

Debra S. Katz, Partner
Katz, Marshall & Banks, LLP
Direct dial: 202-299-1143
katz@kmblegal.com

Janet Goldstein
Vogel, Slade & Goldstein, LLP
Direct dial: 202-537-5906
jgoldstein@vsg-law.com

By Electronic Mail and Hand-Delivery
September 18, 2009

Honorable Chistopher Shays, Co-Chair
Honorable Michael J. Thibault, Co-Chair
Honorable Clark Kent Ervin
Honorable Grant S. Green
Honorable Linda J. Gustitus
Honorable Robert J. Henke
Honorable Dov S. Zakheim
Honorable Charles Tiefer
Commissioners
Commission on Wartime Contracting
1401 Wilson Boulevard, Suite 300
Arlington, VA 22209

**RE: Commission on Wartime Contracting in Iraq and Afghanistan Hearing
on Oversight of Department of State Security Contracts**

Dear Commissioners:

We represent James Gordon, one of the ArmorGroup whistleblowers discussed during the questioning of Sam Brinkley, Wackenhut Services Inc. Vice President, by the Commission on Wartime Contracting (“CWC”) during its September 14, 2009 hearing on the Kabul Embassy security contract. We write to the CWC with great concern over Mr. Brinkley’s testimony. Our concerns are three-fold. First, Mr. Brinkley told the CWC that as part of his corrective action plan to clean up the Kabul Embassy debacle, AGNA Manager Cornelius Medley, a named defendant in Mr. Gordon’s whistleblower lawsuit, will be sent to Kabul to assume responsibilities as the second-in-command of the guard force. Mr. Gordon’s lawsuit alleges that Mr. Medley orchestrated Mr. Gordon’s removal from the Kabul Embassy contract in retaliation for his whistle-blowing activities and that Mr. Medley personally engaged in unlawful acts to conceal information from the State Department. In light of WSI’s pending reassignment of Mr. Medley to Kabul, we ask that you urgently and fully investigate these allegations concerning his role in bringing about the very situation he would be tasked with remediating. Second, we are concerned that Mr. Brinkley’s testimony did not provide the CWC with a full and accurate understanding of many of the events in question. Third, the sexual hazing activity was not restricted to off-duty hours at Camp Sullivan. Witnesses confirm that the now infamous Charlie Shift subjected personnel to sexual hazing games while sitting guard in armored vehicles outside of the U.S. Embassy. Accordingly, we are providing additional information in the hope that it

may assist the CWC in obtaining a fuller picture of the activities in question and in evaluating the accuracy of Mr. Brinkley's testimony.

Mr. Gordon served as Director of Operations for AGNA from August 2007 to February 29, 2008, at which time he was forced into a constructive discharge in retaliation for raising serious concerns about AGNA's numerous acts of non-compliance and illegalities under the Kabul Embassy contract. As detailed in the attached whistleblower retaliation lawsuit, filed on September 10, 2009, Mr. Gordon was tasked with rectifying serious contract deficiencies the State Department had identified on July 19, 2007 in AGNA's performance of the U.S. Embassy contract that led the State Department to conclude "that the security of the U.S. Embassy in Kabul [was] in jeopardy." See Complaint for Declaratory, Injunctive, and Monetary Relief, Civil Action No. 09-cv-01717 (RCL), attached hereto as Exhibit A. Mr. Gordon alleges that during his seven-month tenure as Director of Operations, he investigated, attempted to stop, and reported to the State Department a myriad of serious violations committed by ArmorGroup, including:

- Severely understaffing the guard force necessary to protect the U.S. Embassy to such an extent that Mr. Gordon felt compelled to warn that "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 the State Department, and misrepresenting the workforce's language qualifications to the State Department;
- Failing to properly investigate reports that AGNA managers and employees frequented brothels notorious for housing trafficked women in violation of the Trafficking Victims Protection Act;
- Deliberately withholding documents relating to violations of the Trafficking Victims Protection Act allegedly committed by AGNA's Program Manager and other AGNA employees 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 new armored escort vehicles as promised to the State Department;
- Knowingly using funds to procure cheap counterfeit goods from a company in Lebanon owned by the wife of AGNA's Logistics Manager; and

- Engaging in other improper practices 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.

Named as defendants in Mr. Gordon's lawsuit are ArmorGroup North America (AGNA), ArmorGroup International, Wackenhut Services, Inc., and two individuals from AGNA corporate management, Jerry Hoffman, former Interim President, and Cornelius Medley, AGNA Operations Manager. Mr. Gordon alleges that they conspired with one another to terminate him in retaliation for blowing the whistle – both internally and to the United States Department of State – about illegalities committed by ArmorGroup in the performance of AGNA's contracts with the United States to provide security services at the U.S. Embassy in Kabul.

At the CWC hearing on September 14th, Mr. Brinkley testified that integral to WSI's corrective action plan was for AGNA Operations Manager Cornelius Medley to be deployed to Kabul as the second-in-command over the guard force. Mr. Brinkley asserted that Mr. Medley has extensive experience in the management of embassy security contracts. Before implementation of this plan – a plan which we believe will send *exactly the wrong message to the conscientious employees who blew the whistle on the most recent misconduct by AGNA/WSI*, the Department of State and the CWC should carefully review and investigate Mr. Gordon's allegations regarding the pivotal role Mr. Medley played in orchestrating Mr. Gordon's unlawful removal as AGNA's Director of Operations, and ultimately, in forcing Mr. Gordon to leave AGNA, in retaliation for his efforts to correct contract violations and to disclose AGNA's lack of compliance to the Department of State. See *Complaint, Paragraphs 112-116*.

Moreover, before Mr. Medley assumes a position of responsibility in Kabul, the State Department and CWC should fully investigate the detailed allegations made in Mr. Gordon's complaints about unlawful acts engaged in by Mr. Medley to conceal information from the State Department and to pressure AGNA employees to provide false information to the State Department contract administrator. Mr. Gordon's complaint alleges that Mr. Medley personally engaged in the following improper and unlawful actions:

- Mr. Medley ordered the falsification of ammunition inventory reports to the Department of State to cover up a shortfall of tens of thousands of ammunition rounds. The Complaint alleges the following:

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.

Complaint, Paragraph 126.

- Mr. Medley defended the conduct of AGNA employees frequenting brothels in Kabul on the grounds that at least AGNA knew where the guards were and what they are doing when they visited the brothels. The Complaint alleges the following:

Upon information and belief, Defendant Medley knew that AGNA guards continued to frequent brothels and took no action to stop this unlawful practice. In a conversation with AGNA Training Manager Hal Simpson in mid-2008 about the fact that former Program Manager Nick Du Plessis and fellow guard members had frequented brothels, Medley remarked that at least AGNA knew what the men were up to when they visited prostitutes and if management took away that outlet, the guards would turn to something else.

Complaint, Paragraph 127.

- Mr. Medley impeded Mr. Gordon's efforts to investigate allegations that AGNA's Logistics Manager had procured counterfeit goods. The Complaint alleges the following:

By email dated January 10, 2008, Deputy Program Manager Lemmon informed Mr. Gordon that the cold weather clothing that Mr. Du Plessis had purchased under AGNA's contract with DoS was possibly counterfeit. He reported that the goods received were "knock offs," were "of inferior quality" and were "insufficient for winter wear in Afghanistan." Mr. Gordon relayed these developments to Mr. Hoffman, and in a meeting with Contracting Officer Rogers, he and Mr. Hoffman informed DoS that they were conducting an investigation into the procurement procedures followed in sourcing the items. Mr. Rogers noted that these counterfeit items would eventually revert to government ownership under the contract, to the detriment of the legitimate U.S. suppliers of the brands, and directed AGNA to conduct a full investigation.

Complaint, Paragraph 97.

Mr. Gordon's inquiries revealed that Mr. Du Plessis had authorized Logistics Manager Sean Garcia to place the order for counterfeit cold weather clothing and boots through Garcia's wife's company, Trends General Trading and Marketing, LLC, which was based in Beirut and thereby banned as a contractor. Mr. Gordon consulted with North Face and Altama Boots, the companies whose goods had supposedly been purchased, and both companies confirmed that the items were counterfeit. Mr. Gordon ordered that a formal investigation be conducted by Defendant Cornelius Medley, then the Guard Force Commander and fill-in Deputy Program Manager in Kabul. He further instructed Mr. Medley to assume all of Mr. Garcia's duties immediately. Unbeknownst to Mr.

Gordon, Defendant Medley was a crony of Messrs. Du Plessis and Garcia and actively stonewalled his efforts to investigate this matter.

Complaint, Paragraph 98.

By email dated January 24, 2008, Mr. Rogers directed that Logistics Manager Sean Garcia be terminated from the contract. Mr. Gordon immediately sent Mr. Du Plessis and Mr. Medley an email, stating that the issue of the counterfeit goods "has the highest level of attention at Department of State" and directing that "[a]s of receipt of this email, Sean Garcia will hand over control of all logistics management to Cornelius Medley." He provided DoS Contracting Officer Rogers and DoS Program Officer Ms. McMichael with a copy of that instruction.

Complaint, Paragraph 99.

- Mr. Medley attempted to pressure an AGNA employee to provide false information to Department of State about Sean Garcia's removal from the Kabul Embassy contract, despite his awareness (including during a period of two months that he, Medley, was at Camp Sullivan) that AGNA had retained Mr. Garcia to work on the contract. The Complaint alleges the following:

In or around early March 2008, for example, Defendants Hoffman and Medley instructed Ms. Power to lie to DoS regarding Mr. Garcia's continued employment with AGNA. They instructed her to tell DoS that AGNA had terminated Mr. Garcia from the contract when, in fact, he was still working under the Kabul contract and assisting AGNA in conducting inventories of its ammunition for its reports to DoS.

Complaint, Paragraph 125.

If WSI has investigated the allegations against Mr. Medley set forth in Mr. Gordon's lawsuit and determined that they are without foundation, then WSI should turn over the results of such investigation, as well as any supporting evidence, to the CWC and the Department of State, for their independent assessment. On the other hand, if WSI has not yet performed such an investigation, or WSI is unwilling to turn over the results of such an investigation, we urge that the CWC and the Department of State commence an immediate investigation into these matters. It is vital to the security of our Embassy and the safety and well-being of the current guard force that the State Department insure that individuals who have lied to the Department of State or retaliated against whistleblowers are not permitted to remain in any capacity on the Kabul Embassy contract, let alone in key management positions.

At Monday's hearing, Commissioner Clark Kent Erwin asked Mr. Brinkley about the circumstances surrounding our client Mr. Gordon's termination. Mr. Brinkley gave a carefully

crafted but evasive response, noting that WSI did not purchase AGNA until May of 2008, and that Mr. Gordon “resigned” in February of 2008. In effect, he suggested he knew nothing about Mr. Gordon’s forced resignation. What Mr. Brinkley failed to inform the CWC was that after WSI took over the Kabul Embassy contract, Mr. Gordon sent Mr. Brinkley an email on June 19, 2008 requesting an opportunity to meet with him. Mr. Gordon stated:

I was previously employed by ArmorGroup in the Middle East and in the USA. In November of 2004 I was hired as an instructor at the training facility in Al Hilla, Iraq. Following that I was employed as a Security Team Driver, a Team 2IC, Team Leader, Country Operations Manager, Director of Training (AG Iraq), Middle East Director of Training and Director of Business Development (AGNA). As of February this year I was the Director of Operations in the McLean office.

I was forced to resign from AGNA when I was marginalised (sic) by my superiors after refusing to go along with the way that the USE Kabul Guard Force contract was being mismanaged and my steadfast refusal to allow illegal and immoral activities to go on in my area of responsibility. When I left AGNA I was told that, in time, the wrongs would be made right and that I should perhaps hold out a little longer. I had unfortunately been hearing this same message for at least 3 years but had never seen anything positive come from the company's senior leadership. On the other hand the point of view expressed by some of the middle management was that after the sale of AG the new brooms could be used to sweep clean.

Departing AGNA has caused me to suffer both financial and personal difficulties however my personal ethics and standards are not things that I am prepared to dismiss for profit. Given the way things were being handled by AGNA and AG (London) there was no other option presented to me that I could accept in good conscience.

I receive a lot of emails from people who tell me about the positive developments since WSI came along. These communications lead me to believe that most of the things that gave me such heartburn will not be allowed to continue under your watch. To hear that WSI is not doing business in the same underhanded way that AG used to is encouraging to say the least. I do however have a number of concerns as I still believe there are still some things going on that should not be sanctioned or condoned by any professional security organisation (sic). In some cases it also appears that where things are being addressed individuals who have been party to some of these illegal and immoral activities have not been dealt with and are still in the employ of your company.

I think that there is still a lot that needs to be done to ensure that the American taxpayer is getting what they pay for when they decide to use ArmorGroup to provide security services. Given that this is a small town (so to speak) and everyone knows everyone else in our business I would like to meet with you to discuss some of these issues and get your opinion before I take any further action. I am available at any time and would be happy to meet at a place of your choosing.

See Email from J. Gordon to S. Brinkley (June 19, 2008), attached hereto as Exhibit B.

Initially, Mr. Brinkley failed to respond to the email, and Mr. Gordon persisted contacting others within AGNA to secure such a meeting. As alleged in the Complaint, Mr. Gordon met with Mr. Brinkley on July 15, 2008, and detailed illegalities, material contract violations, and deliberate misrepresentations to the State Department that he had witnessed during his time as Director of Operations of AGNA. He specifically told Mr. Brinkley about the brothels and counterfeit equipment, in which AGNA/WSI's then Project Manager Nick Du Plessis had participated and sanctioned. He also reported Mr. Medley's unlawful role in effecting his removal from the company. And finally, Mr. Gordon told Mr. Brinkley that Mr. Du Plessis was not qualified to be the Program Manager given that he lacked U.S. citizenship and a top security clearance. Mr. Brinkley stated he had never heard of these events and assured Mr. Gordon that he would clean up the illegalities and bring the contract into compliance. Mr. Brinkley further acknowledged that Mr. Du Plessis was not qualified to hold the position and stated that he intended to remove him from the contract – an action the State Department had indicated needed to be taken in October of 2007 and again in February of 2008, but that AGNA had refused to carry out at that time. See *Complaint, paragraphs 65 and 105*. Despite these assurances and Mr. Du Plessis's well-developed record of misconduct, Mr. Brinkley retained Mr. DuPlessis as Project Manager through October 2008 and allowed him to resign of his own accord at that time. In light of these facts, we suggest that the CWC may wish to ask Mr. Brinkley why he did not disclose to the CWC that he personally met with Mr. Gordon and discussed the circumstances of Mr. Gordon's separation, and what actions, if any, he took to investigate and address the issues raised by Mr. Gordon.

Mr. Brinkley repeatedly testified at the hearing that, with the exception of the August 10, 2009 drinking escapade at Camp KAIA, AGNA's corporate team had no knowledge of the "misbehaviors" of Charlie Shift until late August. We suggest that CWC determine the whereabouts of AGNA Vice-President Mark Carruthers during August 10 and 11, 2009. A witness has advised us that Mr. Carruthers was at Camp Sullivan during this period when very inebriated members of Charlie Shift pelted the returning Bravo Shift's armored vehicles with what some witnesses have described as urine-filled cans and others as beer-filled cans. During this incident, a member of the Charlie Shift exposed himself to the returning Bravo shift, in the presence of Jimmy Lemon, the Deputy Project Manager. The witness further informed us that they raised this misconduct to Mr. Carruthers at a town hall meeting who responded only by

folding his arms in front of his chest, looking away, and stating that he had been briefed. If this witness is correct (and we have no reason to doubt his account), Mr. Carruthers should have immediately terminated Mr. Lemon and members of Charlie Shift and reported this incident – which later became the subject of a formal complaint by an Embassy guard – to the State Department. As far as we know, however, this incident was not reported to the State Department in a timely manner, if ever.

During the course of the hearing, Mr. Brinkley testified that the number one reason AGNA/WSI staffed the Kabul Embassy Contract utilizing 12-hour shifts was to mitigate the security risk of transporting guards more than twice a day. We question this assertion, and we urge the CWC to require WSI to submit its initial contract bid to the State Department that was deemed not technically compliant. We suspect that WSI, like AGNA, bid the contract around 8-hour shifts, rather than the 12-hour shifts (which actually necessitates a 14-hour work day) that the current guard force finds exhausting and unsustainable.

Mr. Brinkley asserted that that the U.S. Embassy was not put at additional risk during the Charlie Shift's surveillance mission into Kabul. We question this assertion as well. The structure of the guard shifts necessitates the use of the Off Duty Shift as emergency relief if the U.S. Embassy is subjected to an attack. There are two Bearcat armored vehicles located at Camp Sullivan for this express purpose. The ERT personnel are allowed to keep their weapons in their possession for this purpose as well. There is, in fact, no other resource for the contractor to call on in the event of an emergency. Accordingly, the conduct of "Operation Snack Pack" did place the U.S. Embassy at increased risk and compromised the security of that facility.

Mr. Brinkley did not answer the CWC's question as to whether the surveillance mission was in fact authorized by the State Department. In investigating this issue, the CWC should require answers to the following questions:

- What notification was provided to the ISAF security forces that are responsible for patrolling this area?
- What notification was provided to the Afghan authorities who are responsible for securing the route that was being placed under surveillance?
- What Friend or Foe identification procedures were in place to ensure that the ERT would not be caught in the middle of a "friendly fire" incident should they have been spotted by a concerned citizen who then called out the Afghan security forces or the ISAF military elements?
- What was the MEDEVAC plan that was in place to ensure that, should an individual slip and break his ankle, he could be recovered and provided with treatment – let alone what would have been done in the event of an escalation of force incident?

This surveillance mission raises significant questions about the blurring of the lines between a defensive guard force that is supposed to be securing the Embassy, and a rogue element conducting a military operation, presumably without oversight and approval from the relevant authority (US DoD and ISAF, as they control the battle space). Indeed, our interviews with guards who participated in this mission confirm that they had no prior training to conduct such a mission.

In addressing this surveillance mission in its September 1, 2009 letter to Secretary Clinton, POGO states that the guards on this surveillance mission used night vision goggles from the Embassy supply, “leaving the Embassy largely night-blind.” We are providing to the CWC an email we received from one of the guards dated August 24, 2009, from Deputy Program Manager Jimmy Lemon to the guard force in which Mr. Lemon states that “we have still not been able to determine the whereabouts of the missing NVG [night-vision goggles].” See Email from J. Lemon to Guard Force, attached hereto as Exhibit C. The CWC may want to inquire as to the circumstances under which the night vision goggles, a piece of equipment whose sale and export is controlled by International Traffic in Arms Regulations, went missing, whether this was reported to the Department of State, and whether AGNA’s corporate management knew of the incident.

During the CWC hearing, Chairman Shays questioned Mr. Brinkley extensively about what Mr. Brinkley described as AGNA’s Gurkha guard force and asked Mr. Brinkley to provide the CWC with the background and qualifications of each member of the Gurkha force. In connection with this inquiry, we wish to advise the CWC of the following representations in AGNA’s contract proposal to Department of State:

A.1.19.2 TCN Recruitment and Verification of Candidates’ Skills and Background

Owing to the large numbers of TCNs required to staff this contract, and the stringent screening/vetting requirements, we will commence screening and selection of the individuals well before contract award. We will source Indian and Nepalese personnel to fill the TCN positions; we will employ primarily ex-British Army Gurkhas as TCN Senior Guards, all of whom will have received British Army training (emphasis added).

We have been told by witnesses we have interviewed that the vast majority of the Gurkha force did not meet these qualifications, and that many were in fact Nepalese farmers with no formal British Army training. The questions Chairman Shays raised during the recent hearing were spot on.

Finally, we are troubled by Mr. Brinkley’s suggestion that the lewd and sexually hazing conduct (which he euphemistically referred to again and again as “misbehaviors”) occurred only

during off-duty hours or were limited to the three dates he discussed during his testimony. Witnesses have advised us that Charlie Shift members routinely engaged in sexual hazing activities while sitting in State Department Bearcat vehicles guarding the U.S. Embassy Northern Gate. We are told that some of the more bullying members of this shift inflicted a game called "Gay Chicken" on other members of the shift, whereby they ran their hands along the victim's leg up to his genitals trying to get the victim to flinch. The "goal" of this game was to be "man enough" to allow the groping to take place without reacting. Guards with whom we have spoken have confirmed that this practice was highly disturbing and distracting during a time they were supposed to be vigilant and attentive.

We appreciate the important work of the CWC and would be happy to provide additional information that may assist you in your efforts.

Sincerely,



Debra S. Katz, Esquire
Katz, Marshall & Banks, LLP
1718 Connecticut Ave., N.W.
Sixth Floor
Washington, DC 20009
Tel: (202) 299-1140
Fax: (202) 299-1148



Janet Goldstein, Esquire
Vogel, Slade & Goldstein, LLP
5225 Wisconsin Ave., N.W.
Suite 502
Washington D.C. 20015
Tel: (202) 537-5906
Fax: (202) 537-5905

Enc.

cc: Secretary of State Hillary Clinton
Senator Claire McCaskill
Senator Susan Collins
Honorable Patrick Kennedy