

More Plaintiffs Attorneys Looking to Handle Whistleblower Cases

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With new incentives for whistleblowers and high-profile awards making headlines, an increasing number of plaintiffs attorneys are looking to expand into the often-difficult qui tam arena.

Earlier this month, personal injury firm Messa & Associates hired products liability lawyer Claudine Q. Homolash as an of counsel attorney with an eye toward helping the firm to grow its qui tam practice.

Her addition to the firm is just the latest example of the recent trend. This month, two small Philadelphia firms merged to create McEldrew Young, a practice that covers both medical personal injury and qui tam claims, and several attorneys who spoke with *The Legal* said that, over the past five years, numerous other traditionally personal injury-oriented firms have taken steps to either enter into or expand on their qui tam practices.

Joe Messa, who heads Messa & Associates, said he currently handles a few qui tam cases, but the time seemed right to begin expanding his practice. He said he has known Homolash, who focuses on qui tam and mass torts, for several years. With her recently becoming a solo practitioner, he said he felt

the two could benefit from bringing her into the firm.

"It hasn't been a significant area of the practice, but it's something we want to grow," he said.

According to many attorneys who spoke with The Legal, while qui tam is a highly attractive area for many attorneys, it is a difficult practice, and should not be entered into lightly.

Homolash said qui tam cases can be very different from the typical personal injury case, but that her background in pharmaceutical cases will help her and Messa's firm to grow both the mass torts and qui tam work.

"I think this seems like the right fit because a lot of work overlapped," said Homolash, who, along with working as of counsel to Messa & Associates, will also continue maintaining her own firm that she started in December. "Working with Joe will allow me to expand my practice as well as his."

According to several attorneys, the federal government has expanded the protections and incentives for whistleblowers over the past few years, which helped spark the interest from plaintiffs attorneys.

Stephen Sheller, who heads Sheller P.C., pointed to the \$1.42 billion settlement that Eli Lilly & Co. agreed to in 2009, as ushering in the era of qui tam. Sheller had filed suit in that case.

"Everybody sees these big numbers coming and the plaintiffs bar piled on," Sheller said.

But despite many personal injury attorneys recently flocking to the practice area, qui tam is very different from a typical personal injury case. One of the main differences, according to several attorneys, is that the cases require a lot of investigation.

According to Messa, oftentimes qui tam cases involve highly complex schemes, and understanding them can take time and a sophisticated understanding of the industry. Breaking the schemes down to an easily understandable level for juries also takes a lot of skill as an attorney, Messa said.

"That's a very important part of the qui tam practice," he said.

Qui tam cases also often involve participation from federal attorneys, and several lawyers said after initially working up a case, the next move is to get the government involved, as it can help shoulder some of the investigative burden

and can take the cases to trial.

Developing relationships with federal attorneys is therefore an important factor in maintaining a successful qui tam practice, attorneys told The Legal. But with the number of attorneys increasing in the field, getting the government to pay attention has become increasingly difficult.

Sheller, who has been involved in qui tam litigation for more than a decade, said he used to say attorneys needed to bring their cases to U.S. attorneys on a silver platter, but now they have to bring their cases on a platinum platter.

"The U.S. attorneys are overburdened with lots of cases, which has made it very difficult for them to get involved," Sheller said.

Plaintiffs attorneys must be increasingly ready to fully investigate and bring their cases to trial if necessary, many attorneys said.

Messa said he hopes to build on the relationships Homolash has already established with government officials.

"We intend to utilize her knowledge and skills, and to use her experiences and the relationships she has around the country," Messa said.

According to Thomas R. Kline of Kline & Specter, one of the best ways to ensure success in the qui tam arena is to have experience in the area. That way whistleblowers with meritorious claims will be attracted to the practice, and government officials will be more likely to take note and become involved in a firm's investigation.

"The key to a real qui tam practice is real results, and an ability to navigate complex waters and to demonstrate to potential clients how it's done successfully," he said. "That doesn't exist overnight, and it doesn't exist when a lawyer puts an advertisement on the Internet simply saying 'I'm a whistleblower lawyer.'"

Kline said over the past few years his firm has built the qui tam section into an important part of the firm's practice. In 2010, the firm hired attorney David Caputo to head the qui tam department. Caputo, who began working at Kline & Specter in 2002, had left the firm to work for several years in the U.S.

Attorney's Office for the Eastern District of Pennsylvania, where he served in the government, environmental and health care fraud section.

Despite the pitfalls, many attorneys agreed that there is significant overlap between qui tam and personal injury cases, particularly in the medical field,

since both require significant research and understanding of industry practices.

Messa said the two practice areas are a "natural marriage."

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