

Stages of a Qui Tam Suit and the Whistleblower's Involvement in each Stage

Qui tam law suits, as with most things in law, take a long time to resolution. There are various stages a case goes through and your involvement will be very important at some stages and less important at others. Patience is an important virtue for the relator. To win a qui tam case you need good investigating, good lawyering and a sense of the politics involved. Therefore, certain members of the team, including you, will play a dominant role at different stages.

The preliminary investigation of the charges. This stage will begin as soon as you and your attorney decide to seriously examine your charges to see if a lawsuit can be filed. Most attorneys will want to do some very early investigation before they commit to taking the case, unless your information and documentation is extensive. A good attorney will want to do enough of a preliminary investigation to show the U.S. Attorney and the Justice Department, that will be reviewing the case, that there is some real evidence of fraudulent activity and a realistic chance of a substantial recovery.

This will probably be your most heavy involvement in the case since you know the potential fraud, the company's system, and the mode of operation of the company the best. Your attorney and his or her investigators should be asking you for every bit of knowledge about the case and potential witnesses and following up on your leads. You should not be shy during this stage since you do have the most knowledge of the subject matter. Be concerned if your attorney just takes down a few facts and pursues the investigation without the benefit of your inside knowledge. Investigations are like bank robberies - the most successful ones are inside jobs, i.e., knowing how the company works and how their systems are set up to defraud. You should be working daily with the attorneys, the investigators, and the paralegals. They will want to see all your documentation and ask you the significance of each document. It will be important to stretch your memory to remember every detail about your work and the fraud that you saw.

Writing the complaint, the written disclosure statement and filing the case. The attorneys will write a legal complaint incorporating your knowledge of fraud into a legal document to file with the courts. The qui tam law also requires that the relator file a written disclosure statement that lists all known relevant facts. You may think that your involvement in the legalistic complaint and disclosure statement may be minimal but it is very important that you stay involved. Although the attorney leads in this area, you will ultimately be the person that signs the complaint and disclosure statement stating that they are true and factual. Make sure that every fact is correct and if you don't understand the language, have the attorney explain it to you. You and your attorney will have to live with these documents throughout the case and the defense attorneys will pick at every slight mistake or factual error in order to impeach your credibility. Don't sign the complaint and written disclosure statement until you feel absolutely confident that it is correct.

Under seal. According to the law, the case is filed under seal which means the complaint is sealed by the court and is not served on the defendant. The government then has 60 days to investigate your charges and decide whether or not to intervene in the case. The government usually asks the court and the relator for an extension and the seal could go on for over a year. One of the ideas of the seal is to allow the government to investigate the company without its knowledge of a complaint against it, but it is unrealistic to believe that the information does not leak out to the company within a few months after an investigation begins.

During the time of the seal, the government attorneys and investigators will want to meet with you and go over the factual side of your case. You and your attorney should insist that you don't meet with anyone from the government without your attorney or your investigator present. There are politics involved with qui tam complaints, especially when a powerful company is involved and you need experienced people watching the government attorneys and investigators. Sometimes political or incompetent government attorneys and investigators can wittingly or unwittingly ruin your case and compromise you as a whistleblower, so you and your attorneys and investigators need to be in constant contact with the government to try to follow what they are doing. Some qui tam attorneys who have filed a case and not gotten involved with the government investigation are shocked to see what the government has done to their witnesses, and the case in general, after a year or more of an unchecked government investigation. Make sure that your attorney stays on top of the government investigation and you should volunteer to help in any way possible.

If the government accepts your case. Just because the government accepts your case does not mean that you and your attorney can sit back and wait for a successful conclusion. You will have your deposition taken in the case, but beyond that, you and your attorney should keep in close contact with the progress in the case, much for the same reasons you did while the case was under seal. The government has shown a proclivity to settle for five cents on the dollar in order to get a win and may also feel political pressure from the company's lobbyists to settle low. As a relator, you have a right to file a protest with the court if you think the

proposed settlement is too low, but you need to be able to show factual reasons why the government should get more money. This means that you need to know what the government has or has not been doing in your case.

If the government takes the case to trial, you will be expected to testify as a witness to the fraud and your attorney needs to know the depth of the government case to help prepare you for the defense attorney's cross examination.

If the government declines the case. If the government declines the case, it is good news and bad news. The bad news is that it will require a lot of resources and talent to take the case through the courts yourself and take on a company or corporation that may have even more resources. The good news is that you and your attorney will be acting in behalf of the federal government and will get subpoena power to request documents, the ability to argue motions in court on behalf of the case, the ability to take depositions, including the depositions of corporate managers and executives, negotiate a settlement (which must be approved by the government) and take the case through trial. Usually private attorneys are free of political restraints and have more incentive to show that the fraud is systemic and get a larger settlement or recovery.

If the government declines the case, you and your attorney need to make an assessment to see if the case is worth investing the time and money and to see if the government did anything that would mortally wound your case. Your attorneys and investigators should seek out government procurement experts in your area and ask them to do an evaluation of the case. This will give you and your attorney a better idea on the possibility of success. If you and your attorney decide to take the case, you need to set up a good legal, investigative and expert team and be prepared to slog your way through mounds of documents and motions. Often the company will think that your case and your will is weak because the government did not intervene and will try to obfuscate and delay until your attorney runs low on resources. It is important for you and your attorney to make it be known to the defense counsel and the company that you are ready to go the distance and are prepared to go to trial.

You will probably be a major witness at trial, but if your attorneys and investigators have done their job, your case should go beyond your narrow knowledge and have found systemic fraud throughout the company. This is usually the case in companies that defraud the government and expanding the case will return much more money to the government and increase your recovery.

If you take the case to trial instead of settling and you win a judgment, don't expect to pick up your recovery check the next day. If you are trying a larger company or if the judgment is large, expect the company to appeal the decision. Hopefully your attorney will know good appeal attorneys to assist him or her through the appeal process and has the resources to go through the process. Your involvement will be minimal except that you will have to learn to be patient. If you are lucky, the government and you will finally receive a recovery.

As you can see, a qui tam case is not a quick road to riches for the relator and you will work for any money that you do get. It would be destructive to you to go into a qui tam case desperately needing the money because there are no guarantees that you will receive anything and it could be years before you get an actual check. The best way to think about these cases is that you are righting a wrong and that the recovery is just icing on the cake. Otherwise, the long process could be a miserable one for you.

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