

SECURITIES AND EXCHANGE COMMISSION

FORM 8-K

Current report filing

Filing Date: **1996-01-11** | Period of Report: **1995-12-19**
SEC Accession No. **0000040533-96-000001**

([HTML Version](#) on [secdatabase.com](#))

FILER

GENERAL DYNAMICS CORP

CIK: **40533** | IRS No.: **131673581** | State of Incorporation: **DE** | Fiscal Year End: **1231**
Type: **8-K** | Act: **34** | File No.: **001-03671** | Film No.: **96502788**
SIC: **3730** Ship & boat building & repairing

Mailing Address
3190 FAIRVIEW PARK DR
FALLS CHURCH VA 22042

Business Address
3190 FAIRVIEW PARK DRIVE
FALLS CHURCH VA 22042
7038763375

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 8-K

CURRENT REPORT

Pursuant to section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (Date of earliest event reported) 19 December 1995

General Dynamics Corporation

(Exact name of registrant as specified in charter)

Delaware (State or Other Jurisdiction of Incorporation)	1-3671 (Commission File Number)	13-1673581 (IRS Employer Identification No.)
------------------------------------------------------------------	---------------------------------------	----------------------------------------------------

3190 Fairview Park Drive, Falls Church, Virginia (Address of Principal Executive Offices)	22042-4523 (Zip Code)
----------------------------------------------------------------------------------------------	--------------------------

(703) 876-3000
Registrant's telephone number, including area code

INFORMATION TO BE INCLUDED IN REPORT

Item 5. Other Events

On December 19, 1995, the United States Court of Federal Claims filed the order attached as an exhibit hereto in the matter of McDonnell Douglas Corporation and General

Dynamics Corporation vs. United States of America. Such exhibit is incorporated herein in accordance with General Instruction F to Form 8-K.

Item 7. Financial Statements and Exhibits

(c) Exhibits.

99 - Court Order

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date 8 January 1996

GENERAL DYNAMICS CORPORATION
(Registrant)

By /s/ J.W. SCHWARTZ
J.W. Schwartz
Controller

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

McDonnell Douglas Corporation and
General Dynamics Corporation,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. 91-1204C

Filed: December 19, 1995

ORDER

We ruled last December that the Navy's decision to terminate the A-12 contract for default was improper. Defendant argued that the United States should be permitted to show that plaintiffs were so egregiously in default that converting the termination to one of convenience to the Government would create a "windfall" for plaintiffs. We held extensive discussions during ensuing months concerning the types of evidence that might support such an exception to the general guidance of *SCHLESINGER V. UNITED STATES*, 182 Ct. Cl. 571 (1968). It is now clear that the United States cannot make a showing that would justify such an exception.

After three weeks of trial, we have heard no credible evidence that the Navy was unaware of critical information at the time of termination. We have not heard evidence that the contractors concealed or withheld information from the Navy or provided misleading information to the Navy that would have changed its attitude toward the aircraft. No credible evidence in the record permits us to infer any support whatsoever for defendant's case.

While defendant disagreed with the framework that we established for trial in November, it assured the court repeatedly that the government could meet the standards set forth in a January 31 Order. We suggested on several occasions that if defendant did not have evidence to support its burden as the

court defined it, the case should not proceed; "it would be pointless to continue."

We heard from eleven witnesses during three weeks of trial. Eight of them were employees of the contractors, including their Chief Engineers on the A-12 - both acknowledged experts in the sensitive and highly technical field of Stealth technology. Defendant's case ultimately depends on one witness, a NAVAIR weights engineer, whom government counsel described as "uniquely situated" to testify about aircraft weight. That witness attempted to show that information of which the Navy supposedly was unaware would have altered the weight calculations that he developed for NAVAIR. In fact, his weight calculations were based on little more than whimsey. To the extent that his testimony was offered to support allegations of "concealment," it was entirely discredited on cross-examination.

When it becomes manifestly clear that a party cannot sustain its burden of proof, the court may invoke discretionary power to ensure the orderly disposition of its cases. *ERIE CONDUIT CORP. V. MAPA*, 102 F.R.D. 877 (E.D. N.Y. 1984), *AFF'D*, 765 F.2d 135 (2d Cir. 1985). No witness supported defendant's argument that information was concealed from the Navy, or that the Navy lacked crucial knowledge about plaintiff's progress. The Navy was apprised of all information that could have made a difference in its attitude toward the A-12. Indeed, Navy officials and technical experts worked closely with the contractors on this complex research and development project. It is manifestly clear that defendant cannot prove its case.

It is not necessary to hear additional witnesses. Most can only provide cumulative testimony. Others will be asked to speculate on the basis of assumptions that are insupportable because of evidence already in the record. Even if witnesses whom defendant seeks to call could support the proposed findings of fact for which their testimony is offered, it would not matter. Such testimony could not overcome defendant's utter failure of proof in the central theory of its case.

Having no basis for finding an exception to *SCHLESINGER*, we must convert defendant's termination of plaintiffs' contract for default to termination for convenience of the government. No later than January 5, the parties will propose a schedule for addressing damages. We will issue detailed findings of fact and conclusions of law on Count 17 and other counts related to this ruling in an Opinion that will be released in the near future.

IT IS SO ORDERED this 19th day of December, 1995.

/s/ Robert H. Hodges, Jr.
Robert H. Hodges, Jr.
Judge