

Pharmaceutical Whistleblower Awarded \$1.8M for Unlawful Retaliation

April 17, 2019

New Jersey's Conscientious Employee Protection Act, N.J. Stat. § 34:19-1 *et seq.* ("CEPA"), has resulted in another substantial whistleblower victory. According to [Law360](#), in late February 2019, a New Jersey jury returned a verdict of over \$1.8 million in favor of Min Amy Guo, a whistleblower who alleged that Novartis Pharmaceuticals Corp. terminated her for retaliatory reasons in violation of CEPA. The New Jersey whistleblower protection statute has been a boon for employees and allowed them to hold employers accountable in many instances that might have slipped through the cracks of whistleblower protections available in other states.

Ms. Guo served as the executive director of Novartis's health economics and outcomes research group prior to her 2013 termination. She commenced her lawsuit under CEPA in 2014. In the suit, she alleged that a drug study for which Novartis proposed retaining McKesson Corp., a pharmaceutical distribution company, was in fact a kickback designed to induce McKesson to sell the cancer drug that would be the subject of the study. Kickbacks like the one described by Ms. Guo violate the [federal Anti-Kickback Statute](#), a health care fraud and abuse law that prohibits companies from providing "remuneration" to induce the generation of business for, among other things, an item payable by federal health care programs like Medicare and Medicaid. For these reasons, Ms. Guo opposed the initiative internally, and Novartis ultimately declined to move forward with the study. However, a few weeks after she spoke out against the study, Novartis commenced an investigation into her conduct that led to her termination.

The jury sided with Ms. Guo and found that her termination constituted unlawful retaliation in reaction to her opposing what she reasonably viewed as a potential violation of the Anti-Kickback Statute. As a result, it awarded her \$1,816,040. The verdict was reduced, however, because the jury simultaneously awarded Novartis \$345,360.79 upon finding that Ms. Guo had been unjustly enriched, based in part on finding that she had violated company policy. Novartis made clear that it intended to appeal the ruling.

New Jersey's Model of Broad Whistleblower Protections

For the moment, the verdict marks another impressive win under CEPA. The difference between CEPA and most whistleblower statutes is its breadth. While most whistleblower statutes tend to focus their protections on certain industries or specific types of whistleblowing, CEPA is a broad whistleblower protection statute prohibiting employers from taking any retaliatory action against an employee because, among other things, the employee objects to an employer activity that the employee reasonably believes is in violation of **any** law, or rule or regulation issued under the law.

The impact of a broad whistleblower protection statute like CEPA is to empower employees to be the public's internal watchdogs against illegal activity. In most states, whether an employee's opposition to an employer's illegal activity is protected from retaliation will depend on whether it fits into one of a patchwork quilt of statutes and common law that protect employees in specific situations. The result of this is a disempowered workforce; if employees are not confident that the law will protect them if

they suffer retaliation, they will frequently “go along to get along,” rather than risk their livelihood to ensure things are done the right way. And the result of a workforce too frightened to blow the whistle on illegal activity is a consumer public that cannot trust that the cars they drive, the planes in which they fly, the food they eat, or the drugs they ingest are meeting critical safety standards established by law. The country and its workforce would be better off if more states adopted New Jersey’s model of broad whistleblower protections.