



PACA Pulse

SPRING 2012

PROFESSIONAL AEROSPACE CONTRACTORS ASSOCIATION OF NEW MEXICO

PO Box 9178
Albuquerque, NM 87119
www.pacanm.org

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918.5974

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345.5577

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255.9797

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Don Nash
294.4649

Small Business Officer
Shirley Bailey
288.9700

PULSE EDITOR

Ross Crown
764.5402
RCrown@LRLaw.com

EDITORIAL SUPPORT & DESIGN

Ro Saavedra
830.2345
RoSaavedra@msn.com

UNDERWRITER
**LEWIS
AND
ROCA**
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LAWYERS

PACA Elects New Directors and Officers

The PACA membership held its annual election of a new Board of Directors at the March 20 luncheon meeting.

Patricia Knighten, previously Vice President, automatically assumed the position of President, succeeding Bill Miera. As President, her emphasis will be PACA's commitment to New Mexico technology-based economic development activities and Kirtland AFB.

Patricia values the personal and professional relationships she has developed within PACA. She joined the organization in 2007 largely due to its connection to Kirtland. "Kirtland is the most diverse base in the Air Force," she said. "It provides for a vast range of personal relationships within Kirtland including its many tenants, base representatives, and the people who serve them."

Patricia stepped up her PACA involvement and joined the Board as Vice President last year for several reasons. Not only did she want to develop relationships with PACA members, but she had observed that PACA is well organized with clearly established roles and responsibilities mandated by bylaws and led by highly competent people who support and follow the structure. She credits Don Nash for planting the seed to "get more involved" and Bill Miera for being a stellar example of professional and community involvement that is illustrated by his success.

Patricia also serves on the Board of Directors of Kirtland Partnership Committee and the Albuquerque Hispano Chamber of Commerce, and as an advisor for the Lt. General Marquez Chapter of Logistics Officers Association. She is an active member of the Energy Technology and Environmental Business Association and the Society of American Military Engineers. Patricia was instrumental in organizing the first gathering of New Mexico technology focused businesses last year — The NM

Technology Association Joint Initiative.

Patricia started her own business, PK Consulting, on June 1, 2011 after serving in various executive positions with Chenega Corporation. Her firm provides services to companies and government with an emphasis on business development, operations, program management, and strategic partnering. She is enjoying her client work with AFRL Phillips Technology Institute and is hoping to expand PACA member activities through that work.

Eric Mechenbier is PACA's new Vice President and will be next year's President. He is a senior analyst for Sharp Informatics, a small Albuquerque company that designs information systems so that they are right the first time, every time, according to Eric. "This saves our clients boatloads of money by eliminating rework," he stated.

Eric joined PACA three years ago because he understood it to be an opportunity to meet professionals in all lines of business, as well as



Eric Mechenbier

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New Directors

continued

get inside news on the latest at Kirtland and the broader military community. He believes that PACA has benefitted him greatly by allowing Sharp Informatics to network with Albuquerque's finest consultants and contractors. "The speakers have been top-notch and we derive real value out of our association with PACA," he said. "The BFI has also been extremely beneficial to us and we are looking forward to it more than ever this year."

Eric put his name in the hat to serve as Vice President because he wanted the chance to work more closely with Patricia Knighten and past President Bill Miera. "The more I got to know about PACA and its contributions to community in the name of science and technology, the more I wanted to assist," he stated. "I'm learning in leaps and bounds about PACA's big heart in philanthropic endeavors. I'm also pretty excited about running the Christmas party."

A native Albuquerquean, Eric attended the University of Oklahoma (Boomer Sooner!) on a National Merit Scholarship. He was also a kicker for the school's football team. After attaining his undergraduate degree, Eric traveled the world for five years while working with Cerner Corporation before returning to Albuquerque to earn an M.B.A. in Finance and Marketing from UNM.

Eric and his wife, Cally, are the parents of Lilly, a one and a half-year old. So it's no surprise that when asked about his interests and hobbies he replied, "I'm interested in sleeping!" When time *does* allow, he enjoys golfing, boating, running with the dogs, and occasionally hunting.

Don Nash, the newly elected Program Officer, actually stepped into the role upon Dick Trask's untimely passing last year. He and his wife, Gail, operate Nash Ventures LLC, a small consulting firm. Gail, a Certified Senior Professional on Human Resources, consults on HR issues while Don consults with the Department of Defense and the aerospace world. Gail provides assistance with employee benefits and affirmative action plans in accordance with government requirements. Don's services are focused on proposal preparation and reviews, mostly in the range operation and maintenance and test and evaluation arenas.

Don joined PACA in June 1984, shortly after it was founded, and has appreciated the opportunity to network with fellow aerospace industry professionals, AFRL representatives, and other KAFB organizations. "I've gotten to know companies and DOD agencies better which has provided me an opportunity to evaluate and recommend teaming arrangements to clients," he said.

Formerly, Don spent 14 years with McDonnell Aircraft (now Boeing) where he was the test director for the 1st F-4J Carrier Suitability Tests. He then served as the program manager for BDM Corporation in support of the Airborne Laser Lab/AFRL contract and the Nuclear Effects Contract (EMP facilities).

Don earned a B.S. in Aerospace Engineering from the University of Oklahoma and an M.S. in Engineering Management from the Missouri University of Science and Technology in Rolla, Missouri.

Originally from Newcastle, Oklahoma, Don enjoys fishing, golf, reading, and watching sports.

Stuart Purviance, a PACA member for over ten years, assists Don with program duties, also stepping up to fill the immense void left by Dick's passing. As Executive Director of the Kirtland Partnership Committee (KPC), he routinely deals with most of the top commanders on base and their staffs, the Congressional delegation and their staffs locally and in Washington, and with other elected and appointed officials in New Mexico. The KPC was founded to support, preserve, and grow Kirtland AFB.

"Don and I felt that one of the best ways to honor Dick Trask was to 'pick up the flag' and ensure that PACA programs continue to serve our members," he stated. Don and Stuart will solicit members' ideas for speakers as well as for improving all aspects of our monthly programs.

Shirley F. Bailey is the new Small Business Officer. Shirley is the sole-proprietor of Procurement Strategies, the start-up woman-owned business she launched earlier this year. The specific focus of Procurement Strategies is to assist and educate small businesses in navigating government procurement processes, particularly with respect to the Federal Acquisition Regulation and small business regulatory programs.

Shirley has been involved with PACA since 2005, and in particular the BFI, as both a former contractor and as a representative of the New Mexico District Office of the U.S. Small Business Administration. She joined PACA because it presents a unique opportunity for small businesses to work with a variety of aerospace support functions including the SBIR/STTR programs. As a small business specialist, she is keenly interested in serving those small businesses central to innovating, developing, and implementing technological advancement in the aerospace industries.

Shirley earned her B.B.A. and M.B.A. from New Mexico State University and an M.S. in Government Acquisition and Contract Management from Bellevue University in Nebraska.

Lenny Bean, a member of PACA for several years, assists Shirley with small business issues. He is a procurement advisor for the Procurement Technical Assistance Program (PTAP), one of several advisors serving New Mexico small businesses doing work for the government or hoping to do so. PTAP provides government procurement assistance to small businesses including individual counseling and training to enable businesses to successfully compete for government contracts. Lenny has 35 years experience in the military aerospace industry.

Outgoing President, **Bill Miera**, automatically assumes the position of Immediate Past President on the Board, and continuing in their *long committed* roles are **John Kiegel**, Treasurer, and **Burke Nelson**, Secretary. **Ginny Buckmelter** has completed her service as Immediate Past President and rotates off the Board. We appreciate Ginny's numerous contributions to PACA in many different roles.

A sincere **Thank You** is extended to all board members, incoming, outgoing, and those whose service is unremitting. PACA's lasting success is largely due to the steadfast involvement of our hard working Board members. •

President's Corner

By Patricia Knighten

As we move from spring to summer, we are in the final weeks of preparation for our signature event and annual conference, the Briefing for Industry. There is a hearty team working diligently to bring you a great BFI and to integrate the agendas of our monthly meeting speakers with the topics and speakers of the BFI. The conference topics and themes are designed to increase networking opportunities, provide valuable information, and generate funds for higher education scholarships and high school science fair awards.

The work of PACA is accomplished 100 percent by volunteers, whose priority is **bringing value to our membership and support of our mission**. I emphasize this because now that I have chaired three PACA Board of Directors meetings as President, and attended the same number of BFI planning meetings, I see the dedication and work of PACA's board members and BFI committee members. I see a tremendous effort from all that includes timeliness, quality, and most of all, good cheer. I truly believe that the spirit of our volunteers is what makes PACA a great organization and I emphasize that the value you are receiving as members is at the top of the volunteers' priority list.

It is an inspiration to work with our board and other volunteers, and an honor to "carry the torch" and learn while serving. Hats off to the awesome PACA team!

I am pleased to announce a couple of strategic initiatives that have been discussed and



Patricia Knighten

planned for many months. The first is the launch of our PACA Sponsorship Program. PACA executes its objectives with very conservative spending and is often called the "best membership value in the state." To continue to offer that value to our members, we have sought sponsorship from companies to underwrite the costs of BFI and to assure that the proceeds generated produce generous scholarship funds. PACA Sponsorships will provide special recognition to our sponsors all year long! The PACA Sponsors will receive recognition at all PACA events, as well as special benefits during BFI. We are equally excited for the value this will bring PACA and the opportunity to acknowledge and recognize the support of our Sponsors. This is in addition to formalizing the recognition we give to those who provide ongoing in-kind support in our PACA Patrons Program — those companies or individuals who have and continue to provide "beyond volunteer" level in-kind support to PACA.

We are so pleased to offer our Sponsors and Patrons the opportunity to be seen and recognized by a larger audience,

which leads to the second initiative: the broadening of our Senior Leader Liaison Program. For those new to PACA, this is a program in which our board meets quarterly with the senior leaders of the Air Force Research Laboratory to discuss and plan our mutually beneficial activities. This has resulted in many successful BFI and small business events. Given the breadth and evolving missions at Kirtland AFB, we plan to forge stronger relationships with the Air Force Nuclear Weapons Center and the Space Development and Test Wing. This closer dialogue, we expect, will produce additional benefits to our members, our sponsors, and strengthen PACA overall.

See you at the next PACA event! •

Welcome NEW Members

Chuck Crisler

Kirtland Federal Credit Union

Andrew Dobrot

MEI Technology Inc.

Bret Givens

InfoSciTex Corp
Dayton, Ohio

John Jekowski

Innovative Technology Partnerships LLC

Gerald Kim

EOTRON LLC
Oceanside, California

Robert Niemi

Honeywell Technology Services Inc.

Greg Orndorff

SGT, Inc.
Greenbelt, Maryland

Suzanne Powell

Vox Optima



Upcoming Luncheon Speaker



■ July 17 - Dr. John Meason, Director of the Energetic Materials Research & Testing Center (EMRTC) at New Mexico Tech, Socorro, NM

Dr. John Meason became Director of EMRTC in May 2001 after having served for many years as an Army officer, university professor, and Department of the Army civilian professional.

He began his government career at White Sands Missile Range in 1979.

In February 1989, following a succession of promotions, he became Director of the Directorate for Applied Technology, Test and Simulation.

Prior to his government career, Dr. Meason was a teaching professor and leading researcher at the University of Arkansas and other academic institutions. His academic and government careers have covered virtually all major areas of nuclear science, with achievements advancing the understanding of basic and applied phenomena in the fields of nuclear physics, radio and nuclear chemistry, nucleo-geo-cosmo chemistry, and nuclear engineering.

Dr. Meason has authored over 100 scientific and technical papers and referees for journals such as *IEEE Transactions on Nuclear Science*, *Nuclear Science and Engineering*, and *Physical Review* (nuclear section). He has evaluated proposals for the National Science Foundation and the Atomic Energy Commission and has been a consultant for environmental monitoring of natural and man-made radionuclides to the Electric Power Research Institute.

Dr. Meason, a native of Lubbock, Texas, earned a Bachelor of Science degree in chemistry and physics at West Texas A&M University and continued his studies at the University of Arkansas, earning a Master of Science degree in nuclear chemistry and a Ph.D. in nuclear physics and chemistry. He was awarded the Fulbright Fellowship for Lecturing and Research, University of Hacettepe, Ankara, Turkey.

Dr. Meason served in the U.S. Army Individual Ready

We meet the 3rd Tuesday of each month at **Tanoan Country Club** (Rolling Hills entrance east of Eubank off Academy). Registration begins at 11:30 a.m. followed by lunch at noon. Members are admitted free and the guest fee is \$15.

To RSVP, register online at www.pacanm.org. Include your name, guest's name, and menu selection. Please RSVP by noon on the Friday before the week of the meeting. •

PACA's 26th BFI: August 20-22

There will be no membership luncheon meeting in August due to the 26th Briefing For Industry conference sponsored and conducted by PACA. It will be held on August 20-22 at the Hotel Albuquerque at Old Town. Come join us at this preeminent event and receive a comprehensive overview of new business opportunities for the coming year.

Information regarding registration can be found online at <http://bfi.pacanm.org>. For questions concerning this year's BFI or registration, please contact our registration agent at **505-899-4028**. Register early to receive the discounted fee. The registration fee for PACA members is further reduced by \$75. •

Congratulations to the 2012 New Mexico Science and Engineering Fair PACA Award Winners

Dr. Bill Dettmer has announced the 2012 New Mexico Science and Engineering Fair PACA Award winners. The 60th annual competition was held on March 31, 2012. In addition to Bill, others serving on the judging committee include **James Duffey**, **Bill Goodman**, and **Norm Mendoza**.

■ PACA First Place (\$300)

Travis N. Crockett, Sue Cleveland High School: "Inferring Shape and/or Attitude from Non-Resolved Photometric Measurements-Geosynchronous Satellite"

Travis also took second place in Senior Physics and Astronomy.

■ PACA Second Place (\$200)

Soiba K. Mansoor, Albuquerque Institute for Math and Science: "Diabetes: A Rising Epidemic? Or Can it Be Controlled?"

Soiba was also awarded first place in Senior Medicine and Health.

■ PACA Third Place (\$100)

Jacqueline D. Baros, St. Pius X High School: "Lost in the Los Conchos Fire"

Jacqueline was also a second place winner in Senior Earth and Planetary Sciences. •



Legal Insights: Applying the Statute of Limitations to Claims Under the Contract Disputes Act

By Ross Crown

In April 2012, the U.S. Court of Federal Claims handed down a decision concluding that a claim by the government against a contractor was brought too late. On its way to reaching this result, *Raytheon Company v. United States* offers a full discussion of how the statute of limitations under the Contract Disputes Act is applied and possible defenses to the statute of limitations. 2012 WL 1072294 (Fed. Cl.)

Raytheon Company acquired Hughes Aircraft in 1997. Among the assets and liabilities that Raytheon assumed with this purchase was sponsorship of two retirement plans from which funds had been distributed improperly. Because the retirement funds had been mismanaged, the calculation of allowable, allocable, and reasonable costs for which Raytheon as a government contractor could charge the government was unresolved. To settle the issue, in 1999 Raytheon entered into an Advance Agreement with the Department of Defense that listed all of the costs incurred in connection with the plans that Raytheon considered chargeable to its contracts with DOD. The government agreed tentatively to these costs provided that the DCAA would review the numbers and that Raytheon would reimburse the government for any costs the auditors found unallowable. Meanwhile, Raytheon was permitted to include all of its proposed costs in its pricing, and Raytheon began collecting these costs from the government on an annual basis.

In 2004, the DCAA reported on its audit of the retirement funds finding that \$4.75 million of Raytheon's \$105.9 million in proposed chargeable costs was unallowable. As required by the Advance Agreement, Raytheon reimbursed the government for this \$4.75 million in unallowable costs.

Despite appearances, this did not end the matter. In 2007, the DOD Inspector General issued a report criticizing the 2004 audit. The DCAA responded with a "supplemental report" in 2008 that purported to replace the 2004 audit. This time, DCAA concluded that an additional \$25 million of the costs that Raytheon proposed in 1999 were unallowable.

Shortly thereafter, in December 2008, a contracting officer issued a final decision asserting a government claim against Raytheon for the \$25 million that the government now considered unallowable. The contracting officer demanded that Raytheon reimburse the government for these costs.

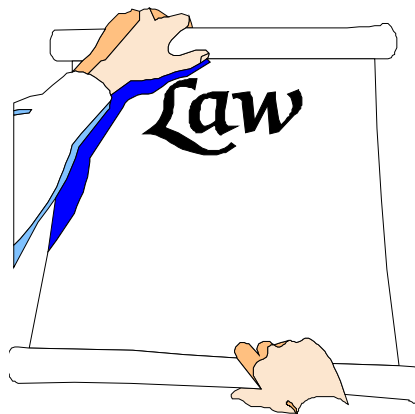
Raytheon brought suit in the Court of Federal Claims asking for a declaration that the statute of limitations had run on the \$25 million claim. The government asserted a counterclaim seeking to collect the \$25 million.

Statute of Limitations and Accrual of Claim

The Contract Disputes Act includes a statute of limitations applicable to claims between the government and a contractor of six years. 41 U.S.C. Sec. 7103(a)(4)(A). As the court noted, the key to applying the statute of limitations is determining when a claim accrues. Accrual of a claim under a government contract is defined to be "the date when all events, that fix the alleged liability of either the Government or the contractor and permit assertion of the claim, were known or should have been known." FAR 33.201. For liability to be fixed, some injury must have occurred but monetary damages need not have been incurred. *Id.*

Raytheon contended that 1999 was the year in which occurred all events necessary to establish any cause of action that the government might have had against Raytheon. The parties signed the Advance Agreement that year and the government had all the financial information it needed or would ever have to assess the allowability of the costs proposed by Raytheon.

The government contended that its claim accrued in 2004 at the earliest when it completed its initial audit. Since the Advance Agreement contemplated that the government would audit Raytheon's proposed costs, the government maintained that the 2004 audit ended a process that began with the Advance Agreement in 1999.



Agreement to Modify Statute of Limitations

The government advanced several defenses to the statute of limitations seeking to avoid a finding that its claim was asserted too late. First, the government suggested that because the Advance

Agreement contemplated a government audit of Raytheon's proposed costs, this provision delayed accrual of a claim for the purposes of the statute of limitations. The court rejected this argument, however, noting that contracting parties, where the government is one of the parties, cannot establish a statute of limitations longer than that set forth in the Contract Disputes Act. FAR 33.206(b). The parties may agree on a shorter limitations period, but not a longer period.

Accrual Suspension Doctrine

The court further noted that although the beginning of a limitations period normally may not be delayed by the parties to a government contract, the Accrual Suspension Doctrine is an exception to this rule. Accrual of a claim may be suspended in those situations in which one party has concealed its acts with the result that the other party was unaware of their existence

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Legal Insights *continued*

or where the injury was inherently unknowable at the time the cause of action accrued. This doctrine did not apply to this case because the government did not frame its arguments in such terms and the court had no evidence that Raytheon concealed its intentions. Moreover, nothing about the provisions of the Advance Agreement were inherently unknowable to the government.

FAR Credits Provision

In support of the timeliness of its claim, the government next invoked the FAR Credits provision which requires that a contractor credit the government with any costs that were reimbursed by another party. FAR 31.201-5. The government argued that Raytheon received compensation for the subject costs from Hughes at the time of the purchase transaction. Thus, under the FAR Credits provision, the government's claim could not have accrued until it knew or had reason to know of the compensation from Hughes.

Raytheon denied that any of the funds it received from Hughes constituted compensation for costs it sought to recover from the government. The government had no evidence that Hughes had paid such costs. Moreover, the court noted that the FAR Credits allegations were not the subject of a contracting officer's final decision and that the government did not plead a FAR Credits claim in the case.

The government complained that Raytheon refused to turn over records relating to the government's contention that Raytheon may have received payment from Hughes. A statute of limitations may be subject to equitable tolling where misconduct by a party creates unfairness. Nevertheless, the court found that Raytheon's objections to the discovery sought by the government did not constitute wrongdoing sufficient to trigger the Equitable Tolling Doctrine.

Continuing Claims Doctrine

The government finally argued that the statute of limitations did not bar its claim under the Continuing Claims Doctrine. This doctrine applies where a claim is inherently susceptible to be broken down into a series of independent and distinct events or wrongs, each having its own associated damages. In this case, the government contended the statute of limitations could not begin running in 1999 because Raytheon submitted its costs on an annual basis. The government therefore urged the court to find that each time Raytheon submitted an annual certification of its costs, this submission began the running of a new limitations period. The court rejected this theory. Despite the fact that Raytheon submitted a certified claim to the government each year, these submissions were the result of one claim arising from the Advance Agreement. A claim based on a single distinct event which may have continued effects is not a continuing claim.

Consider Carefully the Circumstances of a Claim in Determining Timeliness

The court concluded that the government's \$25 million claim

was time-barred because the government had been aware of all of the information on which its claim was based in 1999 but waited for nine years to assert this claim by means of the contracting officer's decision in 2008. Although the facts of this case may be somewhat unusual, the decision is useful in outlining the situations in which a contract claim will be found time-barred and the arguments that may be available to either the government or a contractor in avoiding the statute of limitations. Because the application of the statute of limitations may vary considerably depending on the specific circumstances of a case, it is important to carefully evaluate these facts in determining whether a claim under the Contract Disputes Act has been timely asserted. •

Ross is a partner in the Albuquerque office of Lewis and Roca LLP. This article is intended for general information only and should not be construed as legal advice or opinion. Any questions concerning your legal rights or obligations in any particular circumstance should be directed to your lawyer.



2012 SMD
SPACE AND MISSILE DEFENSE CONFERENCE

AUGUST
13-16

NEW THIS YEAR!

- * TECHNOLOGY PROGRAM - MONDAY
- * CLASSIFIED SESSION (OFF SITE) - THURSDAY

WWW.SMDCONF.ORG

The poster features a soldier in full combat gear on the left, holding a rifle. In the background, a stylized map of the United States is shown with a large, jagged hole in the center, resembling a missile impact. At the bottom, there are logos for ASMDA and NDIK.