

DISTRICT ATTORNEY – NEW YORK COUNTY

NEWS RELEASE
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Manhattan District Attorney Robert M. Morgenthau announced today the indictment of seven men and one company on racketeering charges for defrauding numerous state agencies and scores of private clients in connection with construction material testing. Five others have also been indicted for crimes relating to the schemes, although they are not charged with racketeering.

The indictment names the racketeering enterprise "The TESTWELL GROUP," and charges its members with Enterprise Corruption, Grand Larceny, Scheme to Defraud, Offering False Instruments for Filing, and Falsification of Business Records.

The investigation began in March 2008 when the District Attorney received information from the Inspector General of the Port Authority of New York and New Jersey (Port Authority) that TESTWELL had been improperly performing tests on construction material at the Freedom Tower. Similar information was referred to the District Attorney from the New York Yankees concerning the construction of their new stadium. At that same time, the Inspector General for the Dormitory Authority of the State of New York (DASNY) determined that TESTWELL was performing deficient steel inspections for a project at John Jay College and double billing DASNY for those tests.

Soon thereafter, because of the extent of testing done by the company, the investigation was joined by the New York City Department of Investigation and the Inspector Generals of the Metropolitan Transportation Authority of the State of New York and the New York City School Construction Authority.

As part of the investigation, the District Attorney's Office obtained court-authorized search warrants that were executed at TESTWELL's Ossining office, and two satellite locations in June 2008. A second search of TESTWELL's Ossining office was conducted in August 2008, and a third search was conducted there yesterday morning. The searches produced evidence of several schemes charged in today's indictment.

The investigation disclosed that the TESTWELL GROUP: i) often failed to perform tests on materials it purportedly performed; ii) falsified test results; iii) regularly engaged in double billing with respect to its field inspectors; iv) and billed for inspections done by purportedly certified inspectors when in fact, they were not so certified.

TESTWELL is one of the largest companies in the New York metropolitan area to conduct construction material testing. Today's indictment involves 102 projects that used TESTWELL's services. Those sites include: the Freedom Tower, 7 World Trade Center, the Second Avenue Subway Line, John Jay College, the Jet Blue Terminal at JFK International Airport, the new Yankee

Stadium, and an assortment of other buildings including firehouses, schools, apartment buildings, hospitals, libraries and hotels.

The indictment charges that the TESTWELL Group engaged in a number of schemes related to Mix Design Reports, Concrete “Field Tests,” Compressive Strength Testing for Concrete, and Steel Inspections.

The Mix Design Scheme

Under the New York City Building Code, before any project can start pouring concrete, the structural engineer on the project must specify the strength of concrete needed and file certain relevant reports with the New York City Department of Buildings.

An independent testing lab must prepare a “mix design report” specific to the project. To prepare the mix design report, the lab must obtain materials from concrete suppliers to create four different mix proportions, or recipes, to achieve a given strength of concrete.

The lab then makes batches of each mix, takes several cylinders from each one and cures them in a controlled environment. At 7, 14, 28, and 56 day intervals, the cylinders are removed from storage and placed into a compressive strength machine which applies immense pressure (“load”) to the cylinder until it cracks. The load at which each sample cracks is then divided by the dimensions of the cylinder to come up with the pounds per square inch (PSI) which is the indicator of concrete strength. The lab must compress the various cylinders for each of the four mixes, and indicate the ratios of water, cement and sand for each mix and then make a recommendation as to which recipe to use on the project. The recommendation as to which mix to select is based on both reliability of results and least amount of cement/chemicals used (the most costly ingredients in concrete). The report is then signed and stamped by a licensed professional engineer at the lab and sent to the structural engineer of record.

An analysis of documents recovered from TESTWELL’s Ossining headquarters revealed that TESTWELL engaged in wholesale fraud in connection with their Mix Design Reports --- TESTWELL actually based its recommendations on software projections and not actual tests as required and as TESTWELL had certified. Indeed, the investigation revealed that TESTWELL performed only six to eight legitimate test reports every year and roughly 200-300 phony design mixes.

The “Field Test” Scheme

Once pouring of concrete begins on a project, the New York City Building Code requires that the concrete poured actually meets the strength that the design mix indicated. Industry standard mandates that inspectors conduct four types of field tests: a Slump Test; an Air Test; a Density Test; and a Temperature Test. These field tests are designed to insure that the concrete poured will meet specifications. Handwritten notes of the field tests by the inspectors are supposed to record the results, which are then to be corroborated in the lab.

In addition to the field tests, later laboratory compressive strength tests are conducted to confirm that the concrete meets specifications. Certified inspectors collect samples in cylinders from the concrete trucks at building sites. The cylinders are taken back to the lab and stored for specific time periods (7, 14, 28, 56, and 90 days) under standardized conditions. At each of those intervals, the cylinders are placed in the compressive strength machine and pressure is applied to determine the PSI of the pored concrete; final test results are generated by the computer.

The investigation revealed that while TESTWELL's final reports represented that field tests had been conducted, few actually had been done. The handwritten notes recovered in searches reflected that field tests were done sporadically even though final reports indicated otherwise. For example, at the new Yankee Stadium, while 90 percent of the handwritten field test reports included no result for density tests, a field density test value was reported on the final reports. Similarly, 75 percent of the handwritten air content field tests included no result, but test results were included in final reports. Similar false field test reports were generated by TESTWELL for the Second Avenue Subway project and a project for DASNY at Hunter College.

The Compressive Strength Scheme

The investigation also revealed that comprehensive strength tests were systematically falsified. Documents recovered by the searches at TESTWELL sites demonstrated that TESTWELL's employees simply wrote in the PSI values called for in the specific project.

For example, in connection with the construction of the Freedom Tower, TESTWELL was hired by the developer to assure that the concrete met the design specifications of 12,000 PSI. From May 2006 until September 2006, TESTWELL certified that the concrete reached or exceeded 12,000 PSI on each and every occasion tested. However, in late September 2006, the Port Authority commenced its own testing and determined that the concrete was averaging around 10,000 PSI and that only a third of the pours ever hardened to the required 12,000 PSI. The Port Authority then did core testing, removing samples of the concrete that were already in place, and found that it was actually 9,000 PSI—not the 12,000 that TESTWELL had certified.

In another example, when the Port Authority retested the concrete for construction at the Jet Blue Terminal at JFK, the concrete also came in at lower numbers than TESTWELL had certified. During the June 2008 search at TESTWELL's office, investigators discovered that TESTWELL employees had been writing in new values for test results so that they tests met the specified strengths. Investigators found that over 1,000 test results relating to numerous projects throughout the City were altered in this way.

The Steel Inspection Scheme

TESTWELL also tested structural steel to be used on many projects. The steel was supposed to be tested for structural soundness; any welds connecting steel pieces were also supposed to be tested. The steel was fabricated at a plant in South Carolina and TESTWELL inspectors were located at the fabrication facilities. The investigation revealed that TESTWELL falsified tests on both the structural steel and welding. In many cases, the same piece of steel was tested multiple

times; in others, steel was certified in a time-frame that could not possibly have matched the time it took to fabricate it.

In late 2007, DASNY began to detect inconsistencies in steel inspection reports and bills that TESTWELL had submitted related to a \$500 million expansion at John Jay College.

In general, each piece of steel has a unique number imprinted on it and is either welded to another piece of steel or is left unwelded. DASNY determined that several pieces of steel TESTWELL indicated had been tested for welds had no welds to test. Investigators also noticed that a single piece of steel appeared over 36 times in the inspection reports as undergoing weld testing.

When DASNY alerted TESTWELL of its findings, TESTWELL agreed to revise several months of reports. The revisions however contained even more inaccuracies. For instance, the investigation revealed that large pieces of steel with multiple welds were inspected in one day, when logically they would take several days to fabricate and inspect. Small, single pieces seemed to get the opposite treatment, showing up inexplicably in the inspection reports 10-20 times. Non-existent pieces of steel also appeared repeatedly in the revised reports. Roughly 60 percent of the welded pieces that TESTWELL certified as accurately inspected were in storage at the facility and had never been tested.

Additionally, the investigation revealed that TESTWELL consistently double- and sometimes triple-billed their clients for the same tests. At the time that TESTWELL was billing DASNY for testing done at the South Carolina steel plant, TESTWELL was also billing two other clients for testing done by the same inspector. On an average day, TESTWELL billed 10 hours of inspection by one inspector to DASNY for the John Jay College project, including two hours of overtime, at the same time it billed 10 hours, including overtime, to either of two other clients for the same work for the same inspector.

Certified Inspector Scheme

Beginning in approximately 2007, TESTWELL submitted invoices or Requests for Payment for various inspections at New York City public schools in the areas of concrete, steel, and masonry. The School Construction Authority had a clause in their contract requiring all inspectors to have an up-to-date certification in the area in which they work and the New York City Building Code requires all concrete inspectors to be certified. The investigation revealed that two-thirds of TESTWELL Inspectors did not hold valid certifications in concrete testing despite TESTWELL's filing with the School Construction Authority which stated that all their inspectors were properly certified.

Charged in the indictment are:

V. REDDY KANCHARLA is a Professional Engineer, who served as the President and Chief Executive Officer, and is the sole owner of TESTWELL Laboratories, Inc. Kancharla participated in a scheme to falsify concrete mix design reports and double bill for steel inspections, some of which were not performed. Kancharla is charged with Enterprise

Corruption, two counts of Scheme to Defraud in the First Degree, two counts of Grand Larceny in the Third Degree, one count of Attempted Grand Larceny in the Third Degree, 69 counts of Offering a False Instrument for Filing in the First Degree, and 19 counts of Falsifying a Business Record in the First Degree.

VINCENT BARONE is a Professional Engineer and a TESTWELL Laboratories Inc., Vice President who was in charge of the Engineering Department. BARONE was involved in the falsification of comprehensive testing, a scheme involving steel inspection tests and billing, and falsely certified that TESTWELL employees had been certified to serve as inspectors. BARONE also falsely certified that certain TESTWELL steel inspection reports were done appropriately. BARONE is charged with Enterprise Corruption, two counts of Scheme to Defraud in the First Degree, two counts of Grand Larceny in the Third Degree, one count of Attempted Grand Larceny in the Third Degree, 21 counts of Offering a False Instrument for Filing, and five counts of Falsifying Business Records in the First Degree.

ALFRED CARUSO is a TESTWELL Laboratories, Inc. Director who was responsible for concrete and masonry testing. CARUSO was also involved in the scheme to falsify comprehensive strength tests and a scheme to alter field test reports to make it appear that concrete field testing had been performed when it had not been. CARUSO is charged with Enterprise Corruption, two counts of Scheme to Defraud in the First Degree, three counts of Offering a False Instrument for Filing in the First Degree, and nine counts of Falsifying Business Records in the First Degree.

EDWARD PORTER is a Civil Engineer employed by TESTWELL who was in charge of preparing concrete mix design reports. PORTER generated phony reports by calculating the strength that the client wanted the concrete to test at, then generated fake reports and had an employee at TESTWELL sign and stamp them as if they had been performed and had the reports forwarded to the structural engineer of record for the project. PORTER is charged with Enterprise Corruption, Scheme to Defraud in the First Degree, 52 counts of Offering a False Instrument for Filing in the First Degree, and 14 counts of Falsifying Business Records in the First Degree.

MICHAEL STERLACCI is a Professional Engineer who was primarily employed by TESTWELL Laboratories, Inc. to sign and stamp documents for TESTWELL that required a Professional Engineers seal. STERLACCI participated in the schemes to falsify concrete mix design reports and certified with the New York City Department of Buildings that TESTWELL inspections and procedures were done in accordance with the New York City Building Code when he knew they were not. STERLACCI is charged with Enterprise Corruption, 52 counts of Offering a False Instrument for Filing in the First Degree, and 14 counts of Falsifying Business Records in the First Degree.

STEPHEN LATUS is a Professional Engineer and Project Manager for TESTWELL who was in charge of pile driving and vibration monitoring. LATUS is charged with Enterprise Corruption, Scheme to Defraud in the First Degree, Attempted Grand Larceny in the Third Degree, two counts of Grand Larceny in the Third Degree, 17 counts of Offering a False

Instrument for Filing in the First Degree, and five counts of Falsifying Business Records in the First Degree.

WILFRED SANCHEZ is a manager in TESTWELL's Steel and Fire Code department. Both LATUS and SANCHEZ were involved in the over billing scheme for steel inspections and revisions of steel inspection reports. SANCHEZ is charged with Enterprise Corruption, Scheme to Defraud in the First Degree, Attempted Grand Larceny in the Third Degree, 17 counts of Offering a False Instrument for Filing in the First Degree, and five counts of Falsifying Business Records in the First Degree.

TESTWELL LABORATORIES, INC. is charged with Enterprise Corruption, four counts of Scheme to Defraud in the First Degree, two counts of Grand Larceny in the Third Degree, Attempted Grand Larceny in the Third Degree, 77 counts of Offering a False Instrument for Filing in the First Degree, and 28 counts of Falsifying Business Records in the First Degree.

Mr. Morgenthau also announced three separate indictments of TESTWELL employees for their participation in schemes related to the TESTWELL Group:

NANCY PHILLIPS, a Professional Engineer who worked in the concrete department with STERLACCI, is charged with Scheme to Defraud in the First Degree, and Falsifying Business Records in the First Degree, relating to her participation in the mix design scheme.

PETER PROMUSHKIN and PRITI SHAH, who worked in the concrete department under Alfredo Caruso, are charged with 2 counts of Scheme to Defraud relating to the mix design scheme.

CLYDE FINKLEA and L. TOMMY DOWD, two steel inspectors employed by TESTWELL in South Carolina, are charged with Scheme to Defraud in the First Degree for their roles in the over billing and fraudulent inspection scheme relating to steel inspections.

In addition to today's indictments, Mr. Morgenthau announced that a \$110,000,000 million asset forfeiture action has been filed in New York County Supreme Court seeking the recovery of the criminal proceeds of TESTWELL's schemes. In addition, a Restraining Order in the amount of \$100,000,000 million has also been issued against the assets of all the defendants.

For their assistance in the investigation, Mr. Morgenthau extended his thanks to the following individuals and agencies:

Robert E. Van Etten, Inspector General for the Port Authority of New York and New Jersey and members of his staff, including Deputy Inspectors General Michael Nestor and Steven Pasichow and Investigators Mark Gaw, and Karen Connelly.

Dennis Saville, Director, Internal Affairs, Dormitory Authority of the State of New York, Dennis Monahan, Security Manager, Richard Cacece, Senior Investigative Auditor; and Robert Leask and Richard Visconti of the DASNY Authority's Construction Division.

Commissioner Rose Gill Hearn of the New York City Department of Investigation and members of her staff, including Associate Commissioner John Kantor, the Inspector General for the Department of Buildings, and James McElligot, Nick Novellino, and Michael Carroll of that office.

Barry L. Kluger, the Inspector General for the Metropolitan Transportation Authority of the State of New York, and Frank Lanzo, an Investigative Attorney with that office.

Barbara DiTata, Vice President and Inspector General for the New York City School Construction Authority, and Gerard McEnroe and Chris Baldassari.

Mr. Morgenthau also thanked the New York Yankees for their cooperation in the investigation.

Mr. Morgenthau also thanked his Investigation Bureau, and Chief Investigator Joseph Pennisi, Deputy Chief Terry Mulderrig and Senior Investigators Terry Quinn, Angel Garcia, and Robert Tarwacki.

Mr. Morgenthau also thanked Computer Forensic Analysts John Forames Jr. and Selena Ley of the District Attorney's Computer Forensics Unit working under the supervision of Mary Barnett, Director of Management and Information Services.

Enterprise Corruption is a class B felony punishable up to 8 1/3 to 25 years. Grand Larceny in the Third Degree is a class C felony punishable by up to 15 years in prison. Attempted Grand Larceny in the Third Degree is a class D felony punishable by up to 7 years in prison. Scheme to Defraud in the First Degree, Offering a False Instrument for Filing in the First Degree and Falsifying Business Records in the First Degree are E felonies punishable by up to 4 years in prison.

Assistant District Attorney Diana Florence, of the District Attorney's Labor Racketeering Unit-Construction Industry Strike Force, conducted the investigation leading to today's actions, under the supervision of Unit Chief Michael Scotto. Assistant District Attorney Tara Christie Miner, Chief of the Asset Forfeiture Unit is handling the Asset Forfeiture action that the District Attorney filed.

DEFENDANTS' INFORMATION

V. REDDY KANCHARLA, 5/28/1963
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Croton on the Hudson, New York

VINCENT BARONE, 6/1/1966

474 Bedford Road
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ALFREDO CARUSO, 3/23/1968
19 Kenneth Road
Hartsdale, New York

EDWARD PORTER, 6/3/1935
190 Garth Road
Scarsdale, New York

MICHAEL STERLACCI, 4/22/1944
18 Marshall Place
Ossining, New York

STEPHEN LATUS, 5/2/1969
3431 No. Deerfield Ave
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PRITI SHAH, 11/8/1956
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