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www.adrianprostate.com  
(800) 249-8125  
PROBATE LITIGATION

## Miami suit says whistle-blower was victim of threats, beatings

by John Pacenti  
jpacenti@alm.com

An Argentinian whistle-blower claims in a newly filed lawsuit in federal court in Miami that he was brutally beaten and his family's lives threatened after he exposed alleged bribes paid by German-based Siemens AG to high-ranking government officials — including former president Carlos Menem — to secure a \$1 billion identity card contract.

The complaint filed Sept. 12 states Carlos A. Moran, a lifelong government bureaucrat, was assaulted

outside his home after he discovered the payments and reported them to his superior, whom he also claims was on the take. When he went to the Argentinian justice department, Moran claims the lives of his family were threatened and his livelihood eventually ruined.

"It's one thing when people fight over money, but to actually go out and start whipping people and inflicting physical harm, that's something that these companies can't get away with," said Robert Zarco, part-

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J. ALBERT DIAZ

Attorney Robert Zarco said his client is "the main, if not the sole, whistle-blower" of a 10-year bribery scheme.

## FCPA: Attorney says whistle-blower did 'the right thing'

ner at Zarco, Einhorn, Salkowski & Brito in Miami, who represents Moran.

Zarco called his client "the main, if not the sole, whistle-blower" of a 10-year bribery scheme.

Moran's lawsuit comes after the U.S. Justice Department pursued Siemens for alleged violations of the federal Foreign Corrupt Practices Act. In 2008, the company paid \$1.6 billion in fines, including \$449 million over the national identity card contract. Siemens is Europe's largest engineering company.

U.S. prosecutors followed up in December by charging eight employees with facilitating \$100 million in bribes to Argentine government officials between 1996 and 2007 to secure the identity card contract.

When federal prosecutors detailed the identity card bribery in court documents, Moran found the foundation to file his verified complaint — meaning it is based on his sworn statement.

A previous lawsuit filed by Moran was dismissed in June because Moran's attorney at the time had a conflict of interest. The current case is assigned to U.S. District Judge Ursula Ungaro in Miami.

### CONTRACT AWARDED

Siemens' affiliate in Argentina was awarded the identity card contract in August 1999, but scandal surrounded the project. The U.S. Justice Department filed a complaint in the District of Columbia against the Munich-based company, alleging the company paid \$15.7 million directly to entities controlled by members of the Argentine government, another \$35.2 million to an consulting group tied to the Argentine Minister of Justice and \$54.9 million other entities to secure the contract.

Zarco said Siemens planned to charge Argentinians \$100 per card, but a competitor offered to charge \$10. "See, the motivation for Siemens to bribe government officials is to require citizens to pay more," Zarco said.

The complaint alleges that Menem received \$16 million from Siemens. Two other ministers each received \$9.75 million. Moran claims in the lawsuit. Menem, who is now 82 years old, has publicly denied accepting any bribes from Siemens.

"We can't comment on ongoing proceedings," said company spokesman,

Alexander Becker, in Germany.

No defense attorney is yet listed for Siemens on the court docket.

Attorney Andrew Levi, a former federal prosecutor who runs the Miami office for the investigative firm for Nardello & Co., said the case reminds him of the allegations against Wal-Mart in Mexico where the cover-up is possibly worse than the actual FCPA violation.

"Assuming the allegations are true, they would represent the most egregious attempt by a company to prevent an FCPA allegation from moving forward," Levi said.

Zarco said the case is being pursued in Miami because politicians mentioned in the lawsuit are still in power in some capacity and there is a threat to corrupt the judiciary. He said Siemens has 29 offices in the U.S., including Florida and that

jurisdiction through the federal Alien Tort Statute.

Attorney Joe DeMaria, a Tew Cardenas partner who has been involved in a number of human-rights cases, said the case raises serious issues about the conduct of Siemens. But he said the lawsuit could face a roadblock erected by the U.S. Supreme Court.

The high court has before it a case involving Royal Dutch Petroleum where FCPA attorneys expect it to create "corporate immunity" that will limit claims under the Alien Tort Statute to make only individuals, not corporations, liable.

"I think this case will be dead in the water," DeMaria said.

Moran worked for the Sindicato General de la Nation or SIGEN, an independent governing body within the Argentine government charged with ensuring "the implementation of principles of financial regularity."

He was a lifelong bureaucrat, working in various jobs for more than three decades. He was simply checking documents as an investigator when he says he found that \$100 million had been paid to many high-level government officials, in-

cluding his boss, Raphael Bielsa, the head of SIGEN, according to the lawsuit.

"The bribery scheme was massive in terms of the number of people and amount of money," Zarco said. "I think Siemens were focused primarily on the higher up echelons and did not focus on the independent investigators with SIGEN."

Moran recommended to Bielsa the Siemens Argentina proposal be rejected — a recommendation that was ignored. The complaint claims Moran told Bielsa he would go to the press and was threatened with retaliation by Bielsa if he persisted.

### BRUTAL ATTACK

"When verbal threats to Moran proved to be inadequate to dissuade him from his disclosure, he was brutally attacked and beaten outside of his home," the complaint says. "Moran repeatedly was punched and kicked about the head, rendering him unconscious and causing permanent damage to his vision and hearing."

Prior to losing consciousness, Moran said in his affidavit that he heard his attackers calling him "whistle-blower." He also recognized one of his attackers: Rodolfo Galimberti, an employee of Siemens Argentina and a close associate to Menem, the lawsuit stated.

Neither Galimberti nor Menem are named as defendants. A telephone call to the Argentine embassy in Washington, D.C., was referred to the Ministry of Foreign Affairs, International Trade and Worship in Buenos Aires, which could not be contacted.

The complaint described Galimberti as a known guerilla and former leader of the Montoneros criminal organization responsible for numerous accounts of urban violence, bombings, including the widely publicized kidnapping of billionaire Jorge Born in which the organization received a \$60 million ransom.

"Siemens Argentina was responsible for the retaliation against Moran by

Galimberti, whose attack upon Moran was for the purpose of silencing him," the lawsuit alleges.

The identity card project was canceled in May 2001 by Menem's successor, President Fernando de la Rúa.

Moran alleges in the complaint Siemens Argentina continued to bribe government officials, including de la Rúa, funneling money through shell companies. One of these companies was called MFast, owned by a former Argentine minister of justice.

A \$1 million bribe was set up to influence Bielsa to recommend approval of a revised contract, according to Moran's lawsuit. The contract, though, was never re-initiated and Siemens Argentina sued for breach of contract.

Moran then resigned from SIGEN in late 2001 after being threatened outside his home at gunpoint. He also has been harassed by being run off the road, stalked, continuously harassed by phone calls to his homes and threats of arson, Zarco said.

### DEATH THREAT

He turned to authorities to protect him in Argentina, but "his efforts were met with indifference and/or with death threats from authorities from whom such assistance was requested," the lawsuit stated. He then went to prosecutors in Argentina but was again met with a death threat, Zarco said.

The fallout has been devastating to Moran, the attorney said. Besides his injuries, he has been blackballed from working for the government. His son suffers from a stutter due to the stress of every one in his family having their lives threatened at some point in the last decade.

"We do not suspect these threats were hollow," Zarco said. "He has been living very carefully and out of the limelight."

Moran's causes of action in his lawsuit include attempted extrajudicial killing; torture; cruel, inhuman and degrading treatment; crimes against humanity; and violations of the rights to life, liberty and security.

Moran has no regrets in helping out, his attorney said.

"He believes it was the right thing to do," Zarco said.

"He is a very moral individual, and he knew he had a responsibility to the people, to the country."

The complaint alleges that former Argentina president Carlos Menem received \$16 million from Siemens. The 82-year-old Menem has publicly denied accepting any bribes from Siemens.



Menem