

SHIPMAN & WRIGHT NEWSLETTER

ATTORNEYS AT LAW

SHIPMAN & WRIGHT QUARTERLY NEWSLETTER January 2011

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New Year, New Practice Areas

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The S&W Blog has a NEW DESIGN

www.shipmanandwright.com

We are excited to announce a new look for the Shipman & Wright blog along with new features! At www.shipmanandwright.com our attorneys and staff strive to post blogs on the most current legal topics both nationally and locally. We have recently added a new "search feature" that allows our audience to search our blog posts to find all relevant information on their topic of interest. If you haven't visited our blog yet, please go to www.shipmanandwright.com and give us your feedback!

S&W LEGAL BLOG
WILMINGTON, NORTH CAROLINA

The Facts about Qui Tam Cases & How the Process Works

article written by S&W attorney cory reiss

Lawyers love to speak Latin because it usually means we're invoking some ancient and therefore well-established legal principle. Plus it makes us sound so very smart.

But you don't have to be a lawyer to appreciate this little phrase: qui tam. Actually, that's short for the rather cumbersome qui tam pro domino rege quam pro se ipso in hac parte sequitur, which translates roughly as he "who brings the action for the king as well as for himself." You know you're on hallowed ground when you invoke the king in a modern American court.

A qui tam suit is a whistleblower action against a person or business that has submitted false claims for payment from the federal government, for example by inflating the costs of construction on a military base or filing false Medicare claims. There are two main reasons to come forward with information like this, and the first one is that Uncle Sam wants you to. It would cost a lot of money for the government to ferret out these cases, so the government offers incentives for citizens to do the work. Which brings us to the second reason for blowing the whistle. Anyone with the information to make such a case can bring a qui tam action and share in the

The Facts About Qui Tam Cases

continued from the cover...

recovery, which may be triple the actual damages. If the government picks up the case and prosecutes it successfully, the whistleblower stands to receive 15% to 25% of the award, and the bounty rises to as much as 30% if the government lets the whistleblower proceed.

According to the U.S. Department of Justice, settlements and judgments in whistleblower qui tam actions amounted to \$2.3 billion in recovery for the government just in fiscal year 2010. The whistleblowers, called "relators" in these actions, collected \$385 million. Since 1986, when federal law was strengthened to encourage more qui tam actions, the government has collected \$18 billion and relators have obtained more than \$2.8 billion in awards.

The fact that the Department of Justice advertises such statistics only goes to show how the government values what is the civil equivalent of a citizen's arrest. Federal law even protects whistleblowers from retaliation by their employers. These actions are filed under the federal False Claims Act. That law is triggered when

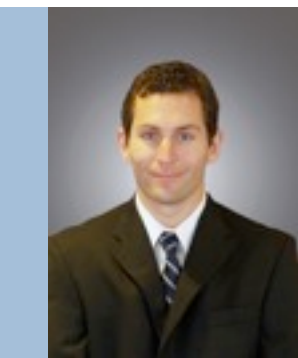
a person or entity makes a false claim, which is a demand for payment from the government or a contractor through whom government money flows to the claimant based on the false claim. False claims can be made on insurance claim forms, bills for goods or services, or applications for government benefits, among other means. The relator must be able to prove that a claim was made knowing that it was false or fraudulent. The relator submits the evidence and lawsuit to the Attorney General, who after review decides either to take the case or allow the relator to proceed independently.

These actions sometimes end before they get off the ground when the allegations become public knowledge or are arguably based on information that is public knowledge. The court can't assert jurisdiction when that happens. The complaint must even be filed under seal while the government considers intervening.

Ergo, silentium est aureum. In other words, act fast and keep your qui tam on the QT.

Banks and the Recession

article written by S&W attorney matthew buckmiller



Let's go back to the year 2005. Life was good, the job market was healthy, and we all had a little more hair. In Southeastern N o r t h Carolina the real estate markets, both

commercial and residential, were booming. Real estate brokers were making hefty commissions on properties for simply listing them, which sometimes would be flipped more than three times in a single month. Developers were selling lots so fast that the closing attorneys were struggling keep up. Banks were making enormous profits and individuals in their lending departments were making outrageous bonuses for producing the loans. Times were great, or at least it seemed that way. In retrospect, the very actions of so many in 2005 are the exact reason we have plummeted into a

scary recession for the last two plus years . Which, if people weren't so afraid to utter the very word, should be called a depression.

So whose to blame? The easy answer is everyone, even ourselves, but let's look at the main culprit. Public enemy number one, the banks. To get even more particular, the lending divisions of banks. The banks rightfully earned first place in the blame game based upon the highly rewarding bonus and compensation systems that were in place during the boom. These irresponsible compensation structures granted employees immediate payouts based solely on the amount of the loan, not on the quality of a loan over the course of the loan. This kind of compensation system was customary, not just in banks but across the industry. People were compensated not for the value or quality of their work but instead for the amount of immediate money they generated for their company. During this time period, the system fed a culture centered around greed. Thankfully, due to the current economic climate, this greed has

New NC Laws as of December 2010

article written by S&W attorney jean s. martin

December is a month for new laws in North Carolina. The new laws include more protection for victims of domestic violence, a ban on video sweepstakes parlors and tougher punishment for animal cruelty. Here's a list of some of the new laws taking effect today in North Carolina:

Domestic Violence: It will be a felony for someone who has been ordered to stay away from a spouse or other companion under a domestic violence protective order to trespass and remain on the premises of a domestic violence shelter where the person protected is staying. The law also gives such shelters immunity from lawsuits due to the acts of someone violating a protective order.

Animal Abuse: Animal cruelty becomes a felony offense, giving judges the option to impose jail time in certain cases, even for first time offenders.

License Plates: Drivers must make sure their entire rear license plate is visible to law enforcement. A vehicle owner whose license plate frame or cover makes a number or letter on the plate, the state name, or the number or month on the registration renewal sticker illegible can be penalized up to \$100.

Video Sweepstakes Parlors: A ban on video sweepstakes machines is also set to go into effect. The video sweepstakes industry is currently fighting this new law and recent court rulings may affect enforcement.

DMV Vehicle Registration Fees: The DMV will no longer charge a \$1 postage and handling fee for drivers who renew their registration through the mail.

Stricter Ethics Laws For Elected Officials And Candidates Running For Office: It will be illegal for officials elected to statewide office to threaten action against or promise preferential treatment for someone doing business with the state in exchange for campaign contributions. Candidates who have merely declared their candidacies, as well as sitting office holders, will be subject to the state's anti-bribery statutes.

somewhat receded but the long standing effects are still present today.

A comparison can rightfully be made when examining "paper mill" personal injury firms. These firms rake in monies without trying a single case due to the overall number of cases they have as opposed to a firm that prides themselves on the value they provide each of their clients on an individual basis. More simply put, lenders compensated their employees for the amount of loans an individual could generate regardless of whether those loans would be performing loans 4 or 5 years down the road. Now you may be asking yourself, why would banks make bad loans? That question is based on an implied assumption that the individuals at banks, especially lenders, are making loans for the best interests of their bank. The evidence to the contrary provides that most of

these individuals were solely looking at their own bottom line due to the lack of consequences from their employer in doing so. This lack of management, risk analysis and underwriting by the banks proved to equate to a long term economic catastrophe.

In the many lender liability cases I have litigated, it is almost comical to see the turnover of bank employees and how often lenders that were at one bank have skipped around to multiple banks throughout their career. In one case in particular, we had extreme difficulty locating the original producer for the loan in question. This particular loan originator had transferred around to multiple banks in a suspiciously short period of time, so much so that he was nearly impossible to track down. Unfortunately, therein lies the pattern of lending and the lack of longevity

or responsibility in the industry. Until the individuals that produce these high risk loans actually face some substantial consequence for improvident lending, this kind of abuse will continue to exist. In fact, the only thing stopping the same problem from occurring today are the stricter lending guidelines finally imposed by the banks in response to the recent economic downturn.

Millions of people migrated to our country "Chasing the American Dream" and prospered because of the opportunity America provided coupled with hard, honest work. The recent economic depression has so recently informed us all that if it sounds too good to be true, it most likely is. Remember, nothing good comes without effort and honesty.

New Year, New Practice Areas at S&W

To better serve our clients in 2011, we have added new practice areas

At S&W, we are continuously looking for ways to improve our firm and better serve our clients. Shipman & Wright is excited to announce it's new practice areas in tax law for 2011. We strive to provide a "one stop shop" approach for all of your legal needs and below are details on our newest additions. For more information please visit our website at www.shipmanlaw.com or our blog at www.shipmanandwright.com.

Tax Planning & Defense Services:

State and federal taxes affect nearly every financial transaction made by a individual or individual throughout life and even after death. Advance planning to anticipate tax ramifications is a necessary part for any person who is considering a major financial decision. At Shipman & Wright, LLP we want to help you make the correct decision for your needs. Our Wilmington, North Carolina, law office operates on a fundamental guiding principle: we believe in up-front communication.

Business Tax Planning:

The services of a good tax lawyer can make the difference between financial success and financial disaster. Proper business tax planning is highly important when it comes to start-ups, acquisitions, dissolutions, and real estate purchases and sales. At Shipman & Wright, we want to help you develop a sound foundation for your business. No matter what the immediate issue is, your attorney will analyze all possible tax consequences and minimize corporate and personal tax liability.

Business Formation:

North Carolina offers several entity options: corporations (S-Corps and C-Corps), general partnerships, limited partnerships, limited liability companies (LLCs) and nonprofits. When starting a business, it helpful to have a smart business lawyer describe the advantages and disadvantages of each entity available. At Shipman & Wright, LLP, we also make sure to explain the tax ramifications of each type of business entity available.

Dissolution Resolutions:

Many business ventures are created using only basic legal forms absent the proper vehicle necessary for dissolution or business entity change. This can lead to disputes that cause dissolution of the entity and distribution of assets. Often times this scenario causes negative tax consequences, and prevents either party from continuing the business at all. Shipman & Wright, LLP can advise individual partners or boards of directors about various methods to resolve operational disagreements, including restructuring, dissolution and sell-out.

Tax Investigations:

Shipman & Wright, LLP offers defense in civil and criminal tax investigations at the local and federal level. Unpaid taxes can lead to tax liens, tax levies garnishments, fines and even jail time. If you receive a notice of investigation from the IRS, contact us immediately. The longer you hesitate, the fewer options you will have.

S&W Attorneys to Participate in "ask a lawyer day"

february 5th 2011 at independence mall in wilmington, nc

On February 5th, 2011 Shipman & Wright attorneys will be participating in North Carolina's National "Ask a Lawyer Day." This program was designed to make legal services available to community members that do not have these types of services available to them otherwise. This program was developed by Young Lawyers Division and is made up of lawyers that donate their time and knowledge.

Shipman & Wright is excited to be participating in this event again this year and looks forward to a large turnout. The event will be held at Independence Mall in Wilmington, NC from 10am to 6pm on February 5th, 2011.

Visit Us Online Anytime at our blog:
www.shipmanandwright.com

S&W LEGAL BLOG
WILMINGTON, NORTH CAROLINA

Tips from our Inquiry Department at S&W

article written by S&W director of inquiries, brandon gay

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Hello from the Inquiry department at Shipman and Wright! We are in charge of the intake process for all potential clients. This portion of the newsletter will be a reoccurring section where we hope to arm our readers with information that will help them through the process of finding an attorney.

This month, we would like to give you a little insight into how exactly our process works. First, when you are calling an attorney's office it is important to gather any pertinent information relating to the potential matter as this will ease the overall process. This information depends mainly on the type of matter but may include Doctor's names, names of hospitals, other parties involved, citations, date of incident etc. During the initial call, It is important to note that the person you are speaking with in most cases is not an attorney and therefore not authorized to give legal advice. They will simply collect information from you including contact information and a summary of your potential claim. After you have

provided a sound summary of your claim and the details pertaining to it, the Inquiry personnel will communicate with the attorneys to see if your claim meets our case criteria. Different firms have different turn-arounds for this process, but usually it's a matter of days. Once the attorneys have been briefed on the claim, one of two things will occur: A decision whether or not to take your case will be made, or the attorneys will feel they need further information to make a decision.

If we feel that we can assist in your matter, an initial consultation will be set up between you and an attorney with the firm. At this meeting we will communicate expectations on both sides of the table and make sure that everyone involved is comfortable with the process. At this point we will have you sign a fee agreement and you become a "Client".

If the firm declines to take your case, don't assume that you don't have a case. Some of our most successful verdicts have been for cases that were initially declined by

other firms. There are many reasons why a firm may decline your case. For instance, when attorneys look at your claim they have to estimate, from experience, what a potential recovery would be. In some cases the cost of the suit may not be justified by the potential recovery. However, another firm may estimate the recovery to be much greater and that is why you should always seek a second opinion.

Keep checking our blog and newsletters for more tips and information from our Inquiry Department!



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