

Some Facts About False Claims Act *Qui Tam* Lawsuits

- Federal and State False Claims Acts and their *qui tam* provisions are designed to combat fraud against the government.
- *Qui tam* is a unique mechanism in the law that allows a person or entity (known as a “relator” or a “whistleblower”) who knows of fraud against federal or state programs or contracts to sue the wrongdoer on behalf of the Government and, if successful, to receive a reward.
- Enforcement of the federal False Claims Act and its *qui tam* provisions has returned more than \$12 billion to the United States Treasury in recent years, with whistleblowers receiving over \$1.2 billion in rewards.
- The federal False Claims Act was originally enacted in 1863 as a response to widespread abuses by government contractors during the Civil War. The federal law was used very little until 1986, when Congress passed amendments that strengthen the law and increase protections and monetary rewards for whistleblowers.
- Under the law, the whistleblower generally may receive as a reward between 15%-30% of the government’s recovery from the defendant in the case (whether by settlement or judgment).
- Any government program can be a victim of fraud. Common victims include health care (such as Medicare and Medicaid), homeland security, military/ defense, transportation and public works, research grants, oil and gas leases, and agricultural subsidies.
- The contract or program does not need to be performed in the United States so long as the government is paying all or part of the bill, directly or indirectly. So, for example, contracts for rebuilding Iraq could be subject to the False Claims Act.
- The citizen files the lawsuit in federal court “under seal” – meaning it is NOT available to the public and cannot be discussed with anyone except government officials investigating the case. At the same time, the citizen presents to the government a statement of all evidence that he/she knows is relevant to case.
- The suit typically does not have to be filed in the state where the citizen resides. Rather, it can be filed anywhere the defendant is doing business and/or the fraud has occurred. Choosing where to file the *qui tam* suit is often an important first step since different U.S. Attorney’s Offices and agencies may be better staffed or equipped than others to investigate and prosecute a *qui tam* lawsuit.

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- Even the defendants – the individual or organization charged with committing fraud – are not told about the lawsuit. This gives the government time to investigate the fraud allegations without alerting the defendant.
- The government initially has 60 days to review the case and decide whether or not to pursue it. Seals on whistleblower cases are often extended for 1-2 years, or more while the government conducts its investigation.
- If the government decides to join the case, it may settle the suit with the defendant before the lawsuit is unsealed, or if a settlement cannot be reached, the lawsuit is unsealed and a copy of the complaint is served on the defendant, and the government and the citizen work together in the case as co-plaintiffs.
- The law stipulates that a liable defendant pay damages equal to three times the government's losses plus civil penalties of \$5,000 to \$10,000 for each false claim (for example, a Medicare claim).
- The defendant also must pay the fees and case-related expenses of the whistleblower and his or her attorney.
- The whistleblower generally is entitled to receive as a reward of between 15%-30% of the government's recovery from the defendant in the case (whether by settlement or judgment).
- Among the largest whistleblower rewards are in the Columbia/HCA cases (relators' share a combined \$154 million); TAP (relators' share a combined \$95 million); and Fresenius/National Medical Care (relators' share a combined \$65 million).
- The law also prohibits a defendant from retaliating against an employee/whistleblower who reports fraud to the government. The court may award the employee any relief necessary to compensate for damage done by such retaliation, including job reinstatement, twice the amount of lost back pay, and payment of litigation costs and attorney's fees.
- Several states have False Claims Acts with *qui tam* provisions, including, California, Florida, Illinois, Massachusetts, Tennessee, and Texas. These laws generally track the federal law fairly closely.
- False Claims Act *qui tam* litigation can raise complicated scenarios requiring specialized advice. A potential whistleblower/relator may want to consult with an attorney who is experienced in this area of the law.

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False Claims Act *Qui Tam* Statistics

(as reported by the U.S. Dept. of Justice: FY ending September 30, 2003)

- **Total FCA amount recovered in Fiscal Year 2003:** \$2.1 billion
- **Relator's/whistleblower's shares/rewards in FY 2003:** \$319 million
- **Total FCA recoveries since 1986:** over \$12 billion
- **Relator's shares/rewards since 1986:** Over \$1.2 billion
- **Total number of *qui tam* cases filed to date:** 4,281