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# Journal

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# Protecting the Empire: A Practitioner's Primer on the New York False Claims Act

**By Michael A. Morse, Bryan S. Neft and Peter S. Wolff**

The federal government and the state governments across the United States spend billions of dollars to stimulate the economy and create jobs. How can we ensure that these taxpayer dollars are not the target of fraud, waste, and abuse? Although the federal and state governments employ thousands of law enforcement officers, and auditors, there are simply not enough government agents to police the billions in taxpayer funds spent each year. As a result of limited government resources, these funds have historically been an easy target for would-be criminals.

In 2007, the New York State Legislature took bold action to ramp-up the state's efforts to combat fraud, waste and abuse in government spending by enacting the New York False Claims Act (NY FCA).[1] The act became law on April 1, 2007, and applies to claims filed before, on, or after this date. Although patterned after the federal False Claims Act (federal FCA or FCA), the New York statute provides both traction for state *qui tam*[2] relators (i.e., whistleblowers) and incentives for state prosecutors and state entities that fall victim to fraud. This article examines the similarities and differences between the federal and New York FCAs, and discusses how the NY FCA may prove to be a powerful tool in combating fraud, waste and abuse of New York taxpayer funds.

## "The Model of Success": The Federal False Claims Act

The federal False Claims Act[3] is widely regarded as the most effective tool for combating fraud against the federal government. The FCA generally prohibits any individual or business from submitting, or causing someone else to submit, to the government a false or fraudulent claim for payment. Those found to have violated the FCA are required to pay the federal government damages totaling three times the amount of the loss the government sustained, along with civil penalties ranging from $5,500 to $11,000 for each false or fraudulent claim. In addition to the damages and civil penalties, violations of the FCA can trigger a number of potential collateral consequences for defendants, such as disqualification from all future federal and state government contracts.

Congress enacted the FCA (often referred to as "Lincoln's Law") during the Civil War to combat fraud perpetrated against the federal government by suppliers

At the same time, a key piece of the federal Deficit Reduction Act of 2005 (DRA)[22] became effective. The DRA amended the Social Security Act to provide that "if a State has in effect a law relating to false or fraudulent claims that meets the requirements of subsection (b), the Federal medical assistance percentage with respect to any amounts recovered under a State action brought under such law, shall be decreased by 10 percentage points."[23] Thus, states with false claims laws would be entitled to retain a 10% greater share of the proceeds than states without a false claims law.

The 10% entitlement is not automatic, however. To receive this additional return, a state false claims law would have to include certain provisions[24] and be approved by the Inspector General of the Department of Health and Human Services (HHS), in consultation with the U.S. Attorney General.[25] Fortunately, on August 7, 2007, the Inspector General of the HHS and the U.S. Attorney General approved the NY FCA.[26]

## The Federal and New York FCAs: Similarities and Differences

In most respects, the NY FCA is substantially similar to the federal FCA, but there are certain substantive and procedural differences that are important to review and fully understand. The provisions of the NY FCA that differ from its federal predecessor can be generally grouped as follows: statutory penalties, initial obligation when fraud is suspected, initiating procedure, and related actions. The pertinent provisions of each act are discussed below.

### Prohibited Conduct and Liable Parties

The NY FCA mimics the federal FCA insofar as they both impose liability upon people who present, or cause to be presented, false or fraudulent claims to an employee or officer of the government for payment or approval. The NY FCA, in addition, provides that "presenting" a false claim to an "agent of the State, or to any contractor, grantee or other recipient of State funds" will trigger a violation of the act. This added provision appears to be a significant effort by New York legislators to assist the state in identifying fraud that involves all government funds – wherever they may be found – when the false claim for the funds is presented, paid or approved. This language covers contractors, subcontractors, consultants, and other entities that contract directly or indirectly with New York. The 2009 FERA amendments to the federal FCA clarified Congress's similar intent to impose potential liability, as the New York statute already provides, for false claims made to any recipient of federal funds.

In one important respect, however, the NY FCA differs from the federal FCA – it does not permit any action to be filed against a state or local government. The New York law defines a "person" subject to the statute as "any natural person, partnership, corporation, association or any other legal entity or individual, *other than the state or a local government*."[27] While the federal FCA does not contain similar language, the U.S. Supreme Court has held that states are not "persons" for purposes of *qui tam* liability under the FCA.[28] However, local governments can be sued under the federal FCA for filing false or fraudulent claims, but the NY FCA eliminates this potentially significant source of false claims act recovery.

### NY FCA's Broad Definition of False "Claim"

The NY FCA imposes liability for making "a false or fraudulent claim."[29] The definition of what constitutes a "claim" determines the scope of conduct that will trigger the liability provisions of the act. The New York law defines the term "claim" broadly to include, as its federal counterpart does, "any request or demand, whether under a contract or otherwise, for money or property."[30] In addition, a false "claim" under the NY FCA includes a false request or demand for government money or property made to "any employee, officer, or agent of the state or a local government,"[31] as well as to those listed in the federal act (contractors, grantees and other recipients of government funds). The Legislature has defined "state" very broadly to include "the state of New York and any state department, board, bureau, division, commission, committee, public benefit corporation, public authority, council, office or other governmental entity performing a governmental or proprietary function for the state."[32] Like the federal FCA, the NY FCA is triggered where the state government "provides any portion of the money, [or] property . . . requested or demanded."[33] The NY FCA also attaches liability if the state "will reimburse . . . for any portion of the . . . services requested or demanded."[34]

The Legislature's decision to include claims made to local government within the scope of the NY FCA is important for two reasons. First, this gives the NY FCA the ability to protect funds spent by a "county, city, town, village, school district, board of cooperative educational services, local public benefit corporation or other municipal corporation or political subdivision of the state."[35] Second, under the NY FCA, the New York Attorney General *and a local government* may bring a civil action.[36] The addition of local governments to the NY FCA provides hundreds of such governments with the opportunity to recover money for fraud schemes perpetrated against them.

### Requisite State of Mind

Neither the federal FCA nor the NY FCA requires a defendant to have actual knowledge that he or she is submitting a false claim before liability will attach. Rather, liability attaches when a defendant acts "knowing" or "knowingly."

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[T]he terms "knowing" and "knowingly" mean that a person, with respect to information –

(1) has actual knowledge of the information;

(2) acts in deliberate ignorance of the truth or falsity of the information; or

(3) acts in reckless disregard of the truth or falsity of the information,

and no proof of specific intent to defraud is required.[37]

Additionally (which might be of comfort to some), the NY FCA expressly states that "acts occurring by mistake or as a result of mere negligence are not covered by this article."[38]

### Statutory Penalties

Both the federal and New York FCAs impose penalties upon persons who violate either statute, although the statutory penalties under the NY FCA are more stringent. Under the federal FCA, a defendant is liable "to the United States government for a civil penalty of not less than $5,000 and not more than $10,000, plus three times the amount of damages which the government sustains because of the act of that person."[39] In 1999, the U.S. Department of Justice issued a Final Rule increasing these penalty amounts to not less than $5,500 and not more than $11,000.[40]

In contrast, under the NY FCA, a defendant is liable "to the state for a civil penalty of not less than [$6,000] and not more than [$12,000], plus three times the amount of damages that the state sustains because of the act of that person."[41] Additionally, in New York, an actor is liable "to any local government for three times the amount of damages sustained by such local government because of the act of that person."[42]

Both the federal and New York FCAs provide for reduction of civil penalties under certain, prescribed circumstances. Penalties may be reduced under both statutes when: (1) the violator informs the government of the violation within 30 days after the violator first learned of the violation; (2) the violator fully cooperates with any government investigation; and (3) at the time the violator informed the government of the violation, there was no criminal prosecution, civil action, or administrative action under either FCA, and the violator did not know of any investigation into such violation.[43] Essentially, penalties may be reduced when the violator comes clean and fully cooperates with the government. Penalties may be reduced under the same circumstances in New York.[44]

Although statutory penalties are greater in New York, reduced penalties under the federal FCA are equal to or greater than those under the NY FCA. Under the federal FCA, the reduced penalties are limited to "not less than [two] times the amount of damages,"[45] while under the NY FCA, "the Court may assess not more than two times the amount of damages."[46] For example, when the government is damaged in the amount of $100,000, statutory penalties under both FCAs are $300,000. When the circumstances allow for a reduction of damages, the amount due under the federal FCA is between $200,000 and $300,000, while the amount due under the NY FCA is between $0 and $200,000. Given this illustration, it is obviously in the violator's best interest to voluntarily come clean to the government and cooperate fully with any investigation.

### Filing Under the NY FCA

An action under the NY FCA may be filed in a federal or state court, with the New York State Supreme Court exercising jurisdiction over state court actions. In contrast, a federal FCA case can be filed only in the federal district court where the defendant may be found, resides, transacts business, or causes the false claims act violations to occur. The federal FCA expressly provides that federal district courts shall have pendent jurisdiction over state FCA claims. There is, however, a clear incentive for filing false claims act actions in federal court, even those a state attorney general initiates. Specifically, pendent jurisdiction relieves the state courts of the cost of administration of these claims, while providing litigants with the federal judiciary's substantial experience with FCA claims and its established caselaw on the subject.

Each of the 62 counties in New York serves as a seat for the state Supreme Court, New York's civil trial division. Each of the 62 county clerk's offices that may receive filings for the state Supreme Court must become comfortable with all the nuances of the seal provisions, which are an integral part of the NY FCA. False claim litigants and their counsel must likewise feel comfortable walking into any New York state court clerk's office and meeting with staff members who can assist them in making certain that the technical aspects of filing a case under seal are meticulously met. Most but not all federal district court clerks' offices are conversant with the NY FCA's seal provisions. Training 62 state clerk's offices to handle the delicate filing requirements designed to preserve the seal would be costly and time consuming. However, the more the NY FCA is used, the more that frauds perpetrated solely against the state and its agencies will be exposed, which will result in state court actions and which, in turn, will provide state clerk's offices with greater exposure to the NY FCA.

Both the federal and New York FCAs contain *qui tam* provisions that authorize a private individual, the relator, to bring an action on behalf of either the "government" or "the people of the state of New York or a local government."[47] Because the NY FCA authorizes the local government to pursue relief in addition to the state of New York, there are procedural distinctions between the federal and NY FCAs regarding the filing of the complaint.

Under the NY FCA, a copy of the complaint and the material evidence must be filed *in camera* and remain under seal for 60 days.[48] If the allegations in the complaint allege a violation involving damages to a local government, the state Attorney General may at any time provide a copy of such complaint and written disclosure to the attorney general for such local government. However, if the allegations in the complaint involve damages only to a city with a population of one million or more,[49] or only to the state and such a city, then the Attorney General shall provide the complaint and written disclosure to the corporation counsel of such city within 30 days from the date the complaint was filed.[50]

### Investigating Cases Under the NY FCA

Upon receipt of the false claims complaint, both the federal and New York FCAs require their respective attorneys general to investigate the *qui tam* relator's allegations of fraud. In particular, under the federal FCA, the "Attorney General diligently *shall investigate* a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General *may* bring a civil action under this section against the person."[51]

By contrast, the NY FCA authorizes the Attorney General to "*have the authority to investigate* a violation," and "if the Attorney General believes that a person has violated or is violating such section, then the Attorney General *may* bring a civil action on behalf of the people of the State of New York or on behalf of a local government against such person." In addition, a local government "*shall have the authority to investigate violations* that may have resulted in damages to such local government under [the NY FCA], and *may* bring a civil action on its own behalf to recover damages sustained by such local government as a result of such violations."[52] The differences between the statutory text of the federal and New York FCAs is that the U.S. Attorney General is required to investigate a violation under the federal FCA, while the New York State Attorney General and local government are authorized, but not required, to investigate a violation under the NY FCA. Additionally, the U.S. Attorney General, the New York State Attorney General, and New York local government are all authorized, but are not required, to pursue a civil action. Furthermore, in New York, the Attorney General "shall consult with the office of medicaid inspector general prior to filing any action related to the medicaid program."[53]

The state may elect to supersede or intervene and proceed with the action, or to authorize a local government that may have sustained damages to supersede or intervene, within 60 days after it receives both the complaint and the material evidence and information. If, however, the allegations in the complaint involve damages only to a city with a population of one million or more, then the Attorney General may not supersede or intervene in such action without the consent of the corporation counsel of such city. The Attorney General shall consult with the office of the Medicaid Inspector General prior to superseding or intervening in any action related to the Medicaid program.[54]

> The federal and New York FCAs provide for reduction of civil penalties under certain, prescribed circumstances.

The federal and state attorneys general, as well as local counsel, may move to extend the period under which the complaint remains sealed. Under both acts such a motion must be for "good cause" and may be supported by affidavits or other submissions *in camera*.[55] Neither act, however, defines the term "good cause."

Nevertheless, prior to the expiration of this 60-day period, or any extension, the New York Attorney General may elect to "file a complaint against the defendant on behalf of the people of the state of New York or a local government, and thereby be substituted as the plaintiff in the action and convert the action in all respects from a *qui tam* civil action brought by a private person into a civil enforcement action by the Attorney General."[56] When the Attorney General elects to convert the *qui tam* civil action into an action it will prosecute, "then the state shall have the primary responsibility for prosecuting the action."[57] The conversion of the action into an Attorney General enforcement action does not impact the rights of the *qui tam* relator to a portion of the proceeds.[58]

Under the federal FCA, the U.S. Attorney General also has 60 days (or longer if an extension is granted) to proceed with the action, in which case the action shall be conducted by the government.[59] The U.S. Attorney General's decision to proceed with the action also does not impact the rights of a *qui tam* relator to a portion of the proceeds.[60] Thus, when the U.S. government elects to proceed with the action, the government bears the responsibility for prosecuting the action, while the relator retains a right to a portion of the proceeds.

### Pending State Action May Bar the *Qui Tam* Plaintiff's Case

The federal and New York FCAs also differ with respect to whether a second party may bring a related action. Under the federal FCA, when a *qui tam* action is brought, "no person other than the Government may intervene or bring a related action based on the facts underlying the pending action."[61] Under the NY FCA, however, a person "may intervene or bring a related civil action based upon the facts underlying the pending action," if that person "has first obtained the permission of the attorney general to intervene or to bring such related action."[62] This is a meaningful distinction between the two statutes. In fact, if the New York State Attorney General's Office uses its authority effectively to permit second parties to commence their own action or intervene, a second party's participation may help to shape the scope and course of a litigation.

Of course, the opportunity for the New York Attorney General or local counsel to recover attorney fees and costs is completely contingent upon their initiating the false claims action or assuming control of an action brought by a *qui tam* relator under the NY FCA. The New York Legislature wisely both enacted this legislation requiring the enforcement of the NY FCA and provided the necessary funding. The office charged with enforcing the NY FCA, namely, the Attorney General's office or local government's counsel, has a compelling incentive to become actively engaged with a *qui tam* plaintiff's case early on – the promise of receiving their counsel fees and costs upon the resolution of the action. This provision empowers the New York Attorney General or the local government's counsel to make their intervention decisions with the knowledge that they will directly benefit from active prosecution of a NY FCA case.

> In 2008 alone, New York, acting through the Attorney General, Medicaid Inspector General and other agencies, recovered $551 million that would otherwise have been lost due to Medicaid fraud.

**The *Qui Tam* Plaintiff's Share of the Recovered Proceeds**

Under both the NY FCA and the federal FCA, a *qui tam* plaintiff receives 15% to 25% of the proceeds of an action or settlement in cases where the government intervenes and 25% to 30% in cases where the government does not intervene, leaving the relator to prosecute the claim without any government resources or assistance. In addition, the *qui tam* relator is entitled to receive reasonable attorney fees, expenses, and costs. The defendant pays these attorney fees, expenses, and costs, all of which will not reduce the relator's share of the recovery by the state and/or local government.

In developing these recovery provisions, the Legislature recognized the integral role of *qui tam* relators in efforts to prosecute fraud, waste, and abuse. The message to potential relators and the *qui tam* bar is clear: private citizens who report false claim violations are integral to the effort to fight fraud – even where the recovery is ultimately based predominantly on the government's own information.

**Fees and Costs Available for Initiating and Assuming Control of an Action**

Under the NY FCA, when the state Attorney General or local counsel becomes involved in a false claims act action, either by initiating the action or by assuming control of an action previously brought by a *qui tam* plaintiff, the Attorney General and/or the local counsel shall be entitled to receive their reasonable attorney fees, expenses, and costs. A number of state false claims acts contain similar provisions. Surprisingly, the federal FCA has never contained such a potent funding tool. As a result, the federal government lacks similar incentives since the U.S. Attorney General does not have the ability to recoup the considerable resources it dedicates to fighting fraud.

**Employee Protection Under the Act**

An employee who knows that his or her employer is submitting false claims is placed in a precarious situation. The employee may refrain from reporting this conduct if he or she feels this will invite retaliation. Both the federal and New York FCAs provide protection that discourages employers from retaliating against an employee for either initiating or participating in a false claims action. The FCAs prohibit discrimination and authorize all relief necessary to make the employee whole, providing that any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of the lawful acts done by the employee on behalf of the employee or others, in furtherance of an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney fees.[63]

Under the federal FCA, a retaliatory action may be brought in "the appropriate district court of the United States," while, under the NY FCA, such an action may be brought "in the appropriate supreme court."[64] Claims for retaliation under these provisions are governed by a six-year statute of limitations.[65]

### Statutes of Limitations and Burdens of Proof

With respect to the time allotted for initiating a false claims action, both FCAs require a civil action to be commenced either six years after the date of the violation or three years after the date when the material facts are known or reasonably should have been known, whichever occurs later, but in no event more than 10 years after the date of the violation.[66] Additionally, a plaintiff in either a federal or New York action has the burden of proving all essential elements of the cause of action by a preponderance of the evidence.[67]

## Office of the Medicaid Inspector General

In addition to the NY FCA, New York has a second method for combating Medicaid fraud. On July 26, 2006, New York established the Office of the Medicaid Inspector General (OMIG) as an independent, formal state agency in the New York State Department of Health.[68] The current Medicaid Inspector General, James G. Sheehan,[69] reports directly to the Governor.[70] Under New York law, the Inspector General is directed "to pursue civil and administrative enforcement actions against any individual or entity that engages in fraud, abuse, or illegal or improper acts, or unacceptable practices, perpetuated within the medical assistance program."[71]

## Conclusion

New York, through the NY FCA and the OMIG, fights fraud through both the private and the public sectors. These statutes, working together, cover all possible avenues for detecting, reporting, and prosecuting Medicaid fraud. While both provisions are relatively new, there can be no doubt that numerous civil actions and recoveries for the state are forthcoming. In 2008 alone, New York, acting through the Attorney General, Medicaid Inspector General and other agencies, recovered $551 million that would otherwise have been lost due to Medicaid fraud. These results should only increase as greater knowledge and resources are committed to the public and private partnership for combating fraud embodied in the NY FCA.

New York has a potent statute, which, if properly cultivated, utilized and protected, will reap significant rewards for the taxpayers of the state. Other states with similar laws have experienced a sizeable increase in their fraud recoveries. The next few years will be crucial to watch how the state, the Attorney General's Office and local government counsel, and *qui tam* relators, as well as the Medicaid Inspector General, will all utilize these fraud enforcement tools on behalf of New York taxpayers.

Only time will reveal the benefits to the taxpayers of the state Legislature's ambitious efforts to combat fraud.

1. N.Y. State Finance Law §§ 187–194. ("State Fin. Law").

2. "Qui tam" is the abbreviated form of a Latin phrase "*qui tam pro domino rege quam pro se ipso in hac parte sequitur*," which means "who as well as for the king as for himself sues in this matter." Black's Law Dictionary 1282 (8th ed. 2004).

3. 31 U.S.C. §§ 3729–3733.

4. Pub. L. No. 111-21, 123 Stat. 1617.

5. Christina Broderick, Note, *Qui Tam Provisions and the Public Interest: An Empirical Analysis*, 107 Colum. L. Rev. 949, n.78 (May 2007) (citing Press Release, Office of N.Y. Attorney Gen., *Spitzer Calls for Passage of State False Claims Act* (June 12, 2003), *available at* http://www.oag.state.ny.us/media_center/2003/jun/jun12a_03.html.

6. *Id.* (citing Michael Luo & Clifford Levy, *As Medicaid Balloons, Watchdog Force Shrinks*, N.Y. Times, July 19, 2005, at A1).

7. *Id.* (citing Richard Perez-Pena & Danny Hakim, *Lawmakers Hit Deadlock on Medicaid*, N.Y. Times, Mar. 28, 2006, at B1).

8. A. Bateman, Jr., *The Coming Wave of Health Care Fraud and Abuse Prosecutions*, N.Y.L.J., July 23, 2007, p. 10, col. 1 (citing Clifford Levy & Michael Luo, *New York Medicaid Fraud May Reach Into Billions*, N.Y. Times, July 18, 2005, at A1).

9. *Id.*

10. *Id.*

11. *Id.*

12. James Lytle, *Meet the State's Brand New Medicaid Fraud Legislation*, N.Y.L.J., July 10, 2006, p. 9, col. 1.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. Eliot Spitzer, *First Annual Message to the Legislature*, *available at* http://www.ny.gov/governor/keydocs/NYS-SoS-2007.pdf.

20. Carl Loewenson & Ruti Smithline, *New York's New False Claims Act*, N.Y.L.J., Apr. 23, 2007, col. 4 (citing 2007 NY S.B. 2064).

21. *Id.* (citing Senate Bill 2064, 2007 Bill Text NY S.B. 2064 (Jan. 30, 2007); Assembly Bill 4308, 2007 Bill Text NY A.B. 4308 (Jan. 20, 2007)).

22. Pub. Law 109-171, 120 Stat. 4.

23. 42 U.S.C. § 1396h.

24. These requirements are as follows:

> (1) The law establishes liability to the State for false or fraudulent claims described in [the federal FCA] with respect to any expenditure described in section 1396b(a); (2) The law contains provisions that are at least as effective in rewarding and facilitating qui tam actions for false or fraudulent claims as those described in [the federal FCA]; (3) The law contains a requirement for filing an action under seal for 60 days with review by the State Attorney General; [and] (4) The law contains a civil penalty that is not less than the amount of the civil penalty authorized under section 3729 of [the federal FCA].

25. 42 U.S.C. § 1396h(b).

26. Approval letter from Daniel Levinson, Inspector General, to The Honorable Andrew Cuomo, New York State Attorney General, can be found at http://www.oig.hhs.gov/fraud/docs/falseclaimsact/NewYork.pdf.

27. State Fin. Law § 188(6) (emphasis added).

28. *Vt. Agency of Natural Res. v. United States ex rel. Stevens*, 529 U.S. 765 (2000).

29. State Fin. Law § 189.

30. State Fin. Law § 188(1).

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. State Fin. Law § 188(4).

36. State Fin. Law § 190(1).

37. 31 U.S.C. § 3729(b); *see also* State Fin. Law § 188(3).

38. State Fin. Law § 188(3).

39. 31 U.S.C. § 3729.

40. 28 C.F.R § 85.3(a)(9).

41. State Fin. Law § 189(g)(i).

42. State Fin. Law § 189(g)(ii).

43. 31 U.S.C. § 3729.

44. State Fin. Law § 189(2).

45. 31 U.S.C. § 3729.

46. State Fin. Law § 189(2).

47. 31 U.S.C. § 3730; State Fin. Law § 190(2)(a).

48. 31 U.S.C. § 3730(b); State Fin. Law § 190(2)(b).

49. Only one city in the state of New York, New York City, has a population of one million or more.

50. State Fin. Law § 190(2)(b).

51. 31 U.S.C. § 3730(a) (emphasis added).

52. State Fin. Law § 190(1) (emphasis added).

53. *Id.*

54. State Fin. Law § 190(2)(b).

55. 31 U.S.C. § 3730(b)(3); State Fin. Law § 190(2)(b).

56. State Fin. Law § 190(2)(c) (emphasis added).

57. State Fin. Law § 190(5)(a).

58. State Fin. Law § 190(6).

59. 31 U.S.C. § 3730(b)(4).

60. 31 U.S.C. § 3730(c).

61. 31 U.S.C. § 3730(b)(5).

62. State Fin. Law § 190(4).

63. *See* 31 U.S.C. § 3730(h); *see also* State Fin. Law § 191(1) (providing for the same relief).

64. *Id.*

65. *United States ex rel. Mishra v. NYSARC*, 03-cv-7250 (S.D.N.Y. March 20, 2009).

66. 31 U.S.C. § 3731(b); State Fin. Law § 192(1).

67. 31 U.S.C. § 3731(c); State Fin. Law § 192(2).

68. N.Y. Public Health Law § 30 ("Pub. Health Law").

69. James G. Sheehan, New York's Medicaid Inspector General, spent 27 years as an Assistant U.S. Attorney, and spent the last five years as Associate U.S. Attorney for Civil Programs, where he was responsible for major cases and program initiatives. Mr. Sheehan has handled major cases in environmental enforcement, savings and loan fraud, and consumer frauds early in his career. Since the late 1980s, Mr. Sheehan has been primarily involved in health care, where he handled or supervised over 500 cases. These cases resulted in recoveries of over $700 million for the federal government. Mr. Sheehan worked with whistleblowers and their counsel in virtually every major health care case, including cases against SmithKline Beecham Clinical Laboratories ($325 million settlement) and Medco Health Systems ($155 million settlement). F. Sheeder, *Meet James G. Sheehan*, HCCA Compliance Today, vol. 10, number two, February 2008, pg. 14.

70. Pub. Health Law § 31(2).

71. Pub. Health Law § 32(6).