



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA
ex rel.

FLOYD LANDIS,
25350 Eagle's Nest
Idyllwild, CA 92549

Plaintiff,

v.

)
) No.
)
) **COMPLAINT FOR VIOLATIONS OF**
) **FEDERAL FALSE CLAIMS ACT**
)
) **FILED UNDER SEAL**
) **(31 U.S.C. § 3729 et seq.)**
)

Qui Tam Actions and False Claims Acts

- In common law, a writ of qui tam is a writ whereby a private individual who assists a prosecution can receive all or part of any penalty imposed. Its name is an abbreviation of the Latin phrase qui tam pro domino rege quam pro se ipso in hac parte sequitur, meaning "[he] who sues in this matter for the king as [well as] for himself."

The federal False Claims Act (31 U.S.C. §§ 3729–373)

- Imposes liability (typically on federal contractors) who defraud governmental programs. The law includes a "qui tam" provision that allows private parties to file actions on behalf of the government.
- Persons filing under the Act often receive a portion (usually about 15–25 percent) of any recovered damages.
- Claims under the law have typically involved health care, military, or other government spending programs, and dominate the list of largest pharmaceutical settlements.
- The government has recovered nearly \$22 billion under the False Claims Act between 1987 and 2008.

U.S. joins suit against Armstrong; cyclist could be hit hard financially

BY ANNYS SHIN

The Justice Department on Friday joined a whistleblower lawsuit against disgraced cyclist Lance Armstrong, increasing the odds Armstrong may have to forfeit millions of dollars paid out by his team sponsor, the U.S. Postal Service.

The lawsuit, filed in 2010 by former teammate Floyd Landis on behalf of the Postal Service, alleges Armstrong and his team defrauded the government and violated

the federal False Claims Act, poses a bigger threat to Armstrong's wealth because it allows the government to recover three times the monetary damages, in addition to civil penalties.

Part of the case was unsealed Friday, but part continues to be kept under wraps while the Justice Department investigates. The complaint, however, was posted on a blog just before Armstrong's January sit-down with Oprah Winfrey.

The government chose to step

time."

The government chose to back off on pursuing team co-owner William Stapleton, Barton Knapp and Thomas Wiesel, who, along with Armstrong and Bruyninckx, were named in Landis's original complaint. But prosecutors could still go after them in the future.

The United States Anti-Doping Agency (USADA), which released a 202-page report in October on Armstrong's use of banned substances, had lobbied the Justice Department to join the whistleblower

State False Claims Acts

- Twenty-nine states and the District of Columbia have also enacted false-claims statutes to protect their publicly funded programs from fraud by including qui tam provisions.
- Twenty of these state False Claims Act statutes provide similar protections to those of the federal law, while ten states have laws which limit recovery to claims of fraud related to the Medicaid program.

States With False Claims Acts

* = Medicaid only. ♦ = statute provides remedies for Medicaid fraud at least as stringent as under the federal statute.

- California ♦
- Colorado *
- Connecticut *
- Delaware
- District of Columbia
- Florida
- Georgia ♦
- Hawaii ♦
- Illinois ♦

- Indiana ♦
- Iowa *
- Louisiana *
- Maryland *
- Massachusetts ♦
- Michigan * ♦
- Minnesota
- Montana
- Nevada ♦

- New Hampshire
- New Jersey
- New Mexico
- New York ♦
- North Carolina
- Oklahoma
- Rhode Island ♦
- Tennessee ♦
- Texas * ♦
- Virginia ♦
- Washington *
- Wisconsin * ♦

New York Says Yes to False Claims Act Qui Tam Tax Cases

<http://www.corporatecrimereporter.com/news/200/krakowerquitamtax12032012/>

State ex. rel. **Beeler, Schad & Diamond, P.C.** v.
Ritz Camera Ctr., Inc., 878 N.E.2d 1152 (Ill. App. Ct. 2007).

- RITZ CAMERA CENTERS, INC., and Ritz Interactive, Inc., and Wolf Camera, Inc. dELiA*s Corp., NBTY, Inc., and Vitamin World, Inc., and Vitamin World Online, Inc., Anthropologie, Inc., Anthropologie Direct, LLC, and Urban Outfitters Direct, LLC, MTS Incorporated, and Tower Direct LLC, Pacific Sunware of California, Inc., and Pacsun.Com, PetsMart, Inc., PetsMart.Com, and PetsMart direct, Bassnet, Inc., G.H. Bass & Co., Izod Corporation, Izod.Com, Inc., and Phillips Van–Heusen Corporation, Retail Brand Alliance, Inc., d/b/a Casual Corner Group, Presidio Retail, Inc., d/b/a Armani Exchange, Hallmark Cards, Inc., The Pfaltzgraff Company, Hot Topic, Inc., Bass Pro, Inc., Bass Pro Outdoor World, L.L.C., Bass Pro Outdoors Online, L.L.C., and Three Johns Company, a/k/a Bass Pro Shops, Inc., New Balance Athletic Shoe, Inc., New Balance Web Express, Books–A–Million, Inc., Booksamillion.Com, Inc., 1–800–Flowers.Com, Inc., Maidenform, Inc., Tupperware.Com, Inc., Amazon.Com, Inc., Borders Group, Inc., Borders Online, Inc., Toysrus, Inc., and Toysrus.Com, EB Catalog Co., Inc., EB World.Com, Inc., and Electronics Boutique Holding Corp., Spencer Gifts Online, Inc., Universal Studios, Inc., and Universal Studios On–Line, Inc., Stuart Weitaman, Inc., and Gateway, Inc., f/k/a Gateway 2000, Defendants–Appellants.

State ex. rel. Beeler, Schad & Diamond, P.C. v.
Ritz Camera Ctr., Inc., 878 N.E.2d 1152 (Ill. App. Ct. 2007).

- The Appellate Court, on certified questions, held that:
- a remote retailer cannot make a “knowingly” false record or statement sufficient to create liability under the Act if the retailer discloses that no use tax is due or collected based on the taxpayer's reasonable interpretation of the law;
- to state a claim under the Act, the alleged violation must be based on a false statement or document;
- documents memorializing a purchase that discloses that no use tax is being collected cannot be considered false sufficient to create liability under the Act;
- it is not necessary for a false record or statement to be submitted to or directly relied upon by the state to violate the Act;
- Act applies to alleged tax liabilities under the Use Tax Act when fraudulent records and statements exist; and
- Act does not violate the Attorney General Clause or the Executive Compensation Clause of the State Constitution.

HB0074
98th General Assembly
State of Illinois
2013 and 2014

- Court of Claims granted jurisdiction of all appeals of determinations by the Department of Revenue regarding awards under Section 4.5 of the Illinois False Claims Act. Sec. 5, adding new Section 8(j) of the Court of Claims Act.
- All courts divested of civil actions that relate to or involve a false claim regarding a tax administered by the Department of Revenue. A list of taxes follows. Section 10, amending Section 4(e) of the Illinois False Claims Act to add a new Section 4(e)(5).
- Department of Revenue given sole authority to bring administrative action resulting from information provided by any person alleging a false claim under the False Claim Act. New Section 4.5 of the False Claims Act. Department of Revenue is to notify the AG within 60 days of any such false claim act report. Following its investigation of a false claim, the Department is to make a recommendation to the AG as to whether the AG should bring an action under the False Claims Act for all applicable tax and interest the Department determines to be due. The AG has the ultimate authority to accept or reject the Department's recommendation. AG retains discretion to file false claim action in the absence of a departmental recommendation. Department of Revenue retains discretion to proceed by way of audit instead of false claim. Department false claim administrative action is stayed if AG files false claim action. However, any audit conducted instead of false claim administrative action is not stayed even if AG files false claim action.

- If AG proceeds with a judicial action based on information provided by a person, the person shall receive an award equal to at least 15% but not more than 30% of any recovery. If the Revenue Department proceeds by administrative action, the award shall be at least 10% but not more than 15%. No recovery for expenses, attorney's fees, or costs. In addition, if the disclosure of specific allegations resulting from a judicial or administrative hearing, a government report, hearing, audit or investigation, or from the news media is determined by the Department to have been the principal source of information leading to a recovery, a person making such disclosure (other than the person filing a false claim), may receive an award determined by the Department, and not in excess of 10% of the recovery.
- Reduction in award for “false false claims” if the Department determines that a false claim was filed by a person who planned the actions that led to the false claim. No award if such person is convicted of criminal conduct arising from the actions that led to the false claim.

Overpayment Class Actions

Tax Collection Class Action & False Claims Act Project

Draft Issues List

February 22, 2013

1. To what extent do state laws currently allow class actions against sellers for overcollection of tax? To what extent are state False Claims Acts or common law equivalents being used in private litigation alleging undercollection of tax?
2. Should states that impose tax on the buyer limit buyers' class actions against sellers for overcollection of tax and/or False Claims Act litigation for undercollection of tax?
 - a. Have such actions altered the economics of tax collection, such that sellers may believe themselves at significant risk of litigation if they collect less than/more than the proper amount of tax?
 - b. What issues are implicated by having such actions heard by general civil courts rather than following state procedures for resolving tax disputes? For example, the taxing authority is often not joined as a party in these actions and may not have a right to intervene.

c. If a seller is in fact routinely overcollecting, do state tax procedures other than class actions adequately address that problem? Even if an individual consumer is aware of the issue, the amount of overcollected tax may well be too small to justify filing and documenting a refund claim. In the absence of a refund claim, can revenue departments effectively monitor routine overcollections in a cost-efficient manner?

d. State law requires sellers to collect tax on behalf of the state. Does the state therefore have an obligation to minimize seller costs of compliance by providing mechanisms to reduce consumer lawsuits against sellers for under- or overcollection of tax?

f. What additional costs are the states likely to incur if they establish administrative mechanisms to deal with systemic issues of overcollection of tax? In other words, if class actions were eliminated, would the states need to put something else in their place to address the possibility of systemic overcollection, and if so, what would be the associated costs?

3. If alternative procedures for individual consumer refund claims should be established, what should they be?

Additional Class Action Issues Identified in Staff Memo to Sales and Use Tax Uniformity Subcommittee (November 21, 2012)

- In considering whether to endorse the ABA Model Transactional Tax Overpayment Act, there are a number of issues the Commission might first explore. Those issues include, at a minimum, the following:
- Are current state laws adequate to address the issue of class action lawsuits against sellers that seek to recover damages for alleged overpayment of transaction tax?
- If not, why not? What are the shortcomings in existing law that need to be addressed?
- Is the Model Act an appropriate and effective response to the problem?
- If the Model Act were to be adopted, what if any implications would there be for current state sales and use tax refund procedures? For example, the Model Act allows purchasers to file refund claims alternatively with the seller or with the taxing jurisdiction. While the Model Act does not allow for duplicate refund claims, is it clear under the Model Act that there would be mechanisms in place to assure that such duplicate claims are not in fact filed? Otherwise, the taxing jurisdiction would at the least incur unnecessary costs in processing a duplicate claim and at worst, might pay a duplicate claim that the seller has already paid.
- Should the Commission encourage the adoption of the Model Act?
- If so, what form(s) should the Commission's encouragement take? A resolution? Written testimony? Oral testimony?

Additional False Claims Act Issues Identified in Staff Memo to Sales and Use Tax Uniformity Subcommittee (November 21, 2012)

- Is there a problem with FCA lawsuits in relation to state and local taxation of such magnitude that legislation is required?
- Is the Commission the appropriate body to draft model qui tam legislation for tax issues?
- What is the appropriate scope for any such legislation? For example, should a carve out from state FCAs encompass all cases that relate to state taxation? Or only cases where liability for tax is unclear? Is such a distinction – clear liability vs. uncertain liability – administrable?
- Alternatively, should FCA claims related to state taxation be allowed only in cases where it is asserted that the defendants have acted knowingly or committed malfeasance in avoiding state taxes?
- Should the carve out include cases where the state has elected to pursue the FCA in lieu of the private attorney general? Or should it be limited to FCAs that are in fact prosecuted by the private attorney general?
- Should the carve out encompass all state taxes? Or should FCA claims be allowed in cases of failure to collect transaction tax, at least under some circumstances?