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Attorneys: Whistleblower faked explosion warning

By RUSS BYNUM

SAVANNAH, GA.

Attorneys for one of the nation's largest sugar producers accused a whistleblower Monday of faking a report that he says he sent to company executives warning them of the dust hazard at a Georgia refinery days before a blast there killed 14 workers.

Lawyers defending Imperial Sugar in more than 30 lawsuits filed a motion in Chatham County State Court asking a judge to throw out the report and all testimony by Graham H. Graham because he "knowingly provided false testimony." Graham was vice president of operations at the Texas company at the time of the explosion.

Company attorneys said computer forensics experts hired by Imperial Sugar determined the report, which Graham says he forwarded to top company executives after he wrote it the week of Jan. 20, 2008 -- 17 days before the explosion -- was actually generated three days after the blast. They say Graham never sent the document to anyone other than his wife.

"They've made a mistake," Graham said Monday. "The allegations are wrong."

Investigators determined the Feb. 7, 2008, explosion at Imperial Sugar's refinery in Port Wentworth, a few miles west of Savannah, was caused by airborne particles of sugar dust that ignited like gunpowder. Dozens of workers were injured along with the 14 who died.

Graham, who lives in Houston, referred further questions to his attorney, Philip Hilder, who called the accusation a "maneuver by Imperial Sugar to continuously smear Graham Harris Graham."

However, Hilder declined to answer questions about when Graham wrote the report and whether he sent it to company executives.

"I can't comment directly on the forensics until I see them," Hilder said. "I have a lot of questions myself."

Mark Tate, a Savannah lawyer who represents the families of 11 victims suing Imperial Sugar, defended Graham as "the hero of this case."

Tate said Graham testified at an Oct. 14 deposition that several e-mails from before the explosion had vanished from his company laptop. Tate said he believes Graham's computer had been tampered with, though he could not say by whom.

"He stood up and he said what was wrong at that plant," Tate said. "They're horrified that he told them the truth. And the truth that he told them leaves them open to criminal liability, not just civil."

The Occupational Health and Safety Administration proposed \$8.7 million in fines against Imperial Sugar in July for safety violations at the Georgia refinery and another plant in Gramercy, La. The Sugar Land, Texas-based company is contesting the fines, the third-largest in OSHA's 40-year history. No criminal charges have been filed.

The disputed report is one in which Graham summarized a visit to the Georgia refinery, where he said he found dangerous accumulations of dust and other safety hazards that he told plant managers needed to be fixed.

"I predicted that if we did not make further significant improvements in our behavior and control of our work activities, a disaster such as an explosion would occur," Graham wrote.

Graham testified that he attached the report to an e-mail sent to Imperial Sugar CEO John Sheptor and other top executives in late January 2008. The report was dated Jan. 20, 2007, but Graham told attorneys the year was a typo.

In a deposition last month, Sheptor said he never received the report.

Even if Graham hadn't warned Imperial about dust hazards before the explosion, investigators say others did. When OSHA released its findings last summer, the agency said its investigation uncovered company audits, insurance records and other documents showing Imperial Sugar had been warned several times about combustible dust hazards in its plants since 2002.

Graham came forward as a whistleblower at a Senate subcommittee hearing on explosive industrial dust last July in Washington. He still worked for Imperial Sugar at the time, but said he left the company in January.

Graham never referenced the disputed report at the hearing, but said he'd warned Imperial Sugar executives that "I believed a fatal disaster would befall the refinery if a fundamental change in the way the plant was operated did not take place."

An e-mail released by Imperial Sugar last summer show Graham had given Sheptor a list of needed improvements at the Georgia refinery after his initial visit there in November 2007, shortly after Graham was hired as Imperial's vice president of operations. That e-mail did not mention explosive hazards at the plant.

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