

# LITIGATION BOUTIQUES

A Special Report

## Helping corporate whistleblowers win big payouts

Getnick & Getnick devotes about half its practice to private cases under the False Claims Act.

BY SHERI QUALTERS

C heryl Eckard, whose \$96 million whistleblower award is the largest one made to an individual in U.S. history, first learned about Getnick & Getnick in a trade publication she read for her job at GlaxoSmithKline PLC.

Eckard, a former GSK global quality-assurance manager, eventually filed a case that exposed the company's manufacturing problems at its now-closed plant in Cidra, Puerto Rico. The False Claims Act case shepherded by New York-based Getnick ultimately netted a \$750 million settlement with the federal government. (Eckard's take was 22% of the federal government's pre-interest share of the deal, which was \$436.4 million.) That was the first significant settlement of a criminal case alleging that a pharmaceutical company introduced adulterated drugs for delivery into interstate commerce.

With just a half-dozen lawyers, plus a new hire slated to take the bar exam this summer, the firm keeps its whistleblower roster full by collecting top dollar for clients



ROHANNA MERTENS

who win cases based on new False Claims Act theories.

In 1983, Neil Getnick teamed up with his father Irving, who was previously a

solo practitioner. The younger Getnick left his job as assistant district attorney at the Manhattan District Attorney's Office. His brother Michael joined as counsel when

the firm opened. Neil and Michael are currently the firm's two Getnicks. Neil Getnick is managing partner.

Only about half of the firm's work is whistleblower litigation, but the other practice areas are related. These include other fraud litigation, compliance counseling, internal investigations and independent monitoring. The firm takes whistleblower cases on a contingent-fee basis, but most of its other work is billed at hourly rates, with rare exceptions, Neil Getnick said. He would not comment on the firm's revenue.

### RESEARCH ON THE INTERNET

Like Eckard, most Getnick & Getnick whistleblower clients find the firm on their own. "Our whistleblower clients come to us because people have read about a prior settlement or have done research on the Internet," said partner Lesley Ann Skillen, who coordinates the firm's False Claims Act whistleblower practice. "One client did a search of the top qui tam cases resolved at that time."

Increasingly, like Eckard, those whistleblower plaintiffs come from the higher echelons of companies, Getnick said. Skillen and Getnick served as co-lead counsel on Eckard's case. They're attracted to the firm because it's anti-fraud, not anti-business, Getnick said. "Those people are very comfortable working with us because we come from the same perspective."

Developing close ties, even friendships, with whistleblower clients is critically important because cases are filed under seal, and the whistleblower isn't allowed to talk to anyone about the lawsuit or the subject matter of the lawsuit, Skillen said. "You really need to be their confidant as well as their lawyers," she said.

Clients come to realize "they can always pick up the phone at any time of the day or night and reach us and speak with us about concerns or questions," said partner Margaret Finerty, who coordinates the firm's independent private-sector inspector general and independent monitoring practice. "A lot of whistleblower clients are going through difficult times," Finerty said.



**Whistleblowers "are very comfortable working with us" since the firm is anti-fraud, not anti-business.**

—NEIL GETNICK

"Many have lost their jobs and are feeling great strain."

Treating people with respect and compassion has "an impact on our law practice and cases being referred to us," Finerty said. "I think many whistleblowers call more than one law firm....I think people do connect with our firm to a great extent because I believe we're very compassionate."

The firm's history of generating top awards using new False Claims litigation theories helps, too. That reputation extends at least as far back as 2003, when Bayer Corp. agreed to a \$257 million settlement of civil and criminal cases stemming from a whistleblower action brought by firm client George Couto.

The settlement was the largest Medicaid qui tam recovery at the time, and it established the so-called best-price theory—the concept that a pharmaceutical company can face fraud charges if it doesn't sell products to Medicaid at its best price, Getnick said. "After that case, others followed emulating that theory," he said. "That's what we're already beginning to see in the Eckard/GSK case, which pioneered the current good-manufacturing-practices theory."

In December, the firm's case against several orthopedic medical device makers survived a dismissal motion. The case, *U.S. ex rel. Bierman v. Orthofix International N.V.*, in the U.S. District Court for the District of Massachusetts, is a new foray into whistleblower cases against medical device makers.

Whistleblower Jeffrey Bierman alleges that Orthofix and other companies manipulate the market in such a way that their bone-growth stimulators are always bought and billed to Medicare even when renting them is more economical. The complaint claims that the companies falsely certify compliance with Medicare and give kickbacks to doctors and third-party suppliers. "The medical device industry has been relatively untouched to date by the qui tam law, but many of the same laws [that cover the health care and pharmaceutical industries] apply," Skillen said.

Getnick said the firm anticipates more work from amendments to the New York State False Claims Act contained in that state's Fraud Enforcement Recovery Act, which passed last year.

Getnick also said the beefed-up whistleblower provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act for people who inform the U.S. Securities and Exchange Commission of securities law violations is another major development.

"It's likely to open up a whole new vista for such cases," Getnick said. "More generally, whistleblower cases are part of the [government's] overall approach to improving the way business is done in this country."

*Sheri Qualters can be contacted at [squalters@alm.com](mailto:squalters@alm.com).*