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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DR. JUDY WOOD on behalf of the UNITED STATES OF AMERICA,	:	
Plaintiff-Appellant,	:	Appeal No. 08-3799-cv
v.	:	
APPLIED RESEARCH ASSOCIATES, INC., et al,	:	
Defendant-Appellees.	:	

REPLY AFFIRMATION TO APPELLEES,
APPLIED RESEARCH ASSOCIATES INC., et al.'s
OPPOSITION TO APPELLANT, DR. JUDY WOOD'S
MOTION FOR ENLARGEMENT OF ORAL ARGUMENT TIME

I, Jerry V. Leaphart, of Jerry V. Leaphart & Assoc., attorney of record for the appellant, Dr. Judy Wood, in the above referenced matter, hereby affirm as follows:

1. On or about June 5, 2009, the appellees, Applied Research Associates, Inc. et al, (ARA appellees) filed with this court their opposition and supporting affirmation opposing the presently pending motion of appellant, Dr. Judy Wood (Wood appellant), for enlargement of time for oral argument which application is based upon the fact that

on May 20, 2009, the first major modification of the False Claims Act, 31 USC § 3729 et seq. since 1986, (False Claims Act or FCA) that is entitled Fraud Enforcement and Recovery Act of 2009 (FERA) was enacted into law at 111 P.L. 21, 123 Stat. 1617 (2009), with significant retroactive effect. FERA also contains a significant amount of legislative history that must be taken into consideration. Accordingly, annexed hereto as Exhibit A is FERA; annexed hereto as Exhibit B is a portion of FERA's legislative history adopted during the course of the current session of Congress, designated as 111th Congress, 1st Session S 386 2009 Bill Tracking S. 386; 111 Bill Tracking S. 386 (S 386 Bill Tracking). All of FERA's legislative history, not just Exhibit B., should be deemed incorporated herein, by reference. In addition annexed hereto is Exhibit C is an additional portion of legislative history from the 110th Congress that has been specifically incorporated into the legislative history of FERA. That additional legislative history (Exhibit C) is designated 110th Congress, 2d Session SENATE Report 110-507 110 S. Rpt. 507 (110 S Rpt. 507). At pg. 17 of S 386 Bill Tracking (Exhibit B), the following quotation confirms incorporation of 110 S Rpt 507 (Exhibit C), into FERA's legislative history:

> "The provisions in Section 4 were drawn, in significant part, from the Committee's previous work on S. 2041, the False Claims Act Corrections Act of 2008, in the 110th Congress. S. 2041 was favorably reported from Committee and a detailed Committee report was filed on S. 2041 outlining the conflicting interpretations and providing significant background on why the Committee chose to make the amendments contained in the bill. The Committee feels that the report to S. 2041, S. Rpt. 110-507, should be read as a complement to this report due to a number of similar changes contained in S. 386." See Exhibit B, pg. 17.

2. Initially, the ARA appellees did not even acknowledge the significance of FERA, including the fact of FERA's "retroactivity" in their said opposition. They referred to the

most significant amendment to the False Claims Act since 1986, retroactive no less, as having "no impact." As that failure to acknowledge the significance of a retroactive change in the law, together with its comprehensive legislative history, was considered to be a "misstatement" the undersigned attorney sent an email letter to counsel for ARA appellees dated June 6, 2009, requesting modification and/or retraction of the said opposition and affirmation filed by them on June 5th. A copy of said letter of June 6th, sent via email, is annexed hereto as Exhibit D.

3. Then, on June 8, 2009, the ARA appellees submitted a letter containing some acknowledgment of the retroactive effect of FERA, which letter they acknowledged was in response to that of the undersigned of June 6th. A copy of said letter of June 8th is annexed hereto, made a part hereof, as Exhibit E. The June 8th letter (Exhibit E) contained no acknowledgment whatsoever of the extensive guidance set down by Congress on the manner in which the False Claims Act is to be interpreted in connection with, among other things, the issues of "public disclosure" and "particularity" together with specific references to judicial decisions that Congress made clear are inconsistent with Congressional intention in the interpretation of the False Claims Act. Moreover, these changes are effective as to currently pending cases.

4. Notwithstanding its otherwise lack of completeness, to put it no more harshly than that, the said ARA appellees letter of June 8th (Exhibit E) contains what can only be described as a binding Judicial Admission, analogous to a signed and notarized "confession" issued on the basis of acknowledgment of "warnings" and upon receipt of prior and timely "advice of counsel."

This is no exaggeration and here is why:

5. The ARA appellees' letter of June 8th (Exhibit E) states, at pg. 2 thereof, as follows:

> "As I am sure you are aware, pursuant to § 4(f) B of the amendments, the only section of the False Claims Act as to which there is a retroactive application of the amendments is 31 USC § 3729(a)(1)(B), formerly § 3729(a)(2). In its decision, the District Court made no mention of this section of the FCA."

6. With respect to the above, one can only say "PRECISELY." As 31 USC § 3729(a)(1)(B) is *retroactive to cases pending as of June 7, 2008*, it is obvious that the district court must NOW take the section into consideration in connection with cases pending as of June 7, 2008. That is what the law mandates. Thus it is disingenuous in the uttermost for the ARA appellees to attempt to (mis) place a burden upon appellant Wood to have mentioned the section at some point or another. Clearly, this case is based on 31 USC 3729 et seq. Thus the following additional quotation contained in Exhibit E at pg. 2 is wrongly premised:

> "Similarly, you did not raise any issues with respect to this section in your appeal." Exhibit E pg. 2

That attempt to negate the effect of a retroactive change in the law that was unknown as recently as two weeks *after* notice of oral argument was given in this case confirms that it is improper to attempt to parse Congressional intention in the manner that is continuing to be done by the ARA appellees, as articulated above.

7. Indeed, there is something further that can be said here; namely, the manner of interpretation of the FCA that the ARA appellees manifest as quoted in paragraphs 5 and 6, above, represents nothing more than the continuation of what can be fairly described as the process of "slicing" and of "dicing" and of "parsing" of words in the FCA so as to defeat Congressional meaning and intent in connection therewith.

Congress has addressed this issue, definitively, as follows in FERA's said legislative history:

> "Despite the Committee's belief that the public disclosure bar and original source statutory provisions were clear when passed in 1986, many courts have interpreted these provisions to create ambiguities and have issued opinions contrary to the intent outlined in the 1986 Committee report. The result of these interpretations has been significant litigation, delays in settling FCA cases with clear violations of law, and, regrettably, the dismissal and presumptive barring of meritorious claims brought by qui tam relators. These decisions have created a chilling effect on relators coming forward with claims because certain types of cases cannot survive dismissal. Some examples--but by no means an exclusive list--of these decisions that run contrary to the intent of the Committee are: [There follows a lengthy, but nonexhaustive list of cases and of circumstances that Congress indicates are contrary to the intent of the FCA." Exhibit C pg. 20

7. The list includes, by way of example, this court's decision in United States ex rel. Doe v. John Doe Corp, 960 F.2d 318 (2d Cir. 1992), a case cited in ARA appellees' brief. Equally significant and controlling, FERA has the effect of specifically *reversing* and/or issuance of cautionary guidance concerning recent Supreme Court decisions including, again by way of nonexhaustive example, Allison Engine Co. v. United States ex rel. Sanders, 128 S. Ct. 2123 (2008), see Exhibit B at pg. 17. This is yet another case relied on by the ARA appellees.

8. In conclusion, then, whether or not appellant Wood has embarked upon a claim of fraud that articulates something that the public may not wish to confront, directly, it is now clear and apparent that she is entitled to have her case proceed to the stage of discovery and to not be peremptorily dismissed based on what is now a clearly established pattern of misinterpretation of the FCA that Congress has definitively rejected.

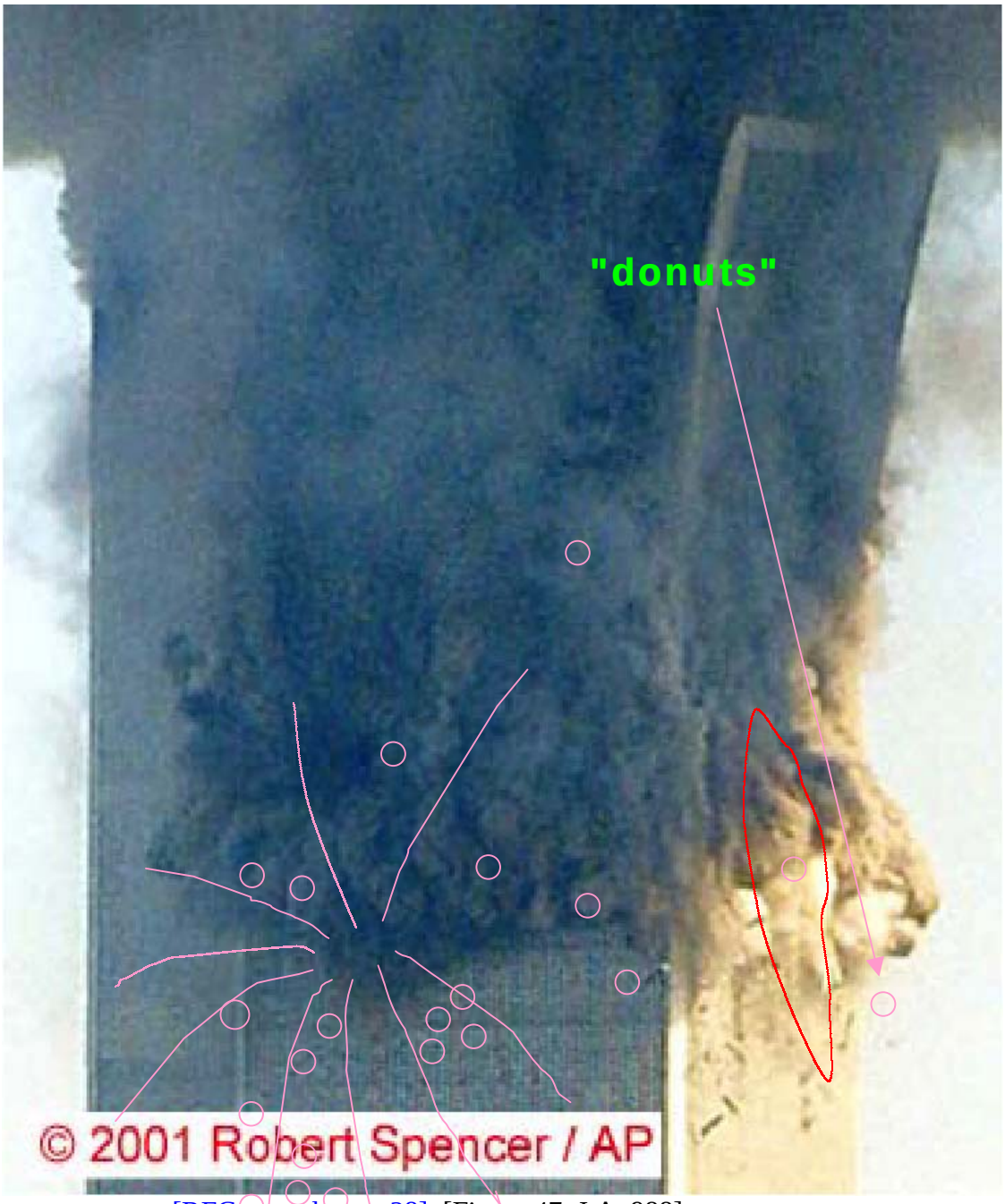
9. For what it is worth, appellant Wood's allegations are not so "terrible" as to be either rejected out of hand or withheld from judicial scrutiny because of what it may or

may not infer about the events of 9/11/01. Her information has been accessed by hundreds of persons whose email addresses end in, respectively, ".gov" and ".mil" and, dare I say it, ".courts" as well; as well as by more than one-half million other website "visitors." In total, the number of people having governmentally related email addresses who have accessed Dr. Wood's information totals hundreds and, perhaps, thousands. Dr. Wood's information has not caused the world to stop revolving, despite it being thought of as "too terrible" to contemplate, perhaps. Among the information she has made available is that which definitively places into the record her investigation and her information and her scientifically derived assertions that:

- directed energy weapons are a causal factor in the destruction of the World Trade Center;
- that NCSTAR 1 is fraudulent;
- that the ARA appellees are manufacturers, developers and/or testers of such weapons and of their lethality effects and/or charged with not being willfully blind to such effects;
- that said ARA appellees committed the fraud of willful blindness in connection with performance of work and the collection of money while participating in the fraud of supporting and substantiating a false and fraudulent investigation of what caused the destruction of the World Trade Center that "did not investigate" the "collapses" of those towers.

Had the ARA appellees disclosed, rather than withheld, what they know, or should know, they, rather than Dr. Judy Wood, would have disclosed to the public that the following manifestation of destruction cannot have derived from kerosene and/or gravity, in any

amount or combination, and that, instead, what is shown below is the result of the use of the kind of weapons, directed energy weapons, that the ARA appellees manufacture, develop test and/or study the lethality effects thereof:



[RFC-appeal-page 28], [Figure 47, J.A. 988],
Figure 47. Figure 6-26, Document NCSTAR1-6, page 183 (265), http://wtc.nist.gov/NISTNCSTAR1-6.pdf

10. Basis the foregoing, appellant Wood's motion for more time should be granted; and, more than that, the appealed from decision of the lower court must be reversed and remanded.

THE APPELLANT, DR. JUDY WOOD

By /s/Jerry V. Leaphart

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Dated: Danbury, CT
June 9, 2009

CERTIFICATION OF SERVICE

I hereby certify that a copy of REPLY AFFIRMATION TO APPELLEES, APPLIED RESEARCH ASSOCIATES INC., et al.'s, OPPOSITION TO APPELLANT, DR. JUDY WOOD'S MOTION FOR ENLARGEMENT OF ORAL ARGUMENT TIME was transmitted, via email, on June 9, 2009 to the following:

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