

GETNICK & GETNICK LLP

THE NEW PARADIGM OF PUBLIC-PRIVATE PARTNERSHIPS: THE NEW YORK MODEL

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Paradigm -

noun - an outstandingly clear example;
archetype

What is the new paradigm? (1) the Statute

- The most robust False Claims Act in the country, sponsored by Hon. Eric T. Schneiderman.
- Creates fixes for:
 - misapplication of the public disclosure bar;
 - overly restrictive Rule 9(b)-type interpretations;
 - disputes about the Statute of Limitations;
 - whistleblower retaliation;
 - FCA tax exclusion.

Public Disclosure

- ▶ Clarifies that qui tam action not barred because relator uses Freedom of Information requests to gather evidence of fraud;
- ▶ Clarifies that (1) government reports must be “broadly disseminated” or “on the record” to bar qui tam action; and (2) internet posting does not necessarily create a public disclosure in the “news media”;
- ▶ Attorney General veto: Defendant cannot move to dismiss qui tam case for violating public disclosure bar if the Attorney General opposes the motion.

FRCP 9(b)

- ▶ Clarifies heightened pleading standard as applied to qui tam actions: relator must identify a fraudulent scheme and notify the government of a fraud, but is not required to identify every false claim.

Statute of Limitations

- ▶ Ends litigation about when ten year statute of limitations applies by applying it in all cases.

Anti-Retaliation Expansion

- ▶ Expands employee protections to also protect contractors and agents;
- ▶ Creates protections against industry blacklisting and for transmitting evidence to officials.

Removal of Tax Bar

- ▶ NYS FCA applies to false claims, records and statements under the state tax law if gross income or sales of defendant equals or exceeds \$1,000,000 for any taxable year, and damages pled exceed \$350,000.

New paradigm (2) OAG Infrastructure

- ▶ NYS OAG renewed commitment to FCA enforcement including new and enhanced infrastructure:
 - ▶ newly created Taxpayer Protection Unit;
 - ▶ enhanced Medicaid Fraud Control Unit.

New paradigm (3) Methodologies

- ▶ state of the art methodologies;
- ▶ e.g., combination of NYS FCA and Martin Act (securities) laws.

New paradigm (4) Alliances

- ▶ Creates fully developed alliances (state, federal, and private relators' bar).

New paradigm (5) Synergies

- ▶ Promotes synergies;
- ▶ e.g., NYS FCA tax claims and IRS whistleblower cases.

New Paradigm (6) Model for others

- ▶ Not New York-centric. Rather, a New York model worth emulating more generally.

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Questions?

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