

Report on Research Compliance Volume 16, Number 5. May 01, 2019 Duke's \$112M False Claims Act Case: A Tale of Fraud, Fabrication and Two Brothers

By Theresa Defino

The recent \$112.5 million False Claims Act settlement involving Duke University over research misconduct was the result of a confluence of events that brought together an embezzling lab tech and a pair of brothers—one her coworker and the other an attorney who happened to specialize in FCA cases.

The historic settlement is all the more remarkable because the government never formally entered the whistleblower suit, which attorney John Thomas initiated in 2013 on behalf of his younger brother, Joe. Cases whistleblowers bring on their own are rarely successful. Federal officials helped broker the settlement and conducted their own investigation but did not legally intervene.

But perhaps most noteworthy: Joe Thomas didn't uncover the fraud at the heart of his case. He learned what Erin Potts-Kant had done from being privy to Duke's own investigation into her misdeeds.

In a wide-ranging interview with RRC, the Thomas brothers shared highlights of the six-year journey leading up to the settlement and the damage done by Potts-Kant. They also expressed their hope it results in some overdue soul-searching by universities about how to better manage grant funds and an examination of a culture Joe Thomas said is built on "misaligned motives."

The settlement, more than 10 times larger than the previous record amount for fraud based on data fabrications, should also serve as a warning to other universities that they could be next. "I don't think this case is going to be the last case of this kind. I think there are going to be others, unfortunately," said John Thomas, a partner with Healy Hafemann Magee in Savannah, Georgia.

In its March 25 announcement, the Department of Justice said the \$112.5 million settlement "resolves allegations that between 2006 and 2018, Duke knowingly submitted and caused to be submitted claims to the NIH and to the Environmental Protection Agency that contained falsified or fabricated data or statements in 30 grants, causing" NIH and EPA "to pay out grants funds they otherwise would not have." John Thomas told RRC of the 30, only one was from the EPA. Half of the amount is repayment of grants and half is penalties, he said.

Joe Thomas was granted 30% of the settlement amount, or \$33.75 million, which he shares with his brother and his firm and two other sets of attorneys. John Thomas said he could not discuss how this money will be apportioned among them.

Although the DOJ statement doesn't mention former Duke lab worker Potts-Kant, the lawsuit names her as the perpetrator of the fraud in her capacity as a clinical research coordinator in the Pulmonary, Asthma and Critical Care Division of Duke University Medical Center; she later admitted to fabricating the data, a pattern that began a year after her hiring in 2005. Duke was also named in the suit, as was William M. Foster, Potts-Kant's supervisor.

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