

**ANONYMOUS, ET ANO. V. MOODY'S CORPORATION,
NO. 103997/2012 (N.Y. SUP. CT.).**

CASE OVERVIEW

Status: Settled

Related Attorneys: David E. Kovel, Karen M. Lerner

Related Practices: False Claims Act, Tax Fraud, Whistleblower

Kirby McInerney LLP has secured an \$8.5 million recovery in a tax whistleblower case alleging an underpayment of taxes to New York State and New York City by Moody's Corporation, along with various affiliates ("Moody's") and Marsh & McLennan Companies, Inc. ("Marsh").

In the case, Kirby McInerney represented a whistleblower who was a former Moody's employee. On the client's behalf, Kirby McInerney alleged that Moody's underpaid New York State and New York City business taxes between 2002 and 2014 by mischaracterizing its income as supposed premiums to its wholly owned captive insurance subsidiary. The firm further alleged that Marsh aided and abetted the scheme.

Under the New York State and New York City False Claims Acts, a whistleblower can bring suit, known as a "qui tam" suit, on behalf of the government to help recover monies lost as a result of alleged fraud. In New York, whistleblowers are expressly permitted to bring actions against those who knowingly or recklessly underpay state taxes, and to receive a percentage share of the government's recovery as an award. If the government chooses not to proceed with the claims (or "declines" the case), then the whistleblower can step into the shoes of the government and prosecute the claims.

In this case, the government declined the case and Kirby McInerney, on behalf of the client, pursued the claims for the benefit of the government. With the settlement, New York State and New York City will now share in the recovery of millions of dollars.

This settlement represents an unusual instance when a New York tax whistleblower has settled a declined case for the benefit of the government. It shows the importance of empowering whistleblowers to carry cases forward even when the government chooses not to take on a case. The settlement is also by far the largest non-healthcare recovery in 2019 under the New York False Claims Act.

Kirby McInerney partners David E. Kovel and Karen M. Lerner represented the whistleblower. Mr. Kovel noted the critical position of whistleblowers in society, "if not for whistleblowers, it is possible that fraud could not be detected and would still be ongoing in many instances." By giving incentives to whistleblowers to help fight fraud, "we are making sure there is money to pay for important government services and that people who follow the rules are not left to pay the burdens for those who do not."