

GRAVES GARRETT NEWS

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BEN HURST APPOINTED TO THE CLEAN WATER COMMISSION

Associate Ben Hurst was recently appointed by Missouri Governor Eric Greitens to serve on the Missouri Clean Water Commission.



Ben Hurst

As one of the commission members appointed by Gov. Greitens and confirmed by the Senate, Hurst and the commission will oversee regulations and policies regarding the planning, monitoring, permitting, enforcement and grant assistance activities to carry out the objectives of the Missouri Clean Water Law. The Clean Water Commission also hears and resolves appeals of permits and staff decisions, and directs the use of state construction grant and loan funds.

Hurst counsels clients in commercial litigation, white collar criminal defense litigation and compliance and internal investigations. ■

Dane Martin Brews Up Success Inside and Outside the Firm

Graves Garrett associate Dane Martin has helped the firm achieve numerous victories through his persistent hard work and exceptional client service. Most recently, he was part of the Graves Garrett team that successfully prosecuted the only class-action lawsuit in the nation to challenge the IRS and former Director of Exempt Organizations Lois Lerner regarding the improper targeting of conservative groups in violation of the First Amendment. Dane personally conducted over 20 depositions of IRS agents, including three depositions of the IRS itself in Washington, D.C. In November 2017, the team obtained a multimillion-dollar settlement on behalf of more than 400 groups represented in the class action. The settlement process, which requires court approval, will extend into 2018.

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KATHLEEN FISHER PRESENTS ON FALSE CLAIMS ACT AT GKCSHA LUNCHEON

Graves Garrett partner Kathleen Fisher teamed up with Cindi Woolery of the U.S. Attorney's Office to give a presentation on false claims at a recent meeting of the Greater Kansas City Society of Healthcare Attorneys (GKCSHA).

The talk included the history of the False Claims Act (FCA), details of a recent case involving the University of Missouri (United States ex rel. Galuten v. University of Missouri-Columbia, et al), significant 2017 FCA cases and settlements, and enforcement trends for FCA litigation in the healthcare industry. The U.S. Department of Justice recovered \$3.7 billion in 2017 through the False Claims Act, with \$2.5 billion of that total a result of healthcare fraud.

Qui tam – or whistleblower actions – resulted in \$3.4 billion recovered, with Fisher and Woolery noting 669 of those types of filings last year.

Fisher represents clients in the defense of civil, criminal and regulatory investigations, as well as defending and prosecuting False Claims Act and qui tam claims. She has been recognized by *Missouri & Kansas Super Lawyers*, *Kansas City Business* magazine, *Missouri Lawyers Weekly*, and *Ingram's* magazine. Graves Garrett represents healthcare providers, clinics and other facilities in a variety of healthcare litigation.

Recently, Fisher and Graves Garrett partner Nathan Garrett obtained a dismissal from the U.S. District Court for

the Northern District of Texas in a False Claims Act matter involving a group of healthcare clinics implicated in a whistleblower action.

The firm has represented both relators and defendants in False Claims Act cases in jurisdictions across the nation, ranging from federal construction disputes to pharmaceuticals, laboratories, healthcare operations and other federal payer-involved disputes. ■



Kathleen Fisher

DOJ GRANSTON MEMO IMPACTS FALSE CLAIMS ACT DEFENSE

By Nathan Garrett and Kathleen Fisher

On January 10, Michael Granston, director of the Department of Justice Commercial Litigation Branch, released a memo outlining circumstances when civil prosecutors should consider dismissing False Claims Act actions brought by relators or whistleblowers. The number of actions brought by whistleblowers, also known as qui tam actions, has greatly increased over the last decade, with more than 600 suits filed every year. Often these actions are filed by disgruntled employees or by individuals who do not fully appreciate the facts and circumstances of the federal payments at issue. This leads to lawsuits that businesses or individuals are forced to defend that may be frivolous or otherwise lacking in merit. In the past, even where the government has declined to intervene in an action after determining the allegations lacked merit, the government was extremely reluctant to prevent a whistleblower from moving forward.



Nathan Garrett

This memorandum outlines a number of circumstances when the DOJ should consider intervening to dismiss the action. Among the factors outlined that the DOJ may consider in deciding to dismiss are (1) curbing meritless qui tams; (2) preventing parasitic or opportunistic qui tams; (3) preventing interference with agency policies and programs; and (4) controlling litigation brought on behalf of the United States. Even where counsel can successfully defend an FCA claim to avoid government intervention, a continued action by a relator can expose an entity or individual to substantial risk and litigation cost.

Graves Garrett has convinced the government not to intervene in many of the cases we have defended, but significant litigation was nevertheless required to successfully defend the case against the relator. Because this memorandum allows civil DOJ attorneys greater discretion in dismissing qui tam actions, convincing the government that allegations lack merit becomes an even more important step in ultimately resolving a suit.

... early and aggressive defense of qui tam actions is essential to potentially avoid protracted litigation costs and the risk of an adverse FCA determination.

For this reason, early and aggressive defense of qui tam actions is essential to potentially avoid protracted litigation costs and the risk of an adverse FCA determination. In addition to significant financial penalties, an adverse FCA judgment can also result in administrative penalties, including debarment from government contracting or exclusions from Medicaid and Medicare reimbursements, as well as other collateral consequences.

Graves Garrett has substantial experience in both prosecuting and defending False Claims Act and qui tam actions, successfully negotiating with the government in these matters, and navigating related administrative actions on behalf of individuals and entities. ■

ALAN SIMPSON HONORED WITH MISSOURI LAWYERS WEEKLY 2017 UP & COMING AWARD

Graves Garrett associate Alan Simpson was recently selected for the 2017 Missouri Lawyers Weekly Up & Coming Award. The award recognizes attorneys



Alan Simpson

ages 40 and younger or in their first 10 years of practice who are positively affecting the legal profession in Missouri and have demonstrated the potential for significant future success.

As an active member of the firm's free speech and election law practice, he counsels and represents clients on a range of political law issues, including state and federal campaign finance regulations, government ethics matters, nonprofit organizations, and initiative petitions. He also represents the firm's clients in complex commercial litigation and white collar criminal defense cases.

Before joining Graves Garrett, Simpson served as a law clerk to the Hon. Julie A. Robinson in the U.S. District Court for the District of Kansas and the Hon. Arthur I. Harris in the U.S. Bankruptcy Court for the Northern District of Ohio.

In addition, Simpson donates his time to several professional organizations. He serves as secretary of the Young Lawyers Section of the Lawyers Association of Kansas City and is a member of the Kansas City Metropolitan Bar Association's 2017 Bar Leadership Academy. Simpson is also a member of the Federalist Society, The Missouri Bar and the Kansas Bar Association.

Alan is admitted to the bars of the Supreme Court of the United States; the states of Missouri and Kansas; the United States Court of Appeals for the Eighth Circuit; and the United States District Courts for the Western District of Missouri, the Eastern District of Missouri, and the District of Kansas. ■

TODD GRAVES FEATURED ON 2017 MISSOURI SUPER LAWYERS MAGAZINE COVER STORY

Graves Garrett partner Todd Graves was recently featured in the cover story of the new issue of the *Missouri & Kansas Super Lawyers Magazine*, a prestigious legal publication with more than 465,000 readers.

In the article, reporter RJ Smith describes how Graves' farming background influences everything he does. "Helming a firm with a national political profile, being the face of the state's Republican Party and raising 200 head of cows – Graves counts each as a critical part of his sense of self, yet the cattle often get the upper hand." Graves recounts his father's mantra of "just starting" as the best approach to tackling difficult or unpleasant tasks. Smith writes, "Whether in law, cattle or politics, Todd Graves knows if you strategize too long, you'll never get the hole dug."

Graves, who is a former U.S. Attorney for the Western District of Missouri and twice-elected Platte County, Missouri, prosecutor, started Graves Garrett law firm in 2006. In addition to heading the state's Republican Party, he currently serves as president of the Pony Express Council of the Boy Scouts of America, and on the board of directors for both Herzog Contracting Corporation and Ballotpedia. He is also founding board member of the Kansas City Missouri Police Foundation, and a former board member of the American Royal Association.

The Super Lawyers lists are published in *Super Lawyers Magazines* and in leading city and regional magazines across the country. The *Super Lawyers Magazines* also feature editorial profiles of attorneys who embody excellence in the practice of law. For more information, go to SuperLawyers.com.

Graves, his wife of 27 years and their four children live on a 270-acre farm north of Kansas City that has been in the family since 1867. He earned his law degree and a master's degree in public administration from the University of Virginia and a bachelor's degree from the University of Missouri. ■



ATTORNEY BENJAMIN TOMPKINS AUTHORS ARTICLE FOR ACCOUNTING TODAY

Benjamin Tompkins, with input from associate Alan Simpson, recently authored an article for *Accounting Today* related to the IRS cracking down on cryptocurrency owners connected to Coinbase.



Benjamin Tompkins

The article, "Coinbase customers could soon find themselves in IRS cross-hairs," outlines the recent court order for cryptocurrency company Coinbase to reveal information for 14,000 of its customers who have made transactions through Coinbase. It is believed the service's customers are being noncompliant with an IRS notice that states transactions of a certain value must be disclosed.

As a former Assistant United States Attorney in Los Angeles and Department of Justice Tax Division Trial Attorney, Tompkins offers clients a unique depth and breadth of

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ATTORNEY BENJAMIN TOMPKINS AUTHORS ARTICLE FOR ACCOUNTING TODAY

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experience in civil and criminal tax matters involving a range of issues, including cryptocurrency; unreported income; nonfiler enforcement; undisclosed foreign bank accounts; tax return preparer, employment taxes and related trust fund recovery penalties; excise taxes; IRS bankruptcy claims; IRS examinations and collection efforts; and identity theft.

Tompkins served almost eight years as a trial attorney for the U.S. Department of Justice in Washington, D.C. While there, he litigated more than 100 civil tax cases, recovered some of the largest recoveries in the Tax Division, and earned the high honor of Department of Justice Tax Division Outstanding Attorney Award for six consecutive years. ■

DANE MARTIN BREWS UP SUCCESS INSIDE AND OUTSIDE THE FIRM

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Dane also served as counsel in other successful resolutions for the firm, including in the Wisconsin John Doe matter and defending companies against class actions in Missouri and Kansas. He continues to represent businesses and individuals by navigating complex commercial litigation issues in state and federal courts throughout the country.



Outside of practicing law, Dane and his wife Elizabeth are able to reflect on a year filled with memorable travels. Last summer, they traveled overseas to Norfolk, England, for a friend's wedding and also visited Granby, Colorado, for a family reunion. Beyond traveling, Dane enjoys brewing with friends in his recently completed home brewery.

Dane continues to receive honors and accolades for his work. He recently graduated from the Kansas City Metropolitan Bar Association's Bar Leadership Academy. He has also been recognized by *Missouri & Kansas Super Lawyers* as a Rising Star for three consecutive years, and was previously named an "Up & Coming" lawyer by *Missouri Lawyers Weekly*.

Dane's success inside and outside of our firm have made a positive impact on Graves Garrett. He will continue to be a valuable asset to the firm and its clients for years to come. ■

NATHAN GARRETT PARTICIPATES IN PANEL ABOUT FORENSICS INVESTIGATIONS

Graves Garrett partner Nathan Garrett recently served as an expert panelist during a Sikich Forensics Academy continuing legal education event. Garrett offered insights about key legal issues companies should consider when creating investigative plans. The panel also included two forensic accounting professionals from Sikich, an accounting and management services firm.

As a former state and federal prosecutor and FBI special agent, Garrett's advice and guidance is regularly sought in formulating and executing internal investigations into alleged or suspected wrongdoing. His legal practice focuses on complex litigation, ranging from False Claims

Act and other federal-based commercial civil litigation to high-stakes federal and state criminal and regulatory investigations and prosecutions. He has extensive experience successfully representing businesses, executives and individuals through their most challenging times.

Garrett was recently named 2018 "Lawyer of the Year" for Kansas City, Missouri, by *The Best Lawyers in America* for the practice area of white-collar criminal defense. He was also named a "Best Lawyer" for commercial litigation, white-collar defense and qui tam (False Claims Act) law by the listing, which is a highly regarded *U.S. News & World Report*-sponsored peer review guide honoring legal professionals worldwide. ■