

FILED

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO, FLORIDA

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U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO, FLORIDA

UNITED STATES OF AMERICA

Plaintiff,

v.

Case No: 6:09-cv-1911 -Orl -18 GJK

KAMAN PRECISION PRODUCTS, INC.,  
f/k/a KAMAN DAYRON, INC.,

Defendant.

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**COMPLAINT**

Plaintiff, the United States of America ("United States"), sues Defendant, Kaman Precision Products f/k/a KAMAN DAYRON, INC., ("KDI") and alleges:

**PARTIES, JURISDICTION, AND VENUE**

1. This action is pursuant to the False Claims Act, 31 U.S.C. §3729 *et seq.*; and under common law for breach of contract, unjust enrichment, and payment by mistake.
2. The United States of America ("United States" or "government") files this lawsuit on behalf of the Department of the Army, an agency and instrumentality of the United States.
3. KDI is a contractor with its principal place of business in Orlando, Florida.
4. This court has jurisdiction pursuant to 28 U.S.C. §1345, providing original jurisdiction for lawsuits commenced by the United States, and under 28 U.S.C. §1331 and 31 U.S.C. §3732(a).
5. Venue for this action is proper in the Middle District of Florida pursuant to 28

U.S.C. §1391(b) and 28 U.S.C. §3732(a).

### **FACTS**

6. In 1996, the U.S. Army entered into contract DAAA09-96-C-0015 ("the contract") with Dae Shin Enterprises, Inc., d/b/a Dayron. In 2002, Dayron was purchased by Kaman and became KDI. KDI assumed contract number DAAA09-96-C-0015. In 2008, KDI changed its name to Kaman Precision Products, Inc, but remained obligated under contract number DAAA09-96-0015 by virtue of a modification of the contract made on November 5, 2008.
7. The contract was for a quantity of FMU-143 fuzes that were to be used in hard target penetration warheads, colloquially referred to as "bunker buster bombs."
8. The contract was modified several times over the years and eventually grew to more than \$20 million. This contract was in effect between the United States and KDI at the time of the events giving rise to this action.
9. FMU-143 fuzes consist of several components, including a component known as the bellows motor. The bellows motor rotates a portion of the fuze assembly to arm the fuze.
10. In 1997, it was discovered that the EB 401-1 bellows motor designated for use in the FMU-143 fuze was over-energetic, meaning that its powder charge was too powerful for the fuze. The over-energetic bellows motor caused the detonator in the fuze to fire unpredictably, often shortly after the fuze was armed. This created a hazard to personnel using the fuze and created a potential for premature and other misfires of the warhead.
11. KDI, working with its bellows motor supplier, Eagle Picher, developed a new

bellows motor for use in the FMU-143 fuze. This new bellows motor was given part number EB 401-2.

12. In 1998, the military approved KDI's request for deviation ("RFD") to contract number DAAA09-96-C-0015. (RFD 0015-D-008R1). The RFD was identified as "urgent" and "major" and stated it was "to revise the bellows to include unique FMU-143 requirements." The RFD specified using the EB 401-2 bellows motor in the FMU-143 fuze.
13. In 2000, the Army issued modification 14, incorporating RFD 0015-D-008R1 into the contract for the fuzes. As a result of the modification, the EB 401-2 bellows motor was specified for use in the FMU-143 fuze.
14. Throughout this time, Dayron and, then KDI, supplied another fuze for use in a different hard target penetration warhead. The other fuze had part number FMU-152.
15. The FMU-152 used an EB 401-3 bellows motor, which has a proprietary powder charge mixture weighing 71-74 mg. This charge is close to the powder charge in the EB 401-1 bellows motor originally used in the FMU-143 fuze and found to be over-energetic. The EB 401-2 bellows motor contractually-specified for the FMU-143 fuze used a powder charge approximately 50 percent less than the powder charge in the EB 401-3 used for the FMU-152.
16. The EB 401-2 and EB 401-3 bellows motors appear identical to the naked eye. However, the motors are different and intended for different fuzes. In addition to having different powder charges, the two motors have different parts numbers, were ordered by KDI through separate purchase orders, and were stored in

- different areas of KDI's facility.
17. On January 15, 2003 and January 30, 2003, KDI ordered EB 401-2 bellows motors from its supplier, Eagle Picher, for use in FMU-143 fuzes that KDI was scheduled to ship in June and July 2003.
  18. KDI's supplier was not able to fill the orders for the EB 401-2 bellows motors, creating a situation where KDI would have to shut down or reduce its production of FMU-143 fuzes and possibly not be able to timely meet its contractual obligations to provide the fuzes.
  19. To resolve this situation, Larry Streit, KDI's Materials Manager, acting on behalf of KDI, went to the area of KDI's facility where the 401-3 bellows motors for the FMU-152 fuzes were stored, took some of those fuzes, and put them in the bins where EB 401-2 bellows motors were kept for FMU-143 fuzes.
  20. Streit, acting on behalf of KDI, also went into KDI's computer system and changed the parts numbers to make it appear that KDI was using EB 401-2 bellows motors for the FMU-143 fuzes that KDI would ship pursuant to the contract.
  21. KDI proceeded to put 401-3 bellows motors into some of the FMU-143 fuzes it was building to supply to the United States.
  22. KDI knew that it substituted non-conforming fuzes but did not report or disclose the substitution at the time that it occurred. KDI did not request a change order, deviation, or other authorization to make the substitution and lacked any authorization to make the substitution.
  23. Nonconforming bellows motors were placed in some or all of 1,081 FMU-143

fuzes shipped by KDI between June 5, 2003 and July 25, 2003, under lots G052-001, G046-003, D046-001 and F046-002.

24. Each lot was accompanied by a DD Form 250 and a Certificate of Conformance to contract specifications.
25. The contract states that a DD Form 250 must be submitted with all requests for payment pursuant to DOD FAR Supp., Appendix F, Part 4. This section of FAR states: "Payment by Defense Finance and Accounting Service, Columbus Center will be based on the source acceptance copies of DD Forms 250 forwarded to the contract administration office."
26. Certificates of Conformance were prepared by KDI and expressly represented compliance with contract specifications.
27. DD Form 250's and Certificates of Conformance prepared by KDI were submitted to the government for the purpose of obtaining payment.
28. By submitting the DD Form 250's and Certificates of Conformance, KDI expressly and implicitly represented compliance with contract specifications despite its knowledge that the fuzes did not comply with contract specifications.
29. A DD Form 250 and Certificate of Conformance for Lot G046-003 was signed by Robert Monahan, KDI's Quality Assurance Manager on July 24, 2003 and submitted by KDI for payment by the government. Payment was made by the government on August 19, 2003.
30. A DD Form 250 and Certificate of Conformance for Lot G052-001 was signed by Robert Monahan, KDI's Quality Assurance Manager on July 24, 2003 and was submitted by KDI for payment by the government. Payment was made by the

- government on December 30, 2003.
31. A DD Form 250 and Certificate of Conformance for Lot FO46-002 was signed by Robert Monahan, KDI's Quality Assurance Manager on June 25, 2003 and was submitted by KDI for payment by the government. Payment was made by the government on July 21, 2003.
  32. A DD Form 250 and Certificate of Conformance for Lot DO46-001 was signed by Robert Monahan, KDI's Quality Assurance Manager on May 22, 2003 and was submitted by KDI for payment by the government. Payment was made by the government on June 6, 2003.
  33. At the time each request for payment was submitted, KDI knew that the fuzes did not comply with contract specifications and that the Certificates of Conformance were false.
  34. The United States relied on the DD Form 250's and Certificates of Conformance prepared by KDI to make payment of \$2,004,499 for lots G052-001, G046-003, D046-001 and F046-002.
  35. On August 18, 2004, Paul Harrison, a Defense Contract Management Agency ("DCMA") Orlando Quality Assurance Specialist ("QAS"), discovered the substitution of the EB 401-3 bellows motors for the EB 401-2 bellows motors in the fuzes shipped between June 5, 2003 and July 25, 2003.
  36. KDI subsequently acknowledged the substitution in September 2004.
  37. The Army, Air Force, and the Navy, all of which were using the fuzes, concurred that substitution of the EB 401-3 bellows motors for the EB 401-2 bellows motor in the FMU-143 fuzes created a potential for fuses firing upon being armed. The

service representatives concluded that use of the fuzes could cause critical injury or death to service personnel, damage to government property, and misfires that could result in waste or failure to achieve tactical goals.

38. The FMU-143 fuzes are sealed as part of the finishing process. Because of the seal, it was not possible for the United States to determine which fuzes had over-active EB 401-3 bellows motors installed in them.
39. The United States requested KDI assist in identifying which fuzes were installed with the EB 401-3 bellows motors. KDI was unable to identify which fuzes were installed with the EB 401-3 bellows motors.
40. Therefore, all 1,081 fuzes supplied between June 5, 2003 and July 25, 2003 were quarantined.
41. The military has attempted to rework the defective fuzes to create usable ones. The cost of this effort exceeds \$3 million to date.

**COUNT I**  
**False Claims Act, 31 U.S.C. §3729(a)(1)**

42. The allegations in paragraphs 1 - 41 are re-alleged and incorporated by reference.
43. The False Claims Act, 31 U.S.C. §3729(a)(1), imposes liability on any person who:
  - knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a members of the Armed forces a false or fraudulent claim for payment or approval.
44. For the purposes of the False Claims Act, "the terms 'knowing' and 'knowingly'

mean that a person, ... (1) has knowledge of the information, (2) acts in deliberate ignorance of the truth or falsity of the information, or (3) acts in reckless disregard of the truth or falsity of the information and no proof of specific intent to defraud is required.” 31 U.S.C. §3729(b).

45. KDI knowingly submitted false claims to the United States when it requested or demanded payment for 1,081 FMU-143 fuzes shipped between June 5, 2003 and July 25, 2003. The DD Form 250's and Certificates of Conformance accompanying these fuzes expressly and implicitly represented compliance with contract specifications for the EB 401-2 bellows motors.
46. KDI knew that the information in the DD Form 250's and Certificates of Conformance accompanying each lot of fuzes was false when it submitted them.
47. In the alternative, KDI acted in deliberate ignorance of the truth or falsity of the lack of compliance or in reckless disregard of the truth or falsity of the lack of compliance.
48. KDI intended that the United States rely on the DD250s and Certificates of Conformance submitted with the fuze shipments.
49. The United States relied on the DD250s and Certificates of Conformance submitted with the fuze shipments and was damaged by the false claims. These damages include the amounts paid for the fuzes, which have no value as supplied.
50. KDI submitted four separate false claims to the United States.

WHEREFORE, the United States requests that the Court:

- Enter a judgment against KDI for the amount of damages and penalties

permitted by law, plus all costs and interest to which the United States may be entitled.

**COUNT II**  
**False Claims Act, 31 U.S.C. §3729(a)(1)(B)**

51. The allegations in paragraphs 1 - 41 are re-alleged and incorporated by reference.
52. The False Claims Act, 31 U.S.C. §3729(a)(1)(B), imposes liability on any person who:
  - knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim. . . .
53. To obtain payment from the United States, KDI knowingly made, used, or caused to be used false records or statements. KDI knew that the information in the DD Form 250's and Certificates of Conformance accompanying each lot of fuzes was false when it submitted them.
54. In the alternative, KDI acted in deliberate ignorance of the truth or falsity of the lack of compliance or in reckless disregard of the truth or falsity of the lack of compliance.
55. KDI intended that the United States rely on the DD Form 250's and Certificates of Conformance accompanying each of the fuze shipments.
56. The United States relied on the DD Form 250's and Certificates of Conformance accompanying each of the fuze shipments and was damaged by these false statements. These damages include the amounts paid for the fuzes, which have no value as supplied.

57. KDI submitted eight separate false statements or records to the United States. WHEREFORE, the United States requests that the Court:
- Enter a judgment against KDI for the amount of damages and penalties permitted by law, plus all costs and interest to which the United States may be entitled.

**Count III  
Breach of Contract**

58. The allegations in paragraphs 1 - 41 are re-alleged and incorporated by reference.
59. KDI breached contract DAAA09-96-C-0015, as modified by RFD 0015-D-008R1, when it supplied FMU-143 fuzes with EB 401-3 bellows motors.
60. The government was damaged by the breach both in the amounts it paid for the non-conforming fuzes and the amount that it has spent attempting to rework the fuzes.
- WHEREFORE, the United States requests that the Court enter a judgment against KDI for all damages suffered by the government as a result of the breach of contract and order all other relief that it deems appropriate.

**Count IV  
Payment by Mistake**

61. The allegations in paragraphs 1 - 41 are re-alleged and incorporated by reference.
62. The government's payments for lots G052-001, G046-003, D046-001 and F046-002 were made by mistake and not authorized by law. Specifically, the

government reasonably believed that the fuzes complied with contract specifications.

63. The government would not have paid the payments if not for this mistaken belief.
64. KDI was not entitled to the payments.

WHEREFORE, the United States requests that the Court enter a judgment against KDI requiring it to repay all money that it received by mistake and which it was not entitled to receive, and order all other relief that it deems appropriate.

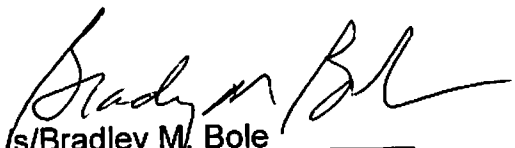
**Count V  
Unjust Enrichment**

65. The allegations in paragraphs 1 - 41 are re-alleged and incorporated by reference.
66. The government paid KDI for lots G052-001, G046-003, D046-001 and F046-002.
67. KDI unjustly benefitted from these payments and obtained monies to which it was not entitled by contract or otherwise because it did not provide fuzes that conformed to contract DAAA09-96-C-0015, as modified by RFD 0015-D-008R1.
68. KDI is not entitled to retain these benefits.
69. In justice and equity, KDI should return the benefits that it unjustly received.

WHEREFORE, the United States requests that the Court enter a judgment against KDI requiring it to repay all money that it unjustly received, and order all other relief that it deems appropriate.

Respectfully submitted,

A. BRIAN ALBRITTON  
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