

TESTIMONY OF MARC S. RASPANTI, ESQUIRE

PHILADELPHIA, PENNSYLVANIA

ON HOUSE BILL 1671

SESSION OF 1997

AS AMENDED

COMMITTEE ON JUDICIARY

HOUSE OF REPRESENTATIVES

APRIL 28, 1998

PROPOSED PENNSYLVANIA FALSE CLAIMS ACT

THURSDAY, AUGUST 20, 1998

WILLIAM GREEN FEDERAL BUILDING
PHILADELPHIA, PENNSYLVANIA

Introduction

Good morning, Mr. Chairman and Members of the House Judiciary Subcommittee on Courts. My name is Marc S. Raspanti and I am a partner in the Philadelphia law firm of Miller, Alfano & Raspanti. I am honored to have been invited to provide you with my comments on House Bill 1671 which was introduced by Representative Kenney and, as I understand it, thirty-three (33) other legislators. I will refer to House Bill 1671 throughout my remarks as the "Pennsylvania False Claims Act." Before providing the Committee with my comments on H.B. 1671, I was asked to provide the Committee with some brief information about my background.

I began my career in public service as an Assistant District Attorney in Philadelphia under then District Attorney and now Mayor Edward G. Rendell. After leaving the District Attorney's Office and after practicing law with two large Philadelphia law firms, I founded my own law firm with two other partners ten years ago. Our firm is comprised of a number of former state and federal prosecutors. We have had extensive experience over the last ten (10) years with all aspects of the federal False Claims Act, particularly in the area of Procurement Fraud and Health Care Fraud. We also have represented *qui tam* plaintiffs, or whistleblowers, who have come forward, sometimes at tremendous personal sacrifice, to uncover fraud, waste and abuse within the federal system. I represented the lead whistleblower, Robert J.

Merena, in a whistleblower suit filed in November 1993 against SmithKline Beecham Clinical Laboratories. That case led the federal government to obtain the largest health care recovery in the history of the United States -- almost \$334 million.

I was honored to have been asked, by Representative George Kenney, the Pennsylvania Attorney General's Office and the Philadelphia District Attorney's Office, to consult and assist in their drafting of the Pennsylvania False Claims Act. The Committee has before it a statute that, there is no question, will significantly enhance and expand the fraud-fighting capabilities of the Commonwealth of Pennsylvania. It will place Pennsylvania in an ever-growing number of states passing their own false claims statutes, and enlist the considerable resources, insight and knowledge of private citizens who, I predict, with the appropriate protections and inducements, will come forward, as they have under the federal statute, and uncover fraud, waste and abuse for the citizens of the Commonwealth of Pennsylvania. The proposed statute will also serve as a significant deterrent against those who might consider defrauding the Commonwealth and its political subdivisions.

The Federal False Claims Statute

In 1986, President Ronald Reagan introduced and a united bipartisan Congress passed significant amendments which breathed life into the 1863 federal False Claims Act originally introduced by President Abraham Lincoln. The scope of the false claims statute was expanded; whistleblowers were provided with more generous recoveries and protections; and due to the complexity of these issues, private lawyers were included in the process. During the twelve (12) years since those amendments were passed, federal recoveries under the Act have skyrocketed from millions per year to over \$600 million per year. Of the most current statistics that I could obtain, the *qui tam* or whistleblower provisions of the 1986 amendments have recovered in excess of \$2.3 billion since 1986 alone. The recoveries to the federal treasury continue on virtually a daily basis.

In an effort to generate the same types of recoveries for their states, the law enforcement and public interest communities in California, Michigan, Utah, Florida, Illinois, Louisiana, Tennessee and the District of Columbia have introduced and been instrumental in passing legislation that provides for specific statutory remedies for fraudulent claims for state funds, and provides for private *Qui Tam* enforcement of that remedy. A number of other states, including New York, Massachusetts, Washington, New

Jersey, Delaware, and, of course, Pennsylvania, are actively drafting and reviewing statutes of their own.

My firm prediction is that, within the next few years, as a result of the tremendous successes of the federal statute, most, if not all of the 50 states will pass their own versions of a False Claims Act modeled, to some degree or another, after the federal statute. If the Pennsylvania statute is passed, state prosecutors will set up affirmative civil litigation units within their offices staffed with prosecutors dedicated to ferreting out fraud, waste and abuse throughout the Commonwealth, with House Bill 1671 as their primary weapon.

Overview of State Qui Tam Enforcement Provisions

The first state to pass False Claims Act legislation was California, in 1987. The California statute is now up and running and, from what I understand, is leading to significant recoveries. The California False Claims Act was advocated by local public interest lawyers and law enforcement organizations based on their findings that fraud, on the state and local level, had increased dramatically. In 1992, Illinois enacted the Illinois Whistleblower Reward and Protection Act, which was modeled after the federal statute. Florida passed the Florida False Claims Act in 1994 and

the District of Columbia enacted similar legislation in 1997. In 1993, Tennessee became the first state to enact civil false claims legislation directed solely at Medicaid claims. In 1997, Louisiana passed the Medical Assistance Program Integrity Law to combat and prevent fraud and abuse committed by some health care providers participating in the Medical Assistance Program. In the same year, Texas passed legislation relating to fraud and improper payments under the state Medicaid program and other related programs. All statutes include *qui tam* provisions.

Pennsylvania Needs Its Own False Claims Statute

Each year, the taxpayers of the Commonwealth of Pennsylvania fund billions of dollars of programs which involve contracts of all types -- from the state contribution of the Medicaid program, to state-funded construction projects, primary and secondary schools, institutions of higher learning, road building, development authorities, block grants, research grants, agricultural subsidies, state hospitals, environmental and natural resource management, wild life preservation, and, of course, a complex framework of procurement which leads to the purchases of billions of dollars of goods and services every year by the Commonwealth and its political subdivisions.

All of these contracts rely implicitly on the good faith and integrity of the entities and individuals doing business with the Commonwealth and its many political subdivisions. Unfortunately, when that trust is misplaced, there is little that can be done to effectively punish those wrongdoers where it really counts -- their pocketbooks.

Under existing Pennsylvania law, while there has been significant strengthening of insurance fraud statutes over the last few years, no other statute currently on the books provides the law enforcement community with the significant fine and penalty provisions of the proposed legislation or most importantly, the ability to enlist private citizens to help the Commonwealth ferret out fraud. The newspapers have been filled with stories of large recoveries obtained by the federal government over the last ten years in health care fraud cases, in federal procurement fraud cases against shoddy defense contractors, in problems associated with research grant fraud and other types of contracts. The fact of the matter is, however, that the great majority of taxpayer money flows not through the federal government but rather, through the 50 states. The federal false claims statute has no jurisdiction over most of these dollars.

The Commonwealth and its political subdivisions disburse billions of dollars into thousands of state and local programs each

and every year. Taxpayers are asked to fund these programs, but in reality, have very little meaningful protection against unsavory contractors who defraud the Commonwealth or its political subsidiaries. House Bill 1671 strikes the appropriate balance of providing prosecutorial authorities with significantly enhanced abilities to uncover, investigate and prosecute those individuals or entities who have defrauded the Commonwealth. It will allow prosecutors to not only recoup monies fraudulently obtained, but exact fines and penalties against the very perpetrators of the fraud. The statute also provides for a well thought-out structure of sharing responsibilities, which is tailored to the uniqueness of the Commonwealth of Pennsylvania. Finally, it provides prosecutorial authorities in the Commonwealth with the aid, benefit, experience, guidance, insight and financial resources of private citizens, or whistleblowers, who, as a result of strong protections and incentives under the statute, will come forward and unmask fraud where few had been willing to venture before.

The Pennsylvania False Claims Statute
Is Needed to Combat Complex Fraud Schemes

Today's fraud schemes are as complicated and complex as the individuals and entities who commit these serious offenses. Computers, the Internet, and a new generation of more sophisticated

criminals make fraud detection and prosecution increasingly difficult. Insiders have the ability to provide the Commonwealth with a road map to uncovering the fraud and prosecuting the responsible individuals. The statute provides the Commonwealth with a generous statute of limitations, similar to the federal statute, of six years, and broad remedies under Section 705, which will allow prosecutorial authorities to take meaningful and immediate steps to stop false claims from being filed against the Commonwealth, including injunctions against false claims, similar to powers enjoyed by the federal authorities, divesting of ill-gotten gains, tracing of inappropriate properties and the appointment of a temporary receiver to stop further fraud.

The statute also would allow prosecutors to serve what is known as a Civil Investigative Demand on a subject, target or witness. This Civil Investigative Demand would allow the appropriate prosecuting authority, if it has reason to believe that any person may be in possession, custody or control of any documentary evidence or information relevant to a false claims investigation, to obtain such documents. Lastly, the passage of strong anti-fraud legislation will not only recover millions of dollars back to the taxpayers and fuel additional anti-fraud prosecutions, but this statute will have a strong deterrent effect

to dissuade potential cheats from defrauding the Commonwealth or its political subdivisions in the first place.

Thank you for allowing me to provide the Committee with my comments. I would be happy to answer any questions that the Committee may have.

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