

VICTORY FOR WHISTLEBLOWERS AND TAXPAYERS: USE OF PUBLICLY AVAILABLE INFORMATION DOES NOT BAR CASES INVOLVING GOVERNMENT FRAUD

Under a federal statute known as the False Claims Act, whistleblowers with knowledge of overcharges or other fraudulent activity directed at the federal government may be entitled to substantial monetary rewards through lawsuits known as *qui tam* cases. The monetary rewards authorized by the False Claims Act provide those who have valuable information about government fraud a strong incentive to come forward and report it. Companies alleged to have engaged in such fraud often fight back by arguing that a whistleblower's *qui tam* case should be dismissed because it is improperly based on "publicly available" information, citing the False Claims Act's "public disclosure bar."

In a victory for whistleblowers and taxpayers, a federal appellate court based in Chicago recently rejected a broad reading of the public disclosure bar. In *U.S. ex rel. Heath v. Wisconsin Bell, Inc.*, the Seventh Circuit Court of Appeals ruled that the public disclosure bar did not apply where a whistleblower's *qui tam* claim cited a contract that was available for public review on a government website. The Court of Appeals decided that the whistleblower's claim against Wisconsin Bell could proceed because it was not "based upon" the publicly available contract, but instead was based on "genuinely new and material information" that the whistleblower obtained through "his own investigation and initiative."

The whistleblower who filed the case, Todd Heath, is a telecommunications consultant based in Waupun, Wisconsin. Heath is retained by school districts and private businesses to identify overcharges contained in their telephone bills. Those bills and supporting materials are often complex and can be confusing even to sophisticated consumers. Heath, who has been auditing phone bills for more than 20 years, has the training and experience necessary to interpret such materials. Relying on information obtained through his own investigation and professional experience, Heath filed a *qui tam* case alleging that Wisconsin school districts were overcharged for telecommunications services.

The Wisconsin school districts were not the only victims of the alleged overcharging, according to Heath, because the federal government subsidizes and pays a substantial portion of the schools' telecommunications bills under a federal program known as the E-Rate

program. Before he filed his *qui tam* case, Heath notified the federal government of his findings, as required by the False Claims Act.

The public disclosure bar relied upon by Wisconsin Bell as a defense is intended to prevent whistleblowers from filing “parasitic” or “opportunistic” *qui tam* lawsuits based on information obtained through government reports or other public documents of the type specifically listed in the federal law. The Court of Appeals concluded that the public disclosure bar did not apply to Heath’s lawsuit, however, explaining that his case was not “based upon” the contract that Wisconsin Bell cited to support its defense. After ruling in Heath’s favor on this issue, the Court of Appeals decided not to consider other arguments made by Heath concerning the public disclosure bar.

Heath is represented in this case by Doug Dehler of O’Neil, Cannon, Hollman, DeJong and Laing, S.C. in Milwaukee, Wisconsin. It is expected that, within several weeks, the Seventh Circuit Court of Appeals will send the case back to a federal court in Wisconsin for additional proceedings.

If you have questions regarding this case or any other potential whistleblower case under the False Claims Act, please contact Attorney Doug Dehler at 414-291-4719 or doug.dehler@wilaw.com.