

# Qui Tam Whistleblower Legal NEWS Re: Fiscal Year 2009

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## Whistleblowers Help Add \$2 Billion In Civil Fraud Settlements and Judgments in Fiscal Year 2009, Qui Tam Attorney Timothy J. McInnis Announces

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WASHINGTON —Whistleblowers in Fiscal Year 2009 (“FY2009”) helped add \$2 billion in civil fraud settlements and judgments to more than \$24 billion recovered since the False Claims Act was amended in 1986 to add greater incentives and protections for whistleblowers, qui tam attorney Timothy J. McInnis announced.

The U.S. Department of Justice’s Civil Division, in a November 2009 news release, pegged total recoveries for FY2009 at \$2.4 billion, calling it the second largest recovery year in federal False Claims Act history.

However, actual total recoveries for the fiscal year are well over \$5 billion when criminal recoveries, state recoveries in Medicaid fraud cases, and in-year payments are included, explained McInnis, a former federal prosecutor whose New York City-based practice concentrates on federal and state qui tam whistleblower matters.

“Reporting differences notwithstanding,” McInnis said, every dollar recovered last year demonstrates the important role that whistleblowers are playing in helping the Government to recover billions of dollars in false claims from medical, pharmaceutical, defense and other sectors.”

"I applaud the dedication of the public servants who investigate and prosecute fraud, and the courage of the many private citizens who risk their careers by reporting fraud, "Assistant Attorney General Tony West, who heads the Department of Justice’s Civil Division, said in a news release.

Two-thirds of the \$2.4 billion total reported by the Department of Justice for FY 009 was attributed to healthcare fraud, with approximately \$1.6 billion going to the Department of Health and Human Services (“HHS”) primarily to HHS Medicare and Medicaid programs.

Pharmaceutical and medical device sectors provided the largest FY 2009 recoveries, according to the Department of Justice. Nearly \$867 million was

repaid to the federal Government and more than \$400 million to state Medicaid programs by Bayer HealthCare LLC, Eli Lilly & Company and Quest Diagnostics Inc. and its subsidiary, Nichols Institute Diagnostics Inc.

McInnis is a long-time member of the Taxpayers Against Fraud Education Fund, (“TAF”) the Washington, D.C. based qui tam legal bar. Over the years he has served as a TAF advisory board member, chaired TAF committees and presented qui tam legal topics at the organization’s annual meetings.

TAF set the actual total of \$5.6 billion-plus for the fiscal year by, among other things, including the \$1 billion civil claim portion of the \$2.3 billion fine Pfizer paid in pleading guilty to a one-count criminal charge for illegally promoting its Bextra painkiller and other drugs.

The Department of Justice’s FY 2009 release noted that two record-setting settlements were attributable to qui tam whistleblower suits, a \$540 million payment by New York City and State to settle Medicaid claims and a nearly \$129 million settlement with the General Services Administration in a defective pricing case.

Under the procurement fraud category nearly \$609 million in settlements and judgments in FY 2009 included \$422 million attributable to Department of Defense contracts.

In 2009 the False Claims Act was further amended and strengthened, McInnis explained, to provide an even broader opportunity for whistleblowers to come forward and, “Do the right thing.”

The qui tam provisions of the False Claims Act date back to the Lincoln administration during the Civil War, allowing citizens to file suit on behalf of the United States against those who have falsely or fraudulently claimed federal funds. The term, “qui tam” is derived from the Latin, “*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.” A whistleblower under the False Claims Act legally is referred to as a “relator.”

The FCA allows the government to collect up to three times the amount it was defrauded, in addition to civil penalties of \$5,500 to \$11,000 per false claim. Under the FCA, whistleblowers could receive awards representing 15 to 25 percent of qui tam recoveries when the Government intervenes and settles the case, McInnis explained.

An experienced qui tam whistleblower lawyer is vital to advancing cases brought under federal or state false claims statutes, McInnis said. In most instances, qui

qui tam matters can take years to reach resolution and a skilled attorney is needed each step of the way. Historically, the best outcomes occur when the Government joins or “intervenes” to investigate and settle a False Claims case.

During the long process leading to resolution defense attorneys, once the alleged False Claims Act violator is advised of the charge, work long and hard to scuttle whistleblowers’ claims. As in all lawsuits, while there are no any guarantees that a qui tam case will be successful, an attorney who has previously shepherded cases to his clients’ benefit and who has worked with federal and state investigators is invaluable, according to McInnis.

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