

## ***QUI TAM* WHISTLEBLOWERS: A PLAINTIFF LAWYER'S PERSPECTIVE**



HEALTH CARE COMPLIANCE ASSOCIATION  
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### Who Are the Whistleblowers?



- **Employees**
- **Competitors and companies**
- **Third parties**
  - Customers
  - Consultants
  - Doctors
  - Patients
  - Data miners

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## #1: Employees



- Most **but not all** qui tam “relators” are current or former employees of the defendant company
- What is their level of seniority?
- What is their motivation?
- Are they just “disgruntled employees”?
- Do whistleblower laws encourage them to by-pass the compliance program?
- Are they a threat to the company -- or an asset?

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## How do they help the government make cases?



- Provide company documents, BUT not if:
  - ✘ Attorney-client privileged
  - ✘ Accessed without authority
  - ✘ Random (e.g. a data dump)
- Provide audio and videotapes
- Identify witnesses and documents to subpoena
- Help the government analyze documents subpoenaed from the defendant
- Provide industry knowledge and expertise

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## How do they help the government make cases?



“Whistleblowers increase our efficiency and conserve our scarce resources ... [at a time when] right-minded companies are searching for new, more aggressive ways to improve corporate culture and compliance, it is past time to stop wringing our hands about whistleblowers. They provide an invaluable public service, and they should be supported.”

- Mary Jo White, SEC Chair, April 2015

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## #2: Competitors and Companies



- Companies are often the first to know about fraud by competitors
- Whistleblower laws can be used to expose illegal business practices of rivals and level the playing field by eliminating bad actors from the marketplace
- Companies can receive a whistleblower award
- Whistleblower laws can be a profit center for companies

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## Corporate Whistleblowers



- **Sanofi-Aventis**
  - Competitor Mylan underpaid Medicaid rebates. \$465M
- **Ven-A-Care**
  - Pharmacy reported price inflation and kickbacks by pharma companies. \$4B
- **Scantibodies Lab**
  - Competitor conducted faulty PTH tests: \$302M
- **Hunter Labs**
  - Competitor discounted tests below Medicaid rate. \$241M

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## #3: Third Parties



- **Customers**
  - e.g., TAP Pharmaceuticals \$585M (HMO employee)
- **Patients**
- **Doctors**
  - e.g., Labcorp \$187M
- **Consultants**
  - e.g., eClinicalWorks \$155M
- **Data miners**

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# Q&A

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