



## The Ghosts of November

A promising government contract for a manufacturer turns into a liability nightmare when its leadership team fails to adequately vet its supply chain.

### PART ONE: SUCCESS IN SIGHT

February in Western Pennsylvania can be tough. Dirty snow in the streets and an almost endless gray. But on this particular February morning, Seth Reiff, the owner of Wilmerding, Pa.-based SWR Manufacturing, has reason to celebrate.



In his inbox that morning is confirmation from the U.S. Department of Defense that his firm is the winning bidder to deliver 2,000 trailer hitch pins to the U.S. Army. Reiff shifts in his seat at the good news, checks the confirmed contract value and the delivery date, then hops up in his excitement.

Running to his office door, he slams the door jamb for emphasis, jarring the peace and quiet of his administrative assistant, Janet.

"Sorry," he says, as Janet flinches in alarm.

"I'm just pretty stoked," he says. "We won that Army contract!"

"That's great," she says, recovering. "When....?"

"They want them by the end of September," he says.

"Darn, there is one thing," he says.

"What's that?" she says.

Janet opens her mouth to form a question, but Reiff has already spun back into his office, closed his door and begun to ruminate.

The good news, in addition the contract announcement, is that there is a drive in the public and private sector to do more to protect U.S. manufacturing. This involves shortening supply chains and giving more work to firms like SWR in the Ohio River Valley that have had their share of lean times.

Reiff has a challenge, though. Due to tariff fisticuffs with Canada, his Winnipeg pin supplier is quoting a per unit price that he just can't swallow.

Back at his desk, Reiff exhales, the wheels in his mind spinning, a still warm cup of Prestogeorge coffee at his elbow.

Struck by a thought, he picks up his phone and starts texting Johnny Costa, the owner of JC Technologies, in nearby Jeanette.

"Can you meet me at DeNunzio's tonight for a beer? Gotta' question."

"?," Costa texts back almost immediately.

"Perfect," Reiff texts back.

Over a deep basket of fried calamari, some prosciutto and pepper sliders and a pitcher of Iron City Light, Reiff and Costa come to a meeting of the minds.

"I need 2,000 trailer hitch pins for a U.S. Army contract, September delivery," Reiff tells Costa. Costa dips some fried squid tentacles into a saucer of DeNunzio's peerless marinara.

"So..." Costa begins, "That means I'd need to have them to you by what? End of June?"

"Ideally, yes," says Reiff.

"We can do that," Costa says with his mouth full, and he names his price.

Reiff does a quick calculation on a bar napkin.

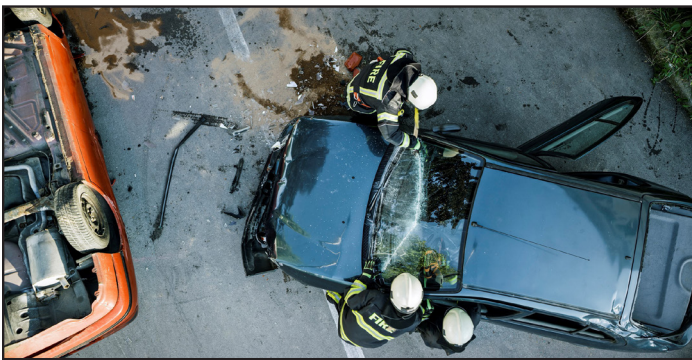
"Perfect," says Reiff. Costa wheels around on his bar stool and catches the waitress's eye, pointing to their now-empty pitcher for a refill.

On the television screen above the bar, a Philadelphia Flyers player rubs his glove into the face of Pittsburgh's Sydney Crosby.

"God, I hate the Flyers," Reiff says.

## PART TWO: AN UNIMAGINED HORROR

That October, Reiff is sitting with his CFO, Romel Schultz, in Schultz's office just down the hall from his.



"All good with that U.S. Army contract?" Schultz asks Reiff.

"Yep. We got them there on time and everything checked out, paid in full as I am sure you know," Reiff said.

Schultz leans back in his chair some.

"You know if I'm reading things right, we break \$100 million in sales this year," he said. "First time ever," he adds.

"Who woulda' thunk it, even five years ago?" says Reiff, a big smile creasing his face. "And I think the Defense Department work should keep flowing."

"I think it's time to talk bonuses," Schultz says.

"Agreed," says Reiff and the two settle in for some additional self-congratulatory executive time.

Within three weeks, SWR Manufacturing is on the verge of collapse. Here's what happens.

In mid-November, the Gonzalez family, Roberto, his wife Lucia and their children Ernesto, 9, and Mathilde, age 7, pile into their sport wagon for a Sunday family outing. The San Antonio-based family just wants to get out into the hill country for some sunshine and

fresh air before the work week begins all over again.

Roberto, his eyes gleaming, catches a glimpse in his rearview mirror of his son Ernesto earnestly cleaning the lens of his binoculars in the back seat.

"What do you think you're going to see today, buddy?" Roberto says.

"Ummm, I want to at least see one blue-throated hummingbird," says Ernesto. "Haven't see one yet this year," he adds.

"I want to see one too!" Mathilde adds competitively, which earns her a poke from Ernesto's elbow, which she readily returns.

"Children, please!" interjects Lucia, trying to nip any sibling tussling in the bud.

Her children temporarily governed, Lucia rolls down her window some to take in the fresh air and some bands of sunlight. In a more relaxed mode, she reaches out her hand and gives Roberto's free hand an affectionate squeeze.

They're on Rte. 10 North, having just cleared its intersection with Rte. 35 and are headed in the direction of Fair Hills Ranch, when it happens. They're passing a U.S. Army Reserve convoy, when the hitch on a trailer hauling an M777, 155mm howitzer disengages.

From her side of the car, Lucia sees the danger first.

"Roberto!" she screams. But her warning is too late.

All Roberto has time to do is take in his breath sharply. Then all hell shatters his life.

Within a millisecond, the more than 8-ton piece of field artillery slams into the Gonzalez' car on the passenger side.

The concussion of the blow kills Lucia, Ernesto and Mathilde instantly.

Roberto wakes in a hospital bed, his right arm in a cast, and with blinding pain his right chest from shattered ribs and a punctured lung.

A nurse hovers over him compassionately.

"What happened?" Roberto manages to eke out.

Then sobbing erupts from him, magnifying the jabbing pain in his chest; the image of the fractured lenses of Ernesto's binoculars in his son's lifeless hand having surfaced to torture his consciousness.

## PART THREE: BUSINESS ECLIPSE

The legal tsunami that swamps SWR Manufacturing is swift, massive and mortal.

Reiff and Schultz are on the phone with their insurance broker the day after the accident when the broker asks him where the accident took place.

Reiff is in shock and trying to collect his thoughts.

"Ummm...I think somewhere outside of San Antonio. Why does that.....?" he begins.

"Texas! Oh this is very bad, very bad indeed," Reiff's broker says.

"Can you tell me why please?" Reiff says, the tension of the moment evaporating his patience.

"Texas is the home of the big jury award. You've got three people in the same family dead and a survivor who has to live in agony," the broker says.

"I wouldn't be surprised to see an award that eclipses \$100 million," he adds.

"You made the hitches to government specs, right?" the broker adds.

"For sure I did," Reiff says. "They bought our design."

"What about any suppliers and what did they produce?" the broker asks.

Reiff reveals that JC Technologies was his pin supplier.

"Were they certified on that design? To the same specs that the Army bought?" the broker says.

"Well...." Reiff begins.

"Do you know or don't you?" the broker asks.

Schultz and Reiff just look at each other.

"We don't know for sure," Reiff admits.

"Maybe it's on them," the broker says. "Maybe."

"You better damn well hope," the broker says to himself after he hangs up with Reiff.

"\$100 million," the number stands in front of Reiff's mind like an

apparition. His insides, already tortured, go ice cold.

\$100 million, SWR's magic sales threshold after 20 years in business, the figure now taking on a horrific additional significance.

An investigation by Roberto Gonzalez's attorneys determines that the pins supplied to SWR Manufacturing by JC Technologies were off-spec. Not only that, but JC Technologies was not ISO-certified for that particular type of work, (in haste and in his beer-impacted state, Reiff never asked Costa if he was).

A San Antonio jury hands down an award of \$110 million to Roberto Gonzalez for the loss of his family and his ongoing pain and suffering.

More bad news for Reiff. JC Technologies carries no product liability insurance. He and his insurers own the entire \$110 million penalty.

"Did you ask Costa if he carried any product liability insurance?" one of Reiff's attorneys says, on a conference call with Reiff and Schultz.

There is a brutal silence. Schultz and Reiff just stare at each other. Reiff actually feels his eyes beginning to water.

"We never asked," Reiff says.

Reiff had never faced a product liability action in his life. He self-insured for a \$500,000 layer and had a \$10 million product liability policy on top of that.

Not even close to enough.

Reiff's failure to properly vet JC Technology's certifications and its insurance coverage might have been his only serious mistake in 20 years of business. But that didn't matter.

The windfall of a shift in supply chain emphasis from the foreign to the domestic will now bypass Seth Reiff. The sale sign in front of the SWR Manufacturing site with the picture of a smiling local commercial realtor from Greensburg says it all.

"75,000 square feet. Zoned Industrial. Now Available." &

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## LESSONS LEARNED – PARTNER'S CONTENT

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The owner of SWR Manufacturing, Seth Reiff, found himself in a challenging situation that is all too common today, with factors like rising costs from tariffs and limitations imposed by the COVID-19 pandemic creating challenges and necessitating quick pivots in supply chains.

In his haste to find a replacement for a key parts supplier, Seth makes a last-minute deal with a local supplier, bypassing potential due diligence actions that might have aided in mitigating liability exposure. Dependent upon a business's needs and requirements and subject to a business's contractual terms, such due diligence could include:

- Vetting his replacement supplier's background and track record in manufacturing pins.
- Comparing performance data of the new supplier's pins to those of the pins they are replacing.
- Examining whether the replacement supplier is ISO-certified.
- Securing proof of liability insurance from the supplier.
- Documenting product specifications, insurance and indemnification requirements in a legally binding contract with the supplier.

In addition, as the \$110 million jury award in this case underscored, Seth's product liability insurance limits of \$10 million were woefully inadequate for his exposure. Social inflation and runaway jury awards have radically changed the product liability exposure landscape. Manufacturers should convene with their brokers regularly to do a full assessment of their insurance and exposure to ensure adequate limits are in place. Companies should also discuss with their brokers the insurance and indemnifications they should consistently and contractually require from suppliers.

It's also notable this business owner may have entered into his government contract with a false sense of security, since under certain circumstances government contractors have immunity from liability. That was not the case in this instance because the product the government purchased from SWR was "off-the-shelf" – not manufactured to government-provided product specifications. Even if the military had provided detailed product specifications, the last-minute switch of pin manufacturers likely would have put the completed product outside of those specifications and hence outside of the realm of immunity.

If Seth were to start over again and attempt to gain government contracts, he would want to make sure that the contract that he enters into indicates that the government participated in the formulating of the product specifications, but he should also speak up if he has knowledge that the design provided is potentially dangerous. He would also want to make sure that whatever he produced followed the exact specifications of the military with no last-minute changes!



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