

THE NEW JERSEY FALSE CLAIMS ACT IS NOT RETROACTIVE

The New Jersey False Claims Act ('NJFCA'), N.J.S.A. 2A: 32C-1 et seq., was enacted on January 13, 2008. Section nineteen of the Act provides that: "This act shall take effect on the 60th day after enactment." New Jersey is one of 22 states plus the District of Columbia that has a FCA, applicable to relator-whistleblower's *qui tam* claims which entails solely state funds. This week's New Jersey decision, State v. Correctional Medical Servs. Inc. ('CMS'), No. A-55575-09T4 (App. Div. October 11, 2011), the Appellate Court ruled that the NJFCA is not retroactive before the effective day of the Act on March 13, 2008. The clause delaying the law's effect until 60 days after enactment "provided clear evidence of the Legislature's intent that the Act be applied prospectively." Thus, the court affirmed the dismissal of a *qui tam* claim that the Department of Corrections was overbilled for dental services to inmates from April 1, 2005 to March 31, 2007.

This important ruling arises from the following facts. Leslie Hayling Jr., a dentist with CMS, a New Jersey corporation, which furnished dental treatment to inmates in New Jersey State prisons from 1996 through March 31, 2005 as a subcontractor pursuant to a contract between the State and defendant CMS. The medical aspect of the contract was performed by CMS and the dental portion by defendant AllCare Dental Group, L.L.C., very closely aligned with CMS. Effective April 1, 2005, the contract was renewed solely to CMS until September 30, 2008. Hayling, as the relator, began investigating CMS and AllCare leading him to conclude that Allcare was submitting false claims for State payment under the dental portion of the contract. Pursuant to N.J.S.A. 2A: 32C-5b, Hayling informed the Office of the Attorney General for New Jersey of his intention to file a *qui tam* action, against CMS and AllCare alleging violations of the NJFCA. On August 25, 2008, Hayling filed the complaint under seal and served it upon the Attorney General. On September 23, 2009, the State declined to exercise its right to intervene in the *qui tam* litigation but permitted the case to proceed. See, N.J.S.A. 2A: 32C-5d -e. As a result, the complaint was unsealed and served on

defendants, who moved to dismiss alleged conduct prior to the effective date of the NJFCA. The judge granted defendants' motion ruling that the Act was inapplicable to the underlying events from April 1, 2005 through March 31, 2007 since the NJFCA did not become effective until March 13, 2008.

The Appellate Court held that the judge's ruling was correct in his determination that, as a matter of law, the NJFCA is not retroactively applicable to conduct occurring before its effective date **unlike other states which specified that false claims acts would have retroactive application. See, New York False Claims Act, L. 2007, c. 58 S. 93 ("section thirty-nine of this act shall apply to claims filed or presented prior to, on or after April 1, 2007")(the NYFCA's effective date); Cal. Gov. Code Section 12654(b) ("A civil action under 12654(b) may be brought for activity prior to the act's effective date of January 1, 1988"). The NJFCA has no express language giving any retroactive application to events occurring before its explicitly stated effective date of March 13, 2008 or "on the 60th day after enactment." Thus **NJFCA is a prospective legislative act, which differentiates it from other states, as held in this precedential New Jersey appellate decision.****