



CYRUS R. VANCE, JR.
DISTRICT ATTORNEY

DISTRICT ATTORNEY – NEW YORK COUNTY

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CONTACT: Erin Duggan
212-335-9400

**DISTRICT ATTORNEY VANCE ANNOUNCES INDICTMENT IN
ENTERPRISE CORRUPTION CONSTRUCTION FRAUD CASE**

*Defendants Charged with Submitting Thousands of Fraudulent Concrete Inspection Tests,
Risking Public Safety*

Manhattan District Attorney Cyrus R. Vance, Jr., today announced the indictment of AMERICAN STANDARD TESTING AND CONSULTING LABORATORIES (“ASTC”), its owner, ALAN FORTICH, 44, and five other defendants for falsifying concrete testing and inspection reports, as well as manipulating government programs to obtain jobs for which they were otherwise ineligible. The defendants are charged with Enterprise Corruption in the First Degree, 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.¹

“Construction projects must comply with building codes for one simple, but very important, reason: to ensure that our City’s buildings are safe,” said District Attorney Vance. “By falsifying safety tests and reports for more than 10 years, the defendants are charged not only with cheating their clients, but also jeopardizing the public’s safety. Because of this fraud, government agencies and private companies paid thousands of dollars for test results that were no more than worthless pieces of paper. Last year, this Office secured the trial convictions of Testwell Laboratories and its executives on Enterprise Corruption charges for similar fraudulent activities. This Office will continue to aggressively investigate and prosecute such illegal and dangerous conduct.”

According to documents filed in court, ASTC is a company hired by contractors, engineers, architects, and others to perform tests and inspections relating to the strength and quality of concrete, as mandated by the New York City Building Code. For more than 10 years, the

¹ The charges contained in the indictment are merely allegations, and the defendants are presumed innocent unless and until proven guilty.

defendants submitted thousands of fraudulent test reports, regularly skipping vital safety tests and creating false reports to create the impression that the tests were performed.

During the same period, ASTC is also charged with lying about its credentials in order to obtain licenses from the New York City Department of Buildings it was otherwise not entitled to obtain, and about its small business qualifications to obtain work it was otherwise not eligible to perform. During the time period covered in the indictment, ASTC is charged with falsifying testing on private and public projects, including:

- Yankee Stadium
- The Intrepid at Hudson River Park
- Jacob Javits Center
- Memorial Sloan Kettering Cancer Center
- Weill Cornell Medical College
- Columbia University
- Air Control Tower at LaGuardia Airport
- East Side Access
- Port Authority Bus Terminal
- Lincoln Tunnel
- MetroNorth Croton-Harmon Station Rehabilitation
- New York City public schools
- Second Avenue Subway
- Fulton Street Transit Center

In these cases, additional steps have been taken to ensure the safety and stability of the projects.

The victims of ASTC's fraud include:

- the Metropolitan Transportation Authority (MTA) and its associated agencies (New York City Transit, Bridges and Tunnels, MetroNorth, and Capital Construction)
- the Port Authority of New York and New Jersey (PANYNJ)
- the New York City Department of Design and Construction (DDC)
- the New York City School Construction Authority (SCA)
- the New York City Department of Buildings (DOB)
- numerous private owners and engineers

The Mix Design Scheme

Under the New York City Building Code, before any construction project can start pouring concrete, a structural engineer must specify the strength of concrete needed. An independent testing lab must obtain the raw materials for the concrete from suppliers and test four different proportions, or recipes, and create a report known as the "mix design test report," which makes a recommendation as to which mix should be used. These reports are valid for

only one year from the date of testing because many of the basic ingredients of concrete (sand, stone, water and cement) are natural and change over time. Strength results for concrete can vary vastly depending on the type of sand or cement that different suppliers use. If the size of the sand or stone changes, it can impact the quality and strength of concrete.

Over a 12-year period, the indictment charges ASTC, ALAN FORTICH, and professional engineers MICHAEL RABKIN, 53, SHAMIM AKOND, 43, RICHARD KASPARIAN, 71, and BRUCE PUMO, 58, with creating, signing, and certifying thousands of false concrete mix design test reports, in which they did not actually test the four proportions of concrete reflected in these reports. None of the close to 3,000 test reports in ASTC's computer database contained legitimate test results.

According to documents filed in court, ALAN FORTICH created the false mix design test reports and then RABKIN, AKOND, KASPARIAN, and PUMO certified the reports' accuracy. ASTC then filed the false reports with professional engineers, who relied on these false reports in assessing their projects.

The Cylinder Test Falsifications

Additionally, under the NYC Building Code, any concrete poured at a project must be tested, and the lab is required to report the results of this so-called "cylinder testing" to the project engineer. The reliability of this testing is essential to the integrity of the project.

According to court documents, ASTC, ALAN FORTICH, RABKIN, AKOND, KASPARIAN, and PUMO created, signed, and certified thousands of false concrete cylinder test results and reports over an 8-year period.

Manipulation of Government Programs

ASTC and ALAN FORTICH are accused of lying about ASTC's credentials to city agencies and public authorities in order to work on the very same projects where they are accused of falsifying thousands of concrete tests. They did so in two different ways.

First, ASTC and ALAN FORTICH are accused of defrauding the MTA through the Disadvantaged Business Enterprise ("DBE") program, a federal program that provides funding to the MTA by the United States Department of Transportation. The DBE program was designed to help businesses owned by women or a member of a designated minority group whose personal net worth, excluding his or her personal residence and the equity stake he or she owns in the company, does not exceed \$750,000. For at least four years, ASTC and ALAN FORTICH are accused of consistently lying to the MTA about his net worth in order to qualify for projects such as the Fulton Street Transit Center and the MetroNorth Croton-Harmon Station Rehabilitation.

Second, the indictment also charges that for more than five years, ASTC committed a similar fraud to qualify for work with the City of New York as a Local Business Enterprise ("LBE"). Specifically, FORTICH recruited a legitimate LBE to pose as a front for ASTC so that

ASTC could continue to work on City projects it was ineligible to perform. FORTICH paid tens of thousands of dollars in kickbacks to the other company.

DOB Licensing Fraud

In order to obtain a license to test concrete from DOB, a lab must employ a director who is either a professional engineer or a registered architect, and who personally supervises the technical aspects of the lab's testing of concrete. Upon receiving the license, the lab director certifies to DOB that he or she and the lab will follow the NYC Building Code.

The indictment charges that RABKIN, AKOND, KASPARIAN, and PUMO falsified their licensing applications as a result of the testing fraud described above.

A slight variation on the scheme occurred when ALAN FORTICH, his brother, ALVARO FORTICH JR., 32, and RABKIN formed HT Laboratories, a separate, short-lived fraudulent venture and falsely obtained a concrete testing license.

This indictment is the result of the continuing investigation by the District Attorney's Rackets Bureau and the Inspectors General of the Port Authority, the MTA, DOB, and the NYC Department of Investigations into criminal activities in New York City's construction industry. The investigation involved the analysis of thousands of documents, computer forensics, and the execution of nearly a dozen search warrants.

This investigation previously led to the October 2008 indictments of Testwell Laboratories and its top executives, V. Reddy Kancharla and Vincent Barone, and several other employees and professional engineers associated with the company. Testwell, Kancharla, and Barone were convicted after trial of Enterprise Corruption and related counts. In addition to monetary fines, Kancharla was sentenced to 7 to 21 years in prison, and Barone was sentenced to 5 1/3 to 16 years in prison. Testwell was also ordered to pay millions of dollars in reparations for its fraud. Several other Testwell employees pled guilty to related crimes.

In July 2010, Stallone Testing Laboratories and its lab director, professional engineer William Bayer pled guilty to Scheme to Defraud and were fined thousands of dollars.

Metropolitan Transportation Authority Inspector General Barry L. Kluger said: "I wish to commend the Office of the New York County District Attorney for its commitment to the investigation and prosecution of those responsible for illegal activity in the construction industry. The issues raised by this indictment are critically important to the MTA and its ridership, and we pledge our ongoing cooperation and dedication of our resources to these matters. We are continuing to work with the MTA Office of Construction Oversight to ensure the public safety and the sustainability of these construction projects. Our office has begun a review of the process by which disadvantaged enterprise firms are certified by the MTA, and I have already discussed with MTA officials recommendations to improve that process."

New York City Department of Investigation Commissioner Rose Gill Hearn said: "These defendants pretended to test concrete samples on a host of construction jobs but instead merely churned out bogus test results, according to the indictment. They may have thought

they had hoodwinked everyone and no one would know. But investigators found suspicious similarities in numerous test results as reported by American Standard Testing and Consulting Labs and then discovered an array of fraudulent schemes outlined in the indictment. This City has no place for companies who choose to cut corners and jeopardize construction safety. This investigation is a testament to the strong partnership between City and State law enforcement agencies dedicated to uncovering and stopping complex fraud against the City and its taxpayers.”

Port Authority’s Inspector General Robert Van Etten said: “The defendants traded greed and profit over integrity and safety. The Port Authority Office of the Inspector General and its Law Enforcement partners will aggressively identify, investigate and bring to justice those who corrupt the integrity of the construction industry.”

New York City Department of Buildings Commissioner Robert LiMandri said: “Today’s indictment sends a clear message to the concrete-testing industry that there are serious consequences for cutting corners on the job site. Concrete testing is a critical component of construction in New York City, and we have created a specialized unit to increase oversight and better ensure the integrity of this work. I would like to thank the members of my staff, the Manhattan District Attorney’s Office and the Department of Investigation for their hard work on this investigation.”

Senior Investigative Counsel Diana Florence and Assistant District Attorney Anne Ternes, of the District Attorney’s Rackets Bureau, conducted the investigation leading to today’s actions, under the supervision of Bureau Chief and Deputy Chief of Investigations Michael Scotto and Chief of the Labor and Construction Investigations Unit Brenda Fischer. Trial Preparation Assistants Mariangela Perrotta and Katherine Munyan assisted with the investigation.

District Attorney Vance thanked 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; 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 Chief Investigator James McElligott, and Investigators Faye Stephan, and Nick Novellino of that office; Barry L. Kluger, the Inspector General for the Metropolitan Transportation Authority of the State of New York, and Frank Lanzo, Investigative Attorney, Dora Diaz-Crowe, Principal Staff Auditor, William McGowan, Senior Principal Auditor, and Meryl Hughes, Administrative Assistant, with that office; Commissioner Robert LiMandri of the Department of Buildings, and Constadino “Gus” Sirakis, Director of Engineering Technical Affairs with that office; Chief Investigator James McElligott, and Investigators Faye Stephan, and Nick Novellino of that office; and Barbara DiTata, Vice President and Inspector General for the New York City School Construction Authority, and Gerard McEnroe and Chris Baldassari.

District Attorney Vance also thanked his Investigation Bureau, including Chief Investigator John Bilich, Deputy Chief Investigator Walter Alexander, and Senior Investigators Terry Quinn and Angel Garcia. Senior Forensic Analyst Selena Ley, worked under the supervision of Director Steven Moran, of the District Attorney's High Technology Analysis Unit.

Defendant Information:

SHAMIM AKOND, D.O.B. 8/1/68
Brooklyn, NY

Charges:

- Enterprise Corruption, class B felony, 1 count
- Scheme to Defraud in the First Degree, class C felony, 3 counts
- Offering a False Instrument for Filing in the First Degree, class E felony, 4 counts
- Falsifying Business Records in the First Degree, class E felony, 4 counts

AMERICAN STANDARD TESTING AND CONSULTING LABORATORIES
Whitestone, NY

Charges:

- Enterprise Corruption, class B felony, 1 count
- Scheme to Defraud in the First Degree, class C felony, 3 counts
- Offering a False Instrument for Filing in the First Degree, class E felony, 13 counts
- Falsifying Business Records in the First Degree, class E felony, 11 counts

ALAN FORTICH, D.O.B. 7/11/67
Whitestone, NY

Charges:

- Enterprise Corruption, class B felony, 1 count
- Scheme to Defraud in the First Degree, class C felony, 3 counts
- Offering a False Instrument for Filing in the First Degree, class E felony, 13 counts
- Falsifying Business Records in the First Degree, class E felony, 11 counts

ALVARO FORTICH, D.O.B. 11/19/78
Whitestone, NY

Charges:

- Enterprise Corruption, class B felony, 1 count
- Offering a False Instrument for Filing in the First Degree, class E felony, 4 counts

RICHARD KASPARIAN, D.O.B. 8/8/39
Manhasset, NY

Charges:

- Enterprise Corruption, class B felony, 1 count
- Scheme to Defraud in the First Degree, class C felony, 2 counts
- Offering a False Instrument for Filing in the First Degree, class E felony, 1 counts
- Falsifying Business Records in the First Degree, class E felony, 4 counts

BRUCE PUMO, D.O.B. 7/12/53
Bogota, NJ

Charges:

- Enterprise Corruption, class B felony, 1 count
- Scheme to Defraud in the First Degree, class C felony, 2 counts
- Offering a False Instrument for Filing in the First Degree, class E felony, 1 counts
- Falsifying Business Records in the First Degree, class E felony, 2 counts

MICHAEL RABKIN, D.O.B. 7/13/58
Gouldsboro, PA

Charges:

- Enterprise Corruption, class B felony, 1 count
- Scheme to Defraud in the First Degree, class C felony, 2 counts
- Offering a False Instrument for Filing in the First Degree, class E felony, 6 counts
- Falsifying Business Records in the First Degree, class E felony, 2 counts

A class B felony is punishable by up to 25 years in prison, a class C felony in punishable by up to 15 years in prison, and a class E felony is punishable by up to 4 years in prison.

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New York County District Attorney | duggane@dany.nyc.gov | 212-335-9400