former client of mine also, so she knew me…and other people knew of me; so as soon as this problem started at the Lab in May of 2008, I started getting calls. Not one other lawyer ever had one of these cases. Nobody else would touch them so we were the only law firm ready and willing to take Livermore on—even though we knew we were up against a big giant."

Corporate Greed with a Twist - The Privatizing of our Nuclear Facilities: Lawrence Livermore National Security, LLC & Bechtel

From the time of its establishment in 1952, until October 1, 2007, LLNL was managed essentially as a public service by the University of California. But in 2007, President George W. Bush's administration made the decision to turn over key government functions to private industry—and in so doing, fully privatize the nation's nuclear warhead complex. They were convinced that the universities weren't running the nuclear facilities very well, and that private companies could do a lot better and save a great deal of money. Furthermore, they believed there would be much more efficiency because private companies function better than public agencies. Subsequently, they put the contract for running LLNL up for bid. There were a number of bids, but the main bid was by an LLC made up primarily of Bechtel and the University of California (UC); it was called Lawrence Livermore National Security, LLC, and this is who they awarded the contract to. There were a few smaller companies that were part of LLNS, but primarily it was Bechtel and UC, and of these two, Bechtel was really the one that was running everything. In order to get the contract, LLNS told the government that they would be able to save them about 50 million dollars a year. However, there were about 40 million dollars more in the cost of the contract. At the time of transition, employees signed a new employment agreement, which stated, "Any termination action must be reasonable under the circumstances and cannot be made for an arbitrary or discriminatory reason." However, approximately thirty Bechtel people were placed in top management positions, and they immediately came in and began all the layoffs. Apparently, part of the plan to save money involved letting go of all of their older workers and bringing in a bunch of younger ones.

This is what Gary has to say about LLNS:

> Bechtel/LLNS is a controversial company as to how powerful they are—and it is not a company that is beholden to stockholders—no responsibility to anybody. What is going on with our government contracts—privatizing labs, nukes for profit, private companies running our nuclear facilities—how do they do that? Well, they cut back on their staff and go with inexperienced, cheaper labor. Is that what we need for our nuclear arsenal? They promised to save the government a lot of money, and they did so, on the backs of loyal hardworking people. Their strategy was just to get rid of their best workers, and keep their cheapest labor--this also was a theme of the case. But, [most importantly] this was a case about perseverance and having the courage to move forward under very complicated, difficult circumstances. It was a very expensive case to pursue but our firm was not afraid to do anything we had to do to fight for justice for our clients. And so it was about the courage of our firm, the courage of our clients—all of us—to take on people like this and never give up.

The Complexity of the Lawsuit:

In May of 2009, Gary filed suit on behalf of 130 former employees of LLNS, claiming they had been selectively terminated because they were older, more senior, and thus higher-paid employees. Furthermore, the lawsuit claimed that LLNS breached employment contracts when they ignored a long-standing policy of cutting temporary, contract, and junior workers before terminating employees with seniority. All of the plaintiffs had claims for age discrimination and breach of contract, along with other individual claims such as retaliation and disability. Under California law, employees over the age of 40 are protected against age discrimination. The average age of the plaintiffs in this case was 54, and they had worked for the Lab an average of 20 years.

It is interesting to note that the lawsuit was filed as a consolidated action—not a class action— lawsuit, which is an important distinction. Furthermore, to have a consolidated action lawsuit that includes 130 plaintiffs is a highly unusual occurrence; most consolidated actions might normally fall within the range of 2-10 plaintiffs. The fact that this lawsuit consisted of such a large number of plaintiffs significantly added to the complexity and difficulty of this case. In consolidated actions, each plaintiff is treated as an individual. This means therefore, that certain facts need to be established for each individual including anything that is unique to them, such as how he/she has personally been harmed by the actions of the defendant. [Often a consolidated action is used when each plaintiff within the group has so many differing individual circumstances, that they outweigh the existing common issues of fact and questions of law that would make it mandatory and necessary for a case to be considered a class action.] With regard to Livermore, age of plaintiff, length of time with Livermore, position, salary, employment contract, etc., were all varying factors and all unique to each individual employee. However, they were all damaged in the same layoff and all had common issues of law and fact regarding liability.

Gary explains further, "We could have filed one hundred and thirty separate lawsuits if we had wanted to, but that would have really been a nightmare; so, we filed one hundred and thirty cases in one complaint because they were all a part of the same layoff and they were all held together by that. The defense frequently wanted to separate them all out and make us try them separately in the hopes that that would make us drain our resources, but the judge kept the cases together, so the question became, 'How are we going to try them?'"

An Unusual Occurrence: The Test Cases—Two Causes of Action

Gary continues,

> So the judge came up with an idea that we should have what we call some "test cases," so five cases were chosen as test cases relatively early on in the litigation and these were the five plaintiffs that ended up going to trial. So, we had two theories or what we call "Causes of Action" in our complaint. One was Age Discrimination and one was Breach of Contract. The Breach of Contract was based on the fact that the plaintiffs could only be fired for what is called "Reasonable Cause," per their [newly signed] employment agreements with LLNS. The vast majority of employees in this country are what are referred to as, "At Will," and can be fired for any reason—most people know that—but that is not true of public employees. Because our plaintiffs had been public employees at the University of California for many, many years, they were able to negotiate a deal with the government. When Bechtel and the LLC took over the Lab on October 1 2007, everybody signed that new employment agreement or letter, and in that letter it was agreed that these employees could only be fired for reasonable cause and not arbitrary or discriminatory—that was the standard for our Breach of Contract case.

The two causes of action should have been tried together, but the defense team was creating havoc with regard to the Age Discrimination case, and asserting it was lacking in statistical evidence. They brought a motion for Summary Judgment on it. Summary Judgment is a pre-trial motion claiming that there are no important facts in dispute, and therefore no need or reason to proceed to trial. Gary was trying to get the case set for trial and it was already the end of 2012; the layoffs had been in 2008, the lawsuit was filed in 2009, and there had been depositions and discovery ongoing since that time—consequently, three years had gone by. The difficulty in this case had been the complication of trying to get so many cases to trial with so many delaying tactics from the Lab and their lawyers—that was the big problem; the defense team had just done everything they possibly could to avoid the trial. Furthermore, the defense firm was able to convince the judge that it was going to take them another year or two to prepare for the Age Discrimination case; so out of frustration, Gary suggested moving forward with the Breach of Contract case. So the judge agreed with Gary on this and he bifurcated (split) the two causes of action—meaning he said that the Breach of Contract case and the Reasonable Cause action would be tried first, and then the Age Discrimination second. Consequently, there were two phases to the trial, and that's why it was tried twice in front of two separate juries in 2013.

The Trials and Verdicts:

Phase I: The Breach of Contract & Reasonable Cause case was known as Phase I, and it began on March 11, 2013. A verdict was reached on May 10, 2013. The jury found that LLNS had breached or violated its own employment agreements, which had stated that it would terminate employees only for reasonable cause. This resulted in a victory for the five test plaintiffs and an award of $2.73M in damages for their economic loss, with amounts ranging

from $242,000 to $853,000 each, to compensate for lost pay and benefits. These awards represented compensation for past and future economic damages only.

Phase II: The Age Discrimination case was known as Phase II, and it began on September 9, 2013. A verdict was reached in December 2013. The Lab prevailed in the second trial which had alleged that the Laboratory had discriminated against older employees in making layoff decisions. This second jury found that the layoff did not have a disproportionate impact on employees age 40 and over, and that there wasn't a pattern of discrimination because they were older.

The mixed results—verdicts both for and against employees in the same case—were possible because while the first jury determined that the Lab breached its employment contracts and acted unfairly in terminating the lead plaintiffs, the second jury found that the Lab did not terminate them because of their age. So basically both juries considered the case on two different theories and came to two different conclusions. However, both plaintiff and defense counsel appealed the others' verdict.

The Settlement of Sept 30, 2015:

After seven very grueling long years, and with both jury verdicts for Phase I and Phase II on appeal, the case finally settled. Immediately preceding this settlement, there had been four months of lengthy mediations and negotiations, which had been strongly encouraged by the Alameda County Superior Court Judge, Robert Freedman. LLNS finally agreed to pay $37.25M to settle the claims of the 129 plaintiffs from Phase 1 [one plaintiff had decided not to settle]. The money was to be distributed according to the workers' pay rates and years of service with the lab. To this day, the lab continues to deny any wrongdoing in connection with the circumstances surrounding or underlying the layoff.

The Money:

It is important to understand that prior to this settlement no money had been paid out in this case whatsoever. The May 2013 verdict in favor of the five test plaintiffs in Phase I of the trial—for 2.7M— was never paid out because the verdict was appealed by the defense. Phase II of the trial was a defense verdict.

Justice Delayed is Justice Denied: Gary's Clients and the Long Road to Settlement

In Gary's words,

> We had great clients who needed our help. They were very deserving and extremely appreciative of every single thing we did for them. We always kept everybody very closely advised as to what was going on. We had meetings with them, we sent emails—they were very grateful—even after all of these years when they were getting worn out and tired. A couple of them had to go through bankruptcy; some of them lost their homes; they couldn't get another job; they were struggling; they had health problems; but still they hung in there. It was our clients who were the real heroes in this case—not me.

A Risky but Rewarding Endeavor for Gary & His Firm:

This case took considerable time, energy, and money for Gary and his firm. Gary estimates that they put in approximately 25,000 hours. In Gary's words,

> "We ended up spending much more time and energy and money than we ever thought we would, but I don't have any regrets about it. Livermore could have settled it a long time ago and saved everybody a lot of time and money; but they wanted to fight it and the people who really got rich was that firm—not me. We got a nice settlement, but I tell you…25,000 hours and all the time and money I put into it—so this was not a "get rich" case. We ended up getting out of it pretty much what we put into it, but there were seven years of risk. There are very few plaintiffs lawyers that would take on a case that was this risky, that would go on this long, and put this much money into it. That is what good plaintiff's lawyers do, however, and you just have to have the courage to move forward and say, 'Hey, I'm going to do it.' I would have fought this case forever even if it had driven me to bankruptcy; I would never have given up on this case—never. You have to decide that there is something more important than money; it is about doing what is right, doing it right, and getting justice for your clients."

Selling Out, Secret Settlements v. Consumer Advocacy, Public Justice, & Integrity:

Livermore wanted to have a confidential, "secret" settlement and initially it was in the first draft of the settlement agreement. However, when Gary saw that, he refused to agree to those terms stating, "This is government money and it is against public policy! We won't do this; we can say anything we want about the cases and our clients can say anything they want about the cases, and there will be no confidentiality whatsoever in the settlement."

Gary believes that secret or confidential settlements are dangerous for society as a whole; people won't know what wrong has been done, what products are bad, or tires that aren't safe, etc. Unfortunately, a lot of plaintiff lawyers will make those deals nonetheless. Sometimes it is because the clients want the attorney to do it; but often, it is just because many lawyers have just given up on fighting for public settlements. Pursuing justice for a client involves practicing law with integrity and seeing justice all the way through to the very end—where justice for the public is achieved as well. In Gary's words, "I'm a public interest lawyer and a consumer advocate—I'm not just a plaintiff's lawyer…and the public interest part of me—that lies at the heart of everything I do."