From: Lindsey Williams <lmw@whistleblowers.org>
Sent: Wednesday, March 9, 2011 8:24 PM
To: Whistleblowers <Whistleblowers@CFTC.gov>
Subject: NWC Comment on 17 CFR Part 165 Implementing the Whistleblower Provisions of Section 23 of the Commodity Exchange Act
Attach: 3.9.2011LettertoCFTConChamberLetter.pdf

To whom it may concern:

Attached please find comments from the National Whistleblowers Center on the CFTC's proposed rules implementing the whistleblower provisions of the Dodd-Frank Act. Thank you for your consideration.

Sincerely,

Stephen M. Kohn
Executive Director

Lindsey M. Williams
Director of Advocacy and Development

National Whistleblowers Center
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March 9, 2011

Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Re: Comments and Legal Guidance to the Proposed Rules for Implementing the Whistleblower Provisions of Section 23 of the Commodity Exchange Act
Reply to February 15th Letter from Chamber of Commerce

Dear Members of the Commission:

We are writing in response to a letter filed in the above-captioned rulemaking proceeding by the Center for Capital Markets Competitiveness of the U.S. Chamber of Commerce on February 15, 2011 to the SEC. In this letter, the Chamber attempts to rebut the findings presented by the National Whistleblowers Center in its report dated December 17, 2010, *The Impact of Qui Tam Laws on Internal Compliance*. The attached letter of reply to the SEC addressing the Chamber's rebuttal will be beneficial to the Commodities Futures Trading Commission in its rule making process. Please consider this a supplemental comment to be filed with the Commodities Futures Trade Commission.

Thank you in advance for your prompt and careful attention to this letter.

Respectfully submitted,

Stephen M. Kohn
Executive Director

Lindsey M. Williams
Director of Advocacy and Development
National Whistleblower Center

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March 7, 2011

Mary L. Schapiro
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-2736

Re: Comments and Legal Guidance Concerning Proposed Rule 240.21F-8 for Implementing Whistleblower Provisions of the Dodd-Frank Act
Reply to February 15th Letter from Chamber of Commerce

Dear Chairman Schapiro:

We are writing in response to a letter filed in the above-captioned rulemaking proceeding by the Center for Capital Markets Competitiveness of the U.S. Chamber of Commerce ("Chamber") on February 15, 2011. In this letter, the Chamber attempts to rebut the findings presented by the National Whistleblowers Center ("NWC") in its report dated December 17, 2010, *The Impact of Qui Tam Laws on Internal Compliance.*

The Chamber's letter is not well taken. The Chamber incorrectly alleged that the NWC failed to publish the data it relied upon in its *Impact* report. As explained below, that data was fully cited, explained and made public by the NWC. The Chamber also incorrectly stated the current law on internal reporting under the False Claims Act ("FCA"). The Chamber argued that in order for employees to be protected under the FCA, they had to engage in some form of internal reporting. In fact, the exact opposite is true. The Chamber misinterpreted the judicial holdings in all twelve federal judicial circuits in the United States.

Upon careful analysis, the Chamber's letter provides strong support for three fundamental principles upon which the SEC's Dodd-Frank whistleblower rules should be predicated:

1) Employees who work for compliance departments, from the chief compliance officer all the way down to a line-level auditor, must be fully protected against any form of retaliation for aggressively performing their functions, regardless the impact on a company's bottom line;

2) Employees who provide information to compliance officials must be completely free from any form of retaliation or discrimination;

3) All employees in regulated industries who perform compliance functions must be fully protected under the Dodd-Frank Act and permitted to file appropriate claims.

The NWC has worked with compliance-related employees since its inception and is concerned that the final rule will not adequately protect these employees who are on the frontline of detecting and reporting fraud.[1] From the earliest days of whistleblower protection, companies have harassed and intimated their own inspectors for doing their job "too well" and only a well-crafted Commission rule designed to properly protect internal compliance will fully succeed in insuring that the Congressional mandates are fulfilled. *Compare* Brown & Root, Inc. v. Donovan, 747 F. 2d 1029 (Inspector *not* protected) with Mackowiak v. University Nuclear Systems, Inc.. 735 F.2d 1159 (Inspector protected). As fully explained, the Chamber and members of the Chamber of Commerce have failed to support independent and aggressive internal compliance programs as highlighted by their continuing efforts to have courts across the United States issue rulings that have proven to be detrimental to the integrity of compliance programs. *See* Attachment A.

The first argument raised by the Chamber alleges that the NWC did not identify the cases it relied upon in reaching the report's conclusions regarding the impact of *qui tam* cases on internal reporting. The Chamber states that the "107 cases relied upon" by the NWC were "not identified in the report." This is not true. In the NWC report filed on December 17th, although the exhibits were not separately marked by an exhibit number, the NWC specifically stated on page 31 of the report that the cases relied upon by the NWC in its report were posted on the NWC's website.

On the evening of December 17th we noticed that the exhibits to the report were not identified by exhibit number, although were clearly identified in this body of the report and highlighted by a link. In order to ensure that any person seeking to review the NWC's underlying data would have ready access to the information, the NWC filed a corrected report onto the official record. The Commission identifies this updated report as having been filed on December 18th. In any event, had the Chamber simply read either report, or had they checked the references on the NWC web site that were referenced in

[1] The NWC has extensive experience working with compliance officials, from line managers to high-ranking compliance executives. We hope that, in our weighing in on this issue, the Commission will understand that numerous compliance employees at the grassroots level are not being heard. The reasons are obvious: top-level officials report either to the general counsels or other management who have taken policy positions that are inconsistent with line-level compliance employees.

the December 17th and 18th filing, they would have had immediate access to two charts that listed each of the 107 cases relied upon by the NWC.[2]

Additionally, the methodology used by the NWC to identify the cases relied upon in its report was explicitly and clearly spelled out in the "Methodology" section of the report at pages 28-30 of the December 17th report. *See* Report, pp. 28-30. In that section, the NWC again stated that the 107 cases were fully cited in a list on the NWC web page:

> This left a final population of 107 cases that were then analyzed to determine if the employee-plaintiff reported the alleged fraud internally before filing a lawsuit, whether or not they worked in a compliance or quality assurance related position for their former employer, and if the Plaintiff engaged in a "protected action" under 31 U.S.C. 3730(h). These cases are listed (and the classification of the case provided by the NWC is set forth) in the chart published at: www.whistleblowers.org

Also, in the Methodology section of the report, the research methods used by the NWC were clearly described. This methodology consisted of an objective utilization of an easily accessible LEXIS research program available to every law firm in the United States. Unquestionably, the Chamber had access to this database and could easily have conducted the same computerized search conducted by the NWC. In fact, the search conducted by the NWC was a very standard and easy to duplicate search of cases decided under a specific statutory provision. If the Chamber actually doubted the accuracy of the NWC's search, it could have very easily duplicated the search and reviewed the underlying data itself.

The second argument raised by the Chamber alleges that the database relied upon by the NWC (i.e. False Claims Act cases referencing subjection "h" of the statute") presented an inaccurate picture of reporting trends. According to the Chamber, the NWC data base was invalid because:

"*a person basing a violation on subsection (h) must have alleged some form of internal reporting or other act in furtherance of a qui tam case. The analysis is accordingly circular, insofar as the cases selected be definition reflect some form of internal reporting.*"

Letter, p. 2 (emphasis added).

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[2] *See* Dodd-Frank Rulemaking Exhibits 3 & 4 at: http://www.whistleblowers.org/index.php?option=com_content&task=view&id=1169#Exhibits

This criticism of the NWC report is completely unfounded. Subsection (h) of the FCA does *not* require employees to undertake any form of "internal reporting" in order to be protected under that provision. In fact, the opposite is true. Subsection (h) has been interpreted by the courts as requiring either direct contact with the government, or internal actions by employees that clearly indicate an employee is about to file a *qui tam* action. In other words, almost every court in the United States has held that purely internal reporting of whistleblower concerns under subsection (h) is *not* a protected activity. *See Kennedy v. Aventis*, 512 F. Supp 2d 1158 (N.D. Ill, 2007). *See* Attachment A.

The true state of the law is the exact opposite as set forth by the Chamber in this letter. The NWC's "analysis" is *not* "circular," as subsection (h) does *not* require any form of internal reporting whatsoever.

Furthermore, because the case law holds that employees who report government contract fraud only to their supervisors and/or to audit or compliance offices are *not protected under the law*, one would actually assume that the data used by the NWC, if anything, understates the amount of internal reporting in False Claims Act/government contractor fraud cases.

The Chamber should have been fully aware that courts in the United States have consistently held that purely internal complaints are ***not*** protected under subsection (h) of the False Claims Act[3] or under other similar anti-fraud whistleblower laws.[4] *See* Attachment A.

For example, in *Hoyte v. American Red Cross*, 518 F.3d 61 (D.C. Cir. 2008), the Court held that the Director of Quality Audits was *not protected* under the False Claims Act, even though she reported her allegations of fraud to her supervisors and thereafter to a Senior Vice President. Agreeing with the arguments raised by employers for the past 20 years, the Court agreed that absent direct contacts with the government, the employee could be *fired* and would have no recourse under the law for protection. Likewise, in *Owens v. First Kuwaiti General Trading*, 612 F.3d 724 (4th Cir. 2010), the court held that "simply reporting" "mischarging to the government to his supervisor" did not constitute

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[3] Ramseyer v. Centry Helathcare Corp., 90 F.3d 1514 (10 Cir. 1996); Karelas v. Melrose-Wakefield, 360 F.3d 220 (1st Cir. 2004); Robertson v. Bell Helicopter, 32 F.3d 948 (5th Cir. 1994).

[4] See Tichenor v. Bank of America WL 2171296 (W.D., North Carolina, 2009) (Financial Institutions Reform, Recovery, and Enforcement Act of 1989); Stephan v. Federal Credit Union WL 3837642 (E.D., Louisana, 2009); Hill v. Money Finance Co., 491 F.Supp.2d 725 (N.D. Ohio 2007).

protected activity. In another case, a Compliance Manager informed the company's "chief compliance officer" that the company was "noncompliant" with billing rules and that his company "falsely billed the government approximately $200 million annually. The court held that because the employee had not filed a fraud claim with the United States he had not engaged in protected activity and could be fired. *Sealed v. Sealed*, 156 Fed. Appx. 630 (5th Cir. 2005)

Employers raised these same arguments in other cases directly related to financial regulation and the protection of markets.[5] For example, in a credit union whistleblower case, the employee contacted the TWA Credit Union's Supervisory Board and Board of Directors with her allegations of "unlawful activity." *Wyrick v. TWA Credit Union*, 804 F. Supp. 1176 (W.D. Missouri 1992). The Court agreed with the employer's arguments that such contacts were not protected, because the employee failed to file her complaints with the government and had only filed them with the internal boards:

> *If the information is never brought to their [the government's] attention, but only to a nonregulatory authority instead, the regulatory authority does not have the chance to take corrective or preventive measures as is the goal of the statute."*

Other banking whistleblower cases have similar holdings. In *Schwyzer v. Fiduciary Trust*, 2008 WL 353997 (S.D. N.Y. 2008) the court denied protection to a Bank Compliance Officer who raised concerns to the company's legal department (but not the government). In another case, the Court agreed with the argument raised by a bank that protecting employees who raised regulatory concerns within the corporate chain of command could somehow interfere with "normal workplace relations," holding that in order to engage in protected whistleblowing the employee had to contact the government. *Lippert v. Community Bank*, 438 F.3d 1275 (11th Cir. 2006).

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[5] It should be noted that unlike the many members of the Chamber of Commerce, the Executive Director of the NWC (Stephen M. Kohn) has argued for over twenty-five years that employee reports to internal compliance programs needed to be fully protected. For example, in 1985 he co-authored an amicus brief to the U.S. Court of Appeals for the Tenth Circuit arguing that quality control auditors needed full protection under the law, and reports to compliance programs must also be fully protected. Kansas Gas & Electric v. Brock, 780 F.2d 1505 (10th Cir. 1985). In 1986 he co-authored one of the first-ever law review articles that strongly endorsed protecting employees who raised internal concerns, but never contacted a government agency. Kohn, et al., "Nuclear Whistleblower Protection and the Scope of Protected Activity under Section 210 of the Energy Reorganization Act," 4 Antioch Law Journal 73, 97-98 (Summer 1986) (the failure to protect employees who raised concerns internally is "repugnant" to sound pubic policy, would "frustrate" industry regulation and would result in the "intimidation of prospective complainants").

In other words, the state of the law is the exact opposite as presented by the Chamber in its February 15th letter.[6]

Should the Commission want to successfully support the development of internal corporate compliance, we urge the Commission in the strongest possible terms to undertake two steps in its rulemaking that will address the main problems that currently undermine the effectiveness of such programs. First, the Commission should issue a rule, similar to 10 C.F.R. § 50.7, and mandate by rule that employee contacts with compliance programs be fully supported as a legally protected activity. Second, the Commission should enact rules, similar to those enacted by the Federal Acquisitions Council applicable to the FCA, mandating that internal corporate compliance programs operate on a more independent basis. The NWC has provided the staff of the Commission with suggested language for these two rule modifications. We are attaching the two rulemaking proposals submitted by the NWC related to bolstering the reliability and integrity of internal corporate compliance programs. The first proposal would mandate that employers covered under Dodd-Frank be prohibited from retaliating against employees who contact internal compliance departments or raise concerns with their management. *See* Attachment A. The second proposal would require companies covered under Dodd-Frank to improve the standards governing internal compliance programs, and ensure that such programs designed to protect investors from fraud are at least as good as internal compliance programs designed to protect the taxpayer from fraud.

The real issue confronting the SEC is *not* the potential negative impact of Dodd-Frank on corporate internal compliance programs, but the reluctance of employees to report information to compliance or government officials. Approximately 40% of employees who witness misconduct never tell a soul. Of the 60% who do report, the overwhelming majority never file such reports to either government regulatory agencies or internal corporate "hotline" programs. As concluded by the Ethics Resource Center after carefully studying employee reporting behaviors: "[O]ne of the critical challenges facing both E&C [Ethics and Compliance] officers and government enforcement officials is convincing employees to step forward when misconduct occurs.." *See* Ethics Resource

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[6] Because internal reporting is not a fully protected activity, the NWC believes that its statistical findings concerning the rate of external reporting under the FCA is in fact high. The NWC's analysis found that approximately 10% of employees reported their qui tam allegations directly to the government, while 90% reported those concerns internally, either to a supervisor or a compliance department. Obviously, had the courts fully protected internal reporting, the rates of internal verses external reporting would have been different, and the number of whistleblowers who filed their concerns directly with their supervisors or with compliance officials would have been higher. Needless to say, if employees know that a company will argue in court that contacting compliance officials is not a protected activity, why would (or should) they ever contact such programs?

Center, "Blowing the Whistle on Workplace Misconduct, p. 3[7]

In arguing against the database used by the NWC to support its conclusions, the Chamber completely ignored additional empirical evidence presented by the NWC. Also, the Chamber ignored the findings published in the *New England Journal of Medicine*. Like the NWC, their study also found that the overwhelming majority of False Claims Act whistleblowers attempted to disclose their concerns to management prior to reporting their concerns to the government. That report was cited in the NWC's December 17th Report, and likewise was published on the NWC's website.[8]

Finally, in its letter the Chamber again makes an unverified conclusory allegation that whistleblowers will, in some manner, "let problems grow" in order to make more money. This statement demonstrates an underlying hostility toward whistleblowers, and a fundamental misunderstanding of whistleblower reporting behaviors over the past 40 years. The NWC case analysis, along with the *New England Journal of Medicine* findings, completely refute this statement. As stated by the *New England Journal of Medicine: "Nearly all (18 of 22) insiders first tried to fix matters internally by talking to their superiors, filing an internal complaint, or both."*

Moreover, none of the major reports issued over the past decade by organizations that have carefully studied employee reporting behaviors, such as the Ethics Resource Center and the Association of Certified Fraud Examiners, have identified this as an issue. The NWC is not aware of any published court decision under any whistleblower law that supports this conclusion. There may be some exceptions to the rule, but such exceptions would not be statistically significant.

In closing, we thank the Commission for the opportunity to clarify the record on these points. The key to insuring the effectiveness of corporate internal compliance programs is ***not*** to place restrictions on the benefits afforded whistleblowers under Dodd-Frank. Instead, rules need to be implemented that insures

a) Compliance officials are fully protected when they do their job
b) Employees who make disclosures to compliance departments are fully protected under law

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[7] Reprinted at:
http://whistleblowers.nonprofitsoapbox.com/storage/whistleblowers/documents/DoddFrank-erewhistleblowerwp.pdf

[8] Reprinted as Exhibit 2 at:
http://www.whistleblowers.org/index.php?option=com_content&task=view&id=1169#Exhibits

c) the Commission enacts no restrictions whatsoever that would undermine legitimate whistleblowing by compliance related officials or restrict their rights under Dodd-Frank.

Thank you in advance for your prompt and careful attention to this letter.

Respectfully submitted,

Stephen M. Kohn
Executive Director

Lindsey M. Williams
Director of Advocacy and Development
lmw@whistleblowers.org

CC: Ms. Elizabeth Murphy, Secretary
All Commissioners
Chamber of Commerce

Attachment A: Circuit-by-Circuit Analysis

Attachment B: Employee Reporting Behavior Charts

Attachment C: Proposed Rule Protecting Employees Who Contact Internal Compliance

Attachment D: Proposed Rule Ensuring the Integrity of Internal Compliance Programs

ATTACHMENT A
Circuit by Circuit Analysis

[Sample Holdings from Cases where U.S. Courts of Appeal have Agreed with Employer Position that Employee Contacts with Internal Compliance/Management was *Not* Protected Under False Claims Act Anti-Retaliation Law]

"Conduct protected by the FCA is limited to activities that 'reasonably could lead' to an FCA action … Karvela's statement that he ***reported his supervisors' destruction of incident reports of medical errors suggests a cover-up of regulatory failures but does not allege investigation or reporting of false or fraudulent claims knowingly submitted to the government."***

1st Circuit
US ex rel. Karvelas v. Melrose-Wakefield Hospital
360 F.3d 220 (2004)

"Simply reporting [a] concern of mischarging … does not establish that [plaintiff] was acting in furtherance of a qui tam action … ***He did not communicate that he was going to report the activity to government officials."***

3rd Circuit
Hutchins v. Wilentz
253 F.3d 176 (2001)

"Simply reporting his concern of a mischarging … to his supervisor does not suffice to establish that [an employee] was acting in furtherance of a qui tam action … ***Any large enterprise depends on communication, so it is hardly surprising that Owens at times reported problems he thought he saw on the site."***

4th Circuit
US ex rel. Owens v First Kuwaiti
612 F.3d 724 (2010)

"In his complaint, Appellant alleges he conducted the audit in his capacity as Director of Compliance. He also alleges that, in that capacity, ***he informed Appellee's chief compliance officer, as well as corporate managers,*** *of his signature requirements and the results of his audit,* ***and that he gave a presentation about the problem at the compliance retreat*** *… plaintiff could not show retaliatory discharge where his investigations were part of his job and he never characterized his concerns as involving illegal, unlawful, or false-claims investigations."*

5th Circuit
Sealed v. Sealed
156 Fed. Appx. 630 (2005)

"It is true that Brandon used terms like 'illegal,' 'improper,' and 'fraudulent' when he confronted the shareholders about the billing practices … ***Brandon was simply trying to convince the shareholders to comply with Medicare billing regulations. Such conduct is usually not protected."***

7th Circuit
Brandon v. Anesthesia & Pain Management
227 F.3d 936 (2002)

"The record quite clearly shows Hopper ***was merely attempting to get the School District to comply with Federal and State regulations. Her numerous written complaints, seventy letters and over fifty telephone calls were all directed toward this end ... she was not whistleblowing."***

9th Circuit
US ex rel. Hopper v. Anton
91 F.3d 1261 (1996)

"'An employee's investigation of nothing more than his employer's non-compliance with federal or state regulations' is ***not enough to support a whistleblower claim."***

DC Circuit
Hoyte v. American Nat'l Red Cross
518 F.3d 61 (2008)

ATTACHMENT B
Employee Reporting: Internal vs. External
(FCA Cases January 1, 2007-January 24, 2011)

Case	Reported to Supervisor or Went to Compliance Before Filing Qui Tam
Mann v. Heckler & Kosh Defense Incorporated and Heckler Koch GMBH; 2010 U.S. App. LEXIS 26215	Yes
United States ex rel. Sanchez v. Lymphatx, Inc., 596 F.3d 1300 (11th Cir. 2010)	Yes
United States v. LHC Group, Inc., 623 F.3d 287	Yes
Johnson v. University of Rochester Medical Center, 2010 U.S. Dist. LEXIS 14136	Yes
Blackburn v. HQM of Riverview Health Care Ctr., 2010 U.S. Dist. LEXIS 135624	Yes
Davis v. Point Park University, et al.; 2010 U.S. Dist. LEXIS 125867	Yes
US ex rel. Hutcheson and Philip Brown v. Blackstone Medical, Inc.; 2010 U.S. Dist. LEXIS 24036	No
United States of America ex rel. Bierman v. Orthofix International, N.V., et al.; 2010 U.S. Dist. LEXIS 118278	Yes
US ex rel., et al. v. Kaplan Career Institute, ICM Campus, and Kaplan Higher Education Corporation; 2010 U.S. Dist. LEXIS 135246	Yes
Davis v. Lockheed Martin Corporation; 2010 U.S. Dist LEXIS 120730	Yes
US, Samuel Adam Cox, III v. Smith & Nephew, Inc.; 2010 U.S. Dist. LEXIS 118493	Yes
Goldberg et al. v. Rush University Medical Center et al.; 2010 U.S. Dist LEXIS 116645	Yes
Hodnett, et al. v. State of Louisiana, et al.; 2010 U.S. Dist. LEXIS 99185	Yes
US ex rel. Zemplenyi v. Group Health Cooperative, et al.; 2010 U.S. Dist. LEXIS 94468	Yes
Kalderon v. Robert Finkelstein, et al.; 2010 U.S. Dist. LEXIS 88036	Yes
Gilchrist v. Inptient Medical Services, Inc.; 2010 U.S. Dist. LEXIS 86199	Yes
Riddle v. Dyncorp International, Inc., et al.; 2010 U.S. Dist. LEXIS 85958	Yes
Williams v. Basic Contracting Services, Inc.; 2010 U.S. Dist. LEXIS 84361	Yes

Smith v. C.R.Bard, Inc.; 2010 U.S. Dist. LEXIS 81098	Yes
Cottone v. Kindred Rehab Services, Inc., et al.; 2010 U.S. Dist. LEXIS 79314	Yes
US ex rel. Martinez v. Virginia Urology Center, P.C.,; 2010 U.S. Dist. LEXIS 77078	Yes
Blakeslee v. Shaw Infrastructure, Inc.; 2010 U.S. Dist. LEXIS 76295	Yes
US, et al. v. Universal Health Services, Inc., et al.; 2010 U.S. Dist. LEXIS 76246	Yes
US ex rel. Gobble v. Forest Laboratories, Inc., et al.; 2010 U.S. Dist. LEXIS 74263	Yes
Elizondo v. Fletcher Parks; 2010 U.S. Dist. LEXIS 69152	Yes
Johnson v. EG&G Defense Materials, Inc.; 2010 U.S. Dist. LEXIS 63439	Yes
Boyd v. Cambridge Speakers Series, Inc., et al.; 2010 U.S. Dist. LEXIS 61234	Yes
Bangura v. Pennrose Management Company, et al.; 2010 U.S. Dist. LEXIS 59450	Yes
Singh v. Pocono Medical Center, et al.; 2010 U.S. Dist. LEXIS 59012	Yes
Twiggy v. Triple Canopy, Inc.; 2010 U.S. Dist. LEXIS 53750	No
Little v. Foster Wheeler Construction, Inc.; 2010 U.S. Dist. LEXIS 51082	Yes
US ex rel. Burroughs v. Central Arkansas Development Council, et al.; 2010 U.S. Dist. LEXIS 47417	Yes
711 F. Supp. 2d 42; 2010 U.S. Dist. LEXIS 47240	Yes
West v. Timex Corp., 361 F. Appx. 249 (2nd Cir. 2010)	Yes
United States ex rel. Owens v. First Kuwaiti Gen. Trading & Constr., 612 F.3d 724 (4th Cir. 2010)	Yes
Thompson v. Quarum Health Resources, LLC; 2010 U.S. Dist. LEXIS 45767	No
US ex rel. Tetsuwari v. Fluor Fernald, Inc.; 2010 U.S. Dist. LEXIS 43759	Yes
Bell v. Elton Dean, et al.; 2010 U.S. Dist. LEXIS 43618	Yes
US ex rel. Gonzalez v. Fresenius Medical Care North America, et al.; 2010 U.S. Dist. LEXIS 37632	No
Laborde v. Jaime Rivera-Dueno, et al.; 2010 U.S. Dist. LEXIS 32483	Yes
US ex rel. Abner et al. v. Jewish Hospital Health Care Services, Inc. et al.; 2010 U.S. Dist. LEXIS 32352	Yes
Parkter v. New York City Department of Education, et al.; 2010 U.S. Dist. LEXIS 30388	Yes
US ex rel. Patton v. Shaw Services, LLC; 2010 U.S. Dist. LEXIS 27433	Yes
US ex rel. Howard v. Urban Investment Trust, Inc., et al.; 2010 U.S. Dist. LEXIS 20748	Yes
US ex rel. Gray v. Lockheed Martin Corporation; 2010 U.S. Dist. LEXIS 14806	Yes
686 F. Supp. 2d 259; 2010 U.S. Dist. LEXIS 14136	Yes
684 F. Supp. 2d 1; 2010 U.S. Dist. LEXIS 12824	Yes
US ex rel. Parato v. Unadilla Health Care Center, Inc., et al.; 2010 U.S. Dist. LEXIS 1796	Yes

683 F. Supp. 2d 74; 2009 U.S. Dist. LEXIS 124870	Yes
Sergison v. Caterpiller, Inc.; 2009 U.S. Dist. LEXIS 118841	Yes
Creel v. Sam Jahani, D.O., et al.; 2009 U.S. Dist. LEXIS 117696	Yes
US ex rel. John MacKay v. Touchstone Research Laboratories, Ltd.; 2009 U.S. Dist. LEXIS 90779	No
US ex rel. Cheri Suter, et al. v. National Rehab Partners Inc., et al.; 2009 U.S. Dist. LEXIS 88630	Yes
Rost v. Pfizer, Inc., et al.; 2009 U.S. Dist. LEXIS 88113	Yes
US ex rel. Smith et al. v. The Boeing Company, et al.; 2009 U.S. Dist. LEXIS 77210	Yes
US ex rel. Rigsby et al. v. State Farm Insurance Company, et al.; 2009 U.S. Dist. LEXIS 70398	Yes
Boze, et al., v. General Electric Company; 2009 U.S. Dist. LEXIS 69969	No
Liburd and the USA v. Bronx Lebanon Hospital Center, et al.; 2009 U.S. Dist. LEXIS 61131	Yes
639 F. Supp. 2d 619; 2009 U.S. Dist. LEXIS 56671	Yes
Perius v. Abbott Laboratories; 2009 U.S. Dist. LEXIS 55590	Yes
US ex rel. Suh and Brunswick Emergency Physicians v. HCA-The Healthcare Co., et al.; 2009 U.S. Dist. LEXIS 53104	Yes
Miller v. Praxiar, Inc., et al.; 2009 U.S. Dist. LEXIS 51130	Yes
Hill v. Booz Allen Hamilton, Inc., et al.; 2009 U.S. Dist. LEXIS 50193	Yes
604 F. Supp. 2d 245; 2009 U.S. Dist. LEXIS 49378	Yes
Georgandellis v. Holzer Clinic, Inc., et al.; 2009 U.S. Dist. LEXIS 47334	Yes
US ex rel. Cafasso v. General Dynamics C4 Systems, Inc.; 2009 U.S. Dist. LEXIS 43154	Yes
McKinney v Apollo Group, Inc., et al.; 2009 U.S. Dist. LEXIS 30067	Yes
Sanches v. City of Crescent City, et al.; 2009 U.S. Dist. LEXIS 23408	No
601 F. Supp. 2d 368; 2009 U.S. Dist. LEXIS 20240	Yes
US ex rel. Sharp v. Eastern Oklahoma Orthopedic Center; 2009 U.S. Dist. LEXIS 15988	Yes
598 F. Supp. 2d 638; 2009 U.S. Dist. LEXIS 14253	Yes
US ex rel. Herndon v. Appalachian Regional Community Head Start, Inc.; 2009 U.S. Dist. LEXIS 7411	No
US ex rel. Howard v. Environmental, Inc.; 2009 U.S. Dist. LEXIS 5694	Yes
Estate of Gina Moyer, et al., v. Novartis Pharmaceuticals Corporation; 2009 U.S. Dist. LEXIS 5122	Yes
United States ex rel. Elms v. Accenture LLP., 341 Fed. Appx 869 (4th Cir. 2009)	Yes
United States v. Am. Nat'l Red Cross, 518 F. 3d 61 (D.C. Cir. 2008)	Yes
591 F. Supp. 2d 68; 2008 U.S. Dist. LEXIS 104592	Yes
590 F. Supp. 2d 850; 2008 U.S. Dist. LEXIS 104322	Yes

Lewis v. Jack Wise, et al.; 2008 U.S. Dist. LEXIS 98656	Yes
583 F Supp. 2d 434; 2008 U.S. Dist. LEXIS 88153	Yes
Unterschuetz v. In Home Personal Care, Inc., et al.; 2008 U.S. Dist. LEXIS 81914	Yes
US ex rel. Lacy v. New Horizons Inc., et al; 2008 U.S. Dist. LEXIS 73814	No
Goyal v. Gas Technology Institute; 2008 U.S. Dist. LEXIS 72289	Yes
US ex rel. Lusby, v. Rolls-Royce Corp.; 2008 U.S. Dist. LEXIS 69300	Yes
Kuhn, et al. v. Laporte County Comprehensive Mental Health Council; 2008 U.S. Dist. LEXIS 68737	No
555 F. Supp. 2d 949; 2008 U.S. Dist. LEXIS 62963	Yes
United States ex rel. Wilson v. Kellogg Brown & Root, Inc., 525 F.3d 370 (4th Cir. 2008)	Yes
Raghavendra, v. The Trustees of Columbia University, et al.; 2008 U.S. Dist. LEXIS 51995	Yes
559 F. Supp.2d 167; 2008 U.S. Dist. LEXIS 43987	Yes
United States ex rel. Ritchie v. Lockheed Martin Corp., 558 F.3d 1161 (10th Cir. 2009)	Yes
United States ex rel. Erickson v. Uintah Special Servs. Dist., 268 Fed. Appx. 714 (10th Cir. 2008)	Yes
Calanno v. Terra Vac Corporation, et al.; 2008 U.S. Dist. LEXIS 43613	Yes
560 F. Supp. 2d 988; 2008 U.S. Dist. LEXIS 36684	Yes
US ex rel. Manion, et al.; v. St. Luke's Regional Medical Center, LTD., et al.; 2008 U.S. Dist. LEXIS 25719	Yes
US ex rel. Nichols v. OMNI H.C., Inc., et al.; 2008 U.S. Dist. LEXIS 25441	Yes
541 F. Supp. 2d 77; 2008 U.S. Dist. LEXIS 24448	Yes
US ex rel. Doe v. County of Cook, et al.; 2008 U.S. Dist. LEXIS 23501	Yes
536 F. Supp. 2d 595; 2008 U.S. Dist. LEXIS 15203	Yes
537 F. Supp. 2d 65; 2008 U.S. Dist. LEXIS 14917	Yes
US ex rel. Kennedy, et al. v. Aventis Pharmaceuticals, Inc. and Pharmanetics, Inc.; 2008 U.S. Dist. LEXIS 11904	Yes
533 F. Supp. 2d 895; 2008 U.S. Dist. LEXIS 8456	Yes
533 F. Supp. 2d 116; 2008 U.S. Dist. LEXIS 8265	Yes
Bouknight, JD. v. Houston Independent School District; 2008 U.S. Dist. LEXIS 1221	No
Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097 (9th Cir. 2008)	Yes
528 F. Supp. 2d 861; 2007 U.S. Dist. LEXIS 93844	Yes
US ex rel. Goughnour, v. REM Minnesota, Inc., et al.; 2007 U.S. Dist. LEXIS 85880	Yes
US ex rel. Fent, v. L-3 Communications Aero Tech LLC, et al.; 2007 U.S. Dist. LEXIS 81976	Yes

Rutz, et al., v. Village of River Forest; 2007 U.S. Dist. LEXIS 80506	Yes
Fauci v. Genebtech, Inc. et al.; 2007 U.S. Dist. LEXIS 75924	Yes
US ex rel. Merchese v. Cell Theraputics, Inc., et al.; 2007 U.S. Dist. LEXIS 65952 & 2007 U.S. Dist. LEXIS 95216	Yes
US ex rel. Heater v. Holy Cross Hostpital, Inc., et al.; 2007 U.S. Dist. LEXIS 63706	Yes
Blazquez v. Board of Education of the City of Chicago, et al.; 2007 U.S. Dist. LEXIS 60791	Yes
US ex rel. Marlar v. BWXT Y-12, LLC; 2007 U.S. Dist. LEXIS 57530	Yes
US ex rel. Smith v. New York Presbyterian Hospital, et al.; 2007 U.S. Dist. LEXIS 53826	Yes
Scott v. Metro Health Corp., 234 Fed. Appx 341 (6th Cir. 2007)	Yes
492 F. Supp. 2d 561; 2007 U.S. Dist. LEXIS 47102	Yes
499 F. Supp. 2d 972; 2007 U.S. Dist. LEXIS 47029	Yes
Green v. City of St. Louis, 507 F.3d 662 (8th Cir. 2007)	Yes
491 F. Supp. 2d 725; 2007 U.S. Dist. LEXIS 43378	Yes
510 F. Supp. 2d 957; 2007 U.S. Dist. LEXIS 39924	Yes
490 F. Supp. 2d 1062; 2007 U.S. Dist. LEXIS 28502	No
Velazquez, et al., v. Landcoast Insulation, Inc.; 2007 U.S. Dist. LEXIS 25239	Yes
US ex rel. Brinlee, v. Accom Government Services, Inc.; 2007 U.S. Dist. LEXIS 9794	Yes
US ex rel. Kersulis, et al., v. Rehabcare group, Inc., et al.; 2007 U.S. Dist. LEXIS 6341	Yes
US ex rel. Erickson, et al., v. Uintah Special Services District, et al.; 2007 U.S. Dist. LEXIS 1707	Yes
Brock v. Presbyterian Healthcare Servs., 220 Fed. Appx. 842 (10th Cir. 2007)	No
TOTAL CONTACTED SUPERVISOR BEFORE FILING QUI TAM	**113 (89.68%)**
TOTAL CONTACTED GOVERNMENT FIRST	**13 (10.32%)**
TOTAL NUMBER OF CASES	**126**

ATTACHMENT B
Compliance Employee Reporting
(FCA Cases January 1, 2007-January 24, 2011)

Case	Worked in Compliance
United States ex rel. Sanchez v. Lymphatx, Inc., 596 F.3d 1300 (11th Cir. 2010)	No
United States v. LHC Group, Inc., 623 F.3d 287	No
Johnson v. University of Rochester Medical Center, 2010 U.S. Dist. LEXIS 14136	No
Blackburn v. HQM of Riverview Health Care Ctr., 2010 U.S. Dist. LEXIS 135624	No
Davis v. Point Park University, et al.; 2010 U.S. Dist. LEXIS 125867	No
US ex rel. Hutcheson and Brown v. Blackstone Medical, Inc.; 2010 U.S. Dist. LEXIS 24036	No
Mann v. Heckler & Kosh Defense Incorporated and Heckler Koch GMBH; 2010 U.S. App. LEXIS 26215	No
US ex rel. Gatsiopoulos, et al. v. Kaplan Career Institute, ICM Campus, and Kaplan Higher Education Corporation; 2010 U.S. Dist. LEXIS 135246	No
United States of America ex rel. Bierman v. Orthofix International, N.V., et al.; 2010 U.S. Dist. LEXIS 118278	No
Davis v. Lockheen Martin Corporation; 2010 U.S. Dist LEXIS 120730	No
US ex rel. Samuel Adam Cox, III v. Smith & Nephew, Inc.; 2010 U.S. Dist. LEXIS 118493	No
Goldberg, et al. v. Rush University Medical Center et al.; 2010 U.S. Dist LEXIS 116645	No
Hodnett, et al. v. State of Louisiana, et al.; 2010 U.S. Dist. LEXIS 99185	No
US ex rel. Zemplenyi v. Group Health Cooperative, et al.; 2010 U.S. Dist. LEXIS 94468	No
Kalderon v. Robert Finkelstein, et al.; 2010 U.S. Dist. LEXIS 88036	No
Gilchrist v. Inptient Medical Services, Inc.; 2010 U.S. Dist. LEXIS 86199	No
Riddle v. Dyncorp International, Inc., et al.; 2010 U.S. Dist. LEXIS 85958	No
Williams v. Basic Contracting Services, Inc.; 2010 U.S. Dist. LEXIS 84361	No
Smith v. C.R.Bard, Inc.; 2010 U.S. Dist. LEXIS 81098	No
Cottone v. Kindred Rehab Services, Inc., et al.; 2010 U.S. Dist. LEXIS 79314	No
US ex rel. Martinez v. Virginia Urology Center, P.C.,; 2010 U.S. Dist. LEXIS 77078	No
Blakeslee v. Shaw Infrastructure, Inc.; 2010 U.S. Dist. LEXIS 76295	No

US, et al. v. Universal Health Services, Inc., et al.; 2010 U.S. Dist. LEXIS 76246	No
US ex rel. Gobble v. Forest Laboratories, Inc., et al.; 2010 U.S. Dist. LEXIS 74263	No
Elizondo v. Fletcher Parks; 2010 U.S. Dist. LEXIS 69152	No
Johnson v. EG&G Defense Materials, Inc.; 2010 U.S. Dist. LEXIS 63439	No
Boyd v. Cambridge Speakers Series, Inc., et al.; 2010 U.S. Dist. LEXIS 61234	No
Bangura v. Pennrose Management Company, et al.; 2010 U.S. Dist. LEXIS 59450	No
Singh v. Pocono Medical Center, et al.; 2010 U.S. Dist. LEXIS 59012	No
Twiggv v. Triple Canopy, Inc.; 2010 U.S. Dist. LEXIS 53750	No
Little v. Foster Wheeler Construction, Inc.; 2010 U.S. Dist. LEXIS 51082	No
US ex rel. Burroughs v. Central Arkansas Development Council, et al.; 2010 U.S. Dist. LEXIS 47417	No
711 F. Supp. 2d 42; 2010 U.S. Dist. LEXIS 47240	No
West v. Timex Corp., 361 F. Appx. 249 (2nd Cir. 2010)	No
United States ex rel. Owens v. First Kuwaiti Gen. Trading & Constr., 612 F.3d 724 (4th Cir. 2010)	No
Thompson v. Quarum Health Resources, LLC; 2010 U.S. Dist. LEXIS 45767	No
US ex rel. Tetsuwari v. Fluor Fernald, Inc.; 2010 U.S. Dist. LEXIS 43759	No
Bell v. Elton Dean, et al.; 2010 U.S. Dist. LEXIS 43618	No
US ex rel. Gonzalez v. Fresenius Medical Care North America, et al.; 2010 U.S. Dist. LEXIS 37632	No
Laborde v. Jaime Rivera-Dueno, et al.; 2010 U.S. Dist. LEXIS 32483	No
US ex rel. Abner, et al. v. Jewish Hospital Health Care Services, Inc. et al.; 2010 U.S. Dist. LEXIS 32352	No
Parkter v. New York City Department of Education, et al.; 2010 U.S. Dist. LEXIS 30388	No
US ex rel. Patton v. Shaw Services, LLC; 2010 U.S. Dist. LEXIS 27433	No
US ex rel. Howard v. Urban Investment Trust, Inc., et al.; 2010 U.S. Dist. LEXIS 20748	No
US ex rel. Grav v. Lockheed Martin Corporation; 2010 U.S. Dist. LEXIS 14806	No
686 F. Supp. 2d 259; 2010 U.S. Dist. LEXIS 14136	No
684 F. Supp. 2d 1; 2010 U.S. Dist. LEXIS 12824	No
US ex rel. Parato v. Unadilla Health Care Center, Inc., et al.; 2010 U.S. Dist. LEXIS 1796	No
683 F. Supp. 2d 74; 2009 U.S. Dist. LEXIS 124870	No
Sergison v. Caterpiller, Inc.; 2009 U.S. Dist. LEXIS 118841	No
Creel v. Sam Jahani, D.O., et al.; 2009 U.S. Dist. LEXIS 117696	No
US ex rel. MacKay v. Touchstone Research Laboratories, Ltd.; 2009 U.S. Dist. LEXIS 90779	No

US ex rel. Suter, et al. v. National Rehab Partners Inc., et al.; 2009 U.S. Dist. LEXIS 88630	No
Rost v. Pfizer, Inc., et al.; 2009 U.S. Dist. LEXIS 88113	No
US ex rel. Smith et al. v. The Boeing Company, et al.; 2009 U.S. Dist. LEXIS 77210	No
US ex rel. Rigsby et al. v. State Farm Insurance Company, et al.; 2009 U.S. Dist. LEXIS 70398	Yes
Boze, et al. v. General Electric Company; 2009 U.S. Dist. LEXIS 69969	No
Liburd and the USA v. Bronx Lebanon Hospital Center, et al.; 2009 U.S. Dist. LEXIS 61131	No
639 F. Supp. 2d 619; 2009 U.S. Dist. LEXIS 56671	No
Perius v. Abbott Laboratories; 2009 U.S. Dist. LEXIS 55590	No
US ex rel. Suh and Brunswick Emergency Physicians v. HCA-The Healthcare Co., et al.; 2009 U.S. Dist. LEXIS 53104	No
Miller v. Praxiar, Inc., et al.; 2009 U.S. Dist. LEXIS 51130	No
Hill v. Booz Allen Hamilton, Inc., et al.; 2009 U.S. Dist. LEXIS 50193	No
604 F. Supp. 2d 245; 2009 U.S. Dist. LEXIS 49378	No
Georgandellis v. Holzer Clinic, Inc., et al.; 2009 U.S. Dist. LEXIS 47334	No
US ex rel. Cafasso v. General Dynamics C4 Systems, Inc.; 2009 U.S. Dist. LEXIS 43154	No
McKinney v Apollo Group, Inc., et al.; 2009 U.S. Dist. LEXIS 30067	No
Sanches v. City of Crescent City, et al.; 2009 U.S. Dist. LEXIS 23408	No
601 F. Supp. 2d 368; 2009 U.S. Dist. LEXIS 20240	No
US ex rel. Sharp v. Eastern Oklahoma Orthopedic Center; 2009 U.S. Dist. LEXIS 15988	No
598 F. Supp. 2d 638; 2009 U.S. Dist. LEXIS 14253	No
US ex rel. Herndon v. Appalachian Regional Community Head Start, Inc.; 2009 U.S. Dist. LEXIS 7411	No
US ex rel. Howard v. Environmental, Inc.; 2009 U.S. Dist. LEXIS 5694	No
Estate of Gina Moyer, et al., v. Novartis Pharmaceuticals Corporation; 2009 U.S. Dist. LEXIS 5122	No
United States ex rel. Elms v. Accenture LLP., 341 Fed. Appx 869 (4th Cir. 2009)	No
United States v. Am. Nat'l Red Cross, 518 F. 3d 61 (D.C. Cir. 2008)	Yes
591 F. Supp. 2d 68; 2008 U.S. Dist. LEXIS 104592	No
590 F. Supp. 2d 850; 2008 U.S. Dist. LEXIS 104322	No
Lewis v. Jack Wise, et al.; 2008 U.S. Dist. LEXIS 98656	No
583 F Supp. 2d 434; 2008 U.S. Dist. LEXIS 88153	No
Unterschuetz v. In Home Personal Care, Inc., et al.; 2008 U.S. Dist. LEXIS 81914	No
US ex rel. Lacy v. New Horizons Inc., et al; 2008 U.S. Dist. LEXIS 73814	No

Goyal v. Gas Technology Institute; 2008 U.S. Dist. LEXIS 72289	No
US ex rel. Lusby, v. Rolls-Royce Corp.; 2008 U.S. Dist. LEXIS 69300	No
Kuhn, et al. v. Laporte County Comprehensive Mental Health Council; 2008 U.S. Dist. LEXIS 68737	No
555 F. Supp. 2d 949;2008 U.S. Dist. LEXIS 62963	Yes
United States ex rel. Wilson v. Kellogg Brown & Root, Inc., 525 F.3d 370 (4th Cir. 2008)	No
Raghavendra v. The Trustees of Columbia University, et al.; 2008 U.S. Dist. LEXIS 51995	No
559 F. Supp.2d 167; 2008 U.S. Dist. LEXIS 43987	Yes
United States ex rel. Ritchie v. Lockheed Martin Corp., 558 F.3d 1161 (10th Cir. 2009)	Yes
United States ex rel. Erickson v. Uintah Special Servs. Dist., 268 Fed. Appx. 714 (10th Cir. 2008)	No
Calanno v. Terra Vac Corporation, et al.; 2008 U.S. Dist. LEXIS 43613	No
560 F. Supp. 2d 988; 2008 U.S. Dist. LEXIS 36684	No
US ex rel. Manion, et al.; v. St. Luke's Regional Medical Center, LTD., et al.; 2008 U.S. Dist. LEXIS 25719	No
US ex rel. Nichols v. OMNI H.C., Inc., et al.; 2008 U.S. Dist. LEXIS 25441	No
541 F. Supp. 2d 77; 2008 U.S. Dist. LEXIS 24448	No
US ex rel. Doe v. County of Cook, et al.; 2008 U.S. Dist. LEXIS 23501	No
536 F. Supp. 2d 595; 2008 U.S. Dist. LEXIS 15203	No
537 F. Supp. 2d 65; 2008 U.S. Dist. LEXIS 14917	No
US ex rel. Kennedy, et al. v. Aventis Pharmaceuticals, Inc. and Pharmanetics, Inc.; 2008 U.S. Dist. LEXIS 11904	No
533 F. Supp. 2d 895; 2008 U.S. Dist. LEXIS 8456	No
533 F. Supp. 2d 116; 2008 U.S. Dist. LEXIS 8265	No
Bouknight, JD., v. Houston Independent School District; 2008 U.S. Dist. LEXIS 1221	No
Mendiondo v. Centinela Hosp. Med. Ctr., 521 F.3d 1097 (9th Cir. 2008)	No
528 F. Supp. 2d 861; 2007 U.S. Dist. LEXIS 93844	No
US ex rel. Goughnour, v. REM Minnesota, Inc., et al.; 2007 U.S. Dist. LEXIS 85880	No
US ex rel. Fent, v. L-3 Communications Aero Tech LLC, et al.; 2007 U.S. Dist. LEXIS 81976	No
Rutz, et al., v. Village of River Forest; 2007 U.S. Dist. LEXIS 80506	No
Fauci v. Genebtech, Inc. et al.; 2007 U.S. Dist. LEXIS 75924	No
US ex rel. Merchese v. Cell Theraputics, Inc., et al.; 2007 U.S. Dist. LEXIS 65952 & 2007 U.S. Dist. LEXIS 95216	No

US ex rel. Heater v. Holy Cross Hostpital, Inc., et al.; 2007 U.S. Dist. LEXIS 63706	No
US ex rel. Marlar v. BWXT Y-12, LLC; 2007 U.S. Dist. LEXIS 57530	No
Blazquez v. Board of Education of the City of Chicago, et al.; 2007 U.S. Dist. LEXIS 60791	No
US ex rel. Smith v. New York Presbyterian Hospital, et al.; 2007 U.S. Dist. LEXIS 53826	No
Scott v. Metro Health Corp., 234 Fed. Appx 341 (6th Cir. 2007)	No
492 F. Supp. 2d 561; 2007 U.S. Dist. LEXIS 47102	No
499 F. Supp. 2d 972; 2007 U.S. Dist. LEXIS 47029	No
Green v. City of St. Louis, 507 F.3d 662 (8th Cir. 2007)	No
491 F. Supp. 2d 725; 2007 U.S. Dist. LEXIS 43378	No
510 F. Supp. 2d 957; 2007 U.S. Dist. LEXIS 39924	No
490 F. Supp. 2d 1062; 2007 U.S. Dist. LEXIS 28502	No
Velazquez, et al., v. Landcoast Insulation, Inc.; 2007 U.S. Dist. LEXIS 25239	No
US ex rel. Brinlee, v. Accom Government Services, Inc.; 2007 U.S. Dist. LEXIS 9794	No
US ex rel. Kersulis, et al. v. Rehabcare group, Inc., et al.; 2007 U.S. Dist. LEXIS 6341	No
US ex rel. Erickson, et al. v. Uintah Special Services District, et al.; 2007 U.S. Dist. LEXIS 1707	No
Brock v. Presbyterian Healthcare Servs., 220 Fed. Appx. 842 (10th Cir. 2007)	No
TOTAL #	**126**
WORKED IN COMPLIANCE	**5 (3.97%)**
DID NOT WORK IN COMPLIANCE	**121 (96.03%)**
WORKED IN COMPLIANCE AND CONTACTED GOVERNMENT FIRST	**1 (.79%)**

ATTACHMENT C
PROPOSED RULE - PROTECTING EMPLOYEE WHISTLEBLOWERS

[Note: The proposed rule is based on 10 C.F.R. § 50.7. The parts of the current rule that are recommended for being cut are struck out, the new additions to the rule are in bold]

~~10 C.F.R. § 50.7~~

Employee protection:

(a) Discrimination by ~~a~~ **an employer regulated by the Securities and Exchange Commission** ("Commission")~~licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant~~ against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section **21F of the Securities Exchange Act** ~~211 of the Energy Reorganization Act of 1974~~, as amended, and in general are related to the administration or enforcement of a requirement imposed under the **Securities Exchange Act or any other law, rule or regulation enforced by the Commission** ~~Atomic Energy Act or the Energy Reorganization Act~~.

(1) The protected activities include but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) introductory text of this section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) introductory text or under these requirements if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of these requirements;

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) introductory text~~.~~**;**

(v) Providing information to an employer's Audit Committee, compliance department or to an employee's supervisor concerning information about alleged

violations of either of the statutes named in paragraph (a) introductory text of this section or possible violations of requirements imposed under either of those statutes;

(vi) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the **Securities Exchange Act** ~~Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954~~, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor **under the Sarbanes Oxley Act and/or by filing an action in federal court pursuant to section 23(h) of the Securities Exchange Act**. ~~The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.~~

(c) A violation of paragraph (a), (e), or (f) of this section by ~~a~~ **an employer regulated by the** Commission **or subject to the requirements of section 23(h) of the Securities Exchange Act,** ~~licensee, an applicant for a Commission license,~~ or a **subsidiary, agent,** contractor or subcontractor of **an employer** ~~a Commission licensee or applicant~~ may be grounds for--

(1) Denial, revocation, or suspension of **listing on an exchange** ~~the license~~.

(2) Imposition of a civil penalty on the **employer, subsidiary, agent** ~~licensee, applicant, or a~~ contractor or subcontractor ~~of the licensee or applicant~~.

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(c)(1) Each **employer subject to the requirements of section 23 of the Securities Exchange Act, including subsidiaries or agents of such employer,** ~~licensee and each applicant for a license~~ shall prominently post ~~the revision of NRC~~ Form ____ ~~3~~, "Notice to Employees~~,~~." ~~referenced in 10 CFR 19.11(c).~~ This form must be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. **Form ____ shall inform employee's of their rights under section 23 of the Securities Exchange Act, and shall include a copy of the text of section 23.** ~~Premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license, and for 30 days following license termination.~~

(2) Copies of NRC Form 3 may be obtained by writing to _____. ~~the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in appendix D to part 20 of this chapter, by calling (301) 415-5877, via e-mail to forms@nrc.gov, or by visiting the NRC's Web site at http://www.nrc.gov and selecting forms from the index found on the home page.~~

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee **under section 23 of the Securities Exchange Act or** with the Department of Labor pursuant to **the Sarbanes Oxley Act** ~~section 211 of the Energy Reorganization Act of 1974, as amended~~, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the ~~NRC~~ **Commission** or to his or her employer on potential violations or other matters within ~~NRC's~~ **Commission's** regulatory responsibilities.

ATTACHMENT D
PROPOSED RULE – PROTECTION AND ENCOURAGEMENT FOR CORPORATE COMPLIANCE PROGRAMS

[Note: The proposed rule is based on 48 C.F.R. § 52.203-13. The parts of the current rule that are recommended for being cut are struck out, the new additions to the rule are in bold]

~~48 C.F.R. § 52.203-13~~ Contractor Code of Business Ethics and Conduct.

(a) *Definitions.* As used in this clause—
"~~Agent~~ **Employer**" means any **corporation or publicly traded entity (including subsidiaries) subject to the requirements of section 23 of the Securities Exchange Act.** ~~individual, including a director, an officer, an employee, or an independent Contractor, authorized to act on behalf of the organization~~.
"Full cooperation" –
(1) Means disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors' and investigators' request for documents and access to employees with information;
(2) Does not foreclose any ~~Contractor~~ **employer** rights arising in law, **or under the Securities Exchange Act** ~~the FAR, or the terms of the contract~~. It does not require—
(i) ~~A Contractor~~ **An employer** to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or
(ii) Any officer, director, owner, or employee of the ~~Contractor~~ **employer**, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and
(3) Does not restrict a ~~Contractor~~ **employer** from—
(i) Conducting an internal investigation; or
(ii) Defending a proceeding or dispute arising under the ~~contract~~ **Securities Exchange Act** or related to a potential or disclosed violation.
"Principal" means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a subsidiary, division, or business segment; and similar positions).
~~"Subcontract" means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.~~
~~"Subcontractor" means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another~~

~~subcontractor.~~
"United States," means the 50 States, the District of Columbia, and outlying areas.
(b) *Code of business ethics and conduct.*
(1) Within 30 days after contract award, unless the ~~Contracting Officer~~ **CFTC Commission** establishes a longer time period, the ~~Contractor~~ **employer** shall —
(i) Have a written code of business ethics and conduct; and
(ii) Make a copy of the code available to each employee ~~engaged in performance of the contract~~.
(2) The ~~Contractor~~ **employer** shall —
(i) Exercise due diligence to prevent and detect criminal conduct; and
(ii) Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.
(3)(i) The ~~Contractor~~ **employer** shall timely disclose, in writing, to the **CFTC Office of Enforcement** ~~agency Office of the Inspector General (OIG)~~, with a copy to the **CFTC Whistleblower Office** ~~Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has~~ credible evidence that a **employer, or any** principal, employee, agent, or subcontractor of the ~~Contractor~~ **employer** has committed —
(A) A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code **or any Federal criminal law enforced by the CFTC or for which a violation may result in civil penalties awarded by the CFTC**; or
(B) A violation of the **Securities Exchange Act, or any other law, rule or regulation enforced by the CFTC** ~~civil False Claims Act (31 U.S.C. 3729-3733).~~
(ii) The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor's disclosure as confidential where the information has been marked "confidential" or "proprietary" by the company. To the extent permitted by law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, 5 U.S.C. Section 552, without prior notification to the Contractor. The Government may transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organization's jurisdiction.
~~(iii) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended~~

~~for use by multiple agencies, the Contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract.~~
(c) Business ethics awareness and compliance program and internal control system. ~~This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial item as defined at FAR 2.101~~. The ~~Contractor~~ **employer** shall establish the following within 90 days **of the enactment of this rule** ~~after contract award, unless the Contracting Officer establishes a longer time period~~:
(1) An ongoing business ethics awareness and compliance program.
(i) This program shall include reasonable steps to communicate periodically and in a practical manner the ~~Contractor's~~ **employer's** standards and procedures and other aspects of the ~~Contractor's~~ **employer's** business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual's respective roles and responsibilities.
(ii) The training conducted under this program shall be provided to the Employer's principals and employees, and as appropriate, the Employer's agents and subcontractors.
(2) An internal control system.
(i) The Employer's internal control system shall—
(A) Establish standards and procedures to facilitate timely discovery of improper conduct in connection with **any violation of the Securities and Exchange Act or any other law, rule or regulation enforced by the CFTC** ~~Government contracts~~; and
(B) Ensure corrective measures are promptly instituted and carried out.
(C) Ensure that the employer have policies and procedures in place that protect employees from retaliation who provide any information or file allegations of fraud, violations of law or misconduct to the internal control procedures. The Employer shall notify every employee who contacts the internal control system of his or her rights under section 23(h) and provide an employee with a copy of section 23(h).
(ii) At a minimum, the Employer's internal control system shall provide for the following:
(A) Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system. **The Chief Compliance Officer shall report directly to the employer's Chief Executive Officer and/ or the employer's Audit Committee.**
(B) Reasonable efforts not to include an individual as a principal, whom due

diligence would have exposed as having engaged in conduct that is in conflict with the Employer's code of business ethics and conduct.
(C) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Employer's code of business ethics and conduct and the special requirements **of the CFTC** ~~Government contracting~~, including—
(1) Monitoring and auditing to detect criminal conduct;
(2) Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and
(3) Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.
(D) An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.
(E) Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.
(F) Timely disclosure, in writing, to the **CFTC Office of Enforcement** ~~agency OIG~~, with a copy to the **CFTC's Whistleblower Office** ~~Contracting Officer~~, whenever, ~~in connection with the award, performance, or closeout of any Government contract performed by the Employer or a subcontract thereunder,~~ the Employer has credible evidence that a principal, employee, agent, or subcontractor of the Employer has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C. **any law, rule or regulation enforced by the CFTC,** or a violation of the **Securities Exchange Act or any civil law, rule or regulation enforced by the CFTC** ~~civil False Claims Act (31 U.S.C. 3729-3733).~~
~~(1) If a violation relates to more than one Government contract, the Employer may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation.~~
~~(2) If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Employer shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies' contracting officers.~~
~~(3) The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.~~

(4) The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.
(G) Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.

(d) **If an employee disclosure resulted in the report identified in subsection (F) above, the employer shall also report to the CFTC Enforcement Division and Whistleblower Office this fact, and shall provide to the CFTC information demonstrating that the employer has not engaged in any retaliation against the employee based on his or her disclosures. The employer shall also inform the employee that a disclosure was made in accordance with subsection (F), and shall inform the employee that the employee may be entitled to a reward under section 23 of the Securities Exchange Act. The employer shall provide the CFTC Office of Enforcement and Whistleblower Office proof that the employee was informed of his or her section 23 rights.**

(e) Within a reasonable period of time from notification from the employer as set forth in subsection (d), but no later then 90 days after the Whistleblower Office provides the employee with written notification of his or her potential eligibility for a reward, the employee who initially contacted the corporate compliance department and/or otherwise made the report that resulted in the referral set forth in subsection (F), may file for a reward under section 23 of the Securities Exchange Act. For purposes of determining the date of filing the 23 claim, that date shall be the date in which the employee can demonstrate that he or she initially contacted the employer's compliance program or otherwise made the report that resulted in the employer's subsection (F) disclosure to the CFTC.

(f) Nothing in this section shall be interpreted as interfering with the employee's right to directly file a section 23 claim with the CFTC at any time. ~~(d) *Subcontracts.*~~
~~(1) The Employer shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of $5,000,000 and a performance period of more than 120 days.~~
~~(2) In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.~~