



## 10th Circuit Gives Grynberg Full Measure of Justice

By: [Rebecca Noecker](#) and [Amy Mowry](#)

Michael L. Beatty and Rebecca H. Noecker of Beatty & Wozniak were part of the successful defense team representing hundreds of natural gas pipeline and production companies against allegations of systematic mismeasurement and undervaluation of natural gas produced from federal and Indian lands, purportedly leading to the companies' underpayment of federal royalties by as much as \$900 billion. The proceeding consolidated seventy four separate qui tam actions brought across the nation under the False Claims Act, 31 U.S.C. § 3729(a)(7) ("FCA"). The FCA (commonly referred to as the "whistleblower act") allows a private individual or "relator" to bring a civil action on behalf of the federal government for the recovery of unpaid federal monies and to share in any recovered proceeds. Jack J. Grynberg filed the original 74 actions in several federal courts in 1997. The cases were consolidated by the MultiDistrict Litigation Panel into a MDL proceeding and transferred to the United States District Court for the District of Wyoming.

The FCA provides no jurisdiction if the fraud allegations have been publicly disclosed and the Relator lacks the requisite "direct and independent knowledge" of the fraud to qualify as an original source of information for the allegations. The district court, finding that Grynberg based his complaints on publicly disclosed information and that he did not have "sufficient direct and independent knowledge" of the alleged facts to qualify as an original source, dismissed all 74 cases for lack of subject matter jurisdiction under 31 U.S.C. § 3730(e)(4).

The Tenth Circuit affirmed the district court's finding that prior public disclosures of the mismeasurement allegations in a 1980s Senate Committee report and a 1995 qui tam action were sufficient to alert the government to any possible fraud as to all Defendants, even if a Defendant was not

specifically named. The Tenth Circuit also agreed that Grynberg failed to qualify as an original source under the "substantiality" standard, where the Court weighed Grynberg's direct and independent knowledge against the entirety of his allegations.

Jack Grynberg, President of Grynberg Petroleum in Englewood, Colorado says that he intends to seek a rehearing en banc and will push his case to the Supreme Court if necessary. The Tenth Circuit decision, *In re Natural Gas Royalties*, 2009 WL 684653 (C.A.10 (Wyo.)) will be published in the Federal Reporter.

[Click here to view the decision](#)



2009, Beatty & Wozniak, P.C. All rights reserved.

This newsletter does not constitute legal advice. The views expressed in this newsletter are the views of the authors and not necessarily the views of the firm. Please consult with legal counsel for specific advice and or information.

Read our complete [legal disclaimer](#).