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## **Forged Under Civil War Fire, The False Claims Act Blow The Whistle On Would-Be Fraudsters Of The Government Trust**

*[First appeared as a blog piece by Susan M. Coler, partner, Halunen Law:*

*See the original at: <http://www.halunenlaw.com/> ]*

MINNEAPOLIS – (June 13, 2016) Under a little-known law, private citizens with knowledge of fraud against the government can bring a lawsuit against the offending organization. Called the False Claims Act, the law—often called the original Whistleblower Law — originated in the Civil War era, when rampant fraud against the U.S. government threatened the very existence of the country.

Sickened by the spectacle of contractors supplying the army with broken guns and sand-packed bullets, lame pack mules and cardboard boots, President Lincoln pressed Congress for a law setting severe financial penalties for fraud against the government. The law also included a provision to empower private citizens to sue fraud perpetrators on behalf of the government. Known by its Latin name as “qui tam,” this provision allows the courts to award whistleblowers, called “relators” under this law, a share of the monies recovered by the government in fraud cases. In Lincoln’s time, the law brought corrupt defense contractors to heel. Today it serves to protect taxpayers against fraud from contractors in any number of industries. Equally important, the law protects individuals, like the Civil War soldiers fighting with inferior equipment, who suffered injury as a result of the fraud. Many states, including Minnesota, have adopted whistleblower laws to protect against fraud against state agencies.

Whistleblowers, by definition, often find themselves at odds with the companies and organizations whose fraudulent practices they are exposing. Even if the cause is just, the road to success in the courts can be long and bumpy. Having good legal counsel, with strong experience in whistleblower and qui tam/False Claims Act law as well as a willingness to go the distance for their clients, is of paramount importance.

Recently the United States Supreme Court took into consideration a case involving alleged fraudulent billing for mental health services by a Massachusetts mental health clinic charged with providing Medicaid-supported treatment for a troubled teenaged girl. The girl’s parents allege that the clinic failed to provide properly supported and supervised therapy for their daughter, in violation of the clinic’s contract with the state. As with many False Claims Act claims, the case is about fraud against the government, but that conduct also resulted in tragedy for the young woman and her family.

### **Lack of Compliance Leads to Tragic Consequences**

The crux of the lawsuit, joined by both the state and federal government, centers around whether the clinic willfully billed the government for services that it knew were not in compliance

with the law. By law, the unlicensed health care workers who saw their daughter should have been closely supervised by a full-time staff psychiatrist and the clinic director; in reality, no such supervision ever took place, the lawsuit alleges – even when the girl was diagnosed with bipolar disorder and prescribed an extremely potent medication known to occasionally cause seizures when patients quit taking it. For example, the lawsuit alleges that the worker who prescribed the medication held herself out to be a board-certified Ph.D. psychologist, when in fact her application for a license had been rejected.

The girl subsequently experienced problems with the medication which caused her to want to discontinue taking it. She attempted repeatedly to contact clinic staff to discuss her adverse reaction to the medication, but allegedly received no return phone calls. The girl then stopped taking the drug, and subsequently suffered several seizures, one of which led to her death at the age of 19.

Upon follow up investigation, the girl's parents learned that the clinic had misled their daughter about being under the care of a licensed psychologist and about the supervisory oversight that the clinic supposedly provided to ensure quality of care. By billing the state for supervisory services not rendered, the clinic violated the law against fraud, the parents argue in their lawsuit. The federal appeals court agreed with the parents and the state and federal government, that the clinic had submitted false claims for reimbursement for supervisory services that were never provided; the clinic's parent company appealed the case to the Supreme Court, which is expected to issue an opinion on the case in June. The appeals court noted that the state built in the cost of supervision into its payment schedule, and thus did not receive the service that it was paying for – roughly akin to Lincoln's army paying for healthy pack mules for the troops, only to discover that the supplied livestock was lame and unfit for service.

#### **No Way To Treat A Minnesota State Agency Or Its Clients.**

The False Claims Act was also asserted in another recently-filed, healthcare related whistleblower lawsuit in Minnesota, involving a nonprofit provider of mental health care services for patients receiving Medical Assistance. The state contracted with the agency to provide community-based mental health services for Medicaid recipients, often dispatching employees out to visit patients in their homes. The state permitted the agency to use workers with no former medical training to carry out the in-home visits, who would then report back to the agency with a written summary of the treatment provided. Those reports were to be reviewed by trained mental health care professionals, to track the progress of treatment with each patient. But, a lawsuit against the agency alleges that the agency began letting things slide, allowing field workers to submit reports with minimal information that were never reviewed by trained experts, according to the whistleblower – a former employee of the agency with insider knowledge of its operations.

The agency in question denies the allegations, but several other former employees emerged with stories about improprieties at the agency since the lawsuit was filed, according to a Minneapolis Star Tribune article.

#### **False Claims Act and Whistleblower Laws Are Powerful Tools.**

As both of these cases illustrate, taking a False Claims Act case to court is not for the weak of heart. Fraud is a difficult charge to sustain in court, especially when the alleged wrong-doers have reason to believe that they can present a smokescreen legal defense that clouds the issue at hand – and perhaps sways a judge and jury that at worst, they were guilty only of operating a business ineptly

The False Claims Act and whistleblower laws protect the rights of the individual whistleblower, the rights of individuals potentially harmed by the fraud, and the rights of taxpayers who, after all, foot the bill for all government services. Government operates on a good-faith basis with its contractors, and depends on private citizens to help safeguard that public trust. The role of the whistleblower in our society is essential to our way of government. And the False Claims Act is a powerful tool when whistleblowers team up with a law firm prepared to take a stand with them against government fraud.

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[Susan M. Coler, a partner at Halunen Law, represents whistleblowers across the United States in many different industries who challenge illegal corporate conduct, including fraud against the government. As a Labor and Employment Law Specialist, Susan has also brought successful retaliation claims in connection with False Claims Act (FCA) /qui tam cases and as stand-alone actions. Contact her at 612-605-4098.]