



---

### Legislation Reports:

---

#### New York State False Claims Act

On January 29, 1998, the Civil Prosecution Committee's report, "The Civil False Claims Act - Enlisting Citizens In Fighting Fraud Against The Government," was endorsed by the State Bar's Executive Committee. The report recommends the enactment in New York State of a False Claims Act along the lines of the Federal False Claims Act, a Civil War era statute that was revamped in 1986 to fight fraud in government contracting. Since 1986 the statute's *qui tam* provisions, which permit a private citizen with knowledge of fraud on the Government to bring action in the Government's name and to receive a percentage share of the proceeds, have returned upwards of \$2 billion to the Federal Treasury.

The report adopted by the State Bar recommends that this coordinated effort of both the government and the citizenry be embodied in legislation for New York State covering fraud against both the State and local governments. Draft legislation similar to the Federal statute but adapted to New York State needs is appended.

Since the report became the official position of the State Bar in January, a lobbying effort has been underway, spearheaded by former Section Chair Bernice Leber, Civil Prosecution Committee Chair Neil Getnick and Ron Kennedy from the State Bar's Government Relations unit in Albany. On March 25, 1998, a bill to enact a New York State False Claims act closely modeled on the Federal statute was introduced into the Assembly (No. A9997). The bill's sponsor in the Assembly was Anne Margaret Carozza, a Democrat from Queens.

#### The Federal False Claims Act 31 U.S.C. §§3729 ff.



The False Claims Act, including its *qui tam* provisions, was initially enacted at the urging of President Lincoln in 1863, a few months before the Battle of Gettysburg, as a response to reports of widespread fraud by Civil War profiteers. The statute was not limited to defense fraud and reflected the integral role played by private citizen enforcement in the U.S. statutory framework of 1863.

Amendments to the False Claims Act in 1943 severely undercut its effectiveness as a fraud fighting tool. In 1986, the statute was substantially amended and overhauled following reports of pervasive fraud against Federal agencies, notably defense procurement and health care fraud. A revamped and revitalized *qui tam* law was seen as a powerful and effective means of addressing these problems. "[O]nly a coordinated effort of both the Government and the citizenry," wrote the Senate Committee on the Judiciary, "will decrease this wave of defrauding public funds." (S.Rep.No.345, 99th Cong., 2nd Sess. (July 28, 1986), reprinted in U.S. Code Cong.& Admin.News 5265, p.2)

Today's Federal False Claims Act provides for treble damages, penalties of \$5,000-10,000 per violation, and attorneys fees for almost any knowing false claim or false statement (other than tax fraud) that involves payment or a demand for payment from the Federal Government.

The *qui tam* provisions of the statute permit a private citizen (individual or corporation) - known as the "relator" - with knowledge of a violation of the statute to receive up to 30% of the recovery, with the average share hovering around 18%. Courts are authorized to reduce the percentage share of a relator who "planned and initiated" the wrongdoing, and a relator who is criminally convicted must be dismissed from the action. *Qui tam* actions "based on" information that has been the subject of a "public disclosure" are jurisdictionally barred, unless the relator is an "original source of the information," as defined in the statute. The statute contains a Federal cause of action for employment discrimination arising from acts performed in furtherance of a *qui tam* action.

While defense fraud and health care fraud still account for most *qui tam* cases, the number of cases involving other government programs is increasing. To date, five States (California, Florida, Tennessee, Illinois, and Texas) and the District of Columbia have followed the Federal Government's lead by enacting similar statutes.

The largest single recovery in a defense contracting *qui tam* suit to date was in April 1994, when defense

THE FEDERAL FALSE CLAIMS ACT (cont'd. on page 4)

contractor United Technologies Corporation agreed to pay the Government \$150 million in settlement of a *qui tam* action commenced by an executive vice-president. The largest health care fraud recovery in a *qui tam* case was \$325 million paid by SmithKline Beecham Laboratories in 1997. This was the latest and largest settlement in a series of cases against the country's major national medical testing laboratories, cases that commenced with a *qui tam* action by a sales manager of one of the laboratories in 1990.

The *qui tam* law creates a public-private partnership that combines the inside knowledge of the citizenry - corporate and individual alike - and the powers and prestige of the Government. The monetary reward provides a financial incentive to "do the right thing," particularly for those people who could not afford the risks to their careers and livelihood that becoming a whistleblower might entail. *Qui tam* actions can also provide compensation to corporations and business people whose market share has suffered as a result of fraudulent, anti-competitive and abusive practices in their industry.

The *qui tam* law also has a deterrent impact. It has raised the stakes of committing and concealing fraud by creating an army of private citizen watchdogs, by providing specific remedies for employer retaliation, and by heavily penalizing wrongdoers.

In 1995 the U.S. Department of Justice issued a press release praising the 1986 *qui tam* law as a work of "leadership and vision...The recovery of over \$1 billion (now \$2 billion) demonstrates that the public-private partnership encouraged by the statute works and is an effective tool in our continuing fight against the fraudulent use of public funds." (U.S. Department of Justice Office of Public Affairs press release, "Justice Department Recovers Over \$1 Billion In *Qui Tam* Awards and Settlements," October 18, 1995.)