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The Hayner Hoyt Corporation To Pay \$5 Million To Resolve False Claims Act Liability

Government Contractor and Several Individuals Admit That They Violated Laws Designed to Enhance Contracting Opportunities for Our Nation's Service-Disabled Veterans

SYRACUSE, NEW YORK – Syracuse-based Hayner Hoyt Corporation has agreed to pay \$5 million, plus interest, to resolve allegations that its Chairman and Chief Executive Officer, Gary Thurston, its President, Jeremy Thurston, employees, Ralph Bennett and Steve Benedict and Hayner Hoyt affiliates LeMoyné Interiors and Doyner Inc., engaged in conduct designed to exploit contracting opportunities reserved for service-disabled veterans.

The United States has long used government contracting to promote small businesses in general and specifically small businesses owned by veterans who have service-connected disabilities. Congress has established a targeted procurement program for the U.S. Department of Veterans Affairs (VA), which requires the VA to set annual goals for contracting with service-disabled veteran-owned small businesses. To be eligible for these contracts, an applicant must qualify as a "small business." In addition to being a small business, a service-disabled veteran must own and control the business and handle its strategic decisions and day-to-day management.

The settlement resolves allegations that the defendants orchestrated a scheme designed to take advantage of the service-disabled veteran-owned small business program to secure government contracts for a now-defunct company, 229 Constructors LLC, that Gary and Jeremy Thurston created and controlled and subcontracts for Hayner Hoyt and its affiliates. The Thurstons – neither of whom is a veteran – exerted significant influence over 229 Constructors' decision-making during the bid, award and performance of these contracts in various ways, including by staffing the company entirely with then-current and former Hayner Hoyt employees and their spouses. They also provided 229 Constructors with considerable resources, which provided it with a competitive advantage over legitimate service-disabled veteran-owned small businesses neither affiliated with nor controlled by a larger, non-veteran owned corporation. Hayner Hoyt officials caused false certifications and statements to be

made to the government representing that 229 Constructors met all requirements to be a service-disabled veteran-owned small business when they knew, or should have known, that 229 Constructors did not meet such requirements. By diverting contracts and benefits intended for our nation's service-disabled veterans to Hayner Hoyt and its affiliates, the defendants undercut Congress's intent of encouraging contract awards to legitimate service-disabled veteran-owned small businesses.

The investigation revealed that Bennett – a service-disabled veteran who allegedly ran 229 Constructors, served as its president and oversaw its \$14.4 million government-contracts portfolio – was not involved in making important business decisions for the company. He was instead responsible for overseeing Hayner Hoyt's tool inventory and plowing snow from Hayner Hoyt's property. Jeremy Thurston set up an email account in Bennett's name in such a way that all emails received by the veteran were automatically forwarded to him. After the government began to question 229 Constructors' affiliation with Hayner Hoyt, Gary Thurston wrote others that he and Jeremy Thurston would likely terminate operations of 229 Constructors. A few months later, service-disabled veteran Bennett and Benedict, who was simultaneously the "co-owner" of 229 Constructors and listed on Hayner Hoyt's website as one of its five "key" officials, transferred a total of \$52,000 to Gary Thurston's personal bank account allegedly to show their appreciation for the assistance he had provided.

Defendants make various admissions in the settlement agreement, including that their conduct violated federal regulations designed to encourage contract awards to legitimate service-disabled veteran-owned small businesses. They also admit that 229 Constructors provided more than \$1.3 million in service-disabled veteran-owned small business subcontracts to Hayner Hoyt, LeMoyné Interiors and Doyner and that those companies generated \$296,819 in gross profits as a result.

"Those who do business with the federal government must do so honestly," said U.S. Attorney Richard S. Hartunian for the Northern District of New York. "As today's settlement demonstrates, this office will vigorously pursue those individuals and entities who game programs designed to help our nation's veterans succeed in starting small businesses."

"Federal contracting programs designed to help service-disabled veteran-owned small businesses should never be undermined by actions such as the ones taken by Hayner Hoyt Corporation officials to divert contracts to ineligible large firms," said Inspector General Peggy E. Gustafson for the Small Business Administration (SBA). "The Office of Inspector General (OIG) will continue to work with the U.S. Department of Justice and partnering agencies in using all available remedies to deter parties from taking advantage of contracting programs designed to assist deserving service-disabled veteran-owned small businesses."

"This settlement demonstrates the Department of Veterans Affairs, Office of Inspector General's continued commitment to aggressively pursue individuals and companies that misrepresent themselves as service-disabled veteran-owned small businesses and deny legitimate disabled veterans the opportunity to obtain VA set-aside contracts," said Special Agent in Charge Jeff Hughes for the Office of Inspector General for the Department of Veteran Affairs (VA-OIG). "The VA-OIG will continue to work diligently to protect the integrity of this important program, which is designed to aid disabled veterans. I also want to thank the U.S. Attorney's Office and our law enforcement partners in this effort."

“This civil settlement is a positive result of a joint investigation that proved Department of Defense contractor Hayner Hoyt executed a scheme to exploit and violate SBA and VA regulations in order to obtain service-disabled veteran-owned small business set aside contracts,” said Special Agent in Charge Craig W. Rupert of the Defense Criminal Investigative Service’s (DCIS) Northeast Field Office for the U.S. Department of Defense Office of the Inspector General. “Through these schemes, Hayner Hoyt denied small businesses, owned by legitimate service-disabled veterans, the opportunity to obtain government contracts. Such schemes erode public confidence and undermine the mission of our government. The DCIS and its law enforcement partners will continue to tirelessly pursue and investigate procurement fraud allegations in order to safeguard the American taxpayer and its military veterans.”

The government’s investigation was triggered by a whistleblower lawsuit filed under the qui tam provisions of the False Claims Act, which allows private persons, known as “relators,” to file civil actions on behalf of the United States and share in any recovery. The relator in this case will receive \$875,000 of the settlement proceeds. The case is docketed with the U.S. District Court for the Northern District of New York under number 14-cv-830.

The investigation and settlement were the result of a coordinated effort among the U.S. Attorney’s Office for the Northern District of New York, SBA-OIG, VA-OIG and DCIS. The United States was represented by Assistant U.S. Attorney Adam J. Katz.

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