



## QUI TAM, ATTORNEYS GENERAL, AND A COMPANY DEFENDS ITSELF

You often read about state attorneys general joining together to sue a company, in the process making headlines as “fighters” by wringing money out of a company. The lead AG’s office in one state does all the work — or farms out the litigation work to buddies in the trial bar — and the other attorneys general sign on for the publicity and political gains.

But sometimes attorneys general say “no.” Given an opportunity to tag along on an anti-business lawsuit with all the potential monetary and PR rewards, an attorney general will actually refuse the blandishments and AG peer pressure and say, “No, this suit does not serve the interest of the citizens of my state.”

Indiana’s attorney general, Greg Zoeller, is the latest state AG to make such a decision earlier this month when he declined to support a qui tam lawsuit against JM Eagle, the world’s leading manufacturer of PVC and plastic piping.

Qui tam is the Latin and legal term for whistleblower lawsuits, that is, a lawsuit by someone claiming to be revealing previously hidden accounts of wrongdoing. The term “whistleblower” generally has a positive connotation, but too often the lawsuits are filed by employees who have been fired or otherwise disciplined. Combine revenge with a profit motive — the Federal False Claims Act (FCA) allows the claimant to receive a portion of the money the government recoups — and you wind up with big incentives for frivolous or abusive litigation.

Such is surely the case with the litigation that Zoeller is refusing to support, a position shared by the AGs from California, Massachusetts and Florida. And their refusal is news.

The basics of the litigation are this: A disgruntled former employee, John Hendrix, sued the company after he was fired, claiming JM Eagle produced substandard pipe that led to burst water pipes around the country. Hendrix gained the institutional backing from the big qui tam,

class-action law firm, Phillips and Cohen. The trial lawyers have been doing what trial lawyers do — recruiting more people to sue, ginning up PR, and working to damage the company’s reputation.

But JM Eagle is fighting back aggressively, refuting the lawsuit’s claims and filing for the suit’s dismissal.

A key point is that, along with the states, the federal government declined to get involved. As JM Eagle’s detailed fact sheets on the dispute report, “After three years of investigation, review and consideration, the U.S. government chose not to intervene in the relator’s lawsuit.” And statistics show that show 94 percent of False Claims Act lawsuits are dismissed when the U.S. government declines to intervene.

As for the quality of its pipe products, the company has thoroughly debunked the accusations. To reaffirm the products’ reliability, JM Eagle is now issuing a 50-year warranty against manufacturing defects.

Indeed, the company has gone to extraordinary lengths to debunk the litigation and defend itself. Faced with the possibility of lengthy litigation in which the plaintiff’s central strategy is to damage a company’s reputation, some companies choose to quickly settle. That’s a business decision that may well make sense.

Still, it’s bracing to see a company that declares, in effect, “This lawsuit is garbage, we resent the accusations and we’re going to fight you to the end.”

And it’s nice to see attorneys general who pass by the usual solicitations and political temptations and agree with the company, in the process representing the interests of their state’s citizens.

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