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James F. Moseley on Qui Tam: Quo Vadis¹

U.S. ex rel. Bayer Clothing Group, Inc. v. Tropical Shipping and Const. Co., Ltd., 2008 WL 2704418, 2008 A.M.C. 2096, (M.D. Fla., Jul. 08, 2008).

Admiralty law and those who practice it find pride and certainty in the fact that many fundamental concepts have existed for hundreds of years; indeed, in some instances thousands of years. These ancient concepts are uniquely blended with congressional enactments, international treaties and admiralty law made by the Courts. This article will focus on whether there is a place in commercial admiralty law to apply Qui Tam claims. Specifically, it will address whether this legal concept fits within the Carriage of Goods by Sea that is the lifeblood of maritime commerce.

It is for this reason that the title of this article is as set forth above. In the maritime commercial sense, where is Qui Tam going?

Qui Tam actions seem to ebb and flow in popularity. “Qui Tam” is merely a shorthand term for “*qui tam pro domino rege quam pro seipso.*” An acceptable translation for this clause is, “he who as much for the King as for himself.”

Unique remedies are almost commonplace in admiralty, but a Qui Tam suit carries another dimensional combination with it, the public interest and the private interest. This paper is not a complete discussion of Qui Tam litigation. Its purpose is to merely discuss recent rulings relating to Qui Tam and the carriage of goods by sea. However, in order to properly focus on contemporary litigation in this issue, it is necessary to discuss some of the background of Qui Tam.

Before discussing the commercial admiralty side, a few words about the statutes that dominate Qui Tam litigation generally. The most significant is the False Claims Act, U.S.C. §3729 et seq. This statute was created in the 1860’s in an effort to provide criminal and civil penalties for fraud when the Union Military Forces were in most instances provided inferior supplies.

This Act was amended in 1986, somewhat precipitated by contractors charging the United States Government exorbitant charges in military contracting.

The most recent significant case that has arisen in the United States Supreme Court has been the Vermont Agency² case. One would not think that there is a

¹ The author gratefully acknowledges the thoughtful and thorough assistance and research of Stephanie U. Grau, of Moseley, Prichard, Parrish, Knight & Jones, J.D., University of Virginia School of Law.

substantial influx of Qui Tam cases unless actively engaged in this phase of litigation. However, it is advisable to take a second to review cases that have arisen in just a few months. See for example the following:

1. Allison Engine Co., Inc., v. U.S. ex rel. Sanders.³
2. U.S. v. Ford Motor Co.⁴
3. U.S. ex rel. K&R Ltd. Partnership v. Massachusetts Housing Finance Agency⁵
4. U.S. ex rel. Wilson v. Graham County Soil & Water Conservation Dist.⁶
5. U.S. ex rel. Marlar v. BWXT Y-12, L.L.C.⁷
6. U.S. ex rel. Fried v. West Independent School Dist.⁸
7. Stalley U.S. ex rel. v. Orlando Regional Healthcare System, Inc.⁹
8. Hoyte v. American Nat. Red Cross.¹⁰
9. Stalley v. Methodist Healthcare.¹¹
10. Timson v. Sampson.¹²

Also, to give another aspect of the number of Qui Tam cases, look at one specific circuit or the Court of Appeals of the Eleventh Circuit and the District Courts of that circuit for the same period of time. A sampling of the cases is as follows:

1. Sprint Communications Co., L.P. v. APCC Services, Inc.¹³
3. Stalley ex rel. U.S. v. Orlando Regional Healthcare System, Inc.¹⁴
4. Timson v. Sampson.¹⁵
5. U. S. v. Rosin.¹⁶
6. Diaz v. Kaplan University¹⁷
7. U.S. ex rel. Bane v. Lincare Holdings, Inc.¹⁸
8. U.S. ex rel. Lewis v. Walker.¹⁹
9. U.S. ex rel. Bane v. Breath Easy Pulmonary Services, Inc.²⁰

² Vermont Agency of Natural Resources v. U.S. ex rel. Stevens, 529 U.S. 765 (2000).

³ 128 S. Ct. 2123, 76 U.S.L.W. 4367 (June 9, 2008).

⁴ 532 F.3d 496 (6th Cir. July 9, 2008).

⁵ 530 F.3d 980 (D.C. Cir. July 8, 2008).

⁶ 528 F.3d 292 (4th Cir. June 9, 2008).

⁷ 525 F.3d 439 (6th Cir. May 13, 2008).

⁸ 527 F.3d 439 (5th Cir. May 9, 2008).

⁹ 524 F.3d 1229 (11th Cir. April 18, 2008).

¹⁰ 518 F.3d 61 (D.C. Cir. March 4, 2008).

¹¹ 517 F.3d 911 (6th Cir. February 28, 2008).

¹² 518 F.3d 870 (11th Cir. February 27, 2008).

¹³ 128 S.Ct. 2531 (June 23, 2008).

¹⁴ 524 F.3d 1229 (11th Cir. April 18, 2008).

¹⁵ 528 F.3d 870 (11th Cir. February 27, 2008).

¹⁶ 263 Fed. Appx. 16, 2008 WL 142037 (11th Cir. January 16, 2008).

¹⁷ 2008 WL 2950153 (S.D. Fla. Jul. 31, 2008).

¹⁸ 2008 WL 2856893 (M.D. Fla. Jul. 22, 2008).

¹⁹ 2008 WL 2817091 (M.D. Ga. Jul. 18, 2008).

²⁰ 2008 WL 2782680 (M.D. Fla. Jul. 16, 2008).

11. Meidinger v. Lee Memorial Hosp.²¹
12. Brown v. Walt Disney World Co.²²
13. Deutsche Bank Nat. Trust Co., v. Holyfield.²³
14. U.S. ex rel. Coss v. Northrop Grumman, Inc.²⁴
15. In re: Columbia/HCA Healthcare Corp. Qui Tam Litigation.²⁵
16. U.S. v. DeGayner.²⁶
17. U. S. ex rel. Chabot v. D&G Discount Homes, LLC.²⁷
18. Dular v. Blackshear.²⁸
19. U. S. ex rel. Walker v. R&F Properties of Lake County, Inc.²⁹
20. U. S. ex rel. Walker v. R&F Properties of Lake County, Inc.³⁰
21. U.S. ex rel. Nichols v. Omni H.C., Inc.³¹
22. U. S. ex rel. Nichols v. Omni H.C., Inc.³²
23. Corwin v. Walt Disney World Co.³³
24. U. S. ex rel. Chabot v. MLU Services, Inc.³⁴
25. U. S. ex rel. Chabot v. Westgate Homes, Inc.³⁵
26. U.S. ex rel. Digiovanni v. St. Joseph's/Candler Health System, Inc.³⁶
27. U.S. ex rel. Bane v. Breath Easy Pulmonary Services, Inc.³⁷
28. U.S. ex rel. Kaimowitz v. Ansley.³⁸

A GENERAL HISTORICAL BACKGROUND OF QUI TAM

A. English

As is patently obvious, from the above litany numerous cases involving Qui Tam abound. To fully understand the totality of the historical perspective, an article that was written some two decades ago is a necessary departure point. Anyone having a Qui Tam case could profit by the superb law review, The History and Development of Qui Tam.³⁹

Qui Tam had its genesis in the formative stages of English law. Beginning in the Thirteenth Century, Qui Tam suits consolidated the interest of the Royal personages and

²¹ 2008 WL 2704494 (M.D. Fla. Jul. 2, 2008).

²² 2008 WL 2561975 (M.D. Fla. June 24, 2008).

²³ 2008 WL 2557591 (M.D. Fla. June 20, 2008).

²⁴ 2008 WL 2389231 (M.D. Fla. June 11, 2008).

²⁵ (No. II) 560 F. Supp2d 1349 (M.D. Fla. June 4, 2008).

²⁶ 2008 WL 2338079 (M.D. Fla. June 3, 2008).

²⁷ 2008 WL 1782876 (M.D. Fla. April 17, 2008).

²⁸ 2008 WL 961326 (N.D. Fla. April 9, 2008).

²⁹ 2008 WL 976786 (M.D. Fla. April 9, 2008).

³⁰ 2008 WL 906734 (M.D. Fla. April 2, 2008).

³¹ 2008 WL 906425 (M.D. Ga. March 31, 2008).

³² 2008 WL 906426 (M.D. Ga. March 31, 2008).

³³ 2008 WL 754697 (March 18, 2008).

³⁴ 544 F.Supp.2d 1326 (M.D. Fla. February 25, 2008).

³⁵ 2008 WL 360785 (M.D. Fla. February 8, 2008).

³⁶ 2008 WL 395012 (S. D. Ga. February 8, 2008).

³⁷ 2008 WL 343158 (M.D. Fla. February 5, 2008).

³⁸ 2008 WL 126613 (M.D. Fla. January 10, 2008).

³⁹ 72 Washington U.L.Q. 81(1972). This note of thirty-two pages is of exceptional clarity and scholarship.

private interests. But at all times these separate interests remained remarkably distinct. Initially these proceedings were not dependent upon statutes. However, during the Seventeenth Century, the need for non statutory Qui Tam proceedings dissipated. Then, statutory Qui Tam proceedings began to appear that permitted private parties to initiate actions to redress public wrongs. As a result, a variety of statutory Qui Tam concepts began to have wide acceptance in England. One rationale for this concept being approved, was that precious little resources were devoted to police departments and other crime fighting entities. The law allowed informers to bring indictments. The informer suits were abolished by Parliament in 1951, but Qui Tam actions could proceed in a civil proceeding. Eventually Qui Tam legislation eradicated the civil concept.

A scholarly article by Professor J. Randy Beck is the nonpareil on this issue of Qui Tam, history, the False Claims Act, the English Ratification of Qui Tam and its rejection.⁴⁰ It is a must read for attorneys participating for either party in a Qui Tam case.

The Qui Tam system along with our other historical concepts of common law, sailed to the American colonies to be inherited as a part of our common law system

B. United States Background of Qui Tam

Qui Tam suits were frequently instituted in American early history but by the end of the Nineteenth Centuries employed only minimally. This trend continued, in 1942, in the case of United States ex rel. Brensilber et al., v. Bausch & Lomb Optical Company.⁴¹ The powerful and widely respected Learned Hand and his first cousin Augustus N. Hand, the latter having been a past President of the Maritime Law Association of the United States, joined with Circuit Judge Clark to affirm the dismissal of the plaintiff's Qui Tam claim. The Court stated that the statute involved in this case imposing liability on a person making a false claim against the United States was to be construed as a "penal statute," must be strictly construed and insofar as it perpetuates the odious and happily nearly obsolete Qui Tam action, it should be regarded with particular jealousy. This panel almost cast the death knell on these actions.

Later, the next year, Marcus v. Hess voiced significant objections also.⁴² In 1943 an amendment to the False Claim Act prohibited suits brought by an informer when the evidence was already in possession of the United States Government.⁴³

The Supreme Court set forth the basic history of Qui Tam actions in Vermont Agency, supra. While this opinion did not deal with an issue of admiralty and related to whether or not an individual could sue a state agency in a Qui Tam action, it cites Qui Tam actions going back 600 years within the English system. From the historical perspective, it is interesting that Chancellor Kent in his four volume Survey of America

⁴⁰ 78 N.C.L. 539, *539.

⁴¹ 131 F.2d 545 (2d Cir. 1945).

⁴² 317 U.S. 537 (1943), Justice Black stated that Qui Tam suits have always been regarded with disfavor by the Court.

⁴³ 31 U.S.C. §232.

Law of which a substantial portion (almost one-third) dealt with admiralty matters, does not entertain any aspect of Qui Tam actions in admiralty or otherwise. However, these volumes were written almost a half century before the legislation involving the False Claims Act was passed.

A Court of Appeals case that dealt with the historical aspects of Qui Tam is the United States Springfield Terminal Railway v. Quinn.⁴⁴ This case rivals the Vermont Agency case as a relation of the history and background in a substantial matter.

More recently, another Court of Appeals has dealt with the issue of Qui Tam in Stalley On Behalf of the United States of America v. Orlando Regional Healthcare System,⁴⁵. This case stands for the proposition that where a plaintiff brought an action under the Medicare Secondary Payer Act, such statute was not a Qui Tam statute and did not authorize a private party to sue for injury to the government, even though he asserted injury in fact suffered by the government. The Court went on to state that there is no common law right to bring Qui Tam action which is strictly a creature of statute.

FEDERAL STATUTES APPLICABLE IN ADMIRALTY

Within the broad general category of Admiralty there are three statutes that deal with Qui Tam. A most excellent paper that was delivered at the Southeastern Admiralty Law Institute in June, 2008 should be reviewed by anyone contemplating bringing a Qui Tam case or defending it in Admiralty.⁴⁶ Two of these criminal statutes applicable to admiralty provide for awards to informers, who are often termed “Whistle Blowers.” These statutes are: (a) Act to Prevent Pollution from Ships, and (b) The Rivers and Harbor Act (Refuse Act).

An International Convention commonly known as MARPOL Protocol regulates and prevents ships’ discharge of oil, chemicals, garbage and sewage. In the United States MARPOL is codified within the Act to Prevent Pollution from Ships, 33 U.S.C. §1901 et seq. The Rivers and Harbors Act of 1899 made unlawful various threats to navigation and the cleanliness of navigable waters, criminalizing dumping or depositing refuse matters of any kind or description into navigable waters or into the banks where it may flow into such waters.⁴⁷

Probably purely of historical importance as opposed to practical are the cases involving statutory forfeiture of vessels outfitted to engage in warfare with friendly nations. This statute was placed in the statute books quite early in this country’s history, 1795 to be exact. An historical version of the text of this statute reads as follows:

Every person who, within the limits of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or

⁴⁴ 14 F.3d 645 (D.C. Cir. 1994).

⁴⁵ 524 F.3d 1229 (11th Cir. 2008).

⁴⁶ Marvel, *Maritime Whistle Blower & Qui Tam Actions*, 2008 SEALI pp. 1-30

⁴⁷ 33 U.S.C. §407.

knowingly is concerned in the furnishing, fitting out, or arming, of any vessel with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or who issues or delivers a commission within the territory or jurisdiction of the United States, for any vessel, to the intent that she may be so employed, shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years. And every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one-half to the use of the informer, and the other half to the use of the United States.

Revised Statutes U.S.C. § 5283. This statute has had countless cases interpreting it generally, for example, The Betsy,⁴⁸; The Brothers;⁴⁹ U.S. v. Skinner;⁵⁰ The Three Friends;⁵¹ U.S. v. The Three Friends.⁵² The most recent case is The Lucy H.⁵³ The current version of this statute has changed very little from the original. Currently, this Section reads as follows:

Arming Vessel Against Friendly Nation⁵⁴

Whoever, within the United States, furnishes, fits out, arms, or attempts to furnish, fit out or arm, any vessel, with intent that such vessel shall be employed in the service of any foreign prince, or state, or of any colony, district, or people, to cruise, or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace; or

Whoever issues or delivers a commission within the United States for any vessel, to the intent that she may be so employed--

Shall be fined under this title or imprisoned not more than three years, or both.

Every such vessel, her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores which may have been procured for the building and equipment thereof, shall be forfeited, one half to the use of the informer and the other half to the use of the United States.

⁴⁸ 30 F. Cas. 7, No. 17,750 (D.C.S.C. 1795).

⁴⁹ 17 F. Cas. 653, No. 9743 (D.C.S.C. 1795).

⁵⁰ 27 F. Cas. 1123, #16,309 (C.C. N.Y. 1818).

⁵¹ 166 U.S. 1 (1897).

⁵² 85 F. 424 (5th Cir. 1989).

⁵³ 235 F. 610 (N.D. Fla. 1916)

⁵⁴ 18 U.S.C.A. § 962.

Historically, the doctrine of Qui Tam has been implemented in a number of cases, notable among them U.S. v. The Three Friends, et al.⁵⁵ The Three Friends concerned Section 5283 of the Revised Statutes, which provided for forfeiture of a vessel where such vessel has been outfitted with the intent to be employed in the service of a foreign state. Such forfeiture of the vessel and its contents was statutorily divided “one-half to the use of the informer, and the other half to the use of the United States.” 17 U.S. 498. “The principal object of the act was to secure the performance of the duty of the United States, under the law of nations, as a neutral nation in respect of foreign powers.” The roots of this Section can be found in the Act of 1794, which has generally been recognized as the first instance of municipal legislation in support of the obligations of neutrality. *Id.* The steamer “Three Friends” was seized by customs agents in Florida in 1896. The Court found that the libel was insufficiently pled, and failed to satisfy the requirements of Section 5283. It is not the holding of The Three Friends that is particularly noteworthy, however; it is the discussion and application of Section 5283, which enables an “informer” to bring suit on behalf of the federal government and share in the benefits of the outcome.

The Second matter relating to maritime property was formerly codified in 46 U.S.C. App., section 723. Since the revision of 2006, this provision has been modified as to form and can now be found at 46 U.S.C. § 80103, and states as follows:

Property On Florida Coast To Be Taken To Port Of Entry

(a) In general.--Property taken from a wreck, the sea, or a key or shoal, on the coast of Florida and within the jurisdiction of the United States, shall be brought to a port of entry of the United States.

(b) Seizure and forfeiture.--A vessel transporting property described in subsection (a) to a foreign port may be seized by, and forfeited to, the United States Government. A forfeiture under this subsection accrues half to the informer and half to the Government.

46 U.S.C. § 80103.

However, once again this is background.

WHETHER OR NOT QUI TAM SUITS MAY BE BROUGHT WITHIN THE CONCEPT OF THE THE CARRIAGE OF GOODS BY SEA ACT/HARTER ACT

The former portion of this article is a prologue to the immediate question: Whether Qui Tam actions are allowable in cases involving the carriage of goods? Such a case arose against three defendants.

⁵⁵ 17 U.S. 495 (1897).

Bayer, a cargo shipper, filed its Complaint in the United States District Court for the Middle District of Florida, Jacksonville Division bringing its claim as a Qui Tam action and also alleging violations of the Harter Act 46 U.S.C. §193 Appendix now codified as 46 U.S.C. §3073 against Tropical Shipping and Construction Company.⁵⁶ It alleged that the carrier had violated the Harter Act and should be fined under Title 18, 46 U.S.C. §30707(a) where half of the fine would go to the party injured by the violation (presumably Bayer) and the other half to the United States pursuant to 46 U.S.C. §30707(c).

The United States appearing independently of the shipper filed a Motion to Dismiss pursuant to Rule 12(b)5 F.R.C.P. Subsequent to Bayer's filing a response to such motion, the Court conducted a hearing on this portion of the case. An Order was entered promptly granting the United States Motion to Dismiss as to the relator's action and dismissing the Qui Tam claim with prejudice since a Qui Tam action under the Harter Act was not authorized or proper.

The Court granted Bayer's motion to amend its Complaint against Tropical. The Amended allegations relating to the Qui Tam claim were almost verbatim as previously alleged. The Amended Complaint added that the Harter Act also provided Bayer with a private right of action to collect fines for Tropical's violation of the Act. Tropical then filed its Dispositive Motion for Judgment on the Pleadings, or in the alternative, Summary Judgment.

Tropical raised four arguments in its Motion against Bayer:

- 1) Bayer is improperly attempting to use provisions of the Carriage of Goods by Sea Act ("COGSA") to establish a violation of the Harter Act;
- 2) Even assuming that the Harter Act applies to the subject Bills of Lading, Tropical did not violate the Harter Act;
- 3) The Harter Act does not provide a private cause of action for Bayer to recover criminal penalties against Tropical; and
- 4) Bayer's concerns regarding COGSA package limitations could have been addressed by "declaring a higher value and paying extra freight."

The most pressing issue was the Qui Tam issue. The Court undertook to address this issue at the initial onset of the opinion. Bayer relied on no modern cases. Instead it had relied upon United States v. Cobb,⁵⁷ and United States ex rel. Pressprich and Sons, Inc., v. James W. Elwell and Co.⁵⁸ An inherent weakness to plaintiff's case was the fact

⁵⁶ U.S. ex rel. Bayer Clothing Group, Inc. v. Tropical Shipping and Const. Co., Ltd., 2008 WL 2704418, 2008 A.M.C. 2096, (M.D. Fla., Jul. 08, 2008).

⁵⁷ 163 F. 791(D.M.D., 1906).

⁵⁸ 250 F.929 (2nd Cir., 1918).

that each of these cases arose years before the United States had adopted the Hague Rules of 1924 and the passage of the legislation in 1936 that is now known as the Carriage of Goods by Sea Act. Neither case had any inkling of what future maritime law would be in the transportation of goods by sea since that would be almost for another generation. The Court below disposed of Cobb by stating that Cobb stated that it was the intention of Congress to make refusal to issue a Bill of Lading an act punishable by fine for one who has been guilty of a violation of law by an indictment. Thus the Cobb Court found that the Harter Act was in fact a criminal penalty to be enforced by indictment by the United States and not a civil statute to be enforced by a Qui Tam action.

The District Court dealt with equal dispatch with the outdated proposition of Elwell that the Harter Act authorized a Qui Tam action on the basis that Judge Hand had permitted a Qui Tam action based on common law. The ruling was not only based on a common law concept, but on a high water mark of Qui Tam earlier in the Twentieth Century. The District Court also dealt with issue stated, that there is no common law Qui Tam cause of action under Federal law. Since Qui Tam was a creature of statute, the Court relied on the reasoning and jurisprudence of United Seniors Association v. Philip Morris, USA.⁵⁹

The Court also recognized the viability of the decision and the law of Vermont Agency of Natural Resources v. United States ex rel. Stevens.⁶⁰ The District Court held that there was no common law Qui Tam action and that the only permissible Qui Tam actions are expressly and explicitly authorized by Federal Statute. The Court found that by its very language, the Harter Act clearly does not expressly authorize a Qui Tam suit, and that the Qui Tam action under the Harter Act must be dismissed. The Court went on to hold that the Harter Act does not provide a shipper with a private right of action to recover chemical penalties that in this case would have been in excess of two millions dollars under 46 U.S.C. §30707. This aspect of the Harter Act is in the criminal nature of fines and the criminal character of the penalties imposed when the statute was in 2006 amended under the title of “criminal penalty.” Thus, there was no standing for the shipper to bring a private action to collect fines.

The District Court in the instant case addressed the third and final issue with the same clarity that it had addressed the prior issues. It stated that even if the shipper had standing to pursue penalties for violation of the Harter Act, pleadings show that the carrier did not violate the Act since the statute clearly gives three options for listing of goods on a Bill of Lading. In conclusion, accepting the shippers’ Amended Complaint as true and viewing it in the light most favorable to shipper, shipper failed to establish that carrier violated the Harter Act or that it had standing to bring a civil action to recover fines. Thus, the carrier was entitled to a Judgment as a matter of law. The use of the Harter Act is intertwined with the Carriage of Goods by Sea Act, thus does not today and should not in the future be considered as a Qui Tam case. The Supreme Court has expressed that there were only four statutes that existed.

⁵⁹ 2007 U.S. App. Lexis 19748 (1st Cir., Aug. 2007).

⁶⁰ 529 U.S. 765 (2000).

Not long after the District Court ruled in this case, the Eleventh Circuit was called upon in Stalley v. Orlando Regional Health Care System,⁶¹ to rule on a private party suit allegedly arising under the Medicare Secondary Payer Act. That Court held that the Medicare Secondary Payer Act is not a Qui Tam statute and does not authorize a private party to sue for injury to the Government. While not a maritime case, the reasoning is similar to the instant case.

The issue of a Qui Tam cause of action arising from a violation of the Harter Act and the Carriage of Goods by Sea Act should remain a dead issue. Only those statutes cited by the Supreme Court remain viable Qui Tam issues and none of those mentioned were Maritime Statutes.

On the not too distant horizon, a new Carriage of Goods by Sea Act will arise in the international arena. The United Nations Commission on International Trade Law (UNCITRAL) has had a working group (Transportation Law) during the last session, the twenty-first session. The end result of this effort is that new law will be created in September of 2009 at Rotterdam at an International Convention. Thereafter for the Convention to replace the U.S. Carriage of Goods by Sea Act, there will be required approval by the U.S. Senate and implementing legislation. However, the action thus far taken by the working group in its present form would do nothing to impact or modify Qui Tam actions such as the instant case or create the Qui Tam issue in a commercial setting of waterborne transportation. This concept should remain historical footnote and relic of the past. It is understood that in September of 2009 a convention will probably exist to create such new statutes. Upon approval by the United States through its Constitutional approbation, it will become law to the United States.

The Tropical case and its philosophy should remain good law for any interpretation of that embryonic convention. While statutes that provide for an informer's share of recovery in the pollution field may continue to exist, it would appear that the question of where Qui Tam will go in the context of maritime commercial carriage cases is clear.

The answer is simple: Nowhere!

⁶¹ (11th Cir., 2008, 524 F.3d 529)