

Preface

The 2018 Supplement is current through May 29, 2018, with further inclusion of U.S. Supreme Court decisions through June 25, 2018.

Thirty-five years ago, Marine veteran Jack Gravitt sought my help when he was terminated by General Electric for refusing to misvoucher time spent on fixed-price commercial jet engine projects to the cost-plus B-1B bomber program.

At that time, no statutes, no cases, and no public policy protected Jack's job. Instead, we suggested that the 1943 version of the federal False Claims Act—which had been virtually unused for 40 years—could provide a path to stop General Electric's unpatriotic activities. When Congress learned of *United States ex rel. Gravitt v. General Electric Co.*, we were subpoenaed twice to Washington, D.C. Mr. Gravitt's and my testimony became the catalyst that revitalized the use of the Abraham Lincoln-era *qui tam* suit to allow private citizens to prosecute civil actions seeking to recover federal funds stolen by government contractors. This rare case was the cornerstone on which Congress relied to enact numerous changes to the False Claims Act.

Eventually, every single suggestion we made to Congress in 1985 and 1986 on how to make this dusty and virtually forgotten statute the linchpin for fighting fraud against the United States was accepted by Congress and codified. President Reagan signed the amended False Claims Act on October 11, 1986. My client and I returned to Cincinnati, where our *qui tam* suit eventually produced a record recovery for the United States. But we had little appreciation for the avalanche that we had started.

The 1986 Amendments to the False Claims Act have proven wildly successful in recovering billions of dollars in misappropriated funds by government contractors. These changes have led to the filing of more than 10,000 other *qui tam* cases recovering over \$50 billion for the taxpayers. The U.S. Supreme Court has reviewed 12 such cases, and there are thousands of published decisions by lower federal courts. Laws now protect those brave whistleblowers who are willing to try to redress fraud against the federal government. More than two dozen copycat statutes have been enacted by the states.

In 2008, I argued the *Allison Engine Co. v. United States ex rel. Sanders* case in the U.S. Supreme Court. The Court's decision reinvigorated Congress, which again sought my testimony to set out the flaws in numerous court interpretations of the False Claims Act, including *Allison Engine*. In 2009 and 2010, Congress passed and President Obama signed three laws clarifying Congress' wishes and overturning *Allison Engine* and other wayward decisions.

Having actively litigated False Claims Act cases longer than anyone, it was my intent that *False Claims Act: Whistleblower Litigation* address all major issues that arise in this unique and vastly expanding area of the law. The treatise is dedicated, of course, to Jack Gravitt.

I elected many years ago not to practice my profession solo. I have always believed in and taught a team approach to complex litigation in general, and *qui tam* cases in particular. I have been blessed to be surrounded by professionals who possess a strong moral conscience in what is right and wrong, a sharp eye for details, an unquenchable appetite for hard work, and a lack of understanding of the word surrender. Were this a professional football team, they would all be known as high round draft choices who play like veterans.

I received tremendous assistance from the members of my law firm. You will find the contributions of my longtime partners, Paul B. Martins, Julie W. Popham, Robert M. Rice, and Robert Clark Neff, Jr. throughout the pages that follow. Students of this area of the law will also recognize their names as the advocates in a variety of published cases that have made new law and clarified old law. My newer partners—Erin M. Campbell and James A. Tate—also spent long hours researching, writing, and editing various segments of this book. We also recognize B. Nathaniel Garrett, who returning from his service as an Air Force Captain in the Middle East, provided useful feedback on *Touhy* regulations and the Foreign Corrupt Practices Act.

In addition, my staff—led by my longtime office manager Gina M. Virginillo and my assistants Jennifer P. Pomerantz, Kerri A. Henry, Shae M. Greer, and William J. Diggs II—made sure none of our clients' needs were neglected while this project was completed. I stand in awe of the remarkable variety of things they handle daily and make look so easy.

My colleague Jennifer L. Lambert, in addition to researching, writing, and editing various sections of this book, located and catalogued the court decisions that continue to flow from the avalanche of pending cases and worked on placing such decisions in a logical manner for use by the reader.

For several years we have enjoyed an excellent relationship with Bloomberg Law Book Division Acquisitions Manager Rob Anderson and our clear-eyed and studious editor Joanne Nobile. Scheduling and updating a work of this size is no small task. I am fortunate to have the skill and dedication of such professionals.

Finally, I would like to thank the many employees of the U.S. government who—like us—toil daily in the trenches policing the hordes of government contractors hungry for taxpayer dollars, as well as the law-

yers with whom we have co-counseled so many cases. In the first group are Justice Department lawyers Alicia J. Bentley, David Cohen, Paul J. Wogaman, Diana J. Yountz, William E. Olson, Laurie A. Oberembt, Chris Wilson, Andrew Steinberg, and Russell Kinner, and their leaders, the late Michael F. Hertz, Joyce Branda, Alan E. Kleinburd, and Michael D. Granston; Justice Department appellate specialists Thomas M. Bondy, Douglas N. Letter, and Stephen Frank; Department of Defense Inspector General Investigators Conrad Swenson, John Carper, Brett Flinn, Theresa Quellhorst, John Youngblood, James Terbovich, and James McCartney (NCIS); Assistant U.S. Attorneys Stephen R. Graben, Andrew M. Malek, Sara Winslow, Margret A. Castro, William B. King, Matthew J. Horwitz, now retired from government service, former agents Mike Fewell (DCIS), John Huheey (DCIS), and Stephen Kosky (FBI); and former Department of Justice lawyers Stephen Altman, Sadhna True, Gerald F. Kaminski, and Dennis Phillips (now Judge Phillips). The second group includes John Phillips and Mary Louise Cohen of Phillips & Cohen; Michael A. Havard of Provost ★ Umphrey; Paul D. Cullen, Sr. and Joseph A. Black of The Cullen Law Firm; Meredith L. Lawrence, Timothy Keller, Dale Aschemann, Ronald Osman, Ken Nolan, Steve Dane, Mike Bothwell, Sam Boyd, Mark A. Kleiman, Jeb White, Dave Haron, William D. Hughes, Mike Brady, Ross Begelman, Mark M. Orlow, K. Lawson Pedigo, Rich Harris, Peter Safirstein, Glenn Grossenbacher, Gary Grossenbacher, Rand Riklin, Jarrett Anderson, Jason Idell, Ben F. Galloway III, and Taxpayers Against Fraud executives Patrick Burns, Neil V. Getnick, and James Breen. Sharp readers will detect references to many of these patriots in the pages that follow.

Last, I wish to acknowledge my gratitude to the clients who have trusted me with their causes, the many judges and their law clerks and staff, and jurors who have listened, studied, and, on occasion, agreed with me.

James B. Helmer, Jr.
Cincinnati, Ohio
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