

April 9, 2003

## U.S. Supreme Court Finds Local Governmental Entities to be Persons Subject to *Qui Tam* Actions Under the False Claims Act

On March 10, 2003, in *Cook County v. United States ex rel. Chandler*, the United States Supreme Court found, for the first time, that local governmental entities are subject to *qui tam* actions under the Federal False Claims Act (FCA), 31 U.S.C. §§ 3729-3733. Prior to this decision, the courts had been split as to whether local governmental entities were covered under this part of the FCA.

### The False Claims Act

The FCA provides civil penalties against any “person” who, among other violations, “knowingly presents, or causes to be presented, to an officer or employee of the United States Government . . . a false or fraudulent claim for payment or approval.” While the U.S. Attorney General can bring suit under the FCA, the FCA permits private persons, known as “relators,” in what is known as a “*qui tam*” action, to bring suit on behalf of the government and collect as a reward a portion of the recovery. The recovery can include civil penalties of \$5,500 to \$11,000 for each violation, *treble damages* for the funds fraudulently obtained, plus attorneys’ fees and costs. The Act also prohibits retaliation against employees who bring such suits.

### The Decision in *Chandler*

In *Chandler*, the relator, a disgruntled employee, brought a *qui tam* action under the FCA against Cook County, alleging that the County along with an affiliated research institute had submitted false statements involving a \$5 million grant from the National Institute of Drug Abuse for the study of a treatment for pregnant drug addicts. The relator claimed the County had: (i) violated the grant’s express conditions; (ii) failed to comply with the regulations on human subject research, and (iii) submitted false reports on “ghost” research subjects.

The issue before the Supreme Court was whether the County, as a local governmental entity, could even be subject to a *qui tam* action. The County argued that the claims against it should be dismissed because the Act only permitted suits

against “persons,” and thus it was not subject to the Act. The County also argued that, as a local governmental entity, it could not be subject to suit because the treble damages provided for in the Act were not remedial, but punitive in nature. Indeed, in *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765 (2000), the Supreme Court had held that states were not persons subject to *qui tam* actions, and noted that the Act’s 1986 amendment to provide for treble damages instead of double damages was “essentially punitive.”

In a unanimous decision, the Supreme Court held that, unlike states, local governmental entities were “persons” subject to *qui tam* suits under the FCA. The Court relied upon a long held presumption that the term “persons” in statutes includes public and private corporations. While the Court admitted it had relied upon the nature of the damages as one of its rationales in *Stevens* for not subjecting states to the FCA, it distinguished *Stevens* on the grounds that, unlike states, local governments had always been considered to be “persons” under federal law. As such, the Court refused to find that Congress intended to implicitly exclude local governments when it increased the penalties in 1986. The Court also noted that treble damages were not completely punitive in the sense that: (i) damages were capped; (ii) up to 30% of a judgment would go to the relator instead of the government; and (iii) the extra damages to some extent made up for the fact the Act did not provide for consequential damages that traditionally are recoverable in fraud actions or pre-judgment interest.

### The Impact of *Chandler*

*Chandler* should be a wake-up call to any governmental entity which seeks funding from the federal government — or state government, for that matter, as most states have similar statutes for state funding. Now more than ever local governments are seeking grants and other funding to provide essential services. Competition for such funds is fierce, and some administrators might be tempted to “fudge” on a grant applica-

tion or, once the grant monies are awarded, divert funds to meet other pressing needs not necessarily covered by the grant. Such actions could now bring fines, treble damages and attorneys' fees. Moreover, as the person bringing such a suit stands to gain a windfall of up to 30% of any recovery, the most likely relator will be a disgruntled or former employee or a union. No one is immune. For example:

- ♦ A Louisiana school district found to have charged the federal government more for its workers' compensation and unemployment insurance than it should have was assessed over **\$21 million** in treble damages for the false claims, and also was hit with over **\$271,000** for pain and suffering and double damages for back pay for retaliating against the employees who reported the violations. In 2001, before *Chandler* held otherwise, the Fifth Circuit Court of Appeals had overturned the treble damages award. *United States ex rel. Garibaldi v. Orleans Parish School Bd.*, 244 F.3d 486 (5th Cir. 2001).
- ♦ Northwestern University, a revered private institution, recently settled a False Claims suit brought by a former employee alleging that the University "knowingly failed to comply with federal government requirements that a specific percentage of the researchers' effort be devoted to the grant."  
The settlement: **\$5.5 million** plus attorneys' fees.

Each local government should take all steps necessary to place sufficient checks and balances on the grant/fund application and grant administration process to insure that its grant/funding applications are 100% accurate, that the funds received are fully accounted for and used in complete accordance with the grant/funding terms, and that any unused or excess funds are promptly returned.

If you have any questions regarding this decision or its impact on your organization, please do not hesitate to contact your Seyfarth attorney.

---

This newsletter is a periodical publication of Seyfarth Shaw and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. For further information about these contents please contact the firm's Labor & Employment Law Practice Group in the Chicago office.

#### ATLANTA

One Peachtree Pointe  
1545 Peachtree Street, N.E., Suite 700  
Atlanta, Georgia 30309-2401  
404-885-1500  
404-892-7056 fax

#### BOSTON

Two Seaport Lane, Suite 300  
Boston, Massachusetts 02210-2028  
617-946-4800  
617-946-4801 fax

#### CHICAGO

55 East Monroe Street, Suite 4200  
Chicago, Illinois 60603-5803  
312-346-8000  
312-269-8869 fax

#### HOUSTON

700 Louisiana Street, Suite 3850  
Houston, Texas 77002-2731  
713-225-2300  
713-225-2340 fax

#### LOS ANGELES

One Century Plaza  
2029 Century Park East, Suite 3300  
Los Angeles, California 90067-3063  
310-277-7200  
310-201-5219 fax

#### NEW YORK

1270 Avenue of the Americas, Suite 2500  
New York, New York 10020-1801  
212-218-5500  
212-218-5526 fax

#### SACRAMENTO

400 Capitol Mall, Suite 2350  
Sacramento, California 95814-4428  
916-448-0159  
916-558-4839 fax

#### SAN FRANCISCO

101 California Street, Suite 2900  
San Francisco, California 94111-5858  
415-397-2823  
415-397-8549 fax

#### WASHINGTON, D.C.

815 Connecticut Avenue, N.W., Suite 500  
Washington, D.C. 20006-4004  
202-463-2400  
202-828-5393 fax

#### BRUSSELS

Boulevard du Souverain 280  
1160 Brussels, Belgium  
(32)(2)647.60.25  
(32)(2)640.70.71 fax