

by James Stevens

Mike Behn's track record of success in whistleblower litigation speaks volumes: He has helped federal and state governments recover hundreds of millions of dollars.

Behn's firm, **Behn & Wytzner, Chartered**, helps whistleblowers seek justice for fraud against the government under the False Claims Act of 1986. The False Claims Act originated as "Lincoln's Law" during the Civil War, as a means to curb fraud in government contracts. Today, the False Claims Act and its state counterparts have paved the way to recover billions of dollars that might otherwise be lost to fraud and dishonesty in government contracts.

The suits allow private individuals to expose fraud against the government. These whistleblowers—who do the right thing and raise a hand when they see something that isn't right—are called "relators," and get a percentage of the recovery for their efforts. But relators face an incredibly difficult road ahead when they first notice government fraud—and Behn is there with them every step of the way.

A Memorable Case, a Lifelong Friend

One of Behn's most memorable clients began his long journey as a relator when he noticed a problem while working for Northrop Grumman. Jim Holzrichter was an auditor for the company on three federal defense projects. As part of the programs, his company was able to bill the government as the project advanced. Holzrichter noticed that the amount Northrop Grumman billed the federal government seemed excessive and just didn't add up. It was time to take action.

The Northrop case shows the difficulty of a client's situation when they decide to blow the whistle, Behn says. Though Holzrichter was doing the right thing and raising a flag to a serious problem internally, his supervisors ignored him and hushed him away.

Holzrichter cooperated with the federal government for a year and a half. Soon, however, the harsh realities set in and he was pressured out of his job and into medical leave. He lost nearly everything that he had earned over the years as a professional. His family had to sell their house, and he had a very difficult time finding new employment.

As Holzrichter's new reality set in, he hired the law firm where Behn would begin as an associate. During the representation, Behn remained by his side: "I went from a Fortune 500 company to living in a homeless shelter, but Mike was always there to take my phone calls



and was very understanding and supportive."

Holzrichter's situation is not unusual for whistleblowers; they are shunned from their industries and often labeled a rat during the proceedings. It can be nearly impossible to find a replacement job if they work in a specialized field. Holzrichter reflected, "I received over 400 rejection letters, ended up sweeping parking lots for \$20 a week and delivering newspapers to make ends meet, but Mike never dodged a call."

It took nearly 16 years for the Northrop Grumman case to resolve to settlement, sending a resounding message to federal contractors as well as the Chicago legal community that defrauding the government is bad business. Holzrichter's settlement in the case was \$134 million, \$100 million more than the next highest settlement in Chicago that year.

However, Behn and Holzrichter's work did not end with the settlement. Today, Holzrichter and another of Behn's former clients, Dr. Janet Chandler, share their insight gained from surviving their whistleblower cases and lead a nationwide mentoring project with Taxpayers Against Fraud to help other relators. Attorneys who handle whistleblower actions often refer new relators to TAF for the needed emotional support and someone to say "you can get through this" and survive "the isolation that comes before and after," according to Holzrichter. Behn often provides legal perspective and helps whistleblowers in the support group find the right representation for their claims.

The Nature of a Qui Tam Case

Whistleblower cases, also known as qui tam actions, require an extremely sharp legal and organizational ability, two characteristics which his clients and colleagues say are synonymous with Mike Behn. According to Holzrichter, Behn was able to master the complexity in the Northrop case easily: "He's got a great ability to grasp disconnected information and pull it together to make sense."

As relators' counsel, Behn (pronounced like "Ben") orchestrates complex litigation between assistant United States attorneys, state attorneys general, counsel for federal agencies, and the clients themselves. One recent case that Behn handled involving a pharmacist who worked for the CVS company involved 29 states.

Behn manages massive efforts like the CVS case using a team structure that helps him keep the complex cast of characters and deadlines in order. As a self-described "chief operating officer," Behn seems to enjoy this management adventure. He loves the challenge of playing to everyone's strengths and thrives on the energy of a great team, admitting that "working with the right people is the true joy of lawyering."

The "right people" couldn't agree more. Assistant United States Attorney Linda Wawzenski of the Northern District of Illinois has worked with Behn on multiple cases and speaks extremely highly of his ability as lead co-counsel: "I've been working with Mike Behn on qui tam cases for probably ten years now. In that time, he's been a true partner with the United States in the investigation and litigation of whistleblower cases." Wawzenski adds that Behn's prior experience outside of private practice make him the perfect ally in these difficult cases: "Perhaps because he himself previously spent time in a U.S. attorney's office, he has an understanding of the government process and exactly how things work in the federal sector. He brings us well-prepared cases with backup information and research, which clearly makes our job easier."

The CVS case is an excellent example of how Behn's management achieves great results. Behn was counsel for a client he describes as "an old-fashioned corner pharmacist who noticed that the CVS Corporation was switching how it filled Zantac prescriptions. Zantac, commonly known as ranitidine, comes in tablet and capsule forms. Medicaid realized that Zantac tablets were frequently prescribed and it set a standard price that it would reimburse for Zantac tablets. (Continued on Page 226)

says Sharp. "I sail on Carlyle Lake between Spring and Fall. I like the mechanical aspect, the strategy, tactics and competition."

When Sharp considers what sorts of careers his three sons might have, he provides insight into his own. "My oldest is in engineering, but the other two have not yet made decisions about their future careers. I would be pleased if they went into law, but I want them to do what they would enjoy most—just as I have. I have no plans to retire."

"Maybe I'll consider cutting back to 40 hours a week," Sharp says. "I'm having too much fun." ■

KENT RATHBUN

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In addition to his regular clients, Rathbun devotes a significant amount of time to pro bono work. Rathbun recently was awarded the Decatur Bar Association's annual Russel D. Hoerbert Pro Bono Award, and has been nominated for the Illinois State Bar Association's 2007–2008 John C. McAndrews Pro Bono Service Award.

His local pro bono activities include serving on a committee in Macon County's public law center, and handling divorce cases through the Land of Lincoln Legal Assistance Foundation, Inc. He's also represented Dove, Inc., a local domestic violence facility, and done work on behalf of Catholic Charities in establishing guardianships.

He also regularly serves as a guardian ad litem, representing the interests of minor children, on a pro bono basis.

"I think we have an obligation to give something back," Rathbun says. "I would say I'm blessed in my practice and income and financial circumstances. Frankly, I'm not happy with how the government spends my money. I like helping people by doing something I know how to do well." ■

HERB GLIEBERMAN

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four newspapers, including the *New York Times* and *The Wall Street Journal*.

He usually arrives at his Loop office before 8 a.m. If involved in a trial, Gliberman says he sometimes works until 8 p.m. or 9 p.m.

"I try to prepare each case as if it's my first case and leave no stone unturned," Gliberman says.

Gliberman says he tries to set aside Sundays to spend with his two young granddaughters. Besides his son Joel, Gliberman and his wife of more than 50 years, Evie, are the parents of a daughter, Gale Thornton. Their eldest son Ron, whom they affectionately called Ronnie, died at an early age.

Cook County Circuit Court Judge Gerald C.

Bender, who has known Gliberman for more than 30 years, says he is always prepared and presents his case in a lawyerly fashion.

"He's not looking to have a fight or disparage anyone," Bender adds. "His measure of civility is the standard which all lawyers should follow."

Gliberman says he plans to continue practicing law "until the day I die."

"The best part of my job is being in court," Gliberman concludes. "That's where I love to be." ■

MIKE BEHN

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However, Medicaid was silent on reimbursements for Zantac capsules.

The whistleblower noticed that CVS changed its policy and would only fill Zantac in capsules, not tablets. He believed this was wrong and suspected that the switching was an attempt to increase corporate profits and avoid Medicaid's reimbursement ceiling. The case soon grew to be a massive example of multi-state litigation, involving the federal government, 29 states and their attorneys general. Behn managed the flow of information and preparation for trial, ensuring that each federal and state entity had the right information to make the case.

The pharmacist's hunch and Behn's management paid off: CVS eventually settled the case for \$36.7 million in March.

Behn's most recent settlement was announced in June when Walgreens agreed to pay \$35 million overcharges that the company unlawfully defrauded Medicaid by switching prescriptions for ranitidine, and fluoxetine, the generic form of Prozac. The settlement affects the U.S. government, Puerto Rico, and 42 state governments.

The Justice Department is very selective in bringing qui tam actions; it only brings select whistleblower claims that are valid and appear likely to succeed, which means that preparation and advance work is key to a case's survival. Holzrichter's advice for future whistleblowers is simple: "there are a lot of attorneys that do different things, but the complexity of the law means that you need someone who knows what they're doing... Mike's working relationship with the federal prosecutor and his reputation as being one the premier qui tam attorneys in the country means that when he brings a case, [the prosecutors] look at it."

For his part, Behn agrees. He says that experience counts most when bringing a qui tam case, and that most attorneys "should not try this at home." ■

THE GOLDBERG TWINS

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right to file a lawsuit as long as they're still suffering from the disability.

And *Jackson v. Michael Reese Hospital & Medical Center* established a law of spoliation of evidence. The *Jackson* case established the pleading requirements for this brand new tort, which had previously been unrecognized in Illinois.

"We've been involved in many cases that have been on the cutting edge of the law, and have successfully broadened as well as created new laws protecting the rights of the injured," Barry says.

Barry holds the largest personal injury verdict in Illinois, with *Proctor v. Upjohn Co.*, a drug liability case that resulted in a \$127 million verdict—one of the largest in the country. It also resulted in the largest punitive damages award in Illinois.

"[Barry] did a marvelous job on this," says Leonard L. Levin, the judge who handled this case. "I don't know how he won the case, but he won the case. It was a very difficult case, and he did everything right... He handled himself magnificently before the jury."

Ian R. Alexander, a partner at Goldberg & Goldberg, has worked with the firm for 10 years and says it's been a "real learning experience at the hands of true masters."

Barry, Alexander says, has a philosophy that the deposition is the trial. Before the rules changed, he had depositions that lasted for days.

"These two are the most tenacious, driven people I've ever met," Alexander says. "One thing about Barry and Barth and our firm is we are never out-gunned. We routinely go up against law firms with unlimited resources and we are never going to be outspent. If they have 10 experts, then we have 20. It's really resource-intensive. Defense lawyers love us or hate us, but they all respect us."

Richard Donohue, who handles significant medical malpractice defense and professional liability work as a partner at Donohue Brown Mathewson & Smyth, says both lawyers have mellowed over the years but they still bring many talents to their cases.

"Barry is a very, very bright man who spends a lot of time studying the medicine and tries very hard to understand the technical aspects of the case," Donohue says. "He's extremely thorough."

"[Barth] tried a lot of cases and still tries a lot of cases, and I respect Barth for that."

When asked what they do when they aren't working on their firm's cases, Barth says he spends time with his four children, ages 12 to 19, and his wife. Barry spends time with his girlfriend of seven years and his two children, ages 14 and 17.

"We intend to keep working," Barry says. "This is my real passion. It's my only passion. There really is nothing I love doing more than trying cases and being in the courtroom." ■