

GRAVES GARRETT NEWS

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Graves Garrett Lawsuit Prompts Legislative Change in Wisconsin

Graves Garrett LLC's clients, Wisconsin Club for Growth and Eric O'Keefe, have successfully resolved their lawsuit against the Wisconsin Government Accountability Board, which again caught the attention of *The Wall Street Journal*.

In May 2014, the Club and O'Keefe sued the GAB on behalf of all Wisconsin taxpayers due to the GAB's role in a long-running "John Doe" investigation. The GAB and prosecutors used the John Doe investigation to harass and intimidate conservative groups and political figures not only in Wisconsin, but also across the country. The Club and O'Keefe sought a declaration that the GAB violated Wisconsin law through its illegal expenditures in the John Doe investigation and overstepped its authority at taxpayer expense.

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Letter from the Firm

Celebrating 10 years as a firm

As Graves Garrett celebrates its 10th anniversary as a firm, we continue to be reminded of how grateful we are to our friends, clients and colleagues for your support since we entered private practice a decade ago. This milestone year has also started on a truly positive note with numerous significant achievements by our attorneys. For instance, we are happy to report that we recently secured a positive motion to dismiss ruling on behalf of Union Pacific Railroad in an environmental/criminal litigation matter. Additionally, the Wisconsin Supreme Court upheld its earlier decision in favor of our clients, the Wisconsin Club for Growth and Eric O'Keefe. In another matter, the U.S. District Court for the Southern District of Ohio recently certified a class action lawsuit that our firm filed against the IRS. As we reflect on these outcomes, as well as our last 10 years working with you, we want to express our thanks for your continued support and wish you the very best in the coming year. ■

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Graves Garrett LLC

Graves Garrett Lawsuit Prompts Legislative Change, Favorable Resolution Regarding Future Conduct, continued from page 1



Documents and deposition testimony obtained by the Club and O'Keefe revealed that the GAB, an agency with authority to pursue civil enforcement actions, worked to control the criminal John Doe investigation from the shadows, and that the GAB funded and operated the investigation alongside Milwaukee County prosecutors.

"GAB Ethics Division Administrator Jonathan Becker spearheaded and controlled the hiring of John Doe special prosecutor Fran Schmitz, and the GAB paid his bills. Equally troubling, GAB assigned staff to work on the investigation who were biased against the targets and motivated by political animus," said Edward Greim, who along with

Todd Graves represented O'Keefe and the Club in the lawsuit.

Under the settlement, the GAB admits "it had contact with prosecutors about the subject of John Doe II and later made expenditures in conducting GAB Investigation No. 2013-02 in cooperation with prosecutors conducting the John Doe II investigation," and agrees that its board, staff and agents will refrain from funding and assisting future criminal prosecutions in violation of its statutory authority. The settlement prohibits the GAB from researching and drafting legal documents on behalf of law enforcement and third-party groups for use in a criminal investigation or prosecution, and it also bars GAB staff from assisting law enforcement without board approval. ■

DOJ Announces that Healthcare Tops List of False Claims Act Recoveries

The U.S. Department of Justice recently reported that more than \$3.5 billion was recovered from False Claims Act settlements and judgments in the 2015 fiscal year. In particular, the DOJ noted that healthcare, housing and mortgage fraud, and government contracts accounted for the three largest portions of the total recoveries.

Healthcare, however, was by far the most extensive of the three offenders with more than half of the recovery – \$1.9 billion – attributed to fraud in the industry. In fact, since January 2009, the government has recovered a total of \$16.5 billion from False Claims Act cases in the healthcare industry.

The most common instances of healthcare fraud ranged from allegations of improper implantation of cardiac devices in Medicare and Medicaid patients to physician kickbacks from pharmaceutical companies. In one example, according to the DOJ, a well-known provider of dialysis services paid a staggering \$800 million between two claims.

The DOJ also included a recap of Assistant Attorney General Sally Quillian Yates' Sept. 9, 2015, memorandum on individual accountability (both criminal and civil) for corporate wrongdoing. The memorandum, which reinforced the department's commitment to deter and address fraud through the use of the False Claims Act and other civil and

criminal enforcement tools, noted that the DOJ would be focusing on individual accountability and no longer allowing individuals to avoid personal exposure from their professional misconduct under the protection of a corporate umbrella.



With these facts in mind, it is imperative that healthcare organizations of all shapes revisit their policies and procedures in regard to fraud and the handling of internal complaints and investigations. By adequately and proactively dealing with internal issues, companies and their employees can significantly mitigate their exposure and the likelihood of paying devastatingly large penalties or being exposed to parallel criminal enforcement.

Graves Garrett attorneys have represented both relators and defendants in False Claims Act ("qui tam") cases nationwide and specialize in defending physicians and healthcare organizations in related or independent criminal enforcement efforts. The Graves Garrett team, led by former federal and state prosecutors and an FBI Special Agent, leverages its investigative and legal experience to successfully secure favorable outcomes in the most threatening environments. ■

Todd Graves Recognized as *NLJ* “Trailblazer” and *Missouri Lawyers* “Influential Lawyer”



Todd Graves was recently named not only an “Influential Lawyer” by *Missouri Lawyers Weekly*, which recognizes outstanding attorneys across the state in a variety of categories, but also named by *The National Law Journal* as one of its 2015 White Collar Crime Trailblazers — a feature highlighting exceptional litigation professionals in the area of white collar crime.

With many high-stakes investigations and litigation coming to a close in 2015, Graves’ work has indeed been the focus of a multitude of the nation’s top media outlets, including *The Wall Street Journal*. In an article titled “Free Speech Liberation Day,” the publication praised the firm for its work in a long-running investigation in which the Wisconsin Club for Growth and its director, Eric O’Keefe, were improperly forced to defend themselves against a wide-ranging, politically motivated investigation used to harass and intimidate conservative groups and political figures. The investigation, referred to as a “John Doe” investigation, was led by the Wisconsin Government Accountability Board (“GAB”) and focused on parties known to have supported Gov. Scott Walker’s political agenda.

This past year, Graves also led the charge in filing a lawsuit against the IRS – one of the first of its kind – for the agency’s improper targeting of conservative political groups. The suit again claimed national headlines when the U.S. District Court for the Southern District of Ohio certified the class action, which will represent more than 200 similarly targeted groups. ■

Nathan Garrett Named *NLJ* “Trailblazer”



Nathan Garrett has been recognized as a 2015 Cybersecurity & Data Privacy Trailblazer by *The National Law Journal* for his contribution to “the fight against criminal cyber activity.”

As reported by *The National Law Journal*, Garrett, a former federal prosecutor and FBI Special Agent, also served as Chief of the National Security and Terrorism Section in the United States Attorney’s Office for the Western District of Missouri. Having worked on a wide range of federal crimes, including cyber fraud, Garrett has been featured as a speaker and writer on a variety of cyber security and data breach topics, including the legal requirements, expectations and consequences imposed on data holders and how best to prepare for and respond to cyber breaches. ■

Kansas City Terminal Railway Investigation Comes to a Close



Partners Todd Graves and Kathleen Fisher recently closed their internal

investigation and resolved all related litigation on behalf of their client, Kansas City Terminal Railway, and its shareholders. The investigation specifically addressed allegations of significant fraud against the company perpetuated by its former president and outside contractors.

Graves Garrett pursued claims on behalf of KCT against former executives and other third parties involved in the scheme. Through resolution of those claims, the firm is pleased to report that Kansas City Terminal Railway was able to recover nearly all funds lost.

Graves Garrett obtained favorable settlements from defendants and other parties without the need for litigation. At the conclusion of the investigation and subsequent settlements, recoveries amounted to nearly 94 percent of Kansas City Terminal Railway’s provable losses.

Although the federal investigation is ongoing, Graves Garrett was able to accomplish these outcomes prior to any formal criminal charges. Kansas City Terminal Railway is now well positioned to move forward in a positive direction without awaiting resolution of the criminal process. ■

Nathan Garrett Serves as Expert Source on Obama's Terrorism Address for NBC TV Station



Nathan Garrett was recently featured as a terrorism expert on Kansas City's NBC TV station, 41 Action News. Following President Obama's address to the nation on terrorism, Garrett served as a leading local source on the subject in a story that aired Dec. 6, 2015.

Garrett's experienced understanding of terrorism and its threat to our nation is firmly rooted in his prior, 10-year service as a federal prosecutor and FBI Special Agent.

As a federal prosecutor, Garrett served as Chief of the National Security and Terrorism Section in the United States Attorney's Office for the Western District of Missouri, and as an Assistant United States Attorney for the Northern District of Texas where he served in the National Security Section, prosecuting high-profile international cases. Garrett also served as an FBI Special Agent in the Dallas Division, where he investigated and prosecuted wide-ranging domestic and international matters. ■

Boy Scouts Name Todd Graves President of Pony Express Council

Todd Graves has been named president of the Pony Express Council of the Boy Scouts. Graves, a longtime council member, previously served as executive vice-president. As president, Graves will serve as the highest officer and volunteer leader within the council.

The Pony Express Council is comprised of five districts and serves approximately 3,000 youth across regions of Kansas and Missouri. This year marks the 100th anniversary of the council and the 106th anniversary of the National Boy Scouts. ■

U.S. District Court Certifies Class Action Against the IRS by Tea Party Groups



As reported in several prominent news outlets, including *The Wall Street Journal*, *Law360* and *The Washington Times*, among others, Graves Garrett recently obtained a major victory on behalf of client NorCal Tea Party Patriots when Judge Susan Dlott, U.S. District Court Judge for the Southern District of Ohio, certified the class action brought against the IRS. The suit, which was filed in May 2013, alleged that the agency violated the First Amendment by engaging in retaliation and discriminatory practices while also violating code that protects confidential taxpayer return information.

"This decision represents a significant step forward for obtaining relief for Tea Party groups that were identified, segregated and harassed by the IRS solely because of their viewpoints," said Edward Greim, who with Todd Graves and Dane Martin served as counsel. "It is also the culmination of nearly two years of class discovery into the scope and harm of the IRS's conduct, including 10 sworn depositions of the IRS and its agents in Washington, D.C., and Cincinnati, Ohio, and the IRS's production of thousands of pages of documents." In briefs, the Tea Party groups cited evidence showing that the IRS's conduct was not benign, but instead an orchestrated effort designed to hinder the effectiveness of Tea Party groups, prevent their access to the courts and forcefully disclose their private donor information.

The class-action suit, which was the first lawsuit filed against the IRS relating to its handling of applications for tax-exemption by Tea Party Groups, will represent more than 200 groups and will now proceed to merits discovery and trial concerning liability and damages. ■

The choice of a lawyer is an important decision and should not be based solely upon advertisements.