

## **INTERVIEW WITH NEIL GETNICK, GETNICK LAW, NEW YORK, NEW YORK**

A group of whistleblowers has secured the second largest recovery in Internal Revenue Service (IRS) whistleblower program history.

Getnick Law and SEC Whistleblower Advocates PLLC led the representation of the lead whistleblower in an historic \$263 million tax fraud recovery from an individual taxpayer, the award for which was recently finalized by the IRS.

Getnick Law and SEC Whistleblower Advocates represented the whistleblower along with Outten & Golden LLP.

The whistleblower, whose identity remains protected, was the primary whistleblower in the case, which involved two additional whistleblowers.

One of the other whistleblowers was represented by Whistleblower Partners LLP, and one did not have legal representation.

The three whistleblowers will receive 30 percent of the government's recovery – \$74 million – the maximum possible award, a reflection of the importance of the information and assistance provided to the government.

The whistleblower represented by Getnick Law provided particularly valuable information and assistance, meeting with government officials from multiple agencies on many occasions over a five-year period.

The IRS is not identifying the taxpayer who committed the fraud.

The \$263 million settlement concludes one of the largest tax whistleblower cases ever.

By comparison, the IRS collected a total of \$338 million from whistleblower cases resulting in 121 awards in fiscal year 2023.

The settlement resolved a matter that was unusually complex due to the size and nature of the fraud and the involvement of three distinct whistleblowers.

Getnick Law proposed a way to overcome obstacles that often impede the resolution of cases with multiple whistleblowers.

The IRS Whistleblower Office, under the leadership of Director John Hinman, facilitated and supported the whistleblowers in coming together, enabling them to reach a resolution regarding the allocation of the award, thereby avoiding the possibility of years of litigation in Tax Court.

Getnick Law partner Margaret Finerty led the

Getnick Law team, which included Neil Getnick, the firm's managing partner, partner Richard Dircks and counsel Stuart Altschuler.

Jordan Thomas of SEC Whistleblower Advocates co-led, and partners Jennifer Schwartz and Tammy Marzigliano co-counseled the matter from Outten & Golden.

The team worked closely with Whistleblower Partners, the unrepresented whistleblower, the IRS Whistleblower Office and its director John Hinman to resolve the matter.

"Together we have demonstrated that when the IRS Whistleblower Program functions as a public-private partnership embracing mutually supportive cooperation, it can produce a win-win-win resolution for the Whistleblower Office, whistleblowers and their counsel, and most importantly, the public," Getnick said.

We interviewed Neil Getnick on September 23, 2024.

**CCR:** How did this IRS whistleblower case come in the door?

**GETNICK:** This case was referred to us by SEC Whistleblower Advocates. They were originally looking at the fact pattern from a securities regulation standpoint. They turned to us as co-counsel to investigate and pursue the case under the IRS whistleblower program.

**CCR:** SEC Whistleblower Advocates is Jordan Thomas, the former head of the whistleblower program at the SEC. Why didn't he just take the case himself?

**GETNICK:** We've teamed up on cases before. We've had a successful track record, both on the federal and state level in pursuing whistleblower cases. In New York state, we have worked cases under the state's tax provisions.

We earlier did a case that resulted in a \$70 million recovery to the state and city of New York. That case involved a hedge fund that was diverting taxes to a lower tax jurisdiction.

To quote my dad, we make good music together, and we work well together.

**CCR:** How many years ago did this come in the door?

**GETNICK:** That is something I'm not going to speak to. There is a whole set of information that remains confidential, in part to protect the identity of the client.

I will say that the case had a quicker turnaround

time than most IRS whistleblower cases. And I'm also comfortable saying that our client provided particularly valuable information and assistance to government agencies on many occasions over a five-year period.

**CCR:** Is there anything at all that you can say about the whistleblower or the person or corporation the whistleblower blew the whistle on?

**GETNICK:** This much I can say – the taxpayer is an individual, which in and of itself is dramatic.

It's a \$263 million recovery. And the tax evasion scheme was an offshore tax evasion scheme that resulted in this recovery.

**CCR:** Was it an individual tax evader or a corporate tax evader?

**GETNICK:** Let's simply say that there's a blurred line there, but the actual tax recovery was from the individual.

**CCR:** Before we get into the details of the case, we've written in past issues about the IRS whistleblower program historically lagging behind other whistleblower programs, including the SEC's program and the Justice Department's False Claims Act whistleblower program.

Has that been the case in recent years? And what does this settlement signal in terms of the state of the IRS whistleblower program?

**GETNICK:** This case is a breakthrough and may very well be a harbinger of the future. There was an extraordinary degree of cooperation among the whistleblowers' counsel and the IRS whistleblower's office.

Getnick Law represented the primary whistleblower in the case. But the case involved two additional whistleblowers. One was represented by Whistleblower Partners LLP. And the other whistleblower did not have legal representation.

The case required a coming together, which was greatly assisted by the IRS whistleblower office.

And the communication that took place led to an agreed upon consolidation of claim forms by the three unrelated whistleblowers into one joint form.

That in turn led to an agreed upon proportional division of the IRS whistleblower award among the three whistleblowers.

That laid the foundation for a relatively quick resolution of the granting of the award.

When the IRS whistleblower office considered the consolidated claim, it took into account the contributions of all three whistleblowers in setting the award percentages according to the three

alternatives that exist in that program – 15 percent, 22 percent or 30 percent.

The IRS whistleblower office evaluated the claim and the supporting activity as qualifying for its highest percentage award of 30 percent.

All of that is very, very positive. But I should point out that the foundation for that cooperation and communication was laid by a transformative improvement of the program that was already underway in the IRS whistleblower office since the appointment of John Hinman as its director in mid-2022.

**CCR:** If we are talking about thirty percent, we are talking \$74 million that will go to the three whistleblowers. Can you say anything about how that was divided among the three whistleblowers?

**GETNICK:** No, other than to say that the three whistleblowers were able to communicate with each other and came to what all of us considered to be a fair and appropriate division.

And the reason that that's very important is that, more typically, the IRS in a multi-whistleblower matter will form its own conclusion – and that does not necessarily sit right with each of the whistleblowers. That, in turn, gives rise to litigation in tax court.

So the most important aspect of this was to come up with a methodology that avoided our need to go into tax court, because everyone – the whistleblowers, the counsel, the IRS whistleblower office – would agree that once you go into tax court, you're going to be bogged down in years and years of litigation. It's not unusual to be involved for a decade in that litigation.

The ability to cut through that process and get right to a resolution is what made all the difference here. And at the end of the day, no one is complaining about the allocated percentage to each individual whistleblower because they've all come to agree that that's an appropriate and fair decision.

**CCR:** And it's not unheard of in whistleblower cases, where the whistleblower is unhappy with the amount of the award and sues the agency to get just compensation.

**GETNICK:** That's true even when there are not multiple whistleblowers. But again, what was particularly helpful here is that the methodology that we applied in the first instance allowed all of us to communicate with each other. That took some convincing that, in fact, could be done in conformity with the IRS rules and regulations.

At times, the IRS finds itself frustrated by its own rules and regulations. And out of a desire to protect whistleblower anonymity, it becomes difficult to foster communication. But we were able to propose a methodology to the IRS that addressed this concern within the existing rules and regulations. And upon review by the IRS counsel, that was permitted to go forward.

That became the foundation for everything that followed. The way the IRS views a consolidated claim is that each contribution of each whistleblower is looked upon as an added contribution to the whole. It's a rising tide lifts all ships situation. And when you look at the contribution of the whistleblowers together, it was so overwhelming that the IRS itself agreed that it gave rise to the 30 percent award.

In addition to co-counseling this with SEC Whistleblower Advocates, we were also involved co-counseling with the law firm of Outten & Golden.

The second represented whistleblower was represented by Whistleblower Partners, and that played a very significant role in allowing us to get this done.

**CCR:** Who were the attorneys you were working with at that firm?

**GETNICK:** Eric Havian, Michael Ronickher and Chris McLamb. As to the Getnick Law team, our lead counsel was partner Margaret Finerty, with myself, partner Richard Dircks and counsel Stuart Altschuler. I should point out that Margaret, in addition to being my law partner, is also my wife.

I met Peggy my first day of law school and we got married the day after graduation. We both went off to work in the Manhattan District Attorney's office under Robert Morgenthau. Peggy served as Deputy Chief of the Trial Division and as a Senior Trial Counsel there, and then became a judge of the New York City Criminal Court. She joined Getnick Law in 1998. We've been practicing together ever since.

**CCR:** Other than facilitating the whistleblowers working together and agreeing to move forward together and agreeing on the percentages, how did the IRS act to resolve this so quickly and amicably?

**GETNICK:** If I had to point to one individual in particular who laid the foundation for all of this, it would be IRS whistleblower director John Hinman, who took office in mid-2022. Along with his staff,

they have undertaken a transformative improvement plan of the IRS whistleblower program.

Quietly since then, he and the office have been meeting with whistleblower lawyers in roundtable sessions trying to delve into what are the issues and how can the program be better improved. Coming out of that, they have developed a program which has seven major objectives supported by a set of ambitious initiatives.

And I'm not going to mention all seven major objectives, but I'll highlight three and point out that each of these three aspects of their improvement program was very helpful in our particular case.

One is to use high value whistleblower information effectively.

The second is to reward whistleblowers fairly and as soon as possible.

And the third is to strengthen collaboration with whistleblower program stakeholders.

Let me focus on that for a moment. It's very important, given the high volume of potential filings that come into the whistleblower office, for the office to be able to identify the high value claims and to get them the level of investigative support that they deserve and need. That happened here.

The second is to reward whistleblowers fairly and as soon as possible. And as a result of this process that I made reference to, we were able to move very quickly, once we were all assembled together and to reach a conclusion that satisfied everyone.

And then ultimately, to strengthen the collaboration with the whistleblower program stakeholders. In this case, that's referring to the whistleblowers themselves and counsel.

And for a whole set of reasons, the whistleblowers and counsel came to play a very active role in the development of this case.

When we think of whistleblower programs more generally, across the board, it's the False Claims Act that really envisions a public-private partnership and a close collaboration between the government, the whistleblower, and their counsel. And that's been very effective in that program, both the federal and the state false claims acts.

It has been more difficult, frankly, to achieve that level of interaction and cooperation in the programs in which a claim is filed – that would

include the IRS, the SEC or the CFTC programs. Under the False Claims Act, a lawsuit is filed.

Traditionally, the SEC and CFTC have more aggressively pursued their cases in cooperation with whistleblowers and their counsel. The IRS has had a harder time of it, which is why there's been criticism of that program in the past.

But hopefully that's going to be fading quickly as a result of this transformative program that's underway in the IRS whistleblower office.

Also, the IRS whistleblower office is only one component of the IRS, when it comes to whistleblower cases. There's the operational end of the IRS which investigates and pursues these cases. And then there's the counsel's office, which guides this process.

That has been a harder situation to crack in terms of developing this public-private partnership. From a practical standpoint, my observation has been that if one can involve the Department of Justice in the pursuit of a case, if one can involve the criminal side of IRS with its very skilled special agents, there's a much better chance of developing that type of close collaboration between the government and the whistleblower and the whistleblowers' counsel, so that everyone is working synergistically.

And that has to be a major goal going forward, to have the operational end of the IRS and the counsel's end of the IRS supporting this public-private partnership concept.

The result in the case that has just been resolved is a way of encouraging that process. A crucial element of being able to do this was getting the approval of the counsel's office, to be able to come together and communicate in the way that we did.

So I'm hopeful that this is where we're headed, and this is where we need to be concentrating ourselves in improving that program, not just in the IRS whistleblower office itself, but in the IRS more generally.

**CCR:** This was, as far as I can tell, the second largest award under the IRS whistleblower program. The largest was when Bradley Birkenfeld blew the whistle on Swiss bank secrecy and was awarded \$104 million.

**GETNICK:** I believe that's correct, but I'm not certain, because the manner in which the IRS whistleblower awards are reported is not that granular. But I believe that what you're saying is correct.

And the one thing I would point out, not to take anything away from the Birkenfeld result, which was stellar, but our case involved a single individual taxpayer, as opposed to a major financial institution that was running a tax evasion program with many, many taxpayers implicated.

**CCR:** When you look up that case, there is a picture of Bradley Birkenfeld. Why in some cases are the whistleblowers made public and others not? **GETNICK:** Sometimes the whistleblower himself or herself comes forward and identifies themselves. I believe that the IRS never identifies the whistleblower unless that becomes essential.

An example would be if there was a need for public testimony in a judicial proceeding that would result in the whistleblower being identified.

Beyond that, whistleblowers sometimes on their own come forward and identify themselves.

But for the most part, anonymity is very important, because as much as we seek to limit retaliation against whistleblowers, there are a lot of obstacles that whistleblowers face, and being identified as a whistleblower tends not to be a career builder.

And even though there are anti-retaliation provisions, it can make it very, very difficult to advance within an organization, and even finding employment elsewhere.

I should point out that the New York State false claims act is the only law that I'm aware of that has, in addition to an anti-retaliation provision, an anti-blacklisting provision.

Under that law, it is a violation not only for the company for whom the whistleblower works to retaliate. It's also a violation for any company to hold that against the whistleblower when considering their future employment.

Now that being said, that's a very difficult thing to prove. So, the greatest protection is anonymity so that one doesn't have to go down that road to begin with.

**CCR:** The IRS brings only a handful of these cases every year, settles only a handful every year. I'm not sure what the exact numbers are, but I've read that there is a backlog of 30,000 whistleblower complaints at the IRS. That's a remarkable number. What can be done about that?

**GETNICK:** That's a very troubling aspect of the situation. Looking backward, there are at least a

couple of things that are going on currently to address that.

The first is that the IRS whistleblower office has received a significant increase in their funding so that they will be able to double their staff size. In terms of return on investment, the money spent on the whistleblower office more than pays for itself in terms of the money recovered.

**CCR:** The staff doubled from what to what?

**GETNICK:** As a result of additional funding to the IRS provided by the 2022 Inflation Reduction Act, the 48-person whistleblower office will soon double.

The other aspect that goes along with that is that when you have those additional resources, it will help the office to discern high value whistleblower information effectively, and then to prioritize those cases.

You need to get through the incoming submissions to select those which have the greatest promise of being successful, and then to prioritize your resources towards them.

If you're running a private law firm, that's exactly what you do. And we need some of that same approach in the public sector as well, so that we can look upon this as a return on investment with the program operating as a profit center within the agency.

**CCR:** Won't these IRS whistleblower cases eventually become public, because the IRS will publicly pursue in court the alleged tax evaders?

**GETNICK:** If it comes down to a court fight, then the answer is yes. If it comes down to a case that's resolved by mutual agreement, then not necessarily.

**CCR:** Was that the case here?

**GETNICK:** Yes, this case was resolved by mutual agreement.

**CCR:** How many whistleblower law firms like Getnick Law have some expertise with the IRS whistleblower program?

**GETNICK:** I feel I'm on a slippery slope here. As you may know, I'm a former chair of Taxpayers Against Fraud, now The Anti-Fraud Coalition.

If I begin to list them, I'm going to miss someone and feel badly about it.

So, I'm going to take a pass. But yes, there are a number of firms with expertise in this area.

And again, I'll point out that John Hinman, the director of the IRS whistleblower office, has been very wise in gathering a brain trust of sorts for roundtable discussions involving these lawyers in

order to improve the program.

**CCR:** Are those sessions in person or by zoom?

**GETNICK:** Both.

**CCR:** But it's overall a smaller plaintiffs bar than say the SEC whistleblower bar or the False Claims Act bar, right?

**GETNICK:** It's a smaller bar. And up until now at least, it's been a shrinking bar because it's been so difficult to crack the program.

But the result in this case and the transformative program under John Hinman and his staff are a harbinger of the future.

I believe that will create a renewed interest in the program among whistleblower lawyers.

I should add that Senator Charles Grassley (R-Iowa) and Senator Ron Wyden (D-Oregon) have a pending piece of legislation – The IRS Whistleblower Program Improvement Act.

That bill has six specific provisions. I'm not going to go into all of them, but two are particularly worth highlighting. The first would exempt whistleblower awards from reductions due to budget sequestration.

The IRS, as far as I know, is the only whistleblower program that is still applying sequestration to whistleblower awards. The awards get reduced by 5.7% as a result of that policy and practice. This bill would change that.

And then the second would be to require the IRS to pay interest on whistleblower awards if they're not paid within one year of receipt of proceeds collected from the whistleblower disclosures.

When there's a dispute between the IRS and the whistleblower, it can take years and years to resolve. In the meantime, the IRS has the benefit of the collected proceeds, and there's no interest accrual for the benefit of the whistleblowers.

That would change under this legislation. Those are two key provisions.

**CCR:** In this most recent case, was the award reduced by 5.7 percent?

**GETNICK:** Yes, that's why in the reporting to date on this case, the reward has been reported as either \$79 million or \$74 million.

The reality is that the award was for \$79 million, but by law it is reduced by 5.7 percent and it becomes \$74 million.

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