

# Jeb White on Low Hanging Fruit, Boxed Fruit and Health Care Fraud

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When it comes to health care fraud whistleblower cases, the government has high standards.

Forget the low hanging fruit.

The government wants boxed fruit.

That's the take of qui tam relator attorney Joseph E.B. "Jeb" White.

White is a partner at Nolan & Auerbach in Philadelphia, Pennsylvania.

The firm does only False Claims Act cases.

And only health care fraud False Claims Act cases.

White was former head of Taxpayers Against Fraud – the Washington, D.C. advocacy group that works on behalf of qui tam relators.

And he knows well what kind of case the government wants.

"We are very selective," White told Corporate Crime Reporter. "We tend to only get involved in what we feel are the strongest cases."

The False Claims Act gives the government a chance to look at the case to decide whether or not they are going to intervene in the action. And because of that, the government has to be selective. They don't want just low hanging fruit. They want boxed fruit."

"When we bring a case and walk in the door, we want the government to have some level of confidence that we are bringing a case that has been fully vetted."

"So, we only bring a handful of cases in any given year."

White has the False Claims Act statistics at his fingertips.

Only 100 cases are settled every year – and 75 percent of the dollar recoveries are from health care fraud cases.

For every ten cases that come in the door, White and his partners take one.

How does he filter them out?

"We have to be able to prove a case," White said. "We are looking for evidence of systematic fraud. We are not interested in cases where a rogue employee went off the track."

"What you want to see is this was a business plan fraud, a scheme from the top of the company, filtering it way down to the employees at the lowest level. And you want to see evidence backing that up."

“So, we are looking for a potential relator who comes in the door with the goods – evidence to back up their allegations.”

“And secondly, we are looking for a credible witness. At the end of the day, we want to say – this is somebody, if it gets to the trial level, that a jury is going to believe in. So, we want to look at the background of that whistleblower. Is this somebody who is going to be credible if and when this person is put on the stand?”

“And then the last thing that we look for are potential jurisdictional bars or procedural hurdles that would potentially prevent this individual from recovering at the end of the day.”

“There are a whole number of obstacles and road blocks that prevent you from being successful under the False Claims Act. The most common hurdle is what is known as the public disclosure bar. Are these allegations already out there publicly? We do a lot of work to see – is this something that the government is already aware of? Have there been newspaper articles about it? Has there been a GAO investigation? Is the information we are providing something that the government is going to find interesting, compelling and new?”

White says the government intervenes in only about 25 percent of the False Claims Act cases.

But working under tightening budgets, its approach is changing.

“The government has limited time, money and resources,” White says. “So, they have to pick and choose. And sometimes the case simply isn’t ready. The relator hasn’t fully flushed out the allegations sufficiently for the government to intervene.”

“Another reason is that the courts do not like cases to sit on their dockets for years. So, they will put pressure on the government to make up its mind before the government is ready to make up its mind.”

“So increasingly, you will see the government say – we are not intervening at this time – signaling to the relator’s lawyer – please keep this case alive, we are going to come back later.”

“And finally, they simply don’t have the resources. So, they will say to the relator’s lawyer – we are declining, but we would encourage you to move forward. We see this as a meritorious case. You have the ability to garner the additional resources that we don’t have. We are declining, recognizing that you can pick up the ball and move it forward for us.”

“So, there are a lot of factors – but time, money and resources are usually the determining factors.”

White says there are about 300 to 400 lawyers practicing on the plaintiffs’ side and 300 to 400 lawyers practicing on the defense side.

Taxpayers Against Fraud represents the qui tam relators and their lawyers in Washington.

Is there a similar group representing the defense bar in Washington?

“Not that I’m aware of,” White says. “There is not a Taxpayers for Fraud that I’m aware of. If there is, they meet in secret.”

White figures that out of the 100 False Claims Act cases settled every year, five of them are blockbusters. The remaining 95 settle for about \$10 million each.

And while the average whistleblower award hovers around 16.2 percent, that’s before taxes and the attorneys’ cut. After those are taken out, the whistleblower gets 8 to 9 percent – or about \$1 million or less.

Does that mean whistleblowers are knocking on his door?

“Usually they call,” White says. “And they usually call right after they have been fired. I should keep a record of this. I would say 99 percent of the time they are calling because they tried to step up to do the right thing, they were alienated, isolated and ultimately terminated by the company. And then they call us to try to get their job back. And sometimes the phone call comes from the company phone as they are cleaning out their offices after being fired.”

[For the complete q/a transcript of the Interview with Jeb White see 26 Corporate Crime Reporter 8(12), February 20, 2012, [print edition only](#).]