

## Employer Sues Whistleblower For Failure to Report Illegal Conduct Internally

by Dennis J. Merley - Thursday, May 09, 2019



Here's an interesting twist – a hospital employer being sued by a former executive for a whistleblower claim is now suing that whistleblower for failing to report the unlawful conduct internally.

Louis Longo was fired from his job as Executive Vice President of Wheeling Hospital in West Virginia. He sued the hospital under the Federal False Claims Act (FCA) alleging that the hospital defrauded Medicare and Medicaid by inflating payments to doctors with high patient volumes in return for patient referrals.

Longo's lawsuit was brought under the *Qui Tam* provision of the FCA, which allows a private citizen to bring lawsuits alleging fraud in federal programs so as to assist the government in recovering misappropriated funds. The person bringing the lawsuit receives a portion of the ultimate penalty assessed against the defrauding party as a reward for bringing the wrongdoing to light. The federal government sometimes intervenes in such cases, as they did here, to add their resources to claims they believe to be significant.

### The Employer's Complaint

In response, the employer sued Longo in federal court claiming that he breached his fiduciary duty to them. Specifically, they contended that Longo had a duty to report possible illegal activity internally but instead used his insider knowledge to "extort a settlement" through a "false and frivolous" whistleblower action.

The hospital also claimed abuse of legal process, alleging that Longo's lawsuit overlooks the fact that the IRS had previously audited the compensation paid to the doctors in question such that any discrepancies regarding compensation would have been discovered and resolved. Thus, they claimed that "Longo's threats and the legal action he filed ... are consistent with a concerted effort to contort the legal process to his own personal advantage and wealth."

The lawsuits are relatively recent and therefore have not yet been subject to any rulings.

## **Bottom Line**

If the court rules in the employer's favor, it could have a significant impact on whistleblower claims. For one thing, those individuals who had a duty to bring wrongdoing forward now face greater consequences for not adhering to their obligations.

In addition, this raises the stakes for anyone who wants to claim that that they actually did blow the whistle but the employer did not respond. Such individuals better have proof that they raised the issue with the employer or face a possible lawsuit for not having done so.

We will report further developments.