

# Qui Tam Whistleblower Legal NEWS

## Re: Qui Tam Cases In Fiscal Year 2012

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### Qui Tam Whistleblowers Responsible for More Than Two-Thirds of Nearly \$5 Billion in Federal Recoveries In a Record False Claims Act Recovery Year

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(New York City) — *Qui Tam* Whistleblowers across the U.S. who stepped forward to “do the right thing” were responsible for more than two-thirds of all civil recoveries under a record federal False Claims Act (“FCA”) in Fiscal 2012, *Qui Tam* Whistleblowers’ Attorney Timothy J. McInnis of McInnis Law announced.

“This impressive new record in turn was responsible for yet another record, the largest single-year recoveries by the U.S. Department of Justice in history,” McInnis explained, “including the most cases filed in one year, 650.”

The record-setting \$4.959 billion one-year USDOJ recovery for Fiscal Year 2012 (“FY 2012”) announced in early December by Acting Associate Attorney General Tony West, included \$3.3 billion attributed directly to *qui tam* whistleblowers, McInnis explained.

The Department of Justice provided no total or breakdown for whistleblower rewards generated by the near-\$5 billion record recovery; however, *qui tam* whistleblowers today are entitled to FCA rewards that can range from 15 to 25 percent for a successful government settlement, and up to 30 percent when the whistleblower prosecutes the case alone, McInnis explained.

“If we split the baby and assume that whistleblowers received, on average, 20 percent of the Government’s recovery,” McInnis said, “that means that men and women who reported false claims for goods and services received at least \$660 million, which beats last year’s record of \$532 million by nearly 25 percent.”

In FY 2011 the Civil Division of the USDOJ reported that whistleblowers were rewarded with \$532,193,735 million of the \$2.8 billion attributed to the *qui tam* provisions of the False Claims Act.

However, according to the Washington, D.C.-based *qui tam* bar, Taxpayers Against Fraud Education Fund, Inc. (www.TAF.org), the actual figure attributed to whistleblowers in FY 2012 is \$9 billion when criminal fines and large state recoveries are included. In addition, in FY 2013, some \$3.5 billion in settlements are queued up, TAF reported.

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McInnis is a long-time TAF member who over the years has lectured or led panel discussions at the organization's annual conferences in Washington, presented CLEs in New York and elsewhere, and testified before the New York City Council on the Empire State and New York City False Claims Acts.

This February, McInnis will be speaking at the 2013 Public Interest Environmental Law Conference, presenting on the panel for "Use of Qui Tam False Claims Act Litigation in Environmental Law Violation Cases."

The right attorney, right timing, and the right filing under seal are critical to *qui tam* whistleblower success, McInnis explained. "Retaining a seasoned Qui Tam Whistleblower attorney who knows the ropes is key if whistleblowers want to prevail in their cases and obtain the highest possible awards," McInnis said. "While there are no guarantees of success, selecting an attorney who inexperienced in this niche area of law can guarantee disappointment."

Potential whistleblowers also should understand how quickly federal and state legal landscapes can change. A federal circuit, or the Supreme Court could issue a ruling that requires immediate readjustment, so whistleblowers need the counsel of an experienced attorney who is up-to-date on all the laws, the FCA legal process, and strategy that helps maximize the possibility of a successful settlement," McInnis said.

As a former federal prosecutor who maintains close contact with U.S. Attorney offices and all federal agencies that investigate Qui Tam Whistleblower cases under the FCA, McInnis is a well-versed and highly experienced in *qui tam* whistleblower law and procedure. He left the U.S. Attorneys Office to establish his New York City-based national whistleblower practice some 13 years ago.

In addition to the federal FCA, 29 states, New York City, Chicago and Allegheny County, Pennsylvania have similar *qui tam* statutes to reward whistleblowers that expose fraud and false billing.

Passed during the Civil War, the original False Claims Act was designed to help stop suppliers who were selling rancid, defective food, weapons, ammunition and other war materiel to the Union. The Act, then called the, "Lincoln Law," targeted unscrupulous suppliers by including *qui tam* provisions that allowed those who reported fraud to be paid from the Government's recovery.

"*Qui Tam*" is a term derived from the Latin phrase, "Qui tam pro domino rege quam pro se ipso in hac parte sequitur," meaning, "who as well for the king as for himself, sues in this matter." The U.S. *qui tam* statute was based on Old English law that allowed subjects to sue on behalf of the king and himself. Today, a whistleblower under the False Claims Act legally is referred to as a "relator."

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It has been more than 26 years since the federal FCA was strengthened to enhance awards to whistleblowers and protect them from retaliation. The key 1986 amendment to the FCA, championed by Senator Charles A. Grassley, of Iowa, and Rep. Howard L. Berman, of California, allowed the government to recover damages up to three times the amount it was defrauded and also sweetened the pot as an incentive for whistleblowers to come forward.

The '86 amendment was followed by the 2009 Fraud Enforcement and Recovery Act, which improved the FCA and other federal fraud statutes.

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