

Analysis of James Gordan vs. ArmorGroup North America

By David Isenberg

Per our past conversation here are my comments re the law suit filed by James Gordon against his former employer ArmorGroup North America (AGNA). Consider this a bit of quasi content analysis.

What I have done below is to copy various excerpts from the September 9 law suit complaint. Each *excerpt is italicized and indented*. Each excerpt is usually followed by **my comment in bold**. Sometimes I make observations. Sometimes I ask questions. In some cases I feel the excerpt is so fascinating in its own right that it stands on its own and I make no comment.

In light of all the publicity given to the report on AGNA in Kabul released by the Project on Government Oversight, unfortunately, mostly centered around the pictures, it occurs to me that most people are not focusing on the important things. That is why I am writing this.

I think everyone in the “industry” (you may recall my past comments as to why it is not yet so) should read the whole thing. You can find the full original complaint at <http://www.kmblegal.com/uploads/pages/149/090909-%20Gordon%20Complaint.PDF>.

Before going any further let’s keep the obvious in mind. This is a complaint and the charges in it are, at this point, just that, charges. None of the points in the complaint have been proven in a court of law. And given the way the legal system works it will be a long time before we have any kind of findings or verdicts.

Nevertheless I don’t think it is farfetched that many people, especially on the operator side, will shake their heads in agreement if they make the time to read the complaint. There have just been too much documented wrongs with regard to PMs and PSCs in Iraq and Afghanistan since 2003 not to assume that some of the charges are likely true. At least that is my personal opinion.

Please note I am not saying that the actions described in the suit reflect a majority or even a great many people in the sector. I generally go with the not very surprising belief that most contractors are trying to do difficult jobs in difficult situations, often without much, if any, in the way of support. And it is true, as I have seen you and others state, that the government has often been missing in action when it comes to doing what it was supposed to be doing from the beginning, i.e. providing proper oversight.

But with that said it only takes a few people, especially if they are in management, to really screw things up, not only for their own company, but for the rest of the companies in the field. And I don’t think there has been nearly enough said about that. For all the purported negative media coverage I often hear and read people complaining about it is my sense that people in management largely gets a free ride, or at least a benefit of the doubt, simply because they are assumed to be ex-military, i.e., a former colonel, general,

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ex-SOF,... as if that is supposed to a guarantee of ethical conduct or integrity. Although, as this complaint shows, the decisions at the highest level may be made by people who have never been in the military.

Please note that I am happy if people comment re the below excerpts. I don't assume my views are the only way to look at this. After all, there is much to be said and read in the future as this goes to trial. But I am pretty sure that at this point "industry" has a problem. If it is to continue on in the future it needs to address this now and not bunker down in the office and complain about the liberal media.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JAMES GORDON v. ARMORGROUP NORTH AMERICA, INC.; CORPORATION
SERVICE COMPANY ; ARMORGROUP INT'L, PLC; WACKENHUT SERVICES,
PRENTICE-HALL CORPORATION SYSTEM, INC.; JERRY HOFFMAN; and
CORNELIUS MEDLEY

COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND MONETARY RELIEF
AND JURY DEMAND

3. During his seven-month tenure as Director of Operations, Plaintiff investigated, attempted to stop, and reported to DoS a myriad of serious violations committed by Defendants, including:

- understaffing the guard force necessary to protect the U.S. Embassy to such an extent that Plaintiff felt compelled to warn DoS that under AGNA's staffing scheme, "if one person gets sick or slips on a banana peel the whole thing falls apart like a cheap suit;"*
- hiring and retaining a Gurkha workforce to guard the U.S. Embassy, the vast majority of whom could not speak English, in violation of AGNA's contract with DoS, and misrepresenting the workforce's language qualifications to DoS;*
- allowing the AGNA project manager and employees to frequent brothels notorious for housing trafficked women in violation of the Trafficking Victims Protection Act, and shutting down Plaintiff's efforts to investigate and put a stop to these violations;*
- deliberately withholding documents relating to reports of violations of the*

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Trafficking Victims Protection Act by AGNA's Program Manager and other AGNA employees and other acts of misconduct under the contract when responding to a document demand from Congressman Henry Waxman on behalf of the Congressional Committee on Oversight and Government Reform;

- *endangering the safety of the guard force during transport to and from the Embassy by attempting to substitute company-owned, subpar, refurbished vehicles from Iraq rather than purchasing armored escort vehicles as promised to DoS, despite Defendants' awareness that without proper escort vehicles the transportation of guards would remain, in Defendant AGI's own words, "a laughing matter within the Kabul private security industry";*

- *knowingly using DoS funds to procure cheap counterfeit goods from a company in Lebanon owned by the wife of AGNA's Logistics Manager; and*

- *Defendants' practice of attempting to maximize profit from the contract with reckless disregard for the safety and security of the guard force, the U.S. Embassy, and its personnel.*

...

5. *Plaintiff vigorously complained of Defendants' improper activities to Defendants and to DoS, attempted to correct AGNA's numerous deficiencies, insisted that Defendants refrain from making material misstatements and omissions to Congress, and made clear to Defendants that he would not communicate false information to DoS.*

6. *In retaliation for these protected disclosures, his refusals to violate the law, his efforts to stop violations of the False Claims Act, his investigation and reporting in furtherance of a potential action under the False Claims Act, and his disclosures to AGNA management and DoS about AGNA's violations of the Trafficking Victims Protection Act, Defendants conspired together to strip Plaintiff of his job duties, subject him to a hostile work environment, and drive him to an involuntary termination in an effort to silence him and conceal the unlawful practices he had identified. Defendants' termination of Plaintiff's employment is in keeping with their pattern and practice of retaliating against conscientious employees who raise concerns about and report to DoS AGNA's contractual and statutory violations and material misstatements to the U.S. government.*

The above are the central charges. Note that this is not a case about AGNA making just a few innocent mistakes. The charges indicate a pattern of willful contractual violations and a continuing conspiracy to cover it up and to ignore, marginalize and ultimately force out Gordon who sought only to do his job as required by contract.

16. *The Trafficking Victims Protection Act ("TVPA") and its implementing*

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regulations provide that that the United States has adopted a “zero tolerance policy” regarding trafficking in persons. The TVPA and its implementing regulations prohibit Contractors, like AGNA, AGI, WSI, and their employees, from engaging in severe forms of trafficking in persons and from procuring commercial sex acts during the period of performance of the contract. The Contractor must inform its employees of these prohibitions and the corrective actions that will be taken against violators, including removal from the contract, reduction in benefits, or termination of employment. The Contractor must notify the Contracting Officer immediately of any information it receives from any source that alleges a Contractor employee has engaged in prohibited conduct and the corrective actions taken, if any, by the Contractor against the employee. A Contractor’s failure to comply with these requirements may result in suspension of contract payments, loss of award fees, termination of the contract, suspension or debarment.

This pretty clear cut -- U.S. contractors shall not frequent whorehouses, regardless of whether the prostitutes are willing or not. The law and thus, AGNA contract, says if you see it you report it, which is what Gordon did.

22. In response to the RFP, Defendants AGI and AGNA, through the assistance of James D. Schmitt, then Vice President of Business Development for AGNA, submitted a bid for this government contract, in which they knowingly made exaggerated and demonstrably false statements about AGNA’s ability including its capacities, experience, staffing capabilities, equipment, personnel, and facilities to provide a guard force to protect the U.S. Embassy in Afghanistan. Defendants’ bid included material false statements about Camp Anjuman, a two acre base modestly comprised of a series of trailers that served as Defendant AGI’s base of operations in Afghanistan. The bid also made outlandish misrepresentations about AGNA’s infrastructure, government contacts, ISAF/NATO contacts, equipment, and support personnel.

This speaks volumes about the U.S. government’s ability, or lack thereof, to judge the value of contracts. Everyone says they should be judged on the basis of best value, not just cost, but how many people are there in government qualified to judge? More important, what recourse does the government have if a company lies? Obviously this is not just a business question. What if the embassy had been successfully attacked while AGNA held the contract?

Among other things, Schmitt is a former U.S. Army officer with service in Special Operations and Infantry units, In 2007 he served as the chairman of the board for the International Peace Operations Association. ArmorGroup has been a member company of IPOA since August 2003.

On September 14 the Commission on Wartime Contracting, a congressionally established body mandated to study wartime contracting in Iraq and Afghanistan, held a hearing. Among the witnesses was Doug Brooks, founder and president of

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IPOA. He said, “membership in IPOA is not automatic and requires disclosure and information not typical of trade associations. Companies can be expelled if they violate the association’s code of conduct.” IPOA’s code, currently in its twelfth version, adopted Feb. 11, 2009, states:

3.2 Signatories shall support effective legal accountability to relevant authorities for their actions and the actions of their personnel. Signatories shall proactively address minor infractions, and to the extent possible and subject to contractual and legal limitations, fully cooperate with official investigations into allegations of contractual violations and breaches of international humanitarian and human rights laws.

3.3. Signatories shall take firm and definitive action if their personnel engage in unlawful activities. For serious infractions, such as grave breaches of international humanitarian and human rights laws, Signatories should report such offences to the relevant authorities.

6.12 Signatories shall not engage or allow their personnel to engage in the act of trafficking in persons. Signatories shall remain vigilant for instances of trafficking in persons and, where discovered, shall report such instances to relevant authorities.

6.13. Personnel shall be expected to conduct themselves humanely with honesty, integrity, objectivity and diligence.

11.4. Signatories shall have an effective mechanism for personnel to internally report suspected breaches of international humanitarian and human rights laws and violations of other applicable laws or the IPOA Code of Conduct. Signatories shall not retaliate against any person who reports in good faith and on reasonable grounds such suspected violations.

24. Upon their arrival in Afghanistan, up until the date of their unlawful terminations on June 13, 2007, Messrs. Sauer, Martino and Gorman raised significant concerns, on almost a daily basis, with senior management of the ArmorGroup Defendants about AGNA’s inability to provide appropriate protection for the U.S. Embassy and Embassy personnel, to no avail. They objected to Defendants’ attempts to enhance AGNA’s profits by significantly altering the work schedules of the guard force. Over their heated objections and in contravention of the DoS RFP, which was designed around an 8-hour-day shift schedule, the ArmorGroup Defendants implemented plans requiring more hours per individual and fewer shifts of staff in order to cut costs and maximize their profit margin. By violating the maximum workable hours per week, as mandated by the DoS contract, AGNA was able to cut the needed guard force by approximately twenty percent, resulting in a substantial savings to AGNA.

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If one cuts the guard force to save money that means longer shifts for the remaining guards with the inevitable exhaustion that entails. From a security viewpoint this is dangerous and is clearly in violation of the terms of the contract.

26. *By email dated March 11, 2007, Mr. Sauer raised concerns about AGNA's screening and ability to hire personnel to staff up the contract. In response, by email dated March 11, 2007, AGNA Vice-President of Operations Michael O'Connell advised Mr. Sauer that the "main concern" for AGNA President Semancik is that Defendant AGI's "Business Development guys developed the transition budget w/o input from you or the Ops folks" and the budget "may be SIGNIFICANTLY below what is required for you to stand this program up." He went on to explain that "AGNA bid this at a very low price and a very low margin., which means that if we don't adhere to the transition budget closely we/you are going to take a huge hit in the profit on year one." He stated: "I'm sure you won't give a rats (sic) if you have to take a huge hit but Karl [Semancik] is now the CEO and ultimately responsible for your program which means that Karl will have to take a huge hit from London and there's the rub." In ending this email, Mr. O'Connell stated: "You made an observation that 'Anjuman [AGI's base of operations] is not as well flushed out as some of you may think.' I would suggest that you consider that a universal law for all support you require and expect."*

27. *The following day, Mr. O'Connell admitted to Mr. Sauer that the timelines and resources in AGNA's proposal to DoS "don't match up," which he described as "[p]robably not a big deal unless COR [the DoS Contracting Officer's Representative] calls us on it." He then encouraged Mr. Sauer to assure DoS, falsely, that AGNA had recruited and was in the process of vetting appropriate personnel. In response to Mr. Sauer's complaints to Mr. Semancik about the 12 ArmorGroup Defendants' deceptive business practices, Mr. Semancik explained in a March 17, 2007, email exchange that AGNA had seriously **underbid** [my emphasis] the proposal to provide security for the U.S. Embassy in Kabul. In response, Mr. Sauer told Mr. Semancik that it would be preferable "to pull out of the contract than to jeopardize the Embassy security." Mr. Semancik acknowledged that he was not sure that AGNA could do the project successfully.*

I ask this sincerely. How often do people in the field get told by people back at corporate HQ to keep silent, when they note improprieties or contractual irregularities or reporting violations? Certainly, AGNA is not the first time this has happened. And how big a problem is underbidding?

29. *By email dated April 1, 2007, Mr. O'Connell emphasized that despite the formidable problems that AGNA was having in complying with the contract, he had little concern that DoS would actually pull the contract from AGNA because the DoS contracting officer was "under severe pressure to make it work" given the intense*

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Congressional scrutiny for all procurements out of his office as a result of Blackwater. Mr. O'Connell subsequently admonished Mr. Sauer not to tell U.S. Embassy personnel that AGNA had problems with staffing under the contract.

Well, isn't this interesting. Not to excuse AGNA but if Gordon has been able to report all violations as legally and contractually required, how seriously would the State Department has taken him? And exactly who at State was exerting "severe pressure" on the State COR?

30. Messrs. Sauer and Martino also clashed with Mr. Semancik and Mr. O'Connell about: 1) AGNA's failure spend sufficient funds to acquire appropriate armored vehicles to safely move the guard force to and from the U.S. Embassy; 2) AGNA's failure to implement a strict policy to ensure that the safety and security of the U.S. Embassy and its personnel were not compromised by the guard force's off-hours activities; 3) AGNA's failure to ensure that "Moderate Risk Public Trust" security clearances were obtained for AGNA hires before they were deployed to Afghanistan; and 4) AGNA slashing Gurkha salaries. Mr. Sauer advised them that AGNA "needed to either fund the project correctly or pull out, given that the operational chaos could lead to a loss of life." When the Gurkha guard force walked off the job in May 2007 because of the low wages and poor treatment they were receiving from AGI, Carol Ruart, AGI's Human Resources Director, insisted that AGNA "lock [the Gurkhas] in their rooms until they agree to work for less."

Lock the guards in their rooms? What, are they children being sent off because they refused to eat their spinach? Is management saying it has to be able to discipline its employees to ensure compliance with the terms of original contract? If so, what happens when the conditions detailed in the original contract change, i.e., become more dangerous? And, more importantly, is there anything in the contract that says employees have to suffer silently at the hands of stupid and incompetent management. Remember, this is not the military. They don't have to follow all orders because someone says to.

And failing to spend sufficient funds to acquire appropriate armored vehicles to safely move the guard force? I mean, come on, how many times since Blackwater at Fallujah are we going to see crap like this?

32. By email dated May 31, 2007, to high-level AGNA and AGI managers, Mr. Sauer stated that "there's one more thing that may be slipping the corporate mind: The U.S. Embassy Kabul is a national security issue even more than a business issue."

Well, that kind of encapsulates the divide nicely. People in the field often say, rightfully, that for them it is not just about the money but about serving the country.

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But does anybody back at corporate give a damn? What happens when the greater public good means cutting into the profit margin?

Years ago, back when MPRI was being bought up by L-3, I predicted two things could happen, either separately or simultaneously. Either the greater financial and administrative resources that the bigger firms, which were buying up the specialized PSCs, were providing could make them far more effective, or, second, the people at the parent corporations would seek only to maximize profit, even if it means screwing people in the field. Undoubtedly both have happened but anecdotal impressions seem to indicate more of the latter.

34. During this period, Messrs. Sauer, Martino and Gornan received reports that recruits for guard force positions who were then in pre-deployment training in Texas had been engaging in lewd, aberrant, and sexually deviant behavior, including sexual hazing, urination on one another and equipment, bullying, "mooning," exposing themselves, excessive drinking, and other conduct making them unfit for service on the contract. Messrs. Sauer and Martino immediately notified Mr. Semancik about these reports and objected vehemently to allowing those involved to deploy to Afghanistan. Mr. Semancik insisted that the men would be deployed given the chronic staffing shortages AGNA was experiencing.

So, there were problems with AG guards long before they even got to Kabul? What does this say about AG vetting and training procedures? Remember that back in September 2004 AG International published a white paper arguing that companies offering armed guards abroad should be vetted under the 2001 Private Security Industry Act. At that time only companies offering services within the United Kingdom were covered by the law. Christopher Beese, director of ArmorGroup International, said "It seems extraordinary that the doorman for a nightclub, catering for a particular clientele in a particular part of town may have to be vetted and licensed, when the same man can be equipped with a rifle and an armoured vehicle and be engaged to protect diamond concessions for a foreign regime in clear breach of public interest and perhaps even in contravention of human rights, but needs no such regulation."

Beese was still AG International's Chief Administrative Officer at the time the events described in the complaint were happening.

35. Mr. Sauer further highlighted the dangers of allowing mentally unbalanced personnel to come to Kabul and be armed, and insisted that he had an obligation to inform the RSO. They also advised Mr. McConnell that the staffing and shift rotation plan AGNA corporate officials had come up with was "unrealistic and not in keeping with the requirements of the RFP." Mr. O'Connell rejected their concerns and charged that ArmorGroup was a "publicly held corporation" and that their "ultimate responsibility" was to its investors.

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Well, I guess, that answers my above question, “What happens when the greater public good means cutting into the profit margin?”

36. Messrs. Sauer, Martino and Gorman were disgusted by AGNA’s “profit over safety” mentality and concluded that they had a legal duty to report Defendants’ fraudulent misstatements concerning AGNA’s capacities, qualifications and readiness to take over security of the U.S. Embassy. Accordingly, on the evening of June 12, 2007, they went to the U.S. Embassy and reported their concerns verbally and in writing to the Assistant RSO Neil Pietrowicz. They informed him that AGNA personnel were not being properly screened and vetted and complained about AGNA’s hiring of an employee “who had been fired from a previous project for pulling a pistol on another employee while drunk.” They further complained that “the training program run for new hires has been plagued with hazing and intimidation of students by students. This included physical threats and perversions.”

37. Assistant RSO Pietrowicz advised them that given the seriousness of the concerns they had raised, he would immediately report the information to the Regional Security Officer and to the Department of State in Washington, D.C. He informed them that the ArmorGroup Defendants would be notified “at once” about the serious concerns Messrs. Sauer, Martino and Gorman had raised, and that the information they had provided would negatively impact on a separate \$500 million proposal the ArmorGroup Defendants had submitted to provide security services in Iraq.

38. On June 13, 2007, Mr. O’Connell terminated Messrs. Sauer and Martino and directed that they be confined against their will to the compound. AGNA personnel then stripped them of their weapons, cell phones, computers, and vehicles, making it impossible for them to communicate with the RSO or other government officials, and forced them to fly out of Afghanistan. AGNA pressured Mr. Gorman to tender his resignation and leave Kabul on the same flight as Sauer and Martino. Later, Mr. Schmitt candidly admitted to Mr. Gordon that “AGNA cut them off at the knees” because “they had gone to the RSO to seek asylum.”

Okay, that also seems pretty clear. If you try to do the ethical, not to mention legally required, thing management is going to fire you. Probably smear and blackball (see 118-119 below) you too. Anybody wonder what kind of message this sends other companies, like, say those working on the WPPS contract?

39. AGNA installed Nick Du Plessis, a South African national, to replace Mr. Sauer as Program Manager, even though as a foreign national he was unable to obtain a U.S. security clearance, as required for the position.

So AGNA just said screw it? Exactly who or what did DuPlessis know that enable him to get the job?

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43. After submitting its response to the Cure Notice to DoS, AGNA promoted Mr. Gordon to the position of Director of Operations purportedly to implement AGNA's corrective action plan, which unbeknownst to Mr. Gordon it had no intention of doing. Immediately upon assumption of the position of Director of Operations, Mr. Gordon sent an email dated September 3, 2007, to Program Manager Du Plessis and his staff stating:

You can rest assured that there is no hiding of information from DoS. Anyone who thinks that they can get away with this will probably end up in a Federal Penitentiary. It is our duty to report on all aspects of the contract performance and we are required to be transparent and honest in our dealings. Personally I wouldn't accept anything else.

Mr. Gordon's admonition to Mr. Du Plessis went unheeded. For the remainder of his tenure at AGNA, Mr. Gordon was placed in the impossible position of trying to reign in a rogue Program Manager who refused to comply with mission critical terms of the Kabul embassy contract and who took his direction from AGI, the foreign parent corporation, while simultaneously dealing with corporate executives who were unwilling to spend the necessary funds to bring the contract into compliance.

Yep, Joe Heller is smiling from heaven looking at this latest Catch-22. Anybody else experience problems like this?

46. From the outset, AGNA lacked the requisite necessary administrative staff to run the Kabul Embassy contract. Instead, AGNA was little more than a shell company set up by AGI to bid for and obtain U.S. contracts that could only be awarded to American companies. During most of Mr. Gordon's tenure, the entire AGNA staff in the United States consisted of 21 employees whose time was spent overseeing several U.S. contracts that had been awarded to AGNA. Only two members of Mr. Gordon's staff were dedicated to the U.S. Kabul Embassy contract. Although Mr. Gordon repeatedly informed AGI that AGNA could never bring the contract into compliance with the staff on hand, AGI Chief Operating Officer Noel Philp refused to permit AGNA to hire additional administrative staff. One of the consequences of AGI's refusal to allow AGNA to hire an adequate number of administrative staff was that AGNA repeatedly failed to perform requisite background checks for new employees or even to contact prior employers. This resulted in AGNA's hiring and training of unqualified personnel that lacked the requisite licenses and clearance and ultimately to the rejection by DoS of many of AGNA's proposed hires, including several with serious criminal records. It also led to the hiring of personnel who had track records for engaging in misconduct, including drunken, lewd, and deviant behavior both at previous places of employment and during pre-deployment training.

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We have all seen the criticisms in the past of insufficient, inexperienced, and undertrained government auditors and CORs. We know that it is indeed bad, very bad. No question about that. But what about the reverse situation, when it is the company which is lacking? Could the whole AGNA scandal have been avoided if some corporate suit had approved hiring a couple more admin staff?

47. Determined to increase its “profit margin,” AGI took over AGNA’s responsibility for recruiting and hiring the Gurkha and non-U.S. expatriate guards. (Gurkhas are people from Nepal and Northern India who are known for their history of bravery and strength in the Indian Army’s Gurkha regiments and the British Army’s Brigade of Gurkhas. The term “Gurkha” may also be used generically to describe guards from the region who are employed by private security contractors. There is a high degree of variability in the skills and training.) AGI’s goal was to do this as cheaply as possible, regardless of whether the personnel recruited and hired were qualified to assume the critical task of guarding the U.S. Embassy. AGI imposed several cost cutting measures, such as reducing the proposed Gurkha salaries by half, eliminating an entire guard shift, and increasing guard shifts from eight to twelve hours in order to reap a greater profit margin for the company.

So we have someone struggling to stay awake towards the end of a 12 hour shift, guarding the embassy, a magnet for attacks if ever there is one. Need we say more?

50. Despite AGNA’s representation in its contract proposal that it had a rigorous program to ensure that all guards assigned to the U.S. Embassy were able to converse in the required languages with employees and visitors while on posts and that it would conduct language proficiency tests for its TCN workforce, Defendants hired Gurkha guards who could not speak English. AGNA falsified [my emphasis] their language qualifications in its submissions to DoS. When Mr. Gordon sought to ascertain what language tests had been administered to the workforce to determine whether their language skills complied with contract requirements, he learned that no language tests had been administered. Mr. Gordon informed DoS of this contract violation and immediately sought to rectify it. Subsequently, AGI hired a language teacher to perform language assessments who concluded that that the Gurkha workforce would need years of language training in order to meet the contract language requirements.

Yes, speaking the same language as your client probably IS a good idea, even a necessity.

53. Under the International Traffic in Arms Regulations (ITAR), a set of U.S. government regulations that control the export and import of defense-related articles and services, AGNA was required to possess a license issued by the United States Directorate of Defense Trade Controls to conduct training of non-

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U.S. personnel for the performance of guard services at the U.S. Embassy in Kabul and to export munitions from the U.S. to Afghanistan for training.
54. *On October 19, 2007, AGNA became aware that it had allowed its ITAR license to lapse on August 31, 2007. After learning of this, Mr. Gordon ordered a halt to all training of non-U.S. personnel until the issue was resolved. Mr. Semancik discussed this problem with AGI's CEO, Mr. Seaton, who told him that AGNA should delay disclosing the ITAR lapse to Contracting Officer Rogers pending further word from the Directorate of Defense Trade Controls about how long it would take to renew the license.*

Okay, how does a PSC not stay on top of the paperwork that allows it to lawfully possess arms and ammo, and all the other things that go along with it. Seriously, how does it overlook that? Remember, we are talking about paperwork that has is required by the USG, not that required by a possibly corrupt ministry in the local government.

62. *On October 10, 2007, AGNA's guard force in Kabul was involved in a number of serious incidents which included: 1) the detention by AGNA guards of a group of Afghan civilians and their involuntary transport to the U. S. Embassy; 2) a verbal and physical altercation between AGNA guards and an Afghanistan Ministry of Interior policeman in which the guards handcuffed the policeman; 3) a confrontation between AGNA guards and an Afghani General and several Ministry of Interior policemen; and 4) the refusal of AGNA guards to obey an order given by the U.S. Regional Security Officer order to withdraw from a checkpoint in order to defuse a potentially explosive situation.*

“the detention by AGNA guards of a group of Afghan civilians?” Did someone decide to use Jack Idema as a role model? Refuse to listen to the RSO? Sounds serious, anybody have details?

85. *Throughout the fall of 2007, AGNA routinely delayed sending invoices to DoS because the data received from Mr. Du Plessis about personnel and hours worked did not comport with the time cards. When invoices were submitted, DoS's audits revealed errors and therefore routinely rejected them.*

Was that mere incompetence or an attempt at deliberate deception?

86. *On November 27, 2007, AGI announced that its operating profits had dropped from the prior year and that CEO Seaton had been asked to resign. AGI blamed its declining profits in part on the “onerous administrative and human resource requirements for the US Embassy contract in Afghanistan, which have had a significant impact on the profitability of its operations in the country.” AGI further announced that AGI had “recently restructured the management team*

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involved in running the contract and believes that this strategic project will become profitable in the early part of 2008.”

This seems to indicate the role of the profit motive’s impact on proper execution of the complaint as clearly as anywhere in the complaint.

89. As a “sweetener” to induce DoS to release the withheld funds, Defendants directed Mr. Gordon to promise DoS that if the funds were released they would be used, in part, for the immediate purchase of the critically needed armored escort vehicles. On December 5, 2007, Mr. Gordon appealed to DoS Contracting Officer Rogers to release some of the funds due to AGNA and assured him that a portion of the released funds would be used to procure the armored vehicles that AGNA had agreed to purchase. Mr. Gordon also represented, per his instructions from Defendants, that the monies would be used to meet payroll and pay AGNA’s outstanding invoices. Mr. Gordon advised Mr. Rogers that if AGNA did not receive payment of the outstanding invoices immediately, its financial crisis would most likely lead the company to default on the contract. Mr. Gordon successfully convinced DoS to release the approximately \$5.5 million in contract funds based on these representations, which it did on December 6, 2007.

Unbeknownst to Mr. Gordon, at the time he made these representations to Contracting Officer Roger, AGI had no intention of permitting AGNA to retain the released funds to pay AGNA’s outstanding bills and honor its contractual commitments. Rather, as soon as the money was transferred into AGNA’s account, AGI’s Chief Financial Officer, Matthew Braben, directed AGNA’s Finance Manager to send AGI all funds AGNA received from DoS, leaving AGNA without funds to pay its bills and to purchase the requisite armored escort vehicles.

So Gordon is set up to lie on behalf of AG. That’s cold.

91. In lieu of purchasing the required armored vehicles as AGNA promised DoS it would do, AGI sought to transfer subpar, refurbished AGI vehicles from Iraq that did not come close to meeting the workforce needs.

Nothing is too good for our boys so that’s what we’ll give them, nothing.

103. In mid-to-late January 2008, AGNA formulated a response to Congress’ document demand that deliberately omitted inclusion of any documents relating to the allegations that AGNA’s Program Manager, Armorer, and Medic frequented brothels, the subsequent investigation of and disciplinary action taken against Mr. Du Plessis, the outbreak of STDs among the workforce, or the incident involving the trainee referenced above. AGNA also omitted information on the purchase of counterfeit goods by the AGNA Logistic Manager from his wife’s company.

104. Mr. Gordon discussed the submission with Mr. Schmitt, who had assumed

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responsibility for preparing the report to Congressman Waxman. During this discussion, it became clear to Mr. Gordon that Defendants intended to conceal information from Congress. In response to Mr. Gordon's strong objections, Mr. Schmitt responded that AGNA decided that those items "were best left out of the report," as it would "not look good for the company." Mr. Gordon also raised the issue with Mr. Hoffman, who responded that these incidents would not be helpful to AGNA and should not be disclosed.

At what point does trying to put the best spin on things become what we, back in the old days, used to call a cover-up?

105. After much discussion, Mr. Hoffman came to the same conclusion as Mr. Gordon that, given Mr. Du Plessis's unethical and illegal conduct and the recent revelations regarding AGNA's purchase of counterfeit goods, it was necessary to remove him from his position as the Program Manager. On or around February 5, 2008, Mr. Hoffman and Mr. Gordon also informed Contracting Officer Mr. Rogers that Mr. Du Plessis would be removed as Program Manager. Mr. Rogers agreed that it was a necessary decision and "well overdue."

106. Mr. Hoffman departed for Kabul on or around February 10, 2008, with the express purpose of terminating Mr. Du Plessis from the Program Manager position. Upon information and belief, AGI personnel, including Carolyn Ruart, leaked word of the impending termination to Mr. Du Plessis. In an effort to save his job and in complete disregard for the security of the Embassy and its personnel, Mr. Du Plessis persuaded the Gurkha workforce to threaten to walk off the job and leave the U.S. Embassy unprotected if AGNA removed Mr. Du Plessis from the position. Mr. Du Plessis had been instrumental in hiring them, despite the fact that they failed to meet the language requirements set out in the DoS contract.

107. Upon his arrival in Afghanistan, Mr. Hoffman was confronted with the threat of the Gurkha workforce walking off the job. As Mr. Hoffman subsequently informed Mr. Gordon, he concluded that AGNA was left with no choice but to retain Mr. Du Plessis.

**"persuaded the Gurkha workforce to threaten to walk off the job and leave the U.S. Embassy unprotected if AGNA removed Mr. Du Plessis from the position."
Extraordinary. Now, how did DuPlessis manage that? Really, how?**

118. Subsequently, Mr. Hoffman met with Mr. Gordon to discuss his complaint. Mr. Gordon reiterated that he could not work under the hostile conditions and for a company that continued to engage in unlawful practices. He further indicated that, given the removal of his duties and responsibilities and his exclusion from meetings, he felt that he had no choice but to resign. Mr. Hoffman did not dispute Mr. Gordon's conclusion that AGNA had indicated by its actions a desire to get rid of him, nor did he try to address Mr. Gordon's concerns in the interest of

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encouraging him to remain with the company. Rather, Mr. Hoffman instructed Mr. Gordon to submit a formal and favorable letter of resignation to allow AGNA to save face with DoS, in exchange for which he would provide Mr. Gordon with a letter of reference.

119. Mr. Gordon was well aware of actions AGNA took to disparage and blackball Messrs. Sauer, Martino and Gorman following their terminations. Accordingly, he acceded to this demand and submitted the requested letter because he feared that he too would be blackballed in the industry if he did not do so. Additionally, Mr. Gordon had recently married a U.S. citizen and was concerned that if he did not accede to Mr. Hoffman's demand, AGNA might try to impede his application for his U.S. legal permanent residence. [my emphasis] Left with no options, Mr. Gordon was forced into an involuntary resignation on February 29, 2008.

126. In fact, after Defendant Medley assumed responsibility for the Kabul Embassy contract, the ammunition inventory count revealed a shortfall of tens of thousands of rounds of ammunition. Mr. Medley directed AGNA employee Misty Maldonado, who was responsible for preparing the inventory report for DoS, to alter the report to remove any reference to the missing ammunition or the disappearance of the inventory. Only when Deputy Director of Operations Gregory Vrentas challenged Mr. Medley's direction to provide false reports to DoS did Mr. Medley back down.

What happened to the ammo? Did it make it way to the local black market? Is it now being used by the Taliban? Will some contractor or ISAF soldier be killed by one of those rounds?

128. Upon information and belief, after Mr. Gordon's departure, AGNA again violated its ITAR license. AGNA had a valid ITAR license which listed David Smallwood as the ITAR approved trainer. Mr. Du Plessis dismissed Mr. Smallwood; however, AGNA did not obtain a modified ITAR license, as required by law. Consequently, it conducted training in Afghanistan without a valid ITAR license.

Rather difficult to inculcate respect for the rule of law in a country, when one's own contractors ignore it.

130. AGNA was cognizant of its serious breaches of its contractual obligations to DoS. In March 2008, AGNA conducted an audit of the company's compliance with 45 specific requirements from the DoS contract and its own procedures. It concluded that of the areas audited, 40% were found to be non-compliant to various degrees. Of those areas that were determined to be non-compliant,

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AGNA's audit deemed one-third to be in mission-critical areas, including, most problematically, in the area of hiring and retention of a stable personnel force. Upon information and belief, AGNA failed to provide a copy of its voluminous audit and report to DoS or to disclose the serious problems identified by AGNA's auditors.

If you can't live up to the contract requirements don't tell anyone.

140. By letter dated April 1, 2009, DoS denied AGNA's request for a waiver to meet contractual language proficiency obligations, the third request of its kind. DoS stated: "[W]e are quite dismayed to learn that after nearly two years of contract performance, AGNA still has language deficiencies among [its] guard force.... AGNA took a huge risk in placing these individuals in positions for which they did not meet the full qualifications."

What about the risk to residents of the Embassy who were under the mistaken belief they were being safely guarded?

141. Because of his ongoing concerns that AGNA and its new owner Wackenhut had failed to take appropriate action under the contract, that DoS remained lax and ineffective in its oversight of the U.S. Embassy Kabul contract, and that conditions existed which endangered the safety of the U.S. Embassy, Mr. Gordon took his concerns to Senator Claire McCaskill, Chairman of the Subcommittee on Contracting Oversight. The Subcommittee held oversight hearings on June 10, 2009. Mr. Brinkley provided false testimony to the Committee about AGNA's full compliance with contractual requirements, insisting that the contract was fully staffed.

There need to be some way for people seeking to do the right thing, other than going to Congress or a watchdog group as a last resort. More internal investigations and audits need to be conducted by or on behalf of outside actors, particularly governments, not the companies themselves. To that end they could use the same standards and practices used by various Inspector Generals, If the Inspector General Act was used as a model, a private entity could provide oversight for PMCs. Given that the government has essentially resigned itself to continued dependence on PMCs this could actually provide more accountability.

One final thought is this. To this day many in the "industry" say that self-regulation is the way to go. It was not that long ago that the British government came out with its long awaited recommendations, saying just that. Perhaps someday industry will be in a position to credibly demand that. But now is not that time. It had its chance

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in Iraq and Afghanistan and, I'm sorry to say, it has not demonstrated that it is capable of being trusted to effectively oversee itself.