

# United States v. Mark Forkner

## The Boeing 737MAX Criminal Trial



Presented By



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## Why Are We Here?



UT Corporate Enforcement – Sept 15, 2022

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# “MCAS” Wire Fraud Theory

- Boeing launched the MAX to compete with fuel efficient Airbus NEO
- Design goal: Still a “737” and no need for significant “difference training” for certified 737 pilots.
- “MCAS” code added for “certification” – it was intended to operate “outside” normal flight, not seen during a normal flight. Mark asked FAA to remove MCAS from training.
- March 2016: “MCAS” changed – Gov’t says that Forkner learned about the change and should have told FAA; Forkner said he did not learn about the change (\*\*& FAA knew & it was immaterial\*\*).
- *Mark defrauded Boeing’s customers – by not telling them that he hid information from the FAA.*

## Six Counts

Counts 1-2: False statement about an airplane “part” (18 U.S.C. § 38)

Counts 3-6: Wire Fraud (18 U.S.C. § 1343)

Court granted motion to dismiss counts 1-2: MCAS is not a “part”, which § 38 defines as:

“frame, assembly, component, appliance, engine, propeller, material, part, spare part, piece, section, or related or auxiliary equipment”

# Gov't Evidence that Mark Knew MCAS Changed: "The Chat"

**Mark Forkner 6:50 PM:**

Oh shocker alert!  
MCAS is now active down to M .2  
It's running rampant in the sim on me  
at least that's what Vince thinks is happening

[...]

**Mark Forkner 6:51 PM:**

so I basically lied to the regulators (unknowingly)



# "The Phone Call"



Also available as part of the eCourse

[eSupplement to the 30th Annual Labor and Employment Law Conference](#)

First appeared as part of the conference materials for the

8<sup>th</sup> Annual Government Enforcement Institute session

"Tales from Trial: The Boeing Case is Shot Down"