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# [***United States ex rel. Bunk v. Gov't Logistics, N.V.***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5R7H-CK81-DYMS-60K6-00000-00&context=)

United States District Court for the Eastern District of Virginia, Alexandria Division

August 22, 2017, Decided; August 22, 2017, Filed

No. 1:02-cv-1168 (AJT/MSN)

**Reporter**

2017 U.S. Dist. LEXIS 211268 \*

UNITED STATES OF AMERICA ex rel. Kurt Bunk, Plaintiff/Relator, v. GOVERNMENT LOGISTICS, N.V., Defendant.

**Prior History:** [*United States ex rel. Bunk v. Gosselin Worldwide Moving, N.V., 2017 U.S. Dist. LEXIS 54032 (E.D. Va., Apr. 7, 2017)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5N89-7141-F04F-F1BS-00000-00&context=)

**Core Terms**

services, transactions, logistical, general agency, reorganization, cycle, fraudulent, brokerage, contracts, entities, support services, customers, rates, government contract, transportation, charges, Team, conditional, shipments, defraud, successor liability, companies, employees, severance, damages, contractual relationship, circumstances, obligations, conspiracy, handling

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**Judges:** Anthony J. Trenga, United States District Judge.

**Opinion by:** Anthony J. Trenga

**Opinion**

**MEMORANDUM OF DECISION AND ORDER**

In this False Claims Act case, Realtor/Plaintiff Kurt Bunk's ("Bunk") seeks to impose successor liability on Defendant Government Logistics, N.V. ("GovLog") for the $24 million judgment that has been entered against Defendants Gosselin Group, N.V., Gosselin Worldwide Moving, N.V., ("Gosselin") and Marc Smet ("Smet") (collectively referred to as the "Gosselin Defendants"). Briefly summarized, Bunk claims that GovLog is a successor to Gosselin because of certain agreements entered into between Gosselin and GovLog in 2007 after Gosselin made the decision to exit the brokerage-services business that it had conducted through direct contractual relationships with the United States and their American prime contractors. That brokerage-services business pertained to the United States' programs to move the household goods of military**[\*3]** and embassy personnel to and from Europe. Under the structure of those agreements, GovLog, which was formed with Smet's assistance, began providing those brokerage services that Gosselin had decided to discontinue while Gosselin continued to provide the actual moving services as a subcontractor to GovLog, and thereby continued to derive financial benefits from the U.S. government contracts business. Bunk's theory is that the transactions with GovLog were fraudulent and GovLog is now responsible for the $24 million judgment against Gosselin because, by discontinuing its direct contractual relationships with the United States and American prime contractors, Gosselin has impeded the United States' ability to collect on its judgment. The Court held a bench trial on this claim on May 16, 2017.[[1]](#footnote-0)1

As discussed in more detail below, the Court finds and concludes that the Gosselin Defendants did not have the intent to hinder, delay, or otherwise defraud creditors in general or the United States in particular when it entered into the challenged transactions with GovLog, and the transactions were not otherwise fraudulent. Accordingly, Bunk is not entitled to relief on his successor liability**[\*4]** claim against GovLog (attributed to Count II of Bunk's operative Third Amended Complaint). The Court therefore renders its verdict in favor of GovLog and against Bunk and issues the following findings of fact and conclusions of law pursuant to [*Federal Rule of Civil Procedure 52(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-22N1-6N19-F032-00000-00&context=).

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**A. Findings of Fact**

Based on the evidence presented at trial, including the Court's assessment of the credibility of the witnesses, the weight to be given each piece of evidence, and the reasonable inferences to be drawn from that evidence, the Court makes the following findings of fact:[[2]](#footnote-1)2

1. Over the years, the United States has arranged for the movement of household goods of military personnel to and from Europe through the International Through Government Bill of Lading ("ITGBL") program and the Direct Procurement Method ("DPM") program, both administered by the United States Department of Defense's Military Transportation Management Command ("MTMC").

2. Under the ITGBL program, MTMC hires American "freight forwarders," also known as Transportation Service Providers ("TSPs"), which function as prime contractors. TSPs then hire as subcontractors European companies (known as "European agents") to secure the**[\*5]** necessary work in Europe, either by performing it directly, subcontracting it to other European moving companies, or some combination of the two. Under the DPM program, MTMC does not use TSPs, but rather contracts directly with European agents, which then arrange for all of the services needed for the movement of household goods within Europe.

3. The United States Department of State's European Logistical Support Office ("ELSO") also contracts with European agents directly, similar to the DPM program, for the handling of shipments for U.S. embassies and consulates in Europe.

4. Gosselin World Wide Moving, N.V., now known as the Gosselin Group, N.V. (collectively, "Gosselin"), is a Belgian moving and logistics company. Prior to 2007, Gosselin provided two types of services in connection with the ITGBL program, the DPM program, and ELSO business. First, Gosselin provided what were essentially brokerage services, whereby it arranged all the necessary logistical services in Europe. In that regard, Gosselin acted as a so-called "general agent" on behalf of the TSPs (in the ITGBL program), MTMC (in the DPM program), and ELSO, and contracted directly with them for that purpose. Second, Gosselin,**[\*6]** itself or through its affiliated companies, provided many (but not all) of the actual logistical services needed in Europe.

5. GovLog is a Belgian company owned by Jan Lefebure ("Lefebure"), Stephan Geurts, Jr. ("Geurts Jr."), Timotheus Noppen ("Noppen"), and Rene Beckers ("Beckers"). It was formed on June 28, 2007[[3]](#footnote-2)3 and began operations on July 1, 2007.

6. GovLog provides the same type of general agency/brokerage services that Gosselin previously provided in connection with the ITGBL program, the DPM program, and ELSO business. In this regard, GovLog arranges through other companies the necessary logistical services, which typically include the packing of shipments, crating, customs clearance, lashing, ocean shipping, billing, customer services, securing, storage, shipping, lift services, third-party services, repair services, trucking, drayage port handling, stevedoring, and warehousing and storage. GovLog itself provides contract negotiations, rate quotations, shipment tracking, management of subcontractors and suppliers, training of subcontractors and suppliers on ***regulations*** applicable to U.S. government shipments, liftvan management, claims settlement, and insurance services.

The**[\*7]** Criminal Case Against Gosselin and Smet

7. On October 8, 2003, the United States filed a criminal complaint in this Court against Smet and Gosselin for conspiracy to restrain trade in violation of the Sherman Act and conspiracy to defraud the United States.[[4]](#footnote-3)4 The criminal case only concerned Gosselin and Smet's conduct with respect to the ITGBL program, not the DPM program. An arrest warrant for Smet was issued the same day. On October 14, 2003, Smet was arrested when he attended a transportation industry conference in Hawaii. The United States Department of Justice (the "DOJ") had arranged for Smet's arrest at this conference, which Smet believed was in violation of an agreement his attorneys had reached with the DOJ that he could attend this conference without being arrested. Smet initially was released on conditions that required him to surrender his Belgian passport and prohibited him from traveling outside the Washington, D.C. area. On November 21, 2003, this Court amended his terms of release, allowing him to return to Belgium.

8. On November 13, 2003, a grand jury indicted Smet and Gosselin on the charges in the criminal complaint.

9. In February 2004, Gosselin entered a conditional**[\*8]** plea of guilty to a criminal information (rather than the indictment) charging Gosselin with conspiracy to violate the Sherman Act and conspiracy to defraud the United States. As a result of the conditional plea agreement, the indictment against Gosselin and Smet was dismissed. The conditional plea agreement allowed Gosselin to challenge whether the immunity provisions of the Shipping Act, [*46 U.S.C. app. §§ 1701-19 (2000)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4MT5-0490-006F-1010-00000-00&context=), applied to the alleged price fixing that formed the basis of the criminal charges.

10. On August 16, 2004, this Court held that the immunity provisions of the Shipping Act applied to the ***antitrust*** conspiracy count but not to the fraud conspiracy count. On June 14, 2005, the Fourth Circuit rejected Gosselin's ***antitrust*** immunity defense to the ***antitrust*** conspiracy charge as well, *see* [*United States v. Gosselin World Wide Moving, N.V., 411 F.3d 502 (4th Cir. 2005)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4GD5-S720-0038-X2MP-00000-00&context=), and Gosselin was convicted on both counts of the criminal information pursuant to the conditional guilty plea.

11. In April 2006, this Court sentenced Gosselin to a fine in the amount of $6 million along with restitution in the amount of $865,000 for losses incurred in the summer cycle of 2002 for Code 4 ITGBL shipments from Germany to the United States.[[5]](#footnote-4)5 Gosselin paid the criminal fine and restitution in full**[\*9]** pursuant to an agreed-upon payment plan with the last payment around May 1, 2007.

Smet's Disbarment and the Creation of Gosselin's U.S. Management Team

12. Although the criminal charges against Smet had been dismissed, he and the United States Army entered into an administrative settlement that barred him from participating in the U.S. government contracts business from March 2004 to March 2007.

13. Gosselin created a business unit called the United States Management Team (the "U.S. Management Team") to manage Gosselin's U.S. government contracts-related business during Smet's debarment. The team consisted of four Gosselin employees: Stephan Geurts, Sr., Luddi Bokken, Geurts Jr., and Noppen. Smet played no role in the creation of the team or the selection of its members, and the U.S. Management Team was aware of the criminal proceedings at this time. During Smet's debarment, the U.S. Management Team performed those functions that Smet had performed with respect to the ITGBL program. Noppen was in charge of calculating rates, providing rate quotes to customers, and negotiating rates with suppliers and customers for work under the ITGBL program. Geurts Jr. handled similar duties for the**[\*10]** ELSO business. As a result, Noppen was intimately familiar with costs and pricing for the ITGBL business, and Geurts Jr. was intimately familiar with costs and pricing for the ELSO business.

14. During this time, Gosselin had a total of approximately 100 employees, and the U.S. government contracts-related business represented a substantial portion of its overall business.

The *Qui Tam* FCA Civil Actions

15. In September 2006, with the criminal proceedings concluded, the DOJ notified Gosselin and Smet of the pending *qui tam* FCA actions that Bunk and another Relator, Ray Ammons, had filed in 2002.[[6]](#footnote-5)6

16. In December 2006, the DOJ detailed to Gosselin and Smet's counsel the evidence underlying the FCA *qui tam* actions against them and advised counsel that the Government had not yet decided whether to intervene to pursue these civil claims.

17. In January 2007, the DOJ made a settlement demand of $104 million on Gosselin and Smet. This demand, as explained by the DOJ, represented approximately 1.5 times the amount of actual damages (approximately $69 million) that the United States claimed it had sustained in connection with the ITGBL and DPM programs as a result of their FCA violations.

**[\*11]**18. On July 18, 2008, the United States intervened with respect to the Relators' claim based on the ITGBL program (the "ITGBL claim") but not with respect to the claim based on the DPM program (the "DPM claim"). The defendants other than Gosselin and Smet settled. Following years of litigation in this Court and the Fourth Circuit, the Relators obtained the $24 million judgment, the only judgment obtained against the Gosselin Defendants, which was based on the DPM claim and only non-compensatory civil penalties.

19. On March 21, 2017, a Belgian court—the Antwerp Court of First Instance, Antwerp Division, Section Civil Court—held that the $24 million judgment could not be recognized or enforced in Belgium, as the judgment was not "based on damage actually suffered" but rather on "penalizing civil compensation" under the FCA. Def. Ex. 21 at 704. Such punitive damages, the court noted, are incompatible with "the strictly compensatory intentions of private law" in Belgium, under which damages are "determined with regard to the actual, material and moral damage." *Id.* at 705.

Gosselin's Reorganization and the Creation of GovLog

20. In early 2007, Gosselin's founder, Dolf Gosselin, died (in January 2007),**[\*12]** and Smet's debarment ended (in March 2007). Following Dolf Gosselin's death, Smet began to plan a broad reorganization of Gosselin.

21. As part of the reorganization, Smet wanted to minimize, if not completely eliminate, the general agency/brokerage services that Gosselin provided through direct contractual relationships with TSPs and the United States—that aspect of Gosselin's U.S. government contracts business that required coordination with other European agents. Smet saw these business activities as the source of his and Gosselin's legal troubles with the United States. He also felt that he and Gosselin had been treated unfairly[[7]](#footnote-6)7 and was concerned that if Gosselin continued to provide these services, he and Gosselin would continue to be exposed to further unwarranted and unfair charges and claims. As others characterized his attitude in this regard, he was "fed up" and frustrated with the claims that had been made against him and Gosselin and the "whole criminal case [against him and Gosselin] and everything around it." Noppen Dep. at 29:16-30:3.[[8]](#footnote-7)8 By limiting Gosselin's involvement in U.S. government contracts business to the actual packing and moving services that Gosselin itself**[\*13]** would provide, he believed that he could minimize his and Gosselin's exposure to similar claims and charges in the future.

22. Despite wanting to limit or eliminate Gosselin's direct business dealings with TSPs and the United States, Smet recognized at the time of the reorganization that for practical, business reasons, Gosselin could not simply walk away from the U.S. government contacts business altogether. First, Gosselin had existing contractual obligations with TSPs under the IGTBL program (through September 30, 2007) and with ELSO (through December 31, 2007). Second, Gosselin's logistical services aspect of its U.S. government contacts business represented a substantial part of Gosselin's revenue. Third, were Gosselin to cease all of its U.S. government contracts-related business, it would need to terminate a large portion of its employees, and Smet had a good-faith belief that Gosselin would incur substantial severance obligations under Belgian law to the terminated employees.[[9]](#footnote-8)9

23. Based on these considerations, Smet wanted Gosselin's reorganization, as it pertained to Gosselin's U.S. government contracts business, (1) to get Gosselin out of the general agency/brokerage**[\*14]** aspect of the U.S. government contracts business that it provided through direct contractual relationships with TSPs and the United States; (2) to protect Gosselin's financial well-being by continuing to provide itself the logistical services (e.g., warehousing, packing, transportation, administrative support) associated with the U.S. government contracts business; and (3) to avoid the potential severance payments to those employees who supported Gosselin's U.S. government contracts general agency/brokerage services.

24. To achieve these goals, Smet decided to explore spinning off into a separate company the brokerage/general agency services part of Gosselin's U.S. government contracts business. By eliminating the brokerage/general agency services it provided to TSPs and the United States while continuing to provide logistical services as a subcontractor to a new company that dealt directly with the TSPs and the United States, the Gosselin Defendants believed it could substantially protect its financial well-being and lessen its exposure to future charges or allegations. Moreover, Gosselin would eliminate its exposure to severance liability because all of its employees either would**[\*15]** remain at Gosselin to support the logistical services business that Gosselin planned to continue or would move to the new company to support the brokerage/general agency aspects of the U.S. government contracts business.

25. Smet did not have as his objective, and did not intend to use the reorganization, to insulate either himself or Gosselin from the legal consequences arising out of their past conduct.

The Formation of GovLog and Its Transactions with Gosselin

26. In April or May 2007, after an internal assessment initiated in February 2007 concerning the proposed reorganization's effect on Gosselin's existing internal accounting, billing, and software systems, Smet told Geurts Jr. and Noppen about his planned reorganization. In that regard, he told them that he no longer wanted to continue the brokerage business that the U.S. Management Team handled and asked whether they wanted to engage in that business line through a separate company.

27. After talking with Noppen and Geurts Jr., Smet met with Lefebure, the Managing Director of International Freight Forwarding Services ("IFFS"). IFFS, a so-called "house forwarder," is an unaffiliated company with which Gosselin had contracted over**[\*16]** the years to handle its commercial overseas shipments. Smet knew that Lefebure owned an inactive company called Brabiver, which held the type of transportation license necessary to provide the transportation services in Europe involved in the ITGBL and DPM programs.

28. Smet proposed to Lefebure that he team up with Noppen and Geurts Jr. to take over, through Brabiver, the general agency/brokerage function performed by Gosselin's U.S. Management Team. As outlined by Smet, Geurts Jr. and Noppen would run GovLog's day-to-day operations; and Lefebure would have limited day-to-day involvement but function as a high-level manager akin to an independent consultant. Lefebure had worked with Smet for years, trusted him, and was familiar with the rates that had been negotiated over the years between Gosselin and IFFS for transportation services. Lefebure liked the idea of activating Brabiver with the opportunity to make a profit through the otherwise dormant company.

29. Following his meeting with Smet, Lefebure asked Beckers, whom he had known and worked with for 15 years, to become the fourth investor in GovLog. Lefebure wanted Beckers to join the venture in order to balance decisionmaking**[\*17]** in the new company between day-to-day operators, Geurts Jr. and Noppen, and those with advisory roles, Beckers and himself. At that time, Beckers was the operations director of Gosselin Container Terminal ("GCT"), a Gosselin-affiliated company, a position he retained after the creation of GovLog.

30. Lefebure had determined that approximately €100,000 was needed to capitalize GovLog, but Beckers, at least, did not have €25,000 to invest in the company. Smet agreed to loan Lefebure, Noppen, Geurts Jr., and Beckers the money for their respective investments in GovLog. Thus, on June 27, 2007, all four GovLog shareholders signed substantially similar loan agreements with Smet, in which Smet loaned each of the four shareholders approximately €25,000 to invest in Brabiver and convert it into GovLog. These loans were interest-free and did not have a repayment deadline. The GovLog principals did not repay any part of these loans, which Smet eventually forgave, at the borrowers' request, because of the substantial, unanticipated litigation costs that GovLog has incurred in this action.

31. At a June 28, 2007 meeting, Lefebure, Geurts, Noppen, and Beckers purchased shares in Brabiver and then**[\*18]** converted it into GovLog. Each of GovLog's four shareholders owns approximately 25 percent of the company, with Lefebure owning slightly more than the other three. Ultimately, 16 former employees of Gosselin became employed by GovLog.

The Gosselin-GovLog Transactions

32. On June 29, 2007, the day after GovLog was formed, GovLog and Gosselin entered into two Purchase and Sale Agreements, one with respect to the ITGBL program (the "ITGBL PSA") and one pertaining to Gosselin's work with ELSO (the "ELSO PSA"). After Smet and Lefebure had worked out the terms of the ITGBL PSA and the ELSO PSA, Gosselin's attorney then drafted those agreements, which Lefebure signed on behalf of GovLog, and Smet signed on behalf of Gosselin. Between June 29 and August 1, 2007, in addition to the ITGBL PSA and the ELSO PSA, Gosselin and GovLog entered into a number of facilities and services agreements (the "FSAs"). Under these agreements, Gosselin-affiliated entities[[10]](#footnote-9)10 agreed to provide on a nonexclusive basis essentially all of the logistical and administrative services GovLog needed in connection with the ITGBL and ELSO business lines, other than the brokerage/general agency services GovLog provided itself.**[\*19]** These services covered under the FSAs included warehousing, local handling, customs documentation, export documentation, transit documentation, trucking, bookkeeping, IT, human resources, employee benefits administration, customer service, in-house legal and billing services. The FSAs did not specify any terms or rates for any particular services. Rather, these agreements were essentially declarations of mutual interest and willingness to do business with each other, and GovLog was to pay Gosselin for all of these services based on rates to be negotiated in the future.

33. Under the ITGBL PSA, GovLog agreed to purchase from Gosselin the following:

[A]ll Gosselin interests in rate agreements which Gosselin has with any carriers involved in the ITGBL business, carrier-customer good will, carrier-customer accounts, along with all obligations and entitlements there under, accrued under or in connection with said US Government ITGBL business as of 1 October 2007, subject to the Terms and Conditions set out in this Agreement and referenced Attachments. Accounts receivable related to the ITGBL business of GOSSELIN based upon rate agreements and performances on ITGBL shipments in any ITGBL Cycle**[\*20]** concluding prior to 1 October 2007 shall remain, however, the exclusive property of GOSSELIN. . . .

Def. Ex. 2, § 3.

34. Under the ITGBL program, European agents like Gosselin did not enter into long-term contracts or exclusive dealing arrangements with TSPs, but rather bid for and renegotiated rates with TSPs for half-year cycles.[[11]](#footnote-10)11 Under both the ITGBL PSA and the ELSO PSA, GovLog retained the right to obtain any services from companies other than Gosselin,[[12]](#footnote-11)12 and Gosselin retained the right to compete with GovLog.[[13]](#footnote-12)13

35. At the time that Gosselin and GovLog entered into the ITGBL PSA in June 2007, Gosselin's only existing ITGBL-related contracts with TSPs were those for the "IS07" cycle, *viz.*, the summer cycle for 2007, which ended on September 30, 2007. This period was defined under the ITGBL PSA as the "Transition Period," during which Gosselin would continue to receive all revenues but would be supported by GovLog. *See id.* § 4.4.a. ("All revenues derived from the performance of services in the ITGBL business during the Transition shall be the exclusive property of GOSSELIN."). GovLog "control[led], and [was] entitled to receive all revenues, and was responsible for all claims or charges, relating**[\*21]** to any ITGBL shipments carried out by GovLog with respect to any ITGBL Cycle after 30 September 2007." *Id.* § 4.4(b).

36. Gosselin did not transfer to GovLog any guaranteed or consummated contracts for any ITGBL business after September 30, 2007 (Gosselin did not have any). Thus, as a practical matter, the only "assets" that GovLog purchased from Gosselin under the ITGBL PSA were Gosselin's goodwill with its TSP customers and its support in obtaining future TSP contracts. While GovLog expected that the bulk of Gosselin's past TSP customers would use GovLog for future ITGBL cycles, as they had used Gosselin, GovLog was still required to compete for ITGBL-related business from TSPs for every channel, in every cycle beginning October 1, 2007. Likewise, under the FSAs, GovLog was not obligated to hire Gosselin, and the ITGBL PSA expressly recognized that GovLog could use Gosselin's competitors. As it turned out, GovLog was successful in obtaining brokerage/general agency contracts for the IS and IW cycles after October 1, 2007, with most, but not all, of the TSPs that formerly dealt with Gosselin directly.

37. Although neither Gosselin nor GovLog had any contractual obligation to use the services**[\*22]** of the other, the parties had an expectation that GovLog would use Gosselin's logistics and support services. Nevertheless, the ITGBL PSA was structured to incentivize GovLog to use Gosselin's logistical and support services. In that regard, Gosselin was entitled to a payment of 25% of GovLog's "Net Revenues" generated from the ITGBL business during GovLog's first year on its own—the IW07 and IS08 Cycles (together, for the period October 1, 2007 to September 30, 2008). However, "Net Revenues" were "defined as all of those revenues received by GovLog in respect to the ITGBL business in the IW07 and IS08 Cycles minus the amount of the Facility Services invoiced by Gosselin to GovLog in connection with the attached Support Services Agreement."[[14]](#footnote-13)14 *Id.* § 4.4.c.i. Because Net Revenues were not reduced by any payments to non-Gosselin entities (or GovLog's expenses), GovLog benefitted by using Gosselin's services during that first year. Beyond one year, GovLog was incentivized to use Gosselin's logistical and support services at a level acceptable to Gosselin in order to discourage Gosselin from reentering the brokerage-services business, as it had a right to do under the ITGBL PSA.

38. GovLog has paid**[\*23]** Gosselin €867,000, based on its obligation under the ITGBL PSA to pay 25% of its Net Revenues, as defined, for the IW07 and IS08 Cycles.[[15]](#footnote-14)15

39. The ELSO PSA was substantially similar to the ITGBL PSA except that it transferred to GovLog an outstanding contract that Gosselin had with ELSO, contract SGE500-06-D-1001 (the "ELSO Contract"), which had an initial period of January 1 to December 31, 2006, with four one-year renewal options. In the ELSO PSA, GovLog agreed to purchase the ELSO Contract from Gosselin,[[16]](#footnote-15)16 and to pay 20% of all "Net Revenues" derived from that contract, which, similar to the ITGBL PSA, was "defined as all of those revenues received by GovLog under the ELSO contract minus the amount of the Support Services invoiced by [Gosselin]'s operating entities and any of these entities' competitors to GovLog in connection with the attached Facilities and Support Service Agreements." Def. Ex. 3 § 4.3.c.i. Pursuant to that obligation, GovLog has paid Gosselin approximately €100,000.

40. Gosselin was required to obtain the United States' approval for the ELSO PSA. During that approval process, GovLog and Gosselin disclosed to the United States the details of Gosselin's reorganization and that**[\*24]** Gosselin and/or other Gosselin entities would be providing all of the facilities and services—other than those provided by GovLog—needed to perform the contract.

41. On September 28, 2007, in accordance with the Federal Acquisition ***Regulations***, GovLog and Gosselin entered into a Novation Agreement, approved by the United States, transferring the ELSO Contract to GovLog (the "Novation Agreement"). The Novation Agreement provides that Gosselin would guarantee payment of all liabilities and the performance of all existing or future obligations that GovLog assumed under the Novation Agreement.

42. Also on September 28, 2007, GovLog and Gosselin entered into two other novation agreements for packing and crating contracts for the American Embassy in Brussels, Belgium, and the American Embassy in Paris, France, respectively. Both were associated with the ELSO Contract and were awarded to Gosselin, effective August 1, 2007, for a one-year period with four one-year options to renew.

43. GovLog did not compete with any other companies with respect to either the ITGBL PSA or the ELSO PSA, nor did the principals of GovLog perform any formal due diligence or employ outside consultants with respect**[\*25]** to the ITGBL or ELSO business lines in which GovLog intended to engage. Nevertheless, the principals of GovLog, because of their work experience, were, without any formal due diligence, thoroughly familiar with the ITGBL and ELSO business lines, including prevailing market rates for services and the costs associated with providing the necessary services. Likewise, given Gosselin's need to locate a future employer for its terminated employees, and its knowledge of the experience and capabilities of GovLog's principals and employees, its decision to enter into the transactions with GovLog, without competition among potential purchasers, was a reasonable business decision and judgment. Smet's decision to loan GovLog's principals the money to capitalize GovLog was a reasonable business decision that promoted and facilitated Gosselin's legitimate business interests and objectives.

44. Although GovLog operated for a number of years in space owned by Gosselin and with certain administrative support services provided by Gosselin, or through its affiliated companies, GovLog compensated Gosselin and its affiliates for that space and those services, and there is no evidence that the terms and**[\*26]** conditions for that space and those services were commercially unreasonable.

45. Since at least September 30, 2007, Gosselin and GovLog have operated as independent companies. GovLog has continued to use primarily Gosselin entities for the logistical and support services it subcontracts based on negotiated rates. In that regard, GovLog has explored the rates of Gosselin's competitors and found that Gosselin's rates have typically been the more favorable, although, in several instances, as early as 2008, GovLog has subcontracted to competitors of Gosselin entities when they had more favorable rates.

46. Overall, the ITGBL PSA and the ELSO PSA were based on commercially reasonable terms and conditions; and the consideration Gosselin has received under those agreements and the related FSAs was commercially reasonable and adequate. That consideration included, at the very least, the elimination of any potential severance liabilities to terminated employees and the payment of approximately €967,000 for essentially Gosselin's goodwill and support and the right to manage the ELSO Contract.

47. Although GovLog operates informally given its size, GovLog is a bona fide, profitable, and independent**[\*27]** entity, in which none of the Gosselin Defendants have any ownership interest or management control. There is no evidence that it is undercapitalized or that its assets are inadequate or inappropriate for the business it conducts.

48. Smet's objective to reduce his and Gosselin's legal exposure in the future by terminating Gosselin's brokerage/general agency business, as it had existed through direct contractual relationships with TSPs and the United States, was a reasonable, good-faith business judgment.

49. Gosselin's reorganization and the GovLog transactions were not entered into, in whole or in part, in order to adversely affect any existing or future judgment creditors, including the United States, based on any liabilities arising out of Gosselin's past conduct or any intended future course of conduct. There were no identified judgment creditors when Smet planned the reorganization or the transactions were consummated;[[17]](#footnote-16)17 and neither the reorganization nor the Gosselin-GovLog transactions associated with it adversely affected the United States or the Relators in litigating their FCA claims against the Gosselin Defendants.

50. Gosselin was not rendered insolvent as a result of the transactions**[\*28]** with GovLog and was not otherwise adversely affected by them. After the transactions, Gosselin and GovLog both continued to exist as financially viable operating entities.

51. As a practical matter, the reorganization and the Gosselin-GovLog transactions have had no effect on the United States' ability to collect its judgment against Smet; would not have materially affected the United States' ability to collect on a judgment against Gosselin based on compensatory damages; and has materially impacted the United States' ability to collect on its judgment against Gosselin only because that judgment is based solely on civil penalties unenforceable in Belgium rather than any compensatory damages. For Smet to have foreseen that Gosselin's withdrawal from direct contractual relationships with TSPs and the United States might impact the United States' ability to collect on a future judgment in the way that it has required a level of prescience, legal knowledge, and sophistication that cannot be reasonably inferred from all the facts and circumstances of the case.

52. The Gosselin Defendants did not have the intent to hinder, delay, or defraud creditors in general or the United States in particular**[\*29]** when Gosselin entered into the challenged transactions with GovLog.

53. The GovLog principals were not aware of any potential civil liability that the Gosselin Defendants faced when they entered into the Gosselin-GovLog transactions and by entering into those transactions, did not intend to assist the Gosselin Defendants in any effort to hinder, delay, or defraud creditors in general or the United States in particular.

54. While the nature, timing, and structure of the transactions raise legitimate concerns and suspicions, and although aspects of the transactions appear unusual at first blush, there were, in fact, valid and reasonable business objectives that justify each aspect of them and rebut the circumstances suggestive of fraud.

**B. Conclusions of Law**

Based on the findings of fact set forth herein, the Court makes the following conclusions of law:

1. The Court has subject matter jurisdiction to adjudicate this action and the claims and defenses asserted herein.

2. Bunk's core complaint is that Gosselin no longer performs the brokerage and general agency services that would have facilitated collection efforts on the United States' judgment against Gosselin. He claims that GovLog is now**[\*30]** responsible for that judgment as Gosselin's successor because, as a result of the 2007 agreements entered into between GovLog and Gosselin, GovLog now conducts the same type of brokerage and general agency business for TSPs and the United States previously conducted by Gosselin and hires Gosselin to perform many logistical and support services necessary for GovLog to perform under its direct contracts with TSPs and the United States.[[18]](#footnote-17)18

3. As a general rule, a corporation that acquires the assets of another corporation does not also acquire the liabilities of the corporation from which the assets are acquired unless one of four exceptions applies. [*United States ex rel. Bunk v. Gov't Logistics N. V., 842 F.3d 261, 273 (4th Cir. 2016)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5M5T-KGD1-F04K-M000-00000-00&context=) (*citing* [*United States v. Carolina Transformer Co., 978 F.2d 832, 838 (4th Cir. 1992))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-0F20-008H-V44J-00000-00&context=). The four exceptions under the traditional rule are: (1) the successor expressly or impliedly agrees to assume the liabilities of the predecessor; (2) the transaction may be considered a de facto merger; (3) the successor may be considered a "mere continuation" of the predecessor; or (4) the transaction is fraudulent." *Id.* (quoting [*Carolina Transformer Co., 978 F.2d at 838*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-0F20-008H-V44J-00000-00&context=))). Here, Bunk claims that the fraudulent transaction exception imposes successor liability on GovLog.

4. The fraudulent transaction exception "turns on the [Gosselin Defendants'] intention underlying the**[\*31]** transfer of assets to GovLog, i.e., whether it was made with an actual intention to hinder, delay, or defraud creditors." [*Id. at 276*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5M5T-KGD1-F04K-M000-00000-00&context=). Because direct evidence of such an intention is usually absent, courts generally look to indirect and circumstantial evidence for "badges of fraud." *Id.* These "badges of fraud" include: (1) "a conveyance to a spouse or near relative"; (2) "inadequacy of consideration"; (3) "transactions that are different from the usual method of transacting business"; (4) "transfers in anticipation of suit or execution"; (5) "retention of possession by the debtor"; (6) "the transfer of all or nearly all of the debtor's property"; (7) "insolvency caused by the transfer"; (8) "failure to produce rebutting evidence when circumstances surrounding the transfer are suspicious"; and (9) "transactions whereby the debtor retains benefits." *Id.* (internal quotation marks omitted). But the ultimate legal issue of fraudulent intent is a fact-laden inquiry. *See* [*id. at 276-77*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5M5T-KGD1-F04K-M000-00000-00&context=).

5. Under either a "clear and convincing evidence" standard or a "preponderance of the evidence" standard,[[19]](#footnote-18)19 Bunk had failed to establish that the Gosselin Defendants, or any of them, entered into any of the Gosselin-GovLog transactions**[\*32]** with the intent to hinder, delay, or defraud the United States or any other actual or potential creditor, or that any transaction was otherwise fraudulent. While the transactions did occur under unusual and suspicious circumstances, the transactions are adequately explained by legitimate business purposes and objectives. The suspicious circumstances are also rebutted by all the facts and circumstances surrounding the transactions, in addition to the legitimate business objectives, including: the adequate consideration paid; the disclosures to the United States at the time of the transactions; the continuing existence of both Gosselin and GovLog as independent, viable operating entities after the transactions; the lack of any adverse financial impact on Gosselin; the lack of any effect on any creditor immediately following the transactions and for over seven years thereafter; and the improbability that Smet could have foreseen the challenged transactions' complained-of effects on the United States' ability to collect on the judgment against the Gosselin Defendants.

6. GovLog is not the successor to Gosselin and has no liability with respect to the judgment obtained against Gosselin in**[\*33]** this action.

**CONCLUSION**

For the above reasons, the Court finds and concludes that Bunk has not proven that any of the 2007 Gosselin-GovLog transactions were made with an actual intention to hinder, delay, or defraud any actual or potential creditors, including in particular the United States, or that any of those transactions were otherwise fraudulent. The Court therefore renders its verdict in favor of GovLog and against Bunk on his successor liability claim in Count II of his Third Amended Complaint. Accordingly, it is hereby

ORDERED that judgment be ENTERED in favor of Defendant Government Logistics, N.V. and against Plaintiff/Relator Kurt Bunk on Count II of Bunk's Third Amended Complaint.

The Clerk is directed to forward a copy of this Memorandum of Decision and Order to all counsel of record and to enter judgment in accordance with [*Federal Rule of Civil Procedure 58*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-2421-6N19-F169-00000-00&context=).

/s/ Anthony J. Trenga

Anthony J. Trenga

United States District Judge

Alexandria, Virginia

August 22, 2017

**End of Document**

1. 1The Court entered summary judgment on this successor liability claim in GovLog's favor. *See* [Doc. Nos. 1363, 1368]. The Fourth Circuit reversed that ruling and remanded this case for trial. Following the trial, the Court took the matter under advisement and allowed the parties to submit briefs on certain legal issues along with revised proposed findings of fact and conclusions of law. [↑](#footnote-ref-0)
2. 2Any factual statements set forth in the conclusions of law are also included within the Court's findings of fact. [↑](#footnote-ref-1)
3. 3GovLog was created through its predecessor company, Brabiver, which was "dormant" or inactive before its conversion to GovLog in 2007. [↑](#footnote-ref-2)
4. 4The criminal case also included a third codefendant, The Pasha Group. [↑](#footnote-ref-3)
5. 5The Pasha Group also pleaded guilty and was separately fined in the amount of $4.6 million. Gosselin and The Pasha Group were jointly liable for the restitution amount of $865,000. [↑](#footnote-ref-4)
6. 6In 2002, Bunk filed this *qui tam* False Claims Act ("FCA") civil lawsuit under seal in this Court against Gosselin, Smet, and numerous other defendants. Bunk's suit alleged that Gosselin, Smet, and the other defendants had rigged bids with respect to the ITGBL program and the DPM program and sought actual damages, punitive damages, and civil penalties. Also in 2002, Relator Ray Ammons filed a sealed FCA civil lawsuit in the United States District Court for the Eastern District of Missouri alleging that Gosselin, Smet, and numerous other defendants violated the FCA with respect to the ITGBL program. The Ammons suit sought actual damages and civil penalties. In November 2007, the Ammons suit was transferred to this Court and consolidated with the Bunk suit. [↑](#footnote-ref-5)
7. 7These feelings were particularly strong with respect to the criminal charges and his view that the DOJ reneged on its agreement not to arrest him when he traveled to Hawaii. [↑](#footnote-ref-6)
8. 8As Lefebure characterized Smet's motivation, Smet was tired of "those chasings toward his person." Lefebure Dep. at 34:19. Bunk relies heavily upon these statements as evidence of Smet's intent to hinder, delay, or defraud the United States as a future judgment creditor by eliminating any direct contractual relationships with TSPs and the United States. But given the evidentiary context within which these comments were made, the Court finds that these characterizations of Smet's feelings referred to avoiding *future* claims and charges against him and Gosselin based on *future* conduct, not insulating himself or Gosselin from any potential judgments based on *past* conduct. [↑](#footnote-ref-7)
9. 9The parties dispute the Belgian law applicable to the potential severance payments. Bunk contends that Gosselin, in fact, had minimal exposure for severance payments under the Belgian Act of 1978 on Employment Contracts since only three months' notice is required for those terminated employees employed for less than 5 years. GovLog, on the other hand, contends that Gosselin faced substantial severance liabilities under Collective Bargaining Agreement No. 10 of May 8, 1973 Regarding Collective Redundancy because the layoffs would have affected more than ten percent of Gosselin's workforce, even were the layoffs limited to Gosselin's brokerage/general agencies services, which involved the 16 of Gosselin's approximately 100 employees who became employed by GovLog. Without resolving this dispute over Belgium law, the Court finds that the Gosselin Defendants had a good-faith belief that Gosselin faced substantial severance obligations to terminated employees that did not find substitute employment. [↑](#footnote-ref-8)
10. 10Those Gosselin entities included Gosselin Support Services (bookkeeping, IT services, customer services, and human resources and employee benefits services); Customers Made Clearance (customs, import, export and transit documentation services); GCT (warehouse handling services, including the loading and unloading of shipping containers and trucks going from the warehouse); Focus Transport (physical transportation of goods via moving trucks); World Wide Relocation Services (warehouse storage space); Gosselin Italia s.r.l.; and Gosselin Suisse SA. [↑](#footnote-ref-9)
11. 11The ITGBL business is structured around the transportation routes between the United States and Europe during a summer, or "IS," cycle that runs from April I through September 30 of each year and a winter, or "IW," cycle that runs from October I through March 30 of the following year. [↑](#footnote-ref-10)
12. 12Def. Ex. 2, § 2.9 ("GovLog has represented, and GOSSELIN understands, that GovLog may at any time following the execution of this Agreement undertake to procure from any parties other than GOSSELIN and its related entities such of those Support Services as GovLog may from time to time require to carry out any agreements which GovLog may reach with Carriers involved in the ITGBL business, and that GovLog is not bound to take or procure any support services from GOSSELIN."); Def. Ex. 3, § 2.9. [↑](#footnote-ref-11)
13. 13Def. Ex. 2, § 2.6 ("GOSSELIN has represented to GovLog, and GovLog understands that, whilst it intends over time to divest itself progressively and completely of its direct participation in US Government business, including direct business with carriers engaged in the ITGBL shipments, GOSSELIN has made no commitment or representation to GovLog that GOSSELIN will not at some future date compete in the US Government business market, including the ITGBL-Carrier market."); Def. Ex. 3, § 2.6. [↑](#footnote-ref-12)
14. 14Under this definition, "Net Revenues" was effectively GovLog's gross revenue, less those payments to Gosselin for the logistical and support services it actually provided. [↑](#footnote-ref-13)
15. 15Bunk has objected to the admission of GovLog's exhibits evidencing these payments in connection with the ITGBL PSA and the ELSO PSA [Doc. No. 1447] on the grounds that GovLog did not produce these documents sufficiently in advance of trial. Without objection, Noppen testified at trial to these payment amounts; and after considering all the facts and circumstances concerning the procedural history of this litigation and the rebuttal nature of those documents, the Court overrules this objection. [↑](#footnote-ref-14)
16. 16The ELSO PSA provided that GovLog would purchase "[the] ELSO Contract . . . awarded to [Gosselin] on 15 December 2005, along with all obligations and entitlements there under, accrued or in connection with said ELSO Contract as of 1 July 2007, subject to the Terms and Conditions set out in this Agreement and referenced Attachments." Def. Ex. 3, § 3. [↑](#footnote-ref-15)
17. 17Around the time of the reorganization plans, Gosselin made the final payment for the fine and restitution resulting from the criminal case. [↑](#footnote-ref-16)
18. 18The parties also contest the scope of any remedy under Bunk's fraudulent conveyance theory of successor liability. On the one hand, Bunk claims that the remedy is the imposition of the entire $24 million judgment without any proof of the actual value of the assets fraudulently conveyed. GovLog, on the other hand, contends that any remedy is limited to the value of the fraudulently conveyed assets. Having found in GovLog's favor, the Court does not decide the scope of any remedy that Bunk would have been entitled to obtain. Likewise, the Court does not decide another legal issue the parties dispute—whether the fraudulent intent or knowledge of GovLog, as transferee in the transactions at issue, is required to impose liability on GovLog. [↑](#footnote-ref-17)
19. 19The parties also disagree about the standard of proof that applies to a claim of successor liability based on a fraudulent transaction theory. Again, the Court does not reach this issue because it concludes that Bunk's successor liability claim fails under either standard of proof. [↑](#footnote-ref-18)