



PRESS RELEASE

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Hanford Whistleblowers Win Trial

Judge calls Hanford Contractors argument “an astonishing display of *chutzpah*”

Seattle, WA: Two Hanford nuclear site whistleblowers were vindicated in a strongly-worded court [decision](#) released today, with the judge directing a Hanford contractor to pay \$216,080 in back pay and compensatory damages, before interest and attorney fees and costs.

The Hanford nuclear site is a former plutonium production facility located in southeastern Washington State, and is the most contaminated facility in the nation. It is owned by the U.S. Department of Energy, or DOE, which hires contractors to operate various portions of the facility.

Kirtley Clem and Matthew Spencer were employed as computer professionals at Hanford’s medical clinic, operated at the time by a contractor called Computer Sciences Corporation, or “CSC.” They were removed from the workplace in September 2012 after reporting numerous failures with a new Electronic Medical Records system (called “OHM”) to their supervisors and the U.S. Department of Energy. They alleged that the system could put worker health and safety at risk, but their concerns were brushed aside by management and the system was deployed over their objections.

The judge in the case validated their concerns, writing, “I find that failure of the OHM software could jeopardize worker safety at the Hanford site, since one of its functions was to memorialize when a particular worker could safely be assigned to work in a particular area of the site.”



Left to right: Matthew Spencer, Nikolas Peterson, & Kirtley Clem

For example, Hanford workers with beryllium disease cannot be assigned to work where there are known beryllium-contaminated areas. The failure of the OHM system could result in putting workers with known restrictions into areas where they could be harmed.

The decision was filed by Judge Christopher Larsen, an Administrative Law Judge with the U.S. Department of Labor, on September 12, 2016, following a six-day trial in Kennewick, Washington.

In his decision, Judge Larsen characterized some of CSC's arguments as "an astonishing display of chutzpah," "evidentiary hash" and "not convincing."

Judge Larsen found that CSC could not articulate—even at trial—a consistent reason for suspending Mr. Clem and Mr. Spencer. CSC had argued that Mr. Clem and Mr. Spencer were suspended for sharing confidential information with a competitor. However, CSC failed to make this argument at trial. Judge Larsen found that "there is simply no evidence in the record that Mr. Clem and Mr. Spencer had such information in the first place, much less passed it on" and that CSC's "inability precisely to identify exactly what information [was] allegedly supplied . . . speaks volumes."

Mr. Clem and Mr. Spencer are both represented by Hanford Challenge Staff Attorney Nikolas Peterson and outside counsel Stephani Ayers. Mr. Peterson said, "Hanford Challenge is proud to represent ethical employees like Kirt and Matt, and trust that this case will send a message to Hanford employers that retaliating against employees who raise safety, health, and other concerns is illegal and expensive."

Mr. Clem said, "While I feel vindicated by this decision, I continue to be very disappointed in the DOE's inadequate protections for whistleblowers. DOE continues to tell employees they have the right and duty to raise concerns and that retaliation will not be tolerated. All too often, DOE pays the legal expenses for these contractors engaging in retaliation." Clem concluded, "I'm also extremely appreciative of our legal team. They did an outstanding job. If it weren't for people like Mr. Peterson and Ms. Ayers, whistleblowers would have a much harder time defending themselves."

A July 2016 [GAO report](#) on the treatment of whistleblowers at sites like Hanford highlights the issue of the ongoing pattern and practice of whistleblower reprisals. The GAO found, "DOE has infrequently used its enforcement authority to hold contractors accountable for unlawful retaliation, issuing two violation notices in the past 20 years. Additionally, in 2013, in response to proposed revisions to its enforcement guidance, DOE determined that it does not have the authority to enforce a key aspect of policies that prohibit retaliation for nuclear safety-related issues—despite having taken such enforcement actions previously."¹

Hanford Challenge calls upon DOE to immediately take enforcement action against CSC in light of this finding in order to set a policy that convinces contractors that there will be consequences for cases like this one.

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¹ Government Accountability Office, Report for Congressional Requesters, "Department of Energy: Whistleblower Protections Need Strengthening," July 2016, available at www.gao.gov.