Effective:[See Notes]

United States Code Annotated Currentness
Title 31. Money and Finance (Refs & Annos)
Subtitle III. Financial Management
Chapter 37. Claims (Refs & Annos)
Subchapter III. Claims Against the United States Government (Refs & Annos)
§ 3729. False claims

(a) Liability for certain acts.--

(1) In general.--Subject to paragraph (2), any person who--

(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);

(D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;

(E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or

(G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104-410 [FN1]), plus 3 times the amount of damages which the Government sustains because of the act of that person.

(2) Reduced damages.--If the court finds that--

(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after

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the date on which the defendant first obtained the information;

(B) such person fully cooperated with any Government investigation of such violation; and

(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation,

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

(3) Costs of civil actions.--A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) Definitions.--For purposes of this section--

(1) the terms “knowing” and “knowingly” --

(A) mean that a person, with respect to information--

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information; and

(B) require no proof of specific intent to defraud;

(2) the term “claim”--

(A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that--

(i) is presented to an officer, employee, or agent of the United States; or

(ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government--

(I) provides or has provided any portion of the money or property requested or demanded; or

(II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and

(B) does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property;

(3) the term “obligation” means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regula-

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tion, or from the retention of any overpayment; and

(4) the term "material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(c) Exemption from disclosure.--Any information furnished pursuant to subsection (a)(2) shall be exempt from disclosure under section 552 of title 5.

(d) Exclusion.--This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

[(e) Redesignated (d)]

CREDIT(S)

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 978; Pub.L. 99-562, § 2, Oct. 27, 1986, 100 Stat. 3153; Pub.L. 103-272, § 4(f)(1)(O), July 5, 1994, 108 Stat. 1362; Pub.L. 111-21, § 4(a), May 20, 2009, 123 Stat. 1621.)

[FN1] So in original. Probably should read "Public Law 101-410".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1982 Acts

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3729	31:231	R.S. § 3490.

In the section, before clause (1), the words "a member of an armed force of the United States" are substituted for "in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States" and "military or naval service" for consistency with title 10. The words "is liable" are substituted for "shall forfeit and pay" for consistency. The words "civil action" are substituted for "suit" for consistency in the revised title and with other titles of the United States Code. The words "and such forfeiture and damages shall be sued for in the same suit" are omitted as unnecessary because of rules 8 and 10 of the Federal Rules of Civil Procedure (28 App.U.S.C.). In clauses (1)-(3), the words "false or fraudulent" are substituted for "false, fictitious, or fraudulent" and "Fraudulent or fictitious" to eliminate unnecessary words and for consistency. In clause (1), the words "presents, or causes to be presented" are substituted for "shall make or cause to be made, or present or cause to be presented" for clarity and consistency and to eliminate unnecessary words. The words "officer or employee of the Government or a member of an armed force" are substituted for "officer in the civil, military, or naval service of the United States" for consistency in the revised title and with other titles of the Code. The words "upon or against the Government of the United States, or any department or officer thereof" are omitted as surplus. In clause (2), the word "knowingly" is substituted for "knowing the same to contain any fraudulent or fictitious statement or entry" to eliminate unnecessary words. The words "record or statement" are substituted for "bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition" for consistency in the revised title and with other titles of the Code. In clause (3), the words "conspires to" are substituted for "enters into any agreement, combination, or conspiracy" to eliminate unnecessary words. The words "of the United States, or any department

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or officer thereof" are omitted as surplus. In clause (4), the words "charge", "or other", and "to any other person having authority to receive the same" are omitted as surplus. In clause (5), the words "document certifying receipt" are substituted for "certificate, voucher, receipt, or other paper certifying the receipt" to eliminate unnecessary words. The words "arms, ammunition, provisions, clothing, or other", "to any other person", and "the truth of" are omitted as surplus. In clause (6), the words "arms, equipments, ammunition, clothes, military stores, or other" are omitted as surplus. The words "member of an armed force" are substituted for "soldier, officer, sailor, or other person called into or employed in the military or naval service" for consistency with title 10. The words "such soldier, sailor, officer, or other person" are omitted as surplus.

1986 Acts. Senate Report No. 99-345, see 1986 U.S. Code Cong. and Adm. News, p. 5266.

1994 Acts. House Report No. 103-180, see 1994 U.S. Code Cong. and Adm. News, p. 818.

2009 Acts. Senate Report No. 111-10, see 2009 U.S. Code Cong. and Adm. News, p. 430.

Statement by President, see 2009 U.S. Code Cong. and Adm. News, p. S21.

References in Text

The Federal Civil Penalties Inflation Adjustment Act of 1990, referred to in subsec. (a)(1), is Pub.L. 101-410, Oct. 5, 1990, 104 Stat. 890, as amended, which is set out as a note under 28 U.S.C.A. § 2461.

The Internal Revenue Code of 1986, referred to in subsec. (d), is set out generally in Title 26, Internal Revenue Code.

Amendments

2009 Amendments. Subsec. (a). Pub.L. 111-21, § 4(a)(1), rewrote subsec. (a), which formerly read:

"(a) Liability for certain acts.--Any person who--

"(1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval;

"(2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;

"(3) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;

"(4) has possession, custody, or control of property or money used, or to be used, by the Government and, intending to defraud the Government or willfully to conceal the property, delivers, or causes to be delivered, less property than the

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amount for which the person receives a certificate or receipt;

"(5) authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

"(6) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge the property; or

"(7) knowingly makes, use
s, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government,

"is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person, except that if the court finds that--

"(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

"(B) such person fully cooperated with any Government investigation of such violation; and

"(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation;

"the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of the person. A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages."

Subsec. (b). Pub.L. 111-21, § 4(a)(2), rewrote subsec. (b), which formerly read:

"(b) Knowing and knowingly defined.--For purposes of this section, the terms 'knowing' and 'knowingly' mean that a person, with respect to information--

"(1) has actual knowledge of the information;

"(2) acts in deliberate ignorance of the truth or falsity of the information; or

"(3) acts in reckless disregard of the truth or falsity of the information,

"and no proof of specific intent to defraud is required."

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Subsec. (c). Pub.L. 111-21, § 4(a)(2) to (4), struck out former subsec. (c); redesignated former subsec. (d) as (c); and in new subsec. (c) as redesignated, struck out "subparagraphs (A) through (C) of subsection (a)" and inserted "subsection (a)(2)". Prior to repeal, former subsec. (c) read as follows:

"(c) Claim defined.--For purposes of this section, 'claim' includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded."

Subsec. (d). Pub.L. 111-21, § 4(a)(3), redesignated former subsec. (e) as (d). Former subsec. (d) redesignated as (c).

Subsec. (e). Pub.L. 111-21, § 4(a)(3), redesignated former subsec. (e) as (d).

1994 Amendments. Subsec. (e). Pub.L. 103-272, § 4(f)(1)(*O*), substituted reference to the Internal Revenue Code of 1986, for reference to the Internal Revenue Code of 1954.

1986 Amendments. Subsec. (a). Pub.L. 99-562, § 2(1), in provision preceding par. (1) substituted "(a) Liability for certain acts.--Any person who--" for "A person not a member of an armed force of the United States is liable to the United States Government for a civil penalty of $2,000, an amount equal to 2 times the amount of damages the Government sustains because of the act of that person, and costs of the civil action, if the person--".

Subsec. (a)(1). Pub.L. 99-562, § 2(2), substituted "United States Government or a member of the Armed Forces of the United States" for "Government or a member of an armed force".

Subsec. (a)(2). Pub.L. 99-562, § 2(3), inserted "by the Government" after "approved".

Subsec. (a)(4). Pub.L. 99-562, § 2(4), substituted "control of property" for "control of public property" and "by the Government" for "in an armed force".

Subsec. (a)(5). Pub.L. 99-562, § 2(5), substituted "by the Government" for "in an armed force" and "true:" for "true; or".

Subsec. (a)(6). Pub.L. 99-562, § 2(6), substituted "an officer or employee of the Government, or a member of the Armed Forces," for "a member of an armed force" and "property; or" for "property.".

Subsec. (a)(7). Pub.L. 99-562, § 2(7), added par. (7).

Subsecs. (b) to (e). Pub.L. 99-562, § 2(7), added subsecs. (b) to (e).

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Effective and Applicability Provisions

2009 Acts. Pub.L. 111-21, § 4(f), May 20, 2009, 123 Stat. 1625, provided that: "The amendments made by this section [amending this section and 31 U.S.C.A. §§ 3730 to 3733] shall take effect on the date of enactment of this Act [May 20, 2009] and shall apply to conduct on or after the date of enactment [May 20, 2009], except that--

"(1) subparagraph (B) of section 3729(a)(1) of title 31, United States Code, as added by subsection (a)(1) [amending subsec. (a) of this section], shall take effect as if enacted on June 7, 2008, and apply to all claims under the False Claims Act (31 U.S.C. 3729 et seq.) [Act Mar. 2, 1863, c. 67, 12 Stat. 698, which was repealed in the general revision of Title 31; the provisions of the Act are now contained in 31 U.S.C.A. §§ 3729 to 3731] that are pending on or after that date; and

"(2) section 3731(b) of title 31, as amended by subsection (b) [so in original; subsection (b) of Pub.L. 111-21, § 4, amended 31 U.S.C.A. § 3731(c) to (e)]; section 3733, of title 31, as amended by subsection (c) [amending 31 U.S.C.A. § 3733]; and section 3732 of title 31, as amended by subsection (e) [31 U.S.C.A. § 3732]; shall apply to cases pending on the date of enactment [May 20, 2009]."

Civil Penalties

Pub.L. 99-145, Title IX, § 931(b), Nov. 8, 1985, 99 Stat. 699, applicable to claims made or presented on or after Nov. 8, 1985, pursuant to Effective Date note under section 287 of Title 18, provided that:

"Notwithstanding section 3729 of title 31, United States Code [this section], the amount of the liability under that section in the case of a person who makes a false claim related to a contract with the Department of Defense shall be a civil penalty of $2,000, an amount equal to three times the amount of the damages the Government sustains because of the act of the person, and costs of the civil action."

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117 ALR, Fed. 263, Construction and Application of “Public Disclosure” and “Original Source” Jurisdictional Bars Under 31 U.S.C.A. § 3730(E)(4) (Civil Actions for False Claims).

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27 ALR, Fed. 407, Construction and Application of Provision of Rule 9(B), Federal Rules of Civil Procedure, that Circumstances Constituting Fraud or Mistake be Stated With Particularity.

2 ALR, Fed. 657, Construction, in Civil Case, of 28 U.S.C.A. § 2101(F), Providing for Stay of Execution or Enforcement of Judgment Subject to Review by United States Supreme Court on Certiorari.

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I. GENERALLY

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1. Constitutionality

Damages award of $5.7 million and civil penalties of $148,500 sought by United States did not violate Excessive Fines Clause in action under False Claims Act (FCA) alleging that real estate vendors illegally provided down payments for home mortgage loans insured by Department of Housing and Urban Development (HUD), even though vendors had already been subjected to criminal penalties for their conduct, where vendors engaged in broad, long-standing, sophisticated, successful scheme to defraud government, government sought no more than amount authorized by FCA, vendors' conduct resulted in approximately $5.5 million in fraudulent loans being funded using HUD insured home mortgage loans, and HUD made payments totaling $2.8 million. U.S. v. Eghbal, C.D.Cal.2007, 475 F.Supp.2d 1008, affirmed 548 F.3d 1281, certiorari denied 2009 WL 1725899. Fines 1.3

Imposition of $729,454.92 in civil penalties and treble damages against owner of physical therapy clinic for violating False Claims Act (FCA) by submitting claims to Medicare for physical therapy services with unauthorized provider number did not violate Excessive Fines Clause, despite owner's contentions that government suffered no harm because patients for whom he submitted false Medicare claims actually received physical therapy services, and that his violations were “mere billing technicality,” where owner's maximum exposure was almost $86 million, government suffered direct damages as result of owner's actions, and owner engaged in course of deceit that involved submission of thousands of false claims over course of four years. U.S. v. Mackby, N.D.Cal.2002, 221 F.Supp.2d 1106, affirmed 68 Fed.Appx. 776, 2003 WL 21277386, published in full at 339 F.3d 1013, certiorari denied 124 S.Ct. 1657, 541 U.S. 936, 158 L.Ed.2d 356. Fines 1.3; United States 122

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Former § 231 of this title was not violative of due process of law on any theory of lack of rational relationship between actual or possible damages and statutory penalty for each false claim. U. S. v. Greenberg, S.D.N.Y.1965, 237 F.Supp. 439.

Award of maximum civil penalties and treble damages under the False Claims Act for contractor's false claims for reimbursement on bond premiums and indemnity payments to parent company did not violate the substantive component of the Due Process Clause of the Fifth Amendment. Morse Diesel Intern., Inc. v. U.S., Fed.Cl.2007, 79 Fed.Cl. 116, reconsideration denied 81 Fed.Cl. 311. Constitutional Law 4426; United States 122

2. Construction

Former § 231 of this title was a criminal statute and therefore words "claim against the government" were carefully restricted, not only to their literal terms, but to evident purpose of Congress in using such terms, particularly where they were broad and susceptible to numerous definitions. U.S. v. McNinch, U.S.N.C.1958, 78 S.Ct. 950, 356 U.S. 595, 2 L.Ed.2d 1001. United States 120.1

The penal nature of former § 231 of this title required careful scrutiny to see if the alleged misconduct violated such former section. U. S. ex rel. Weinberger v. Equifax, Inc., C.A.5 (Fla.) 1977, 557 F.2d 456, rehearing denied 561 F.2d 831 , certiorari denied 98 S.Ct. 768, 434 U.S. 1035, 54 L.Ed.2d 782, rehearing denied 98 S.Ct. 1477, 435 U.S. 918, 55 L.Ed.2d 511. United States 120.1

Former § 231 of this title was a "penal statute" and was strictly construed. U.S. ex rel. Brensilber v. Bausch & Lomb Optical Co., C.C.A.2 (N.Y.) 1942, 131 F.2d 545, certiorari granted 63 S.Ct. 1026, 319 U.S. 733, 87 L.Ed. 1695, affirmed 64 S.Ct. 187, 320 U.S. 711, 88 L.Ed. 417, rehearing denied 64 S.Ct. 256, 320 U.S. 814, 88 L.Ed. 492. See, also, Hyslop v. U.S., C.A.Neb.1959, 261 F.2d 786; U.S. ex rel. Hughes v. Cook, D.C.Miss.1980, 498 F.Supp. 784; U.S. v. Johnston, D.C.Okl.1956, 138 F.Supp. 525.

Former § 231 of this title was strictly construed, and recovery was permitted only when it was shown that defendants presented a false or fraudulent claim against government of the United States or a department or officer thereof. U.S. ex rel. Ostrager v. New Orleans Chapter, Associated General Contractors of America, C.C.A.5 (La.) 1942, 127 F.2d 649, certiorari granted 63 S.Ct. 49, 317 U.S. 613, 87 L.Ed. 498, reversed on other grounds 63 S.Ct. 393, 317 U.S. 562, 87 L.Ed. 458.

Informers who wished to recover under former § 231 of this title had to adhere to the exact language thereof. U. S. ex rel. Marcus v. Hess, C.C.A.3 (Pa.) 1942, 127 F.2d 233, certiorari granted 63 S.Ct. 40, 317 U.S. 613, 87 L.Ed. 498, reversed on other grounds 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. Penalties 9

Former § 231 of this title, being drastically penal, should have been strictly construed and fraud or deceit was a sine qua non of liability. Cahill v. Curtiss-Wright Corp., W.D.Ky.1944, 57 F.Supp. 614. See, also, U.S. v. National Wholesalers, D.C.Cal.1954, 126 F.Supp. 357, reversed on other grounds 236 F.2d 944, certiorari denied 77 S.Ct. 719, 353 U.S. 930, 1 L.Ed.2d 724. United States 121

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3. Construction with other laws

In view of fact that former § 231 of this title incorporated, as a test of liability, provisions of R.S. § 5438 [now §§ 287 and 1001 of Title 18], scope of such former section was confined to its literal terms. Rainwater v. U.S., U.S.Ark.1958, 78 S.Ct. 946, 356 U.S. 590, 2 L.Ed.2d 996. United States 120.1

A certified claim may be a source of liability under both the Contract Disputes Act and the False Claims Act. Daewoo Engineering and Const. Co., Ltd. v. U.S., C.A.Fed.2009, 557 F.3d 1332, rehearing and rehearing en banc denied , petition for certiorari filed 2009 WL 1976052. United States 122

Document received in response to Freedom of Information Act (FOIA) request is not necessarily administrative report or investigation, and thus not automatically a “public disclosure” within meaning of False Claims Act's (FCA) public-disclosure jurisdictional bar against qui tam actions; instead, whether document constitutes public disclosure for purposes of jurisdictional bar depends on whether it is from source enumerated in FCA section that details criteria for application of bar. U.S. v. Catholic Healthcare West, C.A.9 (Ariz.) 2006, 445 F.3d 1147, certiorari denied 127 S.Ct. 725, 549 U.S. 1077, 166 L.Ed.2d 561, certiorari denied 127 S.Ct. 730, 549 U.S. 1077, 166 L.Ed.2d 561. United States 122

Amtrak Reform and Accountability Act, in stating that National Railroad Passenger Corporation (Amtrak) “shall not be subject to title 31,” which includes False Claims Act (FCA), erects no per se bar preventing individuals from bringing FCA actions against those who make false or fraudulent claims implicating federal funds invested in Amtrak, inasmuch as third party rather than grantee is made “subject to” FCA when plaintiff brings qui tam action against third party who has allegedly defrauded federal grantee, and withdrawal of FCA protection was not suggested by legislative history or purposes and aims of Reform Act as whole. U.S. ex rel. Totten v. Bombardier Corp., C.A.D.C.2002, 286 F.3d 542, 351 U.S.App.D.C. 30, on remand 2003 WL 22769033. United States 122

Retaliation claim under False Claims Act (FCA) was subject to California's one-year statute of limitations applicable to claim for wrongful termination in violation of public policy, as such claim was the most closely analogous to retaliation claim. U.S. v. Hughes Aircraft Co., C.A.9 (Cal.) 1998, 162 F.3d 1027, on remand 2000 WL 33775399. United States 36; United States 122

Qui tam plaintiffs' claims under the False Claims Act (FCA), alleging that contractors engaged in pattern of knowingly submitting false claims for payment under their contracts to perform hazardous waste treatment and disposal services at site of chemical plant, were not “challenges to removal or remedial action” precluded by CERCLA's jurisdictional bar; plaintiffs sought neither review of nor injunction against any remedial activity on site but, rather, alleged fraud and sought civil penalties on behalf of the United States. Costner v. URS Consultants, Inc., C.A.8 (Ark.) 1998, 153 F.3d 667, rehearing and suggestion for rehearing en banc denied. Environmental Law 645

Former § 2306(f) of Title 10 did not supersede former § 231 of this title as there was no inconsistency between an Act which dealt with fraud and one which dealt with data which was inaccurate, incomplete or noncurrent. U. S. v. Foster Wheeler Corp., C.A.2 (N.Y.) 1971, 447 F.2d 100. United States 120.1

One who presented for approval to Federal Housing Administration [now Department of Housing and Urban Develop-

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ment] six claims on the government of the United States, knowing such claims to be false, fictitious, or fraudulent, and who was correctly prosecuted and convicted under § 1010 of Title 18, for making false statements in connection with procuring loan, was not liable in damages to the United States under former § 231 of this title. U.S. v. Cochran, C.A.5 (Tex.) 1956, 235 F.2d 131, certiorari denied 77 S.Ct. 262, 352 U.S. 941, 1 L.Ed.2d 237. United States 122

Former § 231 of this title which incorporated R.S. § 5438 [now §§ 287 and 1001 of Title 18] regarding presentment of false claims against United States incorporated R.S. § 5438 as it stood when such former section was adopted, notwithstanding that R.S. § 5438 was later amended and that only amended R.S. § 5438 appeared in United States Code. U.S. ex rel. Kessler v. Mercur Corporation, C.C.A.2 (N.Y.) 1936, 83 F.2d 178, certiorari denied 57 S.Ct. 40, 299 U.S. 576, 81 L.Ed. 424. Statutes 51

Fines and penalties, including treble damages, under the False Claims Act (FCA) constituted “debt” within meaning of the Federal Debt Collection Procedures Act (FDCPA), for purposes of government's claim for prejudgment remedies against president and sole shareholder of Medicare provider, i.e., attachment of real property shareholder owned individually, even if shareholder did not benefit individually by government's alleged overpayments to provider. U.S. ex rel Doe v. DeGregorio, M.D.Fla.2007, 510 F.Supp.2d 877. United States 75.5

Congress, by granting Federal Communications Commission (FCC) the authority to construct a remedial scheme to address violations of FCC regulations, did not intend to “preempt” remedies under False Claims Act (FCA) for abuse of FCC's public bidding procedure for wireless telecommunications licenses. U.S. ex rel. Taylor v. Gabelli, S.D.N.Y.2004, 345 F.Supp.2d 313, stay denied 345 F.Supp.2d 340. United States 122

Offense of illegal acquisition of food stamps and claim for statutory penalties for false claims presented to Government as a result of illegal redemption of those stamps were separate for double jeopardy purposes. U.S. v. Byrd, E.D.N.C.2000, 100 F.Supp.2d 342. Double Jeopardy 25

Federal Employees' Compensation Act's (FECA) preclusion-of-review provision did not bar court from reviewing government's claims against postal employee under False Claims Act (FCA); inquiry into whether employee had violated FCA by falsifying his employment application and his subsequent claim for disability benefits did not constitute a review of Office of Workers' Compensation Programs' (OWCP) action in allowing a payment under FECA. U.S. v. Carpentieri, S.D.N.Y.1998, 23 F.Supp.2d 433. United States 122

Section 15a of Title 15 which permits government to recover for actual damage proximately caused by violation of Sherman Antitrust Act, §§ 1 to 7 of Title 15, and former § 231 of this title were auxiliary, so that enactment of § 15a of Title 15 was insufficient to have impliedly repealed such former section. U. S. v. Beatrice Foods Co., D.C.Utah 1971, 330 F.Supp. 577. Antitrust And Trade Regulation 523; United States 94

Passage of § 15a of Title 15 permitting government to recover for actual damage proximately caused it by violation of Sherman Antitrust Act, §§ 1 to 7 of Title 15, was not intended to limit or preclude government's right to recover damages or forfeitures under former § 231 of this title, but rather to extend its right under antitrust laws. U. S. v. Beatrice Foods Co., D.C.Utah 1971, 330 F.Supp. 577. Antitrust And Trade Regulation 528; United States 122

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Former § 231 of this title was concerned with fraud of a pecuniary nature committed against the government, whereas § 3287 of Title 18 is concerned with the ease with which fraud could be concealed and seeks to grant to the government in time of war, a correspondingly longer time to discover it. U. S. v. Temple, N.D.Ill.1956, 147 F.Supp. 118.

Former § 3740 [now 7401] of Title 26 which provided that no action for recovery of taxes, or of any fine, penalty, or forfeiture shall have been commenced unless authorized by Commissioner of Internal Revenue, did not apply to an informer's action to recover penalty under former § 231 of this title and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for work. U. S. ex rel. Marcus v. Hess, W.D.Pa.1941, 41 F.Supp. 197, reversed 127 F.2d 233, certiorari granted 63 S.Ct. 40, 317 U.S. 613, 87 L.Ed. 498, reversed 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. United States 122

The scope of former § 231 of this title was not affected by subsequent amendments to R.S. § 5438 [now §§ 287 and 1001 of Title 18] originally referred to therein and it was construed as embracing those acts which were forbidden by that section and no other. U.S. ex rel. Boyd v. McMurtry, W.D.Ky.1933, 5 F.Supp. 515.

The amendment of 1918 to R.S. § 5438 [now §§ 287 and 1001 of Title 18] did not add to or diminish the scope of former § 231 of this title, which included acts forbidden by R.S. § 5438 as it stood when this section was enacted and no other. Olson v. Mellon, W.D.Pa.1933, 4 F.Supp. 947, affirmed 71 F.2d 1021, certiorari denied 55 S.Ct. 147, 293 U.S. 615, 79 L.Ed. 704, certiorari denied 55 S.Ct. 148, 293 U.S. 615, 79 L.Ed. 704.

Imposing civil penalties under the Anti-Kickback Act, and separate civil penalties and treble damages under the False Claims Act for the same acts, is neither duplicative nor prohibited. Morse Diesel Intern., Inc. v. U.S., Fed.Cl.2007, 79 Fed.Cl. 116, reconsideration denied 81 Fed.Cl. 311. United States 75(6)

False Claims Act (FCA) applied to allegedly false cost and pricing data supplied to government, in connection with contract to provide Low Altitude Navigation and Targeting Infrared for Night (LANTIRN) pods, even though under Arms Export Control Act, which governed acquisitions for ultimate sale to foreign governments, no loss could result to government. U.S. ex rel. Campbell v. Lockheed Martin Corp., M.D.Fla.2003, 282 F.Supp.2d 1324. United States 120.1

Payment to relator in qui tam action under False Claims Act (FCA) is not a penalty imposed on wrongdoer, as may be excludable from relator's gross income for income tax purposes; rather, it is financial incentive for private person to provide information and prosecute claims relating to fraudulent activity against the government, such as would be includable in gross income. Roco v. C.I.R., U.S.Tax Ct.2003, 121 T.C. 160, 2003 WL 22100687, Unreported. Internal Revenue 3124

4. Purpose

Objective of Congress in enacting former § 231 of this title was broadly to protect funds and property of the government from fraudulent claims, regardless of the particular form or function of the government instrumentality upon which such claims were made. Rainwater v. U.S., U.S.Ark.1958, 78 S.Ct. 946, 356 U.S. 590, 2 L.Ed.2d 996. United States 120.1

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The chief purpose of former § 231 of this title was to provide for restitution of money taken from government by fraud. U. S. ex rel. Marcus v. Hess, U.S.Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. See, also, U.S. v. Beatrice Foods Co., D.C.Utah 1971, 330 F.Supp. 577; U.S. v. Klein, D.C.Pa.1964, 230 F.Supp. 426, affirmed 356 F.2d 983; U.S. v. National Wholesalers, D.C.Cal.1954, 126 F.Supp. 357, reversed on other grounds 236 F.2d 944, certiorari denied 77 S.Ct. 719, 353 U.S. 930, 1 L.Ed.2d 724.

The device of double damages provided for by former § 231 of this title plus a specified sum was chosen to make sure that government was made completely whose. U. S. ex rel. Marcus v. Hess, U.S.Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. See, also, U.S. v. Beatrice Foods Co., D.C.Utah 1971, 330 F.Supp. 577.

Section of the False Claims Act that prohibits any party from using false record or statement to get false claim “paid or approved by the Government” is complementary to separate section prohibiting party from presenting false claim to “officer or employee of the United States Government” and is designed to prevent those who make false records or statements to get claims paid or approved from escaping liability solely on ground that they did not themselves present claim for payment or approval. U.S. ex rel. Totten v. Bombardier Corp., C.A.D.C.2004, 380 F.3d 488, 363 U.S.App.D.C. 180, rehearing en banc denied , certiorari denied 125 S.Ct. 2257, 544 U.S. 1032, 161 L.Ed.2d 1059. United States 120.1

Former § 231 of this title was intended to protect the Treasury against the hungry and unscrupulous host that encompassed it on every side, and should have been construed accordingly; it was passed upon the theory, based on experience as old as modern civilization, that one of the least expensive and most effective means of preventing frauds on the Treasury was to make the perpetrators of them liable to actions by private persons acting, if you please, under the strong stimulus of personal ill will or the hope of gain. U.S. v. Griswold, D.C.Or.1885, 24 F. 361, 11 Sawy. 65.

False Claims Act prohibits fraudulent acts even if they do not cause loss to the government, since Act was intended to cover not only acts that create loss to government but also acts which cause government to pay out sums of money to claimants it did not intend to benefit. U.S. ex rel. Pogue v. American Healthcorp, Inc., M.D.Tenn.1996, 914 F.Supp. 1507, transferred to 238 F.Supp.2d 258. United States 120.1

Purpose of False Claims Act is to discourage fraud against the government, and purpose of qui tam provisions of Act is to encourage those with knowledge of fraud to come forward. Neal v. Honeywell, Inc., N.D.Ill.1993, 826 F.Supp. 266, affirmed 33 F.3d 860. Labor And Employment 776; United States 122

Purposes of 1986 amendments to False Claims Act were to loosen restrictive judicial interpretation of Act's liability standard and burden of proof by defining previously undefined terms, by expanding qui tam jurisdictional provisions, and by increasing civil penalties. U.S. ex rel. Stinson, Lyons, Gerlin & Bustamante, P.A. v. Provident Life & Acc. Ins. Co., S.D.Fla.1989, 721 F.Supp. 1247. United States 122

Purpose of former § 231 of this title and similar statutes which authorized qui tam actions was to provide private citizen who would otherwise have had no judicially cognizable “interest” in rights protected by particular set of substantive provisions with interest sufficient to give that individual standing to sue to enforce such provisions. Public Interest Bounty

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Hunters v. Board of Governors of Federal Reserve System, N.D.Ga.1982, 548 F.Supp. 157. Forfeitures 5

Purpose of former § 231 of this title was to reasonably indemnify the government for all losses arising from the false claims and reflected a fair ratio to damages in order to make sure the government was made completely whole. Peterson v. Richardson, N.D.Tex.1973, 370 F.Supp. 1259
, affirmed 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96 S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. United States 120.1

The purpose of former § 231 of this title was to prohibit the drawing of any money from the Treasury of the United States by false or fictitious claims. U.S. ex rel. Rodriguez v. Weekly Publications, S.D.N.Y.1946, 68 F.Supp. 767. United States 122

5. Retroactive effect

District court should have applied provisions of False Claims Act in effect on date that government's claim ripened, and its error in retroactively applying amendments adversely affected claimant by subjecting him to increased penalty provisions. Miller v. Federal Emergency Management Agency, C.A.8 (Mo.) 1995, 57 F.3d 687. Federal Courts 913; United States 122

Amendment to False Claims Act, which changed showing of knowledge required for imposition of civil liability for bid rigging from clear showing of actual knowledge of falsity of submitted claim to constructive knowledge of falsity, affected substantive rights and liabilities of electrical contractor and its employee, particularly where amendments were applied to increase liability of employee by more than $1 million; thus, district court erroneously applied amendments to Act retroactively. U.S. v. Murphy, C.A.6 (Tenn.) 1991, 937 F.2d 1032. United States 120.1

Amendment to False Claims Act (FCA) eliminating actual payment or approval requirement did not apply retroactively to health care provider that allegedly used fraudulently higher billing rate on claims submitted pursuant to Medicare Part B prior to amendment's effective date, even though Congress did not unambiguously preclude retrospective application of amendment, where application of amendment would have increased provider's liability for past conduct. U.S. v. Aguillon, D.Del.2009, 628 F.Supp.2d 542. United States 120.1

Amendment to False Claims Act, which lowered state of mind necessary to sustain finding of liability, applied to claims for payment submitted after amendment based on false statements made before amendment. U.S. v. United Technologies Corp., S.D.Ohio 2003, 255 F.Supp.2d 787. United States 120.1

Amendment to False Claims Act, to broaden definition of knowledge of falsity required in order to establish liability from actual knowledge to also include deliberate ignorance or reckless indifference, would not be applied retroactively; there was presumption against retroactive application of legislation, relief sought was backward looking and retroactive application would impose different duty of mental attention, after fact, with regard to transactions already completed and impair substantive standard for liability that party could expect to be applicable to transactions prior to amendment. U.S. v. Hercules, Inc., D.Utah 1996, 929 F.Supp. 1418. United States 120.1

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Amendment to False Claims Act in 1986 which defined term "knowingly" to include "reckless disregard" or "deliberate ignorance" was applied to action under False Claims Act based on allegedly false statements in federal grant applications which occurred in part prior to 1986; application of statute did not apply new legal consequences to events prior to its enactment and was not retrospective, as knowledge as used in statute never meant more than reckless disregard. U.S. ex rel. Milam v. Regents of University of California, D.Md.1995, 912 F.Supp. 868. United States 120.1

Damages and penalties provisions of amendments to False Claims Act (FCA) have retroactive effect and, therefore, do not apply to conduct predating effective date of amendments; amendments increased amount of liability. U.S. ex rel. Newsham v. Lockheed Missiles and Space Co., Inc., N.D.Cal.1995, 907 F.Supp. 1349, order vacated on reconsideration 1997 WL 858547, affirmed in part , reversed in part 171 F.3d 1208, amended and superseded 190 F.3d 963, certiorari denied 120 S.Ct. 2196, 530 U.S. 1203, 147 L.Ed.2d 232. United States 122

Amendments to False Claims Act (FCA), providing for increase in damages from double to treble damages and increase in civil penalty, applied retroactively; there is nothing in amendment or legislative history indicating whether or not amendments were to be applied retroactively, FCA involves matters of serious public policy in that it addresses issue of fraud against government and its ability to recover losses resulting from fraud, and defendants who filed false claims had no vested right to specific remedy amount. U.S. v. Stella Perez, D.Puerto Rico 1993, 839 F.Supp. 92, reversed 55 F.3d 703, 139 A.L.R. Fed. 813, on remand 956 F.Supp. 1046. United States 122

Amendments to damages provisions in False Claims Act were applied retroactively to claims which had accrued before enactment of amendments but which were sued upon after passage of amendments, where changes merely addressed amount of damages in question and did not concern substantive changes, and changes were primarily remedial and not punitive in nature. U.S. v. Stocker, E.D.Wis.1992, 798 F.Supp. 531. United States 122

Amendments to False Claims Act which increased potential liability and added definition of "knowing" and "knowingly" in order to clarify state of mind required for liability under Act involved substantive changes and could not be applied retroactively. U.S. v. Ettrick Wood Products, Inc., W.D.Wis.1988, 774 F.Supp. 544, adopted in part 683 F.Supp. 1262. United States 120.1

The 1986 amendments to the False Claims Act, including changes involving statute of limitations, applied retroactively. U.S. v. Macomb Contracting Corp., M.D.Tenn.1990, 763 F.Supp. 272. Limitation Of Actions 6(1); United States 120.1

False Claims Reform Act was retroactively applicable to allegedly fraudulent conduct perpetrated in order to obtain Small Business Investment Corporation license and, subsequently, to obtain funds from Small Business Administration, absent showing that application would result in manifest injustice. U.S. v. Entin, S.D.Fla.1990, 750 F.Supp. 512. United States 120.1

The 1986 amendments to the False Claims Act, imposing treble damages and increasing penalties for violation of Act, applied to case pending at time amendments became law. Kelsoe v. Federal Crop Ins. Corp., E.D.Tex.1988, 724 F.Supp. 448. United States 122

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Retroactive application was appropriate for amendments to the False Claims Act, in action to recover for alleged fraudulent representations of performance of contract to monitor and review hospital discharge payments under the Medicare program. U.S. ex rel. McCoy v. California Medical Review, Inc., N.D.Cal.1989, 723 F.Supp. 1363. United States 122

The 1986 qui tam amendments to False Claims Act could be applied retroactively against insurer which allegedly engaged in scheme to defraud government by allowing Medicare to pay as primary and by avoiding or decreasing its obligation to reimburse Medicare or its beneficiaries. U.S. ex rel. Stinson, Lyons, Gerlin & Bustamante, P.A. v. Provident Life & Acc. Ins. Co., S.D.Fla.1989, 721 F.Supp. 1247. United States 122

Amendment to False Claims Act which increased liability for each violation applied retroactively; amendment addressed issue of national concern, retroactive application would not infringe upon or deprive defendants of right that had matured or become unconditional, and amendment did not impose new obligation upon defendants. U.S. v. Pani, S.D.N.Y.1989, 717 F.Supp. 1013. United States 122

Retroactive application to pending case of amendment of False Claims Act to increase penalties was appropriate, where defendants had no identifiable legal right as to magnitude of sanctions applicable to violations of law, and defendants received adequate notice that their liability would be considerable. U.S. v. Board of Educ. of City of Union City, D.N.J.1988, 697 F.Supp. 167. United States 122

Amendments to False Claims Act increasing civil penalty thereunder and defining term “knowingly” applied retroactively to medicare provider and related nonmedicare provider for allegedly submitting claims to Government without specifying their relationship; amendments were procedural and, therefore, presumption of retroactivity applied, absent contrary indication by Congress or manifest injustice to providers. U.S. v. Oakwood Downriver Medical Center, E.D.Mich.1988, 687 F.Supp. 302. United States 122

Amendments to False Claims Act did not involve substantive changes and could be retroactively applied; neither increased amounts of damages or forfeitures nor “new” definition of “knowingly” changed underlying requirements for liability or affected substantive liability of defendants. U.S. v. Ettrick Wood Products, Inc., W.D.Wis.1988, 683 F.Supp. 1262. United States 122

Amendments to False Claims Act are applicable retroactively. Gravitt v. General Elec. Co., S.D.Ohio 1988, 680 F.Supp. 1162, appeal dismissed 848 F.2d 190, certiorari denied 109 S.Ct. 250, 488 U.S. 901, 102 L.Ed.2d 239. United States 120.1

Retroactive application of amendments to False Claims Act, in civil case for recovery of damages arising out of Small Business Administration and Farm Home Administration loan scheme did not violate either ex post facto or due process clauses, even though amendments provided for higher potential forfeitures and increased damage awards. U.S. v. Hill, N.D.Fla.1987, 676 F.Supp. 1158. United States 120.1; Constitutional Law 4078; Constitutional Law 2800

Recent amendment increasing penalties under False Claims Act could not be applied retrospectively; retrospective application of amendment would create new liability in connection with past transactions. U.S. v. Bekhrad, S.D.Iowa 1987,

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672 F.Supp. 1529. United States 94

Government contractor had no vested right to be protected from or exposed to treble damages rather than double damages under the False Claims Act, and 1986 False Claims Act amendments raising statutory damages to treble damages plus a maximum of $10,000 per claim could be applied retroactively. SGW, Inc. v. U.S., Cl.Ct.1990, 20 Cl.Ct. 174. United States 120.1

6. Power of Congress

Congress had power to impose forfeitures for conspiracy to defraud the United States by obtaining, or aiding to obtain, payment of knowingly false claims in addition to any previous criminal sentence for such conspiracy. U. S. v. Ben Grunstein & Sons Co., D.C.N.J.1955, 127 F.Supp. 907. Double Jeopardy 23

7
. Remedial nature of section

Former § 231 of this title was remedial and covered the submission of claim known to have been false. U. S. v. Cooperative Grain & Supply Co., C.A.8 (Neb.) 1973, 476 F.2d 47. United States 120.1

8. Jurisdiction

Where qui tam relator failed to qualify as an "original source" within the meaning of the False Claims Act (FCA) provision setting forth the original-source exception to the public-disclosure bar on federal-court jurisdiction, the government's intervention in his case did not provide an independent basis of jurisdiction with respect to relator. Rockwell Intern. Corp. v. U.S., U.S.2007, 127 S.Ct. 1397, 549 U.S. 457, 167 L.Ed.2d 190, rehearing denied 127 S.Ct. 2300, 550 U.S. 954, 167 L.Ed.2d 1128, on remand 492 F.3d 1157. United States 122

Relator's allegations in qui tam action under False Claims Act against pharmaceutical company that company provided illegal inducements to physicians and pharmacists with goal of increasing drug prescriptions under guise of speaker fees, research grants, and improper gifts were based on information he learned and saw during time he was employed by company, and thus relator was "original source," as required for federal district court to have subject matter jurisdiction over relator's allegations of illegal inducements. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2008, 538 F.Supp.2d 367. United States 122

Employee alleged sufficient facts regarding parent company's control over subsidiary to justify imputing subsidiary's contacts in state to parent, as required for federal district court to have general jurisdiction over parent company in employee's wrongful termination and False Claims Act (FCA) retaliation action against subsidiary and parent company; some of subsidiary's decisions were approved by parent, parent and subsidiary had same accounting and financial recording system, and subsidiary was undercapitalized. Glynn v. EDO Corp., D.Md.2008, 536 F.Supp.2d 595. Federal Courts 82

Court's prior holding that relator failed to satisfy the False Claims Act's (FCA) jurisdictional prerequisites deprived the

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court of jurisdiction to enter a judgment on behalf of the United States where government had not intervened, nor expressed any interest in intervening until after court issued its order dismissing the case for lack of subject matter jurisdiction. U.S. ex rel. Maxwell v. Kerr-McGee Oil & Gas Corp., D.Colo.2007, 486 F.Supp.2d 1233. United States 122

Court of International Trade (CIT) had exclusive jurisdiction over government's False Claims Act (FCA) “reverse false claims” action against produce importer, who had allegedly engaged in conduct designed to avoid antidumping duties; action came within CIT's specific grant of jurisdiction over government actions to recover customs duties, and so was specifically excluded from jurisdiction of district court. U.S. v. Universal Fruits and Vegetables Corp., CIT 2005, 387 F.Supp.2d 1251, 29 C.I.T. 673, subsequent determination 433 F.Supp.2d 1351, 30 C.I.T. 706, appeal dismissed 204 Fed.Appx. 881, 2006 WL 3151393. Customs Duties 84(1); Federal Courts 1138

Claims that oil companies violated False Claims Act in connection with reporting the value of oil produced on federal and Indian leases and paying royalties for the oil produced would not be deferred to Department of Interior, under doctrine of primary jurisdiction; deferral would prolong unnecessarily resolution of dispute, claim did not depend on Department's determination that oil undervaluations occurred, and neither Department nor its Minerals Management Service (MMS) desired to have matter pursued through administrative process. U.S. ex rel. Johnson v. Shell Oil Co., E.D.Tex.1998, 34 F.Supp.2d 429. United States 122

By enacting False Claims Act (FCA) Congress has given federal district courts original jurisdiction over actions for false or fraudulent claims against government. U.S. v. Unified Industries, Inc., E.D.Va.1996, 929 F.Supp. 947. Federal Courts 976

Court of Federal Claims lacked jurisdiction over former city auditor's claim to share of disaster relief payments that city refunded to the federal government, which was asserted under the qui tam provisions of the False Claims Act (FCA), as federal district courts have exclusive jurisdiction over qui tam claims. Giles v. U.S., Fed.Cl.2006, 72 Fed.Cl. 335, appeal filed. Federal Courts 1141

Governors of Florida and New Jersey, and the New Jersey Administrative Office of the Courts lacked sufficient contacts with New York to establish personal jurisdiction in action brought under the False Claims Act and §§ 1983, 1985, and 1988. Eisenstein v. Whitman, C.A.2 (N.Y.) 2001, 4 Fed.Appx. 24, 2001 WL 125777, Unreported, certiorari denied 122 S.Ct. 1078, 534 U.S. 1134, 151 L.Ed.2d 979. Federal Courts 76.5

9. Duty of applicant for public funds

Applicant for public funds has duty to read the regulations or be otherwise informed of the basic requirements of eligibility. U. S. v. Cooperative Grain & Supply Co., C.A.8 (Neb.) 1973, 476 F.2d 47. United States 113

One seeking public funds must bear great measure of responsibility in advising the government of the true and accurate factual basis of the claim and eligibility for payments must be established by the recipient. U. S. v. Cooperative Grain & Supply Co., C.A.8 (Neb.) 1973, 476 F.2d 47. United States 113

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Applicants for federal grant for scientific research had no statutory or fiduciary duty to disclose that data which had been relied on in earlier applications were false, and applications did not violate False Claims Act, where there was no evidence at time application was filed that data previously relied on were false. U.S. ex rel. Milam v. Regents of University of California, D.Md.1995, 912 F.Supp. 868. United States 120.1

10. Duty of government to inspect

Provision of government supply contract that inspection by United States would not be conclusive "as regards latent defects, fraud, or such gross mistakes as to amount to fraud" embodied established rule that, even where final inspection is obligation of the government, such obligation does not absolve contractor from liability for defraud. U. S. v. Aerodex, Inc., C.A.5 (Fla.) 1972, 469 F.2d 1003. United States 121

11. Matters to be proved generally

To establish knowing presentation of false claim to government under False Claims Act, plaintiff must show (1) that defendant presented or caused to be presented to agent of United States claim for payment, (2) claim was false or fraudulent, (3) defendant knew it was false or fraudulent, and (4) United States suffered damages as result. Wilkins ex rel. U.S. v. State of Ohio, S.D.Ohio 1995, 885 F.Supp. 1055. United States 122

Under former § 231 of this title, which provided that any person who made or caused to be made, for payment or approval, to any person or officer in civil service of the United States, claim against United States government knowing such claim to be false or fraudulent was liable to government for damages, government must have established by clear and convincing evidence, the following elements: defendant presented or caused to be presented, for payment or approval, to government of the United States, claims upon or against the United States; claim was false, fictitious, or fraudulent; defendant knew that claim was false, fictitious or fraudulent; and to recover damages, it must have been shown that United States sustained damage by reason of the false claim. U. S. v. Lawson, D.C.N.J.1981, 522 F.Supp. 746. United States 120.1

United States suing under former § 231 of this title which provided for $2,000 forfeiture by anyone knowingly making fraudulent claim upon or against the government must have proved that defendant had intent to defraud, that claim contained false, fraudulent, or fictitious statements, that defendant knew and understood that the claim was false, fraudulent, or fictitious in whole or part, and that the government believed and acted upon the false representations. U. S. v. Sawin, S.D.Iowa 1965, 243 F.Supp. 744. United States 122

In order to recover prescribed penalties under former § 231 of this title United States must have proved "fraud" in its accepted sense, i.e., false representation of material fact made with knowledge of its falsity and with intent to deceive, which representation must have been believed and acted upon by deceived party to his damage. U. S. v. Schmidt, E.D.Wis.1962, 204 F.Supp. 540. See, also, Woodbury v. U.S., D.C.Or.1964, 232 F.Supp. 49, affirmed in part, reversed in part on other grounds 359 F.2d 370; U.S. v. Robbins, D.C.Kan.1962, 207 F.Supp. 799. United States 122

12. Deceit

Mere fact that item supplied to United States under contract was as good as one contracted for did not relieve suppliers of

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liability under former § 231 of this title, if it could have been shown that they attempted to deceive government agency. U. S. v. Aerodex, Inc., C.A.5 (Fla.) 1972, 469 F.2d 1003. United States 121

Under former § 231 of this title, even though it would have been enough that a claimant secured his contract with United States by deceit, it would not have been sufficient that he secured it by any other kind of wrong. U.S. ex rel. Brensilber v. Bausch & Lomb Optical Co., C.C.A.2 (N.Y.) 1942, 131 F.2d 545, certiorari granted 63 S.Ct. 1026, 319 U.S. 733, 87 L.Ed. 1695, affirmed 64 S.Ct. 187, 320 U.S. 711, 88 L.Ed. 417, rehearing denied 64 S.Ct. 256, 320 U.S. 814, 88 L.Ed. 492. United States 121

Former § 231 of this title made "fraud" of some sort the basis of the liability, and used the word in its accepted sense of deceit. U.S. ex rel. Brensilber v. Bausch & Lomb Optical Co., C.C.A.2 (N.Y.) 1942, 131 F.2d 545, certiorari granted 63 S.Ct. 1026, 319 U.S. 733, 87 L.Ed. 1695, affirmed 64 S.Ct. 187, 320 U.S. 711, 88 L.Ed. 417, rehearing denied 64 S.Ct. 256, 320 U.S. 814, 88 L.Ed. 492. United States 121

Liability follows if claim be false or if it be fictitious or if it be fraudulent, and it was not necessary to recovery thereunder that government established fraud and deceit on part of defendant. U. S. v. Eagle Beef Cloth Co., E.D.N.Y.1964, 235 F.Supp. 491. United States 122

13. Intent--Generally

Intent to deceive is requisite element of proof under the pre-1986 version of the False Claims Act only if government asserts that defendant submitted "fraudulent" as opposed to "false" claims to the government. U.S. v. TDC Management Corp., Inc., C.A.D.C.1994, 24 F.3d 292, 306 U.S.App.D.C. 286
. United States 120.1

Anyone who presented any claim upon or against United States government knowing such claim to have been false was liable under former § 231 of this title; government need not have established that defendant intended to deceive, defraud, or cheat government. U. S. v. Hughes, C.A.7 (Ind.) 1978, 585 F.2d 284. United States 120.1

"Intent," for purposes of former § 231 of this title, included the volitional action of presenting claim to the government, the ill will towards the government, and the knowledge of the action itself. U. S. v. Cooperative Grain & Supply Co., C.A.8 (Neb.) 1973, 476 F.2d 47. United States 120.1

A forfeiture could not have occurred under R.S. § 5438 [now §§ 287 and 1001 of Title 18] without the party having incurred the same being guilty of both fraudulent intent and conduct, while a violation of the customs and navigation laws involving a forfeiture or penalty might have, and often did, occur without fraudulent intent or willful negligence. U.S. v. Griswold, D.C.Or.1885, 24 F. 361, 11 Sawy. 65.

Requisite intent for claim under False Claims Act (FCA) is knowing presentation of what is known to be false, as opposed to innocent mistake or mere negligence. U.S. ex rel. Rueter v. Sparks, C.D.Ill.1996, 939 F.Supp. 636, affirmed 111 F.3d 133. United States 120.1

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It was not necessary to establish intent to defraud government under former § 231 of this title, it was enough that defendant knowingly defrauded government. U. S. v. Krietemeyer, S.D.Ill.1980, 506 F.Supp. 289. United States 121

Intent to defraud was not required for violation under first two clauses of former § 231 of this title which prohibited making or presenting for payment any claim knowing such to be false and making or using for purpose of obtaining payment or approval of such claim any receipt, claim, certificate, or affidavit, knowing it to contain any fraudulent or fictitious statement or entry, though government must have proved that defendant had knowledge that claims were false. U. S. v. Fox Lake State Bank, N.D.Ill.1963, 225 F.Supp. 723. United States 120.1

Intent to defraud was a necessary prerequisite to civil liability under former § 231 of this title. U.S. v. Park Motors, E.D.Tenn.1952, 107 F.Supp. 168. See, also, Woodbury v. U.S., D.C.Or.1964, 232 F.Supp. 49, affirmed in part, reversed in part on other grounds 359 F.2d 370; U.S. v. Goldberg, D.C.Pa.1958, 158 F.Supp. 544. United States 121; United States 122

A "fraudulent claim" against federal government within meaning of former § 231 of this title, was a false or fictitious claim, gotten up or contrived by some person or persons with intent to present it for approval and thus to defraud the government. Mandel v. Cooper Corporation, S.D.N.Y.1941, 42 F.Supp. 317. United States 122

14. ---- Actual or specific intent

Department of Energy's (DOE) full knowledge of material facts underlying any representations implicit in contractor's conduct negated any knowledge that contractor had regarding truth or falsity of those representations, for purpose of lawsuit brought by relator under False Claims Act (FCA). U.S. ex rel. Becker v. Westinghouse Savannah River Co., C.A.4 (S.C.) 2002, 305 F.3d 284, certiorari denied 123 S.Ct. 1929, 538 U.S. 1012, 155 L.Ed.2d 848. United States 120.1

"Ill will" or specific intent were not necessary elements for actionable liability under former § 231 of this title; the real issue was whether the claimants knew they were submitting false claims. U. S. v. Cooperative Grain & Supply Co., C.A.8 (Neb.) 1973, 476 F.2d 47. United States 120.1

For purposes of former § 231 of this title the specific element of "intent," which was distinct from knowledge, was the specific will to act, an element of deliberateness or willfulness or not inadvertent or accidental. U. S. v. Cooperative Grain & Supply Co., C.A.8 (Neb.) 1973, 476 F.2d 47. United States 120.1

Under former § 231 of this title which imposed penalties for filing false claims with government, an actual intent to deceive must have been proved. U. S. v. Mead, C.A.9 (Cal.) 1970, 426 F.2d 118. United States 122

Applicant's representation in proposal for Small Business Innovation Research (SBIR) program grant that it already had office space, laboratories, and "dry room" was made with scienter necessary to support claim under False Claims Act (FCA), even if facilities were in place at time proposal was funded, where buildings were not yet complete when proposal was submitted. U.S. ex rel. Longhi v. Lithium Power Technologies, Inc., S.D.Tex.2007, 513 F.Supp.2d 866. United States 120.1

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Alleged failure of Massachusetts Housing Finance Agency (MHFA), as mortgage lender, to seek legal opinion on effect of bond issuance on its existing mortgage notes did not show that MHFA had knowledge that claims for interest reduction payments under mortgage assistance program for owners of low-income housing projects were false or that it had intent to deceive Housing and Urban Development (HUD), where relator did not identify any duty on MHFA's part to seek such legal opinion, for purpose of relator's action under False Claims Act (FCA). U.S. ex rel. K & R Ltd. Partnership v. Massachusetts Housing Finance Agency, D.D.C.2006, 456 F.Supp.2d 46, affirmed 530 F.3d 980, 382 U.S.App.D.C. 67, rehearing en banc denied. United States 122

Government was not required to prove actual intent to submit false claims to establish liability under False Claims Act. U.S. v. Oakwood Downriver Medical Center, E.D.Mich.1988, 687 F.Supp. 302. United States 122

Specific intent is not required for violation of False Claims Act. U.S. v. Children's Shelter, Inc., W.D.Okla.1985, 604 F.Supp. 865. United States 120.1

A person who knowingly disobeyed requirements of former § 231 of this title, intending with bad purpose either to disobey or disregard that law, was acting with a specific intent. Woodbury v. U. S., D.C.Or.1964, 232 F.Supp. 49, affirmed in part, reversed in part on other grounds 359 F.2d 370. United States 120.1

15. ---- Imputation, intent

Where only officer of banks had actual knowledge of falsity of documents which accompanied claims for reimbursement submitted to Federal Housing Administration [now Department of Housing and Urban Development] and officer was not acting with purpose of benefitting banks but to profit personally, guilty intent of officer would not have been imputed to banks, and they were not liable for forfeitures and double damages under former § 231 of this title. U. S. v. Ridglea State Bank, C.A.5 (Tex.) 1966, 357 F.2d 495. United States 122

16. ---- Particular cases, intent

There was no evidence that university medical center or company that managed center's physician staffing had actual knowledge that Medicare claims submitted were false, or that billing errors were made in reckless disregard of their truth, as required to satisfy scienter element of claims under False Claims Act (FCA), particularly given center's hiring of consultant to help it improve its compliance and voluntary repayment of amounts that had been erroneously double billed. U.S. ex rel. Hefner v. Hackensack University Medical Center, C.A.3 (N.J.) 2007, 495 F.3d 103. United States 122

Exporter's alleged reliance on officials of United States Department of Agriculture (USDA) to approve corrections to USDA's original export certificates made by exporter's employees did not preclude determination that employees, in making changes, acted with knowing intent to avoid obligation to government required to violate reverse false claims provision of False Claims Act, particularly given evidence that, in some instances, employees made major or significant changes to original certificates without USDA approval, thereby avoiding obligation to pay fee for in-lieu-of or replacement certificate. U.S. ex rel. Bahrani v. Conagra, Inc., C.A.10 (Colo.) 2006, 465 F.3d 1189, certiorari denied 128 S.Ct. 388, 169 L.Ed.2d 264, on remand 2009 WL 751169. United States 120.1

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Relator failed to show that contractor fraudulently induced government to award construction contract to it by making promises at the time it submitted its bid regarding cost-saving devices it never intended to use; contractor substantially attempted to implement proposed cost-saving measures, and fact that some were ultimately abandoned as unfeasible did not permit inference that contractor never intended to implement them. U.S. ex rel. Bettis v. Odebrecht Contractors of Cal., Inc., C.A.D.C.2005, 393 F.3d 1321, 364 U.S.App.D.C. 250. United States 120.1

Contractors' openness with Environmental Protection Agency (EPA) about various problems in performing hazardous waste treatment and disposal services and their close working relationship with EPA in solving the problems negated the required scienter necessary to support claim under False Claims Act (FCA). U.S. ex rel. Costner v. U.S., C.A.8 (Ark.) 2003, 317 F.3d 883, rehearing and rehearing en banc denied , certiorari denied 124 S.Ct. 225, 540 U.S. 875, 157 L.Ed.2d 137. United States 120.1

Evidence was insufficient to show that electric cooperative selling power to a federal agency on a cost of production basis overcharged the government with the level of intentionality required for the False Claims Act's multiplied damages provisions; the only intentional act the district court pointed to was the discharge of some debt not related to the power plant at issue with proceeds from sale of the plant, cooperative attempted to deal with the consequences of this act by eliminating interest from the plant as a cost category in agency's bills, and there was no evidence that cooperative knew that some of this interest was charged to the agency through interest payments on common facilities. U.S. v. Basin Elec. Power Co-op., C.A.8 (N.D.) 2001, 248 F.3d 781, rehearing and rehearing en banc denied , certiorari denied 122 S.Ct. 924, 534 U.S. 1115, 151 L.Ed.2d 887. United States 122

Government contractor's alleged replacement of two lower salaried workers with two higher salaried workers, in order to charge government more money for subcontract, did not give rise to liability under False Claims Act, as there was no allegation of an intent to defraud, and higher salaried workers used for bid proposal were actually staffed on the subcontract. Harrison v. Westinghouse Savannah River Co., C.A.4 (S.C.) 1999, 176 F.3d 776. United States 122

Evidence that medicare claims falsely indicating that services had been rendered by physician were prepared by nursing home employee at instruction of nursing home operator and that physician whose name was placed on the forms was not medical
director of the nursing home sustained determination that nursing home operator had guilty intent to make false claims against the government and was liable under former § 231 of this title. Peterson v. Weinberger, C.A.5 (Tex.) 1975, 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96 S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. United States 120.1

Where wholesaler by bid incorporated into United States contract offered to furnish regulators of designated proprietary number but delivered regulators manufactured by wholesaler and bearing spurious proprietary labels and sent as part of claims for regulators so delivered invoices describing regulators by proprietary numbers and ordnance stock numbers, there was intent on part of wholesaler to work deceit on government. U. S. v. National Wholesalers, C.A.9 (Cal.) 1956, 236 F.2d 944, certiorari denied 77 S.Ct. 719, 353 U.S. 930, 1 L.Ed.2d 724. United States 120.1

Relator did not demonstrate that Massachusetts Housing Finance Agency (MHFA), as mortgage lender, had knowledge that claims for interest reduction payments under mortgage assistance program for owners of low-income housing

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projects were false or that it had intent to deceive Housing and Urban Development (HUD), on allegations that MHFA had motive to defraud HUD because of MHFA's precarious financial condition and that MHFA made misrepresentations in financial statements for other programs, for purpose of relator's action under False Claims Act (FCA). U.S. ex rel. K & R Ltd. Partnership v. Massachusetts Housing Finance Agency, D.D.C.2006, 456 F.Supp.2d 46, affirmed 530 F.3d 980, 382 U.S.App.D.C. 67, rehearing en banc denied. United States 122

Even if some of Medicare services provider's claims for pulmonary rehabilitation services and simple pulmonary stress tests were “false” under the False Claims Act (FCA), government failed to show that provider “knowingly” submitted a false claim; provider's billing practice conformed to a reasonable interpretation of ambiguous regulations that he, and his staff, believed in good faith were proper, and provider complied with government instructions regarding the claims. U.S. v. Prabhu, D.Nev.2006, 442 F.Supp.2d 1008. United States 120.1

Relator failed to show that contractor fraudulently induced government to award the contract to it by making promises at the time it submitted its bid regarding cost-saving devices it never intended to use, failing to follow industry practices for preparing its bid, or by reaffirming its bid during the period of the bid protest or submitting a false request for equitable adjustment (REA) after the contract was awarded; contractor's REA, which ultimately resulted in a $6.9 million contract adjustment, reflected a contract dispute, not a false claim within the meaning of the False Claims Act. U.S. ex rel. Bettis v. Odebrecht Contractors of California, Inc., D.D.C.2004, 297 F.Supp.2d 272, affirmed 393 F.3d 1321, 364 U.S.App.D.C. 250. United States 120.1

Defendants did not act with the requisite intent to establish False Claims Act (FCA) liability for “reverse” false claims for purpose of decreasing royalty payments due under certain Federal leases; defendants did not “knowingly” make false statements regarding the gas volumes used for royalty purposes since the methodology employed for measuring and reporting gas production was known to and approved by the responsible government authorities, and defendants' statements about the value assigned to the gas for royalty purposes was not knowingly false since the approach used to determine that value was openly disclosed to the government and repeatedly accepted. U.S. ex rel. Grynberg v. Praxair, Inc., D.Colo.2001, 207 F.Supp.2d 1163, affirmed in part , reversed in part 389 F.3d 1038, certiorari denied 125 S.Ct. 2964, 545 U.S. 1139, 162 L.Ed.2d 888, on subsequent appeal 183 Fed.Appx. 724, 2006 WL 1531413. United States 120.1

To the extent that statement supplied by government contractor on DD-250 Forms, wherein government quality assurance representative certified compliance of modular pack mine system assemblies with government contract, together with other statements and documents and request for payment, had intended effect of inducing government to pay claims which were not properly payable, materials could constitute a false claim under False Claims Act (FCA) and, accordingly, summary judgment was precluded on that claim. U.S. ex rel. Fallon v. Accudyne Corp., W.D.Wis.1995, 921 F.Supp. 611. Federal Civil Procedure 2498.4

Evidence in action by United States to recover payments made to partners under soil bank program with respect to lands leased by individual partners from partnership was insufficient to support finding of an intent by partners to deceive, in view of record clearly indicating that partners had been led by government agents to believe that their actions were permissible under the law. U. S. v. Lazy FC Ranch, D.C.Idaho 1971, 324 F.Supp. 698, affirmed 481 F.2d 985. United States 120.1

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Where claim presented to Veterans' Administration incorrectly stated that total purchase price of automobile by veteran from dealer did not exceed $1,600, but government was not overcharged for automobile and dealer received nothing he was not entitled to, and dealer did not with fraudulent design undertake to deceive and cheat government, dealer could retain amount of claim paid under Act Aug. 8, 1946, c. 870, 60 Stat. 915, providing for gift of automobile by federal government at cost of $1,600 to disabled veterans of World War II who lost one or both legs, notwithstanding falsity of claim. U.S. v. Park Motors, E.D.Tenn.1952, 107 F.Supp. 168. United States 120.1

17. Knowledge--Generally

False Claims Act provides for recovery of civil penalties from those who knowingly present false or fraudulent claim to the federal government for payment, or knowingly use false record to avoid or decrease obligation to pay the federal government. In re Schimmels, C.A.9 (Nev.) 1996, 85 F.3d 416. United States 122

Party “knowingly” presented false and fraudulent claims to the government under the pre-1986 version of the False Claims Act if he had actual knowledge or acted with deliberate ignorance and reckless disregard of the truth or falsity of his claims. U.S. v. TDC Management Corp., Inc., C.A.D.C.1994, 24 F.3d 292, 306 U.S.App.D.C. 286. United States 120.1

One violates False Claims Act if one has actual knowledge that one is submitting false or fraudulent claim to government for payment or approval, one acts in deliberate ignorance of truth or falsity of one's false claim, or one acts in reckless disregard of truth or falsity of one's false claim; innocent mistakes and negligence are not offenses under Act. Wang v. FMC Corp., C.A.9 (Cal.) 1992, 975 F.2d 1412. United States 122

There must have been a showing of actual knowledge to establish liability under former § 231 et seq. of this title. U.S. v. Ekelman & Associates, Inc., C.A.6 (Mich.) 1976, 532 F.2d 545. United States 120.1

“Knowing” within former § 231 of this title was “knowing” in civil sense and not the guilty knowledge of the criminal mens rea. U. S. v. Cooperative Grain & Supply Co., C.A.8 (Neb.) 1973, 476 F.2d 47. United States 120.1

Extreme carelessness of grain producers in not ascertaining whether purchased grain was eligible for commodity price support was “knowing” within former § 231 of this title. U. S. v. Cooperative Grain & Supply Co., C.A.8 (Neb.) 1973, 476 F.2d 47.

To have shown violation of former § 231 of this title, evidence must have demonstrated guilty knowledge of purpose on part of the defendant to cheat the government. U. S. v. Aerodex, Inc., C.A.5 (Fla.) 1972, 469 F.2d 1003. United States 122

Addition of conjunctive phrase “and should have known” to finding that subcontractor, sued by United States under former § 231 of this title for allegedly making improper claim for direct labor, knew and should have known of illegality and fraud of its conduct did not impair finding that subcontractor had necessary scienter. U.S. v. Ueber, C.A.6 (Mich.) 1962, 299 F.2d 310. United States 122

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Genuine issue of material fact existed regarding whether employees of tribal business knew that claims submitted for brushing and road grading work performed under contract with Bureau of Indian Affairs (BIA) were false, precluding summary judgment on government's False Claims Act (FCA) claims against employees. U.S. v. Menominee Tribal Enterprises, E.D.Wis.2009, 601 F.Supp.2d 1061, reconsideration denied 2009 WL 1373952, entered 2009 WL 2877083. Federal Civil Procedure 2498.4

University which received grants from government, under Cooperative Agreements, to undertake project to assist Russia in developing capital markets and foreign investments, was not liable under False Claims Act (FCA), on basis of violation, by university employees, of provisions of those Agreements which prohibited investment in Russia; university did not know that the statements it submitted to government, in which it certified compliance with the conditions of the grants, were false. U.S. v. President and Fellows of Harvard College, D.Mass.2004, 323 F.Supp.2d 151. United States 122

In order to be liable under False Claims Act, party must have knowingly presented claim that was known to be false. Plywood Property Associates v. National Flood Ins. Program, D.N.J.1996, 928 F.Supp. 500. United States 120.1

To establish False Claims Act violation, government need not prove intent to defraud, but only that the violations were committed knowingly, i.e., with willful blindness to existence of a fact or reckless disregard for the truth. U.S. v. Incorporated Village of Island Park, E.D.N.Y.1995, 888 F.Supp. 419. United States 120.1

False Claims Act provides penalties for those who knowingly present false or fraudulent claims to United States and incentives for whistleblowers who expose fraud by filing qui tam actions. U.S. ex rel. Fine v. University of California, N.D.Cal.1993, 821 F.Supp. 1356, reversed 39 F.3d 957, rehearing en banc granted 60 F.3d 525, opinion vacated on rehearing 72 F.3d 740, certiorari denied 116 S.Ct. 1877, 517 U.S. 1233, 135 L.Ed.2d 173. United States 122

Former § 231 of this title required only that defendants knowingly presented a false claim to the government. Alsco-Harvard Fraud Litigation, D.C.D.C.1981, 523 F.Supp. 790. United States 120.1

Threshold requirement under former § 231 of this title was that each defendant's claim against government was “knowingly” grounded in fraud. U. S. ex rel. Hughes v. Cook, S.D.Miss.1980, 498 F.Supp. 784. United States 120.1

In order to have been liable under former § 231 of this title, a party must have had at least knowledge of the fact he was submitting a false claim to the government. U. S. v. Kennedy, C.D.Cal.1977, 431 F.Supp. 877. United States 121

In action under former § 231 of this title, United States was not required to prove intent to defraud but was required only to prove, as matter of law, that claimant made claim upon or against government of United States, knowing it to have been false. U. S. v. Foster Wheeler Corp., S.D.N.Y.1970, 316 F.Supp. 963, modified on other grounds 447 F.2d 100. United States 120.1

18. ---- Deliberate ignorance, knowledge

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Statutory definition of "knowingly" in False Claims Act requires at least deliberate ignorance or reckless disregard. U.S. ex rel. Hagood v. Sonoma County Water Agency, C.A.9 (Cal.) 1991, 929 F.2d 1416, on remand. United States 121

Amendments to False Claims Act, providing for violation in cases in which person submits claim in deliberate ignorance or reckless disregard of its truth or falsity, broadened liability under Act, which previously applied only to cases in which there was actual knowledge of falsity of claim. U.S. v. Hercules, Inc., D.Utah 1996, 929 F.Supp. 1418. United States 120.1

Fact that government contractor certified in final progress billing that subcontractors had been paid, despite still having failed to pay all its suppliers and subcontractors, supported conclusion, for purposes of the False Claims Act (FCA), that contractor also acted knowingly, or in deliberate ignorance with reckless disregard of falsehoods, when it certified the final progress billing. Lamb Engineering & Const. Co. v. U.S., Fed.Cl.2003, 58 Fed.Cl. 106. United States 120.1

19. ---- Government knowledge

"Government knowledge inference" negated the scienter element of False Claims Act (FCA) violation based on state university officials' false certification that university was a "minority institution" eligible for Department of Defense (DoD) set-aside contract grants; from university's enrollment data, the Department of Education (DoE) consistently placed university on its annual list of minority institutions, and, from those lists, the DoD consistently sent university solicitations for minority-institution contracts, assuring university that, if it was on DoE's list, it was eligible. U.S. ex rel. Burlbaw v. Orenduff, C.A.10 (N.M.) 2008, 548 F.3d 931. United States 120.1

Prior product liability lawsuits against manufacturer of heart pacemaker leads, alleging leads were not as safe as had been reported to Food and Drug Administration (FDA), precluded relator's qui tam claims under False Claims Act against manufacturer alleging medicare fraud for manufacturer's alleged fraud in providing information to FDA; government could have reasonably inferred fraud allegations from various parts of prior complaints, prior complaints mentioned both a change in design specifications and fraud surrounding manufacture of leads, and medicare fraud claim necessarily relied on FDA fraud claim. U.S. ex rel. Gilligan v. Medtronic, Inc., C.A.6 (Ohio) 2005, 403 F.3d 386, rehearing and rehearing en banc denied , certiorari denied 126 S.Ct. 1054, 546 U.S. 1094, 163 L.Ed.2d 860. United States 122

Contractor could not be held liable for submitting fraudulent claim to government under False Claims Act (FCA) when contractor acted pursuant to government's explicit directions in submitting proposal and invoices using excavation line-items for pond dredging project and in resubmitting invoices without excavation line-items. U.S. ex rel. Durcholz v. FKW Inc., C.A.7 (Ind.) 1999, 189 F.3d 542. United States 120.1

In determining whether government had such knowledge as would preclude qui tam suit under False Claims Act, government's knowledge need not be mirror image of that in hands of informer; rather, information need only be sufficient to enable government to adequately investigate case and decide whether to prosecute. U.S. v. TRW, Inc., C.A.6 (Ohio) 1993, 4 F.3d 417, rehearing denied, certiorari denied 114 S.Ct. 1370, 511 U.S. 1004, 128 L.Ed.2d 47. United States 122

Statutory basis for False Claims Act claim is defendant's knowledge of the falsity of its claim, which is not automatically exonerated by any overlapping knowledge by government officials, but fact that contractor has fully disclosed all inform-

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ation to the government may show that contractor has not "knowingly" submitted a false claim. U.S. ex rel. Kreindler & Kreindler v. United Technologies Corp., C.A.2 (N.Y.) 1993, 985 F.2d 1148, certiorari denied 113 S.Ct. 2962, 508 U.S. 973, 125 L.Ed.2d 663. United States 122

Bureau of Indian Affairs (BIA) officials did not encourage or order resubmission of invoices with false amounts of work by employees of tribal business arm, and thus narrow exception to False Claims Act (FCA) for government's knowledge of falsity of claims did not apply to claims that employees submitted false claims for brushing and road grading work performed under contract with BIA. U.S. v. Menominee Tribal Enterprises, E.D.Wis.2009, 601 F.Supp.2d 1061, reconsideration denied 2009 WL 1373952, entered 2009 WL 2877083. United States 120.1

Documents/allegations in the United States' possession at the time relator filed its qui tam suit, whether or not characterized as "evidence," were sufficient to enable United States adequately to investigate the case and to make a decision whether to prosecute, and therefore qui tam action was barred by former statute barring qui tam suits based upon information in the government's possession. Makro Capital of America, Inc. v. UBS AG, S.D.Fla.2006, 436 F.Supp.2d 1342, reconsideration denied 2006 WL 4448860, affirmed 543 F.3d 1254. United States 122

Government was not estopped from claiming fraud under False Claims Act, based on corporation's billing of tasks required under specific contract to general defense research, despite corporation's claim that it informed government of its intent to perform required work using general research funds. U.S. ex rel. Mayman v. Martin Marietta Corp., D.Md.1995, 894 F.Supp. 218. Estoppel 62.2(4)

20. ---- Imputation, knowledge

In government's action against defendant to recover forfeitures for submitting false claims for materials supplied by defendant as subcontractor on a Navy shipbuilding project, defendant could not escape liability on ground that he had no knowledge that the bids being submitted for Navy approval were not bona fide, where such bids were procured by defendant's agents for defendant's sole benefit. U. S. v. Rohleder, C.C.A.3 (Pa.) 1946, 157 F.2d 126. United States 122

University employees were not acting within the scope of their employment when they made investments in Russia which violated provision of university's agreement with government, prohibiting employees involved in project to assist Russia in developing capital markets and foreign investments, from investing in Russia, and thus university could not be charged or imputed with the collective knowledge of the employees for purposes of determining whether university had knowledge of the falsity of its certifications to government, as required for a violation of the False Claims Act (FCA); employees were not acting with an intent to benefit university. U.S. v. President and Fellows of Harvard College, D.Mass.2004, 323 F.Supp.2d 151. Colleges And Universities 5; United States 122

Government contractor's project superintendent's alleged concealment from government of employees' discovery and disturbance of asbestos in military housing during remodeling could be imputed to contractor for purposes of False Claims Act suit, regardless of whether superintendent's superiors were aware of asbestos; superintendent was working within scope of his employment, submitted daily reports to contractor and government, and served as liaison between contractor and government inspector, and thus acted with apparent authority. U.S. ex rel. Bryant v. Williams Building Corp., D.S.D.2001, 158 F.Supp.2d 1001. United States 120.1

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Common-law doctrine of corporate knowledge would not be applied to impose liability on aircraft contractor, based on government's inflated pricing claims under False Claims Act, absent finding of intent to deceive government; although certificate of current cost or pricing data provided that responsibility of contractor would not be limited by personal knowledge of contractor's negotiator, whether or not to apply doctrine of corporate knowledge was not dependent on language of parties' agreement. U.S. v. United Technologies Corp., Sikorsky Aircraft Div., D.Conn.1999, 51 F.Supp.2d 167. United States 120.1

Bank officer's knowingly false representation on behalf of Small Business Administration loan applicant would be imputed to bank, for purpose of imposing liability under False Claims Act, in that officer was acting in course of his employment and for benefit of employer at time representation was made. U.S. v. Entin, S.D.Fla.1990, 750 F.Supp. 512. United States 122

21. ---- Information and belief, knowledge

Certification of nonsupervised lender that information which it was submitting to the Veterans' Administration or the Federal Housing Administration [now Department of Housing and Urban Development] for purposes of obtaining guarantee or insurance of home loans was true “to the best of my knowledge and belief” was a qualified assertion of facts and did not provide basis for holding the lender liable under former § 231 et seq. of this title on theory that it had made its representations recklessly. U.S. v. Ekelman & Associates, Inc., C.A.6 (Mich.) 1976, 532 F.2d 545. United States 120.1

Nonsupervised lender was not held liable under former § 231 of this title for failing to verify information which was subsequently determined to be false and which it had certified to the Veteran's Administration as being true to the best of its knowledge and belief. U.S. v. Ekelman & Associates, Inc., C.A.6 (Mich.) 1976, 532 F.2d 545. United States 120.1

22. ---- Particular cases, knowledge

Evidence was sufficient to support jury finding that contractor, in seeking government approval of subcontract, knowingly submitted to the Department of Energy (DOE) a false certification that no organizational conflicts of interest existed between contractor and subcontractor, and thus possessed the requisite scienter to be held liable under the False Claims Act (FCA); contractor's employee knew that subcontractor was submitting a bid on the subcontract, the employee was one of the three contractor employees who graded the bid before it was submitted to DOE, contractor's procurement specialist cautioned employee to ensure that no contract employees would have access to procurement sensitive information, and subcontractor's employee, who was a contract employee for contractor, had unrestricted access to procurement sensitive documents. U.S. ex rel. Harrison v. Westinghouse Savannah River Co., C.A.4 (S.C.) 2003, 352 F.3d 908. United States 122

Even if government contractor's executive vice president violated criminal statute aimed at “revolving door” abuses by former government employees by representing contractor in matters related to contract, and even if contractor knew of such violation, it did not “knowingly” misrepresent validity of contract in violation of False Claims Act; issue of whether such violation could render contract voidable was open, and contract, even if voidable, would become invalid only upon contingency of government exercising its right to disclaim. U.S. ex rel. Siewick v. Jamieson Science and Engineering, Inc., C.A.D.C.2000, 214 F.3d 1372, 341 U.S.App.D.C. 459. United States 120.1

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Department of Labor's efforts to establish wage classification for piping workers on water treatment plant project were not uncertain and did not preclude finding of scienter in union's qui tam action for contractor's alleged violation of False Claims Act (FCA) in certifying falsely that it had paid piping workers on federally-funded project the applicable prevailing wage required by Davis-Bacon Act and related laws. U.S. ex rel. Plumbers and Steamfitters Local Union No. 38 v. C.W. Roen Const. Co., C.A.9 (Cal.) 1999, 183 F.3d 1088, certiorari denied 120 S.Ct. 2195, 530 U.S. 1203, 147 L.Ed.2d 232, on remand 2002 WL 73230. United States 120.1

Authorization of specialty pay for Department of Veterans Affairs (VA) clinic's chief of anesthesiology by clinic administrators and affiliated physicians did not support claim under False Claims Act, even if chief was not in fact entitled to specialty pay under VA guidelines, absent evidence that administrators and physicians knew that their application of guidelines was incorrect or were deliberately indifferent to or recklessly disregardful of alleged inapplicability of those provisions. U.S. ex rel. Hochman v. Nackman, C.A.9 (Cal.) 1998, 145 F.3d 1069. United States 121

Civil judgment finding real estate agent to be liable under former § 231 of this title for having combind with other to present false claims to Department of Housing and Urban Development was not erroneous on ground that no showing was made that defendant had intent to deceive, in that government was required only to establish that defendant knowingly presented false claim to government. U. S. v. Hughes, C.A.7 (Ind.) 1978, 585 F.2d 284. United States 120.1

Evidence sustained finding that there was no actual knowledge on part of lender that any information submitted by it to the Government with respect to VA and Federal Housing Administration loan guarantee and insurance programs was false or fraudulent. U.S. v. Ekelman & Associates, Inc., C.A.6 (Mich.) 1976, 532 F.2d 545. United States 120.1

Government contractor was subject to fine of $2,000 where it knowingly claimed reimbursement for personal services rendered by contractor's employees on another employee's farm, which matter was directly brought to attention of contractor's officials by federal agency, contractor thereafter failing to remove such personal expenditures from charges claimed. Acme Process Equipment Co. v. U. S., Ct.Cl.1965, 347 F.2d 509, 171 Ct.Cl. 324, certiorari granted 86 S.Ct. 1367, 384 U.S. 917, 16 L.Ed.2d 438, reversed on other grounds 87 S.Ct. 350, 385 U.S. 138, 17 L.Ed.2d 249, rehearing denied 87 S.Ct. 738, 385 U.S. 1032, 17 L.Ed.2d 680. United States 122

Evidence failed to show that military supply contractor knowingly made false claims against government. Klein v. U.S., Ct.Cl.1961, 285 F.2d 778, 152 Ct.Cl. 8. United States 120.1

In action under former § 231 of this title by United States against member of first partnership, which had a contract with Air Force for overhaul of marine engines, and which submitted vouchers for cost of spare parts at prices higher than those paid by second partnership, the spare parts supplier, because majority of members of second partnership were close relatives of members of first partnership, the United States was required to prove that member of first partnership personally had guilty knowledge of a purpose on part of first partnership to cheat the United States and to obtain payment of amounts for which she knew the United States was not liable under the contract. U. S. v. Priola, C.A.5 (Ala.) 1959, 272 F.2d 589. United States 122

In action by federal government against dairyman who delivered recombined milk in violation of his contract for delivery

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of fresh milk and presented claims for payment for delivery of fresh milk knowing such claims to be false, evidence sustained jury's finding that 15 percent of all milk delivered was not consumed by troops because 70 percent thereof was recombined milk. Faulk v. U.S., C.A.5 (Tex.) 1952, 198 F.2d 169. United States 122

In government's action against defendant to recover forfeitures for submitting false claims for materials supplied by defendant as subcontractor on a Navy shipbuilding project, evidence was sufficient to show that defendant knew that the bids being submitted for Navy approval were not bona fide. U. S. v. Rohleder, C.C.A.3 (Pa.) 1946, 157 F.2d 126. United States 122

Homeowners association board did not make false statement in violation of False Claims Act (FCA) when securing loan agreement to repair roofs that were damaged by hurricane, by submitting resolution stating that majority of owners had approved loan, as required for condominium owner's claim against homeowners association, board members, management company and management company's operator under False Claims Act (FCA), absent evidence of board's knowledge of falsity of information or intent to defraud government. U.S. ex rel. Crenshaw v. Degayner, M.D.Fla.2008, 622 F.Supp.2d 1258, reconsideration denied 2008 WL 4613084. United States 120.1

Genuine issue of material fact as to whether hospitals that established diabetes treatment centers presented Medicare claims to United States after operator of centers knowingly and willingly made excessive payments to physicians in return for patient referrals precluded summary judgment in action against operator under False Claims Act (FCA) based on violations of Anti-Kickback Statute (AKS). U.S. ex rel. Pogue v. Diabetes Treatment Centers of America, D.D.C.2008, 565 F.Supp.2d 153, reconsideration denied 576 F.Supp.2d 128. Federal Civil Procedure 2498.4

Jury charge, in suit alleging that contractors violated False Claims Act (FCA) by bid-rigging conspiracy for Egyptian construction projects funded by United States, instructing that contractors acted “knowingly” if they “had information which would lead a reasonably prudent person to make an inquiry through which he would have surely learned certain facts,” fell within FCA's definition of knowledge for scienter requirement. Miller v. Holzmann, D.D.C.2008, 563 F.Supp.2d 54. Conspiracy 9

Genuine issue of material fact as to whether insurance agent knew he was submitting false or fraudulent crop insurance applications, acreage reports, production worksheets, and claim documents for persons not eligible for crop insurance, precluded summary judgment in favor of government on False Claims Act (FCA) claim that agent knowing made or used false statements to get a false crop insurance claim paid or approved by government. U.S. v. Hawley, N.D.Iowa 2008, 544 F.Supp.2d 787, subsequent determination 566 F.Supp.2d 918. Federal Civil Procedure 2498.4

Contractor hired to provide reimbursement rates for government reimbursements to schools, for implementation of School Health and Related Services (SHARS) program, did not have knowledge that rates were inflated, as required for liability for causing filing of false reimbursement claims in violation of False Claims Act (FCA), despite assertions that state officials had told contractors rates seemed unreasonable, and that contractor had profit motive to set high rates. U.S. ex rel. Gudur v. Deloitte Consulting LLP, S.D.Tex.2007, 512 F.Supp.2d 920, affirmed 2008 WL 3244000. United States 120.1

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Genuine issues of material fact existed as to whether government contractor acted with requisite scienter under False Claims Act (FCA) in falsely certifying its Cost Accounting Standards Board (CASB) disclosure statements by failing to list affiliated subcontractor among the companies with whom it engaged in inter-organizational transfers, and by allegedly violating the federal regulations governing its accounting practices, precluding summary judgment in favor of relator on False Claims Act (FCA) claims. U.S. ex rel. Oliver v. The Parsons Corp., C.D.Cal.2006, 498 F.Supp.2d 1260. Federal Civil Procedure 2498.4

Allegedly erroneous interpretation of mortgage notes by Massachusetts Housing Finance Agency (MHFA), as mortgage lender, did not demonstrate that MHFA had knowledge that claims for interest reduction payments under mortgage assistance program for owners of low-income housing projects were false or that it had intent to deceive Housing and Urban Development (HUD), for purpose of relator's action under False Claims Act (FCA); reasonableness of MHFA's interpretation, whether or not correct, was demonstrated on evidence that for 30 years every party to notes interpreted them in same way. U.S. ex rel. K & R Ltd. Partnership v. Massachusetts Housing Finance Agency, D.D.C.2006, 456 F.Supp.2d 46, affirmed 530 F.3d 980, 382 U.S.App.D.C. 67, rehearing en banc denied. United States 122

Because rules regarding documentation for establishing medical necessity for services provided were ambiguous, Medicare services provider could not be found to have “knowingly” submitted any “false” claim to the government regarding the medical necessity of his claims. U.S. v. Prabhu, D.Nev.2006, 442 F.Supp.2d 1008. United States 120.1

University which received grants from government, under Cooperative Agreements, to undertake project to assist Russia in developing capital markets and foreign investments, did not knowingly make false records or statements and thus was not liable under False Claims Act (FCA), despite violation, by university employees, of provisions of those Agreements which prohibited investment in Russia; university did not know that the statements it submitted to government, in which it certified compliance with the conditions of the grants, were false. U.S. v. President and Fellows of Harvard College, D.Mass.2004, 323 F.Supp.2d 151. United States 122

Government's allegations that private insurer was aware of applicable regulations regarding primary/secondary payment and knew that it was not accurately processing Medicare Secondary Payer (MSP) claims, and that insurer actually obtained information relevant to making accurate determinations regarding its payment obligations but nonetheless failed to incorporate such information into its claims processing systems were sufficient to allege knowing conduct element of claim under False Claims Act (FCA). U.S. ex rel. Drescher v. Highmark, Inc., E.D.Pa.2004, 305 F.Supp.2d 451. United States 122

Government contractor's alleged failure to implement proper channels of communication with subcontractors, allegedly resulting in submission of erroneous bid results to government, did not rise to level of reckless disregard so as to satisfy False Claims Act's “knowingly” criterion. U.S. ex rel. Ervin and Associates, Inc. v. Hamilton Securities Group, D.D.C.2004, 298 F.Supp.2d 91. United States 120.1

Contractors did not engage in pattern of knowingly submitting false claims for payment under their contracts to perform hazardous waste treatment and disposal services at site of chemical plant, and thus were not liable under False Claims Act (FCA), despite contention that worker had tampered with incinerator sensor to reduce occurrence of waste feed cutoffs, where contemporaneously recorded computer records contained no evidence of tampering, contractors had no ac-

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tual knowledge of alleged tampering, oversight contractor hired to perform inspection services continuously on site never saw any evidence of tampering, and observed elevated levels of dioxin at site were attributable to numerous causes other than kiln puffs and tampering. U.S. ex rel. Costner v. URS Consultants, Inc., E.D.Ark.2001, 182 F.Supp.2d 754, affirmed 317 F.3d 883, rehearing and rehearing en banc denied , certiorari denied 124 S.Ct. 225, 540 U.S. 875, 157 L.Ed.2d 137. United States 120.1

Claim for Federal Employees Compensation Act (FECA) benefits filed by army hospital clerical assistant 21 months after alleged on-the-job lifting injury was false and subjected employee to a civil penalty under False Claims Act; employee was knowledgeable about his FECA rights, such that his waiting so long to file claim was incredible, as was his failure to mention injury during subsequent medical treatment. U.S. v. Bottini, W.D.La.1997, 19 F.Supp.2d 632, affirmed 159 F.3d 1357. United States 120.1

Material issue of fact existed as to whether contractor knowingly violated False Claims Act by submitting five sworn statements that it had performed work in accordance with its contract with United States, precluding summary judgment for United States on False Claims Act claim. U.S. v. Chilstead Bldg. Co., Inc., N.D.N.Y.1998, 18 F.Supp.2d 210. Federal Civil Procedure 2498.4

Government failed to establish that retail grocer “knowingly” acquired, possessed or redeemed illegally obtained food stamps and thus could not recover, under False Claims Act, damages arising from grocer's alleged violations of food stamp program requirements; although grocer admitted to being person responsible for redeeming food stamps for store and admitted to not having any unredeemed food stamps at store, government presented no direct evidence that grocer ever acquired, possessed or redeemed illegally obtained food stamps, and there was no evidence that grocer deliberately “turned his back” to misconduct of store's managers, who were grocer's mother and aunt. Haynes v. U.S. Through Food and Nutrition Service, E.D.Ark.1995, 956 F.Supp. 1487, affirmed 106 F.3d 405. United States 122

Former employee of federal contractors failed to establish that contractors had actual knowledge, acted with deliberate ignorance of truth or falsity or acted in reckless disregard of truth when it reported wrong wage rates for employees' maintenance work in certified payroll records provided to government under Copeland Act, for purposes of maintaining claim against contractors under False Claims Act (FCA), where contractor testified that he thought maintenance hours did not need to be included on certified payroll record since “General Wage Decision” under its contract did not provide classification for maintenance, contractors had followed same practice for 25 years, and audit performed by Department of Labor did not indicate that contractors were paying improper rate to employees for maintenance work. U.S. ex rel. Rueter v. Sparks, C.D.Ill.1996, 939 F.Supp. 636, affirmed 111 F.3d 133. United States 122

Genuine issues of material fact existed as to whether United States or government contractor were aware of radio frequency miscalibration, whether that miscalibration led to tender of defective modular pack mine system components, and whether failure to train operators more extensively contributed to malfunctioning of testing units, precluding summary judgment on United States' claim under False Claims Act (FCA) that contractor knowingly supplied data for nonconforming parts and failed to properly test completed products in performing contract for production of modular pack mine system components. U.S. ex rel. Fallon v. Accudyne Corp., W.D.Wis.1995, 921 F.Supp. 611. Federal Civil Procedure 2498.4

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Director of university cancer research center who was principal investigator on grant for federal funding for research and its renewals did not knowingly submit false statements to federal agency, as would allow imposition of liability under False Claims Act, even though director signed application which contained allegedly false statements made by other investigators; director had no knowledge of dispute over research cited, and as director was entitled to delegate responsibility for scientific accuracy to subordinates who were trained researchers. U.S. ex rel. Milam v. Regents of University of California, D.Md.1995, 912 F.Supp. 868. United States 120.1

False Claims Act (FCA) complaint sufficiently alleged that shareholders of health care provider knowingly caused the submission of false claims to government under the Medicare, Medicaid, and TRICARE/CHAMPUS health insurance programs as a result of their alleged participation in making illegal referrals; complaint alleged that shareholders accepted illegal kickbacks for making referrals that supported the alleged claims eventually made to Medicare and other government programs by health care provider. U.S. ex rel. Bartlett v. Tyrone Hosp., Inc., W.D.Pa.2006, 234 F.R.D. 113. United States 122

Medicare insurer did not manipulate Medicare system computer software, which was designed to catch duplicate claims, so that software ignored duplicate claims, knowing that such manipulation would cause false or fraudulent claim to be presented to government, in violation of the False Claims Act (FCA); representative of software developer stated it would have been impossible to manipulate software in such manner, and insurer had denied more claims as duplicate than national average. U.S. ex rel. Watson v. Connecticut General Life Ins. Co., E.D.Pa.2003, 2003 WL 303142, Unreported, affirmed 87 Fed.Appx. 257, 2004 WL 234970. United States 120.1

23. Motive

Finding that owner of physical therapy clinic knowingly presented false Medicare claims when he caused clinic to submit claims for Medicare payment which incorrectly represented that his physician father provided services performed was not clearly erroneous, and thus supported government's claims under False Claims Act (FCA), despite owner's contentions that he lacked motive to submit false claims because clinic could easily have qualified as physician-independent facility and that clinic's apparent physician-run status precluded it from billing Medicare clients at clinic's full rate once cap that applied to independent facilities was reached; clients presumably would have sought services from physicians or physician-run clinics to which cap did not apply, and clinic's status as apparent physician-run clinic enabled it to avoid cap altogether. U.S. v. Mackby, C.A.9 (Cal.) 2001, 261 F.3d 821, on remand 221 F.Supp.2d 1106. United States 120.1

24. Negligence

Medical school seeking reimbursement from government for radiology residents' work at hospital did not submit false claims in violation of the False Claims Act where residents performed work listed in invoices, in arranging residencies both school and hospital operated under assumption that federal funding for positions would be forthcoming and neither party knew the possibility of funding was foreclosed, no harm was done to government when funding ultimately did not become available as the hospital received benefit of two full-time residents at no cost, and, at most, school was negligent in not ascertaining whether funding had been approved before it invoiced hospital for its costs. Hindo v. University of Health Sciences/The Chicago Medical School, C.A.7 (Ill.) 1995, 65 F.3d 608, certiorari denied 116 S.Ct. 915, 516 U.S. 1114, 133 L.Ed.2d 846. United States 120.1

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Negligent misrepresentation by claimant constituted the necessary "knowledge" within the meaning of former § 231 of this title. U. S. v. Cooperative Grain & Supply Co., C.A.8 (Neb.) 1973, 476 F.2d 47.

Negligence is not actionable under False Claims Act which requires intent element of knowing representation of what is known to be false. Ali v. U.S., E.D.Wis.1995, 904 F.Supp. 915. United States 120.1

25. Recklessness

Massachusetts Housing Finance Agency's (MHFA) interpretation of mortgage notes, without obtaining legal opinion or prior approval of Department of Housing and Urban Development (HUD), did not constitute "reckless disregard" for alleged false claims for subsidy payments submitted to HUD after MHFA's bond refund, as required for MHFA to knowingly make excessive claims in violation of False Claims Act (FCA) as asserted by relator in qui tam action, where MHFA specifically brought to HUD's attention MHFA's bond refund to lower its debt service, and HUD continued to pay claims. U.S. ex rel. K & R Ltd. Partnership v. Massachusetts Housing Finance Agency, C.A.D.C.2008, 530 F.3d 980, 382 U.S.App.D.C. 67, rehearing en banc denied. United States 120.1

High Value Items Clause (HVIC) in federal acquisition regulations (FAR) did not foreclose False Claims Act (FCA) as means for government to recover damages for loss of military helicopter, on contractor's failure to ensure quality of parts used for remanufacture of helicopter; even though HVIC limited contractor liability for high value items in fairly broad terms, nothing in HVIC suggested that its limitation of contractor liability covered statutory violations. U.S. ex rel. Roby v. Boeing Co., C.A.6 (Ohio) 2002, 302 F.3d 637, rehearing and suggestion for rehearing en banc denied, certiorari denied 123 S.Ct. 2641, 539 U.S. 969, 156 L.Ed.2d 675. United States 120.1

Psychiatrist and his wife acted with reckless disregard in submitting incorrect billings for treatment provided to Medicare patients, and thus acted "knowingly" under False Claims Act, where, inter alia, wife completed submissions with little or no factual basis, and psychiatrist failed utterly to review bills submitted on his behalf. U.S. v. Krizek, C.A.D.C.1997, 111 F.3d 934, 324 U.S.App.D.C. 175, on remand 7 F.Supp.2d 56. United States 120.1

At the least, medical doctor acted with reckless disregard as to the truth or falsity of claims for Medicare and Medicaid reimbursement that were being submitted by his pain management clinic, and thus acted "knowingly" under False Claims Act (FCA), given that doctor failed to take any reasonable steps to ensure that billings were correct, gave complete control of billings to person with no prior experience with medical billing, and did not know or inquire into what codes were being used to bill for his services. U.S. v. Stevens, W.D.Ky.2008, 605 F.Supp.2d 863. United States 120.1

Fact that contractor in charge of Department of Housing and Urban Development (HUD) mortgage auction deployed only one employee to oversee work of subcontractor that devised revenue-optimization model to be applied to bids, allegedly resulting in submission of erroneous bid results to HUD, did not, by itself, constitute reckless disregard actionable under False Claims Act, especially absent any evidence of industry practice. U.S. ex rel. Ervin and Associates, Inc. v. Hamilton Securities Group, D.D.C.2004, 298 F.Supp.2d 91. United States 120.1

Contractor was liable to United States under False Claims Act (FCA) for asserting false claim for equitable adjustment of contract for replacement of underground water lines, since contractor failed to verify and document its claim and contin-

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ued to press those portions found to be unrecoverable. Larry D. Barnes, Inc. v. U.S., C.A.Fed.2002, 45 Fed.Appx. 907, 2002 WL 1890798, Unreported. United States 120.1

Contractor's submission of claim for amount already paid by government constituted recklessness with regard to validity of claim and he was liable under False Claims Act (FCA). Al Munford, Inc. v. U.S., Fed.Cl.1995, 34 Fed.Cl. 62, vacated 86 F.3d 1178. United States 120.1

Assuming that common control existed between defense contractor and temporary staffing company, government failed to establish that contractor either knowingly or recklessly submitted false claims, in violation of False Claims Act (FCA), by passing through profits of company, as well as its own profits, in billing United States on cost plus fixed fee contracts, given evidence that relationship between contractor and company was repeatedly disclosed to government, that contractor investigated question of whether its issuance of purchase order to company would violate "common control" regulation and reasonably concluded that it did not, and that contractor repeatedly evaluated circumstances of its relationship to company with respect to common control issue. U.S. ex rel. Kholi v. General Atomics, S.D.Cal.2003, 2003 WL 21536816, Unreported. United States 122

Medicare insurer did not act knowingly, recklessly, or with deliberate ignorance in failing to assess required 10 percent late fees on claims filed by suppliers, and thus insurer's conduct could not support claim under False Claims Act (FCA); at most, insurer's failure in rare instances to assess penalties was caused by negligence or mistake, which was not actionable under FCA. U.S. ex rel. Watson v. Connecticut General Life Ins. Co., E.D.Pa.2003, 2003 WL 303142, Unreported, affirmed 87 Fed.Appx. 257, 2004 WL 234970. United States 120.1

26. Liability between government and claimant

Former § 231 of this title applied even where there was no direct liability running from government to claimant. Smith v. U.S., C.A.5 (Tex.) 1961, 287 F.2d 299. United States 120.1

27. Materiality of misrepresentation

Omissions in hospital's Medicare and Medicaid reimbursement claims, which failed to disclose that illegal referrals had occurred or that kickbacks had been paid, were "material" for purposes of government's claims against hospital administrator under False Claims Act (FCA), given that Stark Amendment to Medicare Act barred payment of claims arising from medical services rendered to improperly referred patients. U.S. v. Rogan, C.A.7 (Ill.) 2008, 517 F.3d 449. United States 120.1

False certification by contractor to the Department of Energy (DOE) that no organizational conflicts of interest existed between contractor and subcontractor relating to a proposed government subcontract was "material" for purposes of claim brought by qui tam relator pursuant to the False Claims Act (FCA), notwithstanding fact that DOE continued to fund the subcontract even after it was informed about the alleged conflict. U.S. ex rel. Harrison v. Westinghouse Savannah River Co., C.A.4 (S.C.) 2003, 352 F.3d 908. United States 120.1

The submission to the United States of claim known to have been false in material aspect was covered by former § 231 of

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this title. U. S. v. Cooperative Grain & Supply Co., C.A.8 (Neb.) 1973, 476 F.2d 47. United States 120.1

Applicant's misrepresentations in its proposal for funding from Air Force pursuant to Small Business Innovation Research (SBIR) program regarding its key personnel and its previous similar work for Army were sufficiently material to support claim under False Claims Act (FCA), where evaluator understood that proposal was unique and novel, and would not have recommended funding Air Force contracts if he had known of Army contracts. U.S. ex rel. Longhi v. Lithium Power Technologies, Inc., S.D.Tex.2007, 513 F.Supp.2d 866. United States 120.1

Section 8 housing owners' alleged false certification in housing assistance payment (HAP) vouchers that the property was in a "decent, safe, and sanitary" condition was not "material" for purposes of civil False Claims Act (FCA) claim since Department of Housing and Urban Development (HUD), as a matter of policy and practice, routinely made Section 8 housing assistance payments to owners of Section 8 property irrespective of whether the property was in a "decent, safe, and sanitary" condition, and HUD, in its authorization of housing assistance payments to the owners, did not consider the truth or falsity of the "decent, safe, and sanitary" certification. U.S. v. Southland Management Corp., Inc., S.D.Miss.2000, 95 F.Supp.2d 629, reversed 288 F.3d 665, rehearing en banc granted 307 F.3d 352, on rehearing 326 F.3d 669. United States 120.1

Fraud implies misrepresentation of material fact either express or implied. U. S. v. Klein, W.D.Pa.1964, 230 F.Supp. 426, affirmed 356 F.2d 983. Fraud 9

Even if Medicare insurer knowingly and wrongfully misrepresented its compliance with government regulations to government, such conduct could not form basis for claim against insurer under the False Claims Act (FCA), because conduct did not affect amount of funds that government allocated and paid to insurer; amount of funds allocated to insurer depended on its workload, not its compliance with regulatory directives, and there was no evidence that government would have assessed contractual penalty against insurer for non-compliance. U.S. ex rel. Watson v. Connecticut General Life Ins. Co., E.D.Pa.2003, 2003 WL 303142, Unreported, affirmed 87 Fed.Appx. 257, 2004 WL 234970. United States 120.1

28. Defenses

Attorney-client privilege applied with respect to communications between counsel and former corporate employee, in action brought against corporate defendants pursuant to False Claims Act (FCA), if communication sought to be elicited related to former employee's conduct or knowledge during her employment or if it concerned conversations with corporate counsel that occurred during her employment, but otherwise did not apply. U.S. ex rel. Hunt v. Merck-Medco Managed Care, LLC, E.D.Pa.2004, 340 F.Supp.2d 554. Witnesses 199(2)

Allegation that supplier presented invoices to government agency for payment which supplier knew at time of presentation were false stated claim under False Claims Act (FCA), regardless of whether agency failed to discover that tools supplied were unauthorized substitutes for those specified where there was no final inspection provision to impose duty on government in favor of supplier. U.S. v. Advance Tool Co., W.D.Mo.1995, 902 F.Supp. 1011, affirmed 86 F.3d 1159, certiorari denied 117 S.Ct. 1254, 520 U.S. 1120, 137 L.Ed.2d 334. United States 120.1

If contractor led General Services Administration (GSA) to believe that GSA was acquiring new paint pigment and GSA

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remained unaware of extent of debris contained in pigment referred to in termination for convenience settlement, it would be irrelevant under False Claims Act (FCA) whether material, once screened, was “just as good” as new pigment; FCA did not recognize “just as good” exception. Chemray Coatings Corp. v. U.S., Fed.Cl.1993, 29 Fed.Cl. 278. United States 120.1

29. Contract negotiation

Relator failed to show that contractor fraudulently induced government to award construction contract to it by reaffirming its bid during the period of the bid protest or by submitting request for equitable adjustment (REA) after the contract was awarded; contractor's REA reflected a contract dispute, not a false claim within the meaning of the False Claims Act. U.S. ex rel. Bettis v. Odebrecht Contractors of Cal., Inc., C.A.D.C.2005, 393 F.3d 1321, 364 U.S.App.D.C. 250. United States 120.1

Shipbuilder did not commit any fraud under the False Claims Act in connection with application for construction differential subsidy on American-built ships, merely by requesting an escalatable contract without a downward adjustment in indices chosen by United States Maritime Administration, i.e., a contract which specifically permitted it to earn additional profit if it held costs below amount that Maritime Administration found to be fair and reasonable. U.S. v. Davis, S.D.N.Y.1992, 803 F.Supp. 830, affirmed in part , reversed in part 19 F.3d 770. United States 120.1

30. Contract interpretation

Government's claims against employees of tribal business arm, that employees submitted false claims for brushing and road grading work performed under contract with Bureau of Indian Affairs (BIA), were not contract disputes about performance or interpretation, but rather stated claim under False Claims Act (FCA). U.S. v. Menominee Tribal Enterprises, E.D.Wis.2009, 601 F.Supp.2d 1061, reconsideration denied 2009 WL 1373952, entered 2009 WL 2877083. United States 120.1

At time that school district requested reimbursement from federal government of expenses incurred in implementing School Health and Related Services (SHARS) program, there was no definition of “time study” required to be made under “State Plan Amendment” implementing program, precluding claim that contractor retained to establish SHARS reimbursement rates violated False Claims Act (FCA) by submitting rates based on allegedly less rigorous “time survey.” U.S. ex rel. Gudur v. Deloitte Consulting LLP, S.D.Tex.2007, 512 F.Supp.2d 920, affirmed 2008 WL 3244000. United States 120.1

Government contractor's submission of engineering change form to government in connection with redesign of generator set installed in United States Navy destroyers, stating that “recurring costs” of redesign “remain unchanged” from earlier model, could not constitute misrepresentation under False Claims Act, regardless of whether contractor's recurring costs had in fact decreased; “cost” of redesign, in engineering change form, referred only to cost to government, i.e. price, which in fact was unchanged due to parties' fixed-price contract. U.S. ex rel. Sanders v. Allison Engine Co., S.D.Ohio 2003, 364 F.Supp.2d 699. United States 120.1

Real estate broker's failure to advertise Resolution Trust Corporation (RTC) property in newspapers of general circula-

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tion, and the broker's failure to list the property in a listing service within three days after executing the listing agreement, were matters of contract interpretation and were thus not actionable under the False Claims Act (FCA); the listing agreement did not obligate the broker to list the property within any designated time frame, the manager of the sale unilaterally determined to dispose of the property by sealed bid, and the RTC never filled out a specific form that was a prerequisite to listing the property. U.S. v. Bald Eagle Realty, D.Utah 1998, 1 F.Supp.2d 1311. United States 120.1

31. Sufficiency of compliance with contracts

Plaintiff's allegation that defense contractor failed to comply strictly with contractual requirements in planning and reporting testing and that those making modifications had not authority to do so was matter of contract interpretation and was not allegation of false claims in violation of False Claims Act. U.S. ex rel. Butler v. Hughes Helicopters, Inc., C.A.9 (Cal.) 1995, 71 F.3d 321. United States 120.1

Deliberate mislabeling of aircraft engine bearings, coupled with fact that parts delivered to United States government agency did not actually meet specifications of contract compelled finding of liability under former § 231 of this title, though suppliers contended that entire aviation industry at the time in question considered the bearings contracted for and the bearings supplied to be interchangeable. U. S. v. Aerodex, Inc., C.A.5 (Fla.) 1972, 469 F.2d 1003. United States 121

Where federal government contract with dairyman provided for delivery of fresh milk, delivery of recombined milk was not in compliance with contract, though federal specifications allegedly would have permitted delivery of reconstituted milk. Faulk v. U.S., C.A.5 (Tex.) 1952, 198 F.2d 169. United States 73(22)

Relator bringing qui tam action under False Claims Act (FCA) failed to make showing that contractor hired to establish reimbursement rates to be paid by government to local schools, under School Health and Related Services (SHARS) program, did not follow requirements for rate setting laid down in Office of Management and Budget (OMB) circular; affidavit of relator's expert, claiming noncompliance, was contradicted by expert's deposition admission that circular was complied with, and in any event methodology being followed was clearly set forth, precluding any argument that government was being deceived. U.S. ex rel. Gudur v. Deloitte Consulting LLP, S.D.Tex.2007, 512 F.Supp.2d 920, affirmed 2008 WL 3244000. United States 122

Contracts entered into between federal government and company that manufactured explosive and pyrotechnic devices for use in products sold to federal agencies, which unequivocally stated that company had to comply with all applicable federal, state, and local laws, required company to comply with such laws as condition of payment, in determination of whether company was liable for submitting false claims to government under False Claims Act (FCA). U.S. ex rel. Holder v. Special Devices, Inc., C.D.Cal.2003, 296 F.Supp.2d 1167. United States 120.1

32. Changing conditions

Medicaid-provider pharmacy did not violate False Claims Act (FCA) by not voiding or adjusting claims for medications after those medications had been returned for redispensing; claim was not false or fraudulent at time of submission because pharmacy had no way of knowing if medication would be returned, changed circumstances, caused by later return of medication, did not render initial claim false or fraudulent, and there was no regulatory requirement of reversal of

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claim once medication had been returned. U.S. ex rel. Quinn v. Omnicare Inc., C.A.3 (N.J.) 2004, 382 F.3d 432. United States 120.1

Government contractor did not file false claim under False Claims Act (FCA), even though it billed government for full monthly contract price despite the fact that many of preventive maintenance services were never performed or completed; contract became outdated and did not accurately correspond to existing conditions, contractor billed full monthly prices required by contract, and Army deducted price for any work not performed, and Army was fully cognizant of billing situation. U.S. ex rel. Windsor v. DynCorp, Inc., E.D.Va.1995, 895 F.Supp. 844. United States 120.1

33. Persons liable--Generally

Former § 231 et seq. of this title penalized a person for his own acts, not for the acts of someone else. U. S. v. Bornstein, U.S.N.J.1976, 96 S.Ct. 523, 423 U.S. 303, 46 L.Ed.2d 514. United States 120.1

Each of the owners of farms on which contractor constructed conservation practices for which aid was sought from government was liable for the mistaken overpayments by government based on contractor's erroneous invoices setting forth the value of projects rather than their costs as the basis for payments, since farm owners had signed the applications, contractor purported to act on their behalf and owners received benefits as a result of transaction. U. S. v. Mead, C.A.9 (Cal.) 1970, 426 F.2d 118. United States 69(6)

In case of bribery of a federal agent the government has a right of action against both the payor of the bribes as well as the beneficiary. U.S. v. Cripps, E.D.Mich.1978, 460 F.Supp. 969. United States 126

Counsel retained to argue a cause pending in the Court of Claims [now United States Claims Court] was not within the purview of former § 231 et seq. of this title. U.S. ex rel. McManus v. Moore, D.C.Sup.1877, 10 D.C. 226. United States 122

34. ---- Direct contractual relationship, persons liable

Although person who induced fraudulent contractual claim against United States neither sought nor obtained any transfer of government funds or property to himself, the fraudulently induced contract may have created liability under former § 231 of this title when that contract later resulted in payment thereunder by government, whether to the wrongdoer or someone else. U. S. v. Veneziale, C.A.3 (N.J.) 1959, 268 F.2d 504. United States 120.1

Former § 231 of this title was intended to reach any person knowingly causing or assisting in causing government to pay fraudulent claims, regardless of whether the person had direct contractual relations with government, as well as those receiving money from government as result of their fraud. U.S. v. Samuel Dunkel & Co., S.D.N.Y.1945, 61 F.Supp. 697. United States 122

35. ---- Congressmen, persons liable

Members of Congress were intended to be within the scope of former § 231 of this title. U. S. ex rel. Hollander v. Clay,

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D.C.D.C.1976, 420 F.Supp. 853. United States 120.1

Suit brought against Congressman under former § 231 of this title, charging defendant with having submitted false travel vouchers to the clerk of the House of Representatives, was not barred by the political question doctrine, since there was no textually demonstrable commitment of a Congressman's liability under such former section to another branch of government. U. S. ex rel. Hollander v. Clay, D.C.D.C.1976, 420 F.Supp. 853. Constitutional Law 2580

36. ---- Conspirators, persons liable

Amendment to False Claims Act which permits imposition of civil penalty for submitting bid with constructive knowledge of falsity does not eliminate need for some action by defendant whereby claim is presented or caused to be presented, or need for proving that defendant is member of alleged conspiracy. U.S. v. Murphy, C.A.6 (Tenn.) 1991, 937 F.2d 1032. United States 122

As related business entities, government contractor and its wholly-owned subsidiaries lacked capacity to conspire with one another to violate the False Claims Act (FCA). U.S. ex rel. Brooks v. Lockheed Martin Corp., D.Md.2006, 423 F.Supp.2d 522, affirmed in part , dismissed in part 237 Fed.Appx. 802, 2007 WL 627372. Conspiracy 2

University employees acted in agreement to make loans to a third party for the purpose of making an investment in a Russian business, and therefore they violated the False Claims Act (FCA) conspiracy provision by causing submission, by the university, of false claims; employees were acting in violation of a condition of university's agreement with government, which required university's compliance with requirement that its employees who were involved in project in Russia not make investments there, and university filed certifications that it was in compliance with the conditions of its agreement. U.S. v. President and Fellows of Harvard College, D.Mass.2004, 323 F.Supp.2d 151. Conspiracy 9

Teacher who prepared allegedly false course description could not be held liable on conspiracy theory under False Claims Act (FCA), absent any indication of collaboration with other officers and employees in alleged plan to receive federal funds on basis of false applications that incorporated her course description. U.S. ex rel. Haskins v. Omega Institute, Inc., D.N.J.1998, 11 F.Supp.2d 555, decision clarified on reconsideration 25 F.Supp.2d 510. Conspiracy 9

Once liability for a conspiracy under former § 231 of this title was established, each conspirator was liable for each of the overt acts committed pursuant to the conspiracy irrespective of the fact that he did not personally commit the act; hence, defendant contractor was liable for each of the 72 repair contracts awarded by Department of Housing and Urban Development as a consequence of his fraud and for each of the 16 false invoices submitted pursuant to the conspiracy. U.S. v. Cripps, E.D.Mich.1978, 460 F.Supp. 969. Conspiracy 13

37. ---- Contractors or suppliers, persons liable

Contractor's initial false certification in Procurement Under Review (PUR) package to the Department of Energy (DOE) recommending that DOE approve subcontract to subcontractor tainted all of the following invoices, and thus contractor could be held liable on all 26 of the submissions by contractor seeking government funding for work performed by subcontractor under the subcontract, notwithstanding fact that DOE became aware of the potential conflict but continued to

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pay the invoices. U.S. ex rel. Harrison v. Westinghouse Savannah River Co., C.A.4 (S.C.) 2003, 352 F.3d 908. United States 120.1

Information about operational problems allegedly withheld by contractors while performing hazardous waste treatment and disposal services under contract with Environmental Protection Agency (EPA) was not relevant to EPA's decision to pay them, precluding liability under False Claims Act (FCA); EPA was informed of operational problems from at least three sources, but did not consider those problems to be contractual violations, and instead worked with the contractors to resolve problems as they arose. U.S. ex rel. Costner v. U.S., C.A.8 (Ark.) 2003, 317 F.3d 883, rehearing and rehearing en banc denied , certiorari denied 124 S.Ct. 225, 540 U.S. 875, 157 L.Ed.2d 137. United States 120.1

Evidence supported determination by Court of Federal Claims that contractor hired to provide floodlight sets to Air Force had knowingly submitted a false claim by making request for equitable adjustment based on original purchase orders, even though it had received 99% of purchase invoices, and stated in cover letter that it was relying on “actual increases experienced,” so that contractor's claim for adjustment was forfeited pursuant to Special Plea in Fraud, and contractor was liable under False Claims Act (FCA) and Contract Disputes Act (CDA); contractor was aware of difference between “actual” and “projected” costs, but had improperly relied on projected costs in its claim. UMC Electronics Co. v. U.S., C.A.Fed.2001, 249 F.3d 1337. United States 75(4); United States 122

Even if doctrine that agency regulations are part of contract with governmental agency was applied, it did not insulate defendants from liability, under former § 231 of this title, for their own fraud. U. S. v. Aerodex, Inc., C.A.5 (Fla.) 1972, 469 F.2d 1003. United States 121

Subcontractor was civilly liable under False Claims Act (FCA) for knowingly making, using, or causing to be made or used, false record or statement to get false or fraudulent claim paid or approved by government, although federal government never actually paid or approved subcontractor's claim; subcontractor's criminal conviction established that he knowingly presented false records “to get a claim paid or approved,” and approval or payment was not required for liability. U.S. ex rel. Virgin Islands Housing Authority v. Coastal General Const. Services Corp., D.Virgin Islands 2004, 299 F.Supp.2d 483. United States 122

Contractor in charge of Department of Housing and Urban Development (HUD) mortgage auction, and subcontractors who managed auction and applied revenue-optimization model to bids, did not engage in reckless disregard actionable under False Claims Act by failing to verify bid results submitted to HUD which turned out to be below optimum revenue due to mistaken instructions given subcontractor's employee by contractor's employee; contractor did not represent that it would specifically test results yielded by model, it was reasonable for contractor to rely on subcontractors' prestigious reputations, and auction was pioneer and massive effort. U.S. ex rel. Ervin and Associates, Inc. v. Hamilton Securities Group, D.D.C.2004, 298 F.Supp.2d 91. United States 120.1

Funds used by United States government to pay for military equipment that was resold to foreign government were funds of United States, and thus contractor was subject to liability under False Claims Act (FCA) for its allegedly fraudulent conduct, even though foreign government was required under Arms Export Control Act to cover cost of procurement contract; government paid more money than it otherwise would have paid, United States was likely to be required to reimburse foreign government for its loss, government suffered damage to integrity of contracting process, and it was pos-

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sible that foreign government would have less money to spend on other defense needs as result of alleged fraud. U.S. ex rel Hayes v. CMC Electronics, Inc., D.N.J.2003, 297 F.Supp.2d 734. United States 120.1

Contractor could not be held liable under False Claims Act on theory that it submitted a bid that was intentionally undervalued with the goal of seeking subsequent modifications and adjustments to the contract price. U.S. ex rel. Bettis v. Odebrecht Contractors of California, Inc., D.D.C.2004, 297 F.Supp.2d 272, affirmed 393 F.3d 1321, 364 U.S.App.D.C. 250. United States 120.1

38. ---- Corporations, persons liable

Liability of corporation for violation under former § 231 et seq. of this title arose from conduct of employees other than those with substantial authority and broad responsibility. U. S. v. Hangar One, Inc., C.A.5 (Ala.) 1977, 563 F.2d 1155. Corporations 423

Pharmaceutical company's parent company could not be held liable for wrongful acts of pharmaceutical company in relator's qui tam action under False Claims Act, absent evidence which supported piercing corporate veil. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2008, 538 F.Supp.2d 367. Corporations 215

Genuine issue of material fact existed as to whether parent corporation could be held liable for its indirect subsidiary's alleged violations of False Claims Act (FCA) based upon its direct involvement in submitting false claims or causing them to be submitted to the government, precluding summary judgment in favor of parent corporation. U.S. ex rel. Hockett v. Columbia/HCA Healthcare Corp., D.D.C.2007, 498 F.Supp.2d 25, reconsideration denied 587 F.Supp.2d 757. Federal Civil Procedure 2498.4

Complaint stated valid basis for piercing the corporate veil and holding foundation liable for a non-profit corporation's alleged conduct; foundation was allegedly organized solely to provide financial support to non-profit corporation and was otherwise indistinct from non-profit corporation and upholding the corporate form would lead to injustice since corporation's ability to pay its obligations was dependent upon the foundation. U.S. ex rel. Wright v. Cleo Wallace Centers, D.Colo.2000, 132 F.Supp.2d 913. Corporations 1.4(2); Corporations 1.7(1)

Corporate employer could not be held vicariously liable under the False Claims Act (FCA) as a result of the misdeeds of a low-level employee who, acting within the scope of her employment, caused false claims to be filed with the Government unless Government could prove that employer authorized, ratified, or acted with knowledge of or reckless indifference to employee's misdeeds; for vicarious liability purposes, FCA provided for “punitive” damages where amounts well beyond the actual loss to Government are sought. U.S. v. Southern Maryland Home Health Services, D.Md.2000, 95 F.Supp.2d 465. United States 120.1

Corporate veil between dentist and his dental care companies would be pierced and judgment entered against those companies under False Claims Act where dentist had routinely and intentionally attempted to bill Medicare for oral cancer examinations which were conducted as routine part of standard dental exam; it was clear that dentist's main corporation was undercapitalized and that revenues were siphoned off from other companies. U.S. v. Lorenzo, E.D.Pa.1991, 768 F.Supp. 1127. Corporations 1.6(13)

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The word "person", as used in former § 231 of this title, included corporations. U. S. ex rel. Marcus v. Hess, W.D.Pa.1941, 41 F.Supp. 197, reversed 127 F.2d 233, certiorari granted 63 S.Ct. 40, 317 U.S. 613, 87 L.Ed. 498, reversed 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

The word "person" did not include corporations, within the meaning of former § 231 of this title. U.S. v. Kansas Pac. Ry. Co., D.C.Kan.1877, 26 F.Cas. 680, No. 15506. United States 121

"Person," in context of False Claims Act (FCA), would not include municipal entities; "person" did not presumptively include municipal corporations until 1868, and FCA had not substantively altered "person" in FCA since 1863, and other legislative history suggested FCA was enacted with principal goal of stopping frauds perpetrated by private contractors. U.S. v. Erie County Medical Center, W.D.N.Y.2002, 2002 WL 31655004, Unreported. United States 120.1

39. ---- Corporate directors and officers, persons liable

Where vice-president of corporate supplier was in charge of division which reworked bearings and was also person who signed bid to supply new bearings to Navy and signed requisition for bearings to be reworked and orders for the reworking, and where also he gave false information to government agencies investigating, jury could have found he was individually liable under former § 231 of this title. U. S. v. Aerodex, Inc., C.A.5 (Fla.) 1972, 469 F.2d 1003. United States 122

Jury was not precluded from finding corporate vice-president liable under former § 231 of this title, for supplying reworked bearings in place of new, merely because his subordinate who was directly in charge of reworking and renumbering was not held also liable by the district court, where government failed to prove that subordinate knew, at his level of responsibility, that the reworking was improper in the particular case. U. S. v. Aerodex, Inc., C.A.5 (Fla.) 1972, 469 F.2d 1003. United States 122

Executive director of lessee of government housing project who filed quarterly reports with government claiming as expense cost of materials never furnished to housing project, resulting in federal government making disbursements to project to cover such costs or in authority deducting such costs from what otherwise would have been remitted to government as rental, was liable under former § 231 of this title although there was no direct liability running from government to director. Smith v. U.S., C.A.5 (Tex.) 1961, 287 F.2d 299. United States 122

Corporate officers and supervisors for home health agency were not "employers" of whistleblower in qui tam action, and thus were not subject to individual liability under False Claims Act (FCA), where they did not dominate and control agency in way that benefitted them personally. Palladino ex rel. U.S. v. VNA of Southern New Jersey, Inc., D.N.J.1999, 68 F.Supp.2d 455. United States 120.1

Bank and corporate officers who made false representations in order to obtain Small Business Administration loan for corporation would be held jointly and severally liable for $5,000 civil penalty, costs of lawsuit, and lost loan in amount of $500,000, tripled, with amount recovered by receiver deducted. U.S. v. Entin, S.D.Fla.1990, 750 F.Supp. 512. United States 122

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Officer and principal stockholder of corporation which had government subcontract was liable, under former § 231 of this title, for money represented by checks which government made payable to corporation, instead of to prime contractor, and which officer, with knowledge, cashed and deposited in corporation's account. U. S. v. Scolnick, D.C.Mass.1963, 219 F.Supp. 408, affirmed 331 F.2d 598. United States 120.1

Father or corporation's officer and principal stockholder was not liable to United States on account of checks which had been made payable to corporation although no money was due, and which officer had deposited in corporation's account and withdrawn to reimburse himself, where it did not appear that father had participated in presentation of false claims or had knowledge of transactions, although he received payment from proceeds of a check. U. S. v. Scolnick, D.C.Mass.1963, 219 F.Supp. 408, affirmed 331 F.2d 598. United States 120.1

Both corporation and those working for it or running it may be liable under former § 231 of this title, but in order for individual to be liable, he must have been part of cause which resulted in false claim. U. S. v. Cherokee Implement Co., N.D.Iowa 1963, 216 F.Supp. 374. United States 122

Where corporate government contractor sued to recover cost and damage resulting by termination, for convenience of government, of contracts, and it appeared that president of corporation and owner of majority of its stock as well as vice president thereof and owner of almost entire balance of corporate stock committed fraud against United States by presenting to Navy and to court statements claiming corporation had spent certain sums in performance of contract which in fact had not been so expended but on the contrary had been expended for the personal benefit of its officers, fraud would be imputed to corporation whose claim against United States would be forfeited. Wagner Iron Works v. U.S., Ct.Cl.1959, 174 F.Supp. 956, 146 Ct.Cl. 334. United States 120.1

Officer of corporation could only have been held liable under former § 231 of this title, if he was a party to a conspiracy to defraud the government of the United States by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim. U.S. v. American Precision Products Corp., D.C.N.J.1953, 115 F.Supp. 823. Corporations 324; United States 120.1

Nominal officer of corporation was not liable in action by the United States under former § 231 of this title merely because he knew that corporation was attempting to get the United States government to advance more moneys to corporation than corporation was entitled to under contract with the United States. U.S. v. American Precision Products Corp., D.C.N.J.1953, 115 F.Supp. 823. Corporations 324; United States 120.1

40. ---- Employees, persons liable

Employees of tribal entity were “persons” under False Claims Act (FCA), as required to bring claim alleging that employees filed false claims for brushing and road grading work performed under contract with Bureau of Indian Affairs (BIA) in violation of FCA; suit was against employees in their individual capacities, rather than in their official capacities, recovery against employees was not tantamount to recovery against tribe, and judgment against employees would not impact sovereignty of tribe. U.S. v. Menominee Tribal Enterprises, E.D.Wis.2009, 601 F.Supp.2d 1061, reconsideration denied 2009 WL 1373952, entered 2009 WL 2877083. United States 122

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Under False Claims Act (FCA), individual state employees are "persons" who may be sued if they are sufficiently involved in submission of false claim to the United States. U.S. ex rel. Burlbaw v. Regents of New Mexico State University, D.N.M.2004, 324 F.Supp.2d 1209. United States 122

University employee, who was in charge of project undertaken by a university division which received government grants, under Cooperative Agreements, to undertake project to assist Russia in developing capital markets and foreign investments, was not liable under False Claims Act (FCA), on basis that he violated provisions of those Agreements, which prohibited investment in Russia, even though his salary was paid out of government grants; employee did not take any actions to have claims submitted to the government. U.S. v. President and Fellows of Harvard College, D.Mass.2004, 323 F.Supp.2d 151. United States 122

Individual employee of subcontractor in charge of managing Department of Housing and Urban Development (HUD) mortgage auction did not show reckless disregard actionable under False Claims Act by failing to further pursue "suspicious" result from second subcontractor's application of revenue-optimization model to bids, beyond contacting trusted employee of prime contractor and receiving reasonable-sounding explanation for discrepancy; recalculating revenue optimization without aid of second subcontractor's algorithm would have required weeks or months at least, and results were time-sensitive. U.S. ex rel. Ervin and Associates, Inc. v. Hamilton Securities Group, D.D.C.2004, 298 F.Supp.2d 91. United States 120.1

41. ---- Employers, persons liable

Employer may not be held liable under False Claims Act unless one of its employees knowingly submitted false claims. U.S. ex rel. Milam v. Regents of University of California, D.Md.1995, 912 F.Supp. 868. United States 120.1

Employer could be held liable under False Claims Act for whistleblower retaliation as result of its termination of employee at behest of third party as result of employee's protected conduct affecting third party. Nguyen v. City of Cleveland, N.D.Ohio 2000, 121 F.Supp.2d 643. Labor And Employment 857

41a. ---- Municipalities, persons liable

Municipal corporations are "persons" amenable to qui tam actions under the False Claims Act (FCA), in light of manner in which term "person" was understood when the FCA was enacted in 1863, and notwithstanding Congress' amendment of damages provision of the FCA to make it more punitive; amendment could not be interpreted as repealing, sub silentio, municipal liability under the FCA based upon local governmental units' traditional immunity from punitive damages awards. Cook County, Ill. v. U.S. ex rel. Chandler, U.S.2003, 123 S.Ct. 1239, 538 U.S. 119, 155 L.Ed.2d 247. United States 122

41b. ---- Indian tribes, persons liable

Indian tribe was not "person" under False Claims Act (FCA), and thus tribe's business arm could not be sued under False Claims Act (FCA) for alleged false claims for brushing and road grading work performed under contract with Bureau of Indian Affairs (BIA); tribe was sovereign, and there was no affirmative evidence that Congress intended to allow Indian tribes to be sued under FCA. U.S. v. Menominee Tribal Enterprises, E.D.Wis.2009, 601 F.Supp.2d 1061, reconsideration

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denied 2009 WL 1373952, entered 2009 WL 2877083. United States 122

42. ---- Partners, persons liable

Where partner had knowledge that pine oil disinfectant sold by partnership to General Services Administration was vastly inferior to product, which it was purported to be in invoices submitted to government, and such partner directed such fraudulent activities, government was entitled to recover from such partner, individually, and as partner, twice the difference between amount paid by government and value of portion of disinfectant used, and to recover $2,000 for each false invoice. Henry v. U. S., C.A.5 (Ga.) 1970, 424 F.2d 677. United States 122

43. ---- Persons not in military or naval forces, persons liable

Former § 231 of this title applied to any person not in the military or naval forces. U. S. ex rel. Marcus v. Hess, W.D.Pa.1941, 41 F.Supp. 197, reversed 127 F.2d 233, certiorari granted 63 S.Ct. 40, 317 U.S. 613, 87 L.Ed. 498, reversed 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

A paymaster's clerk in the Army or in the Navy was a person “in the military or naval forces of the United States” within the meaning of former § 231 of this title. In re Thomas, N.D.Miss.1869, 23 F.Cas. 931, 1 Chi.Leg.N. 245, No. 13888. See, also, U.S. v. Bogart, D.C.N.Y.1869, 3 Ben. 257, 24 Fed.Cas. No. 14,616.

44. ---- State agencies and employees, persons liable

Laboratory, although wholly-owned corporation of state university, was not “arm of the state,” due to its anticipated and actual financial independence, and thus was “person” against which suit could be brought by private relator under False Claims Act (FCA); state treasury was not legally liable for any judgment against laboratory, laboratory retained substantial autonomy in its operations, and laboratory generated operating funds and profit through its own commercial activity. U.S. ex rel. Sikkenga v. Regence Bluecross Blueshield of Utah, C.A.10 (Utah) 2006, 472 F.3d 702, on remand 2007 WL 2713913. United States 122

False Claims Act (FCA) claims against state agency employees in their official capacities are treated as claims against state agency, for which there is no FCA cause of action. U.S. ex rel. Adrian v. Regents of University of California, C.A.5 (La.) 2004, 363 F.3d 398. United States 120.1

Neither university research fund nor research foundation was a “person” subject to liability under the False Claims Act (FCA), where fund and foundation were entirely governed and run by university personnel, they operated from university offices, and their registered agent was the university counsel. U.S. v. Solinger, W.D.Ky.2006, 457 F.Supp.2d 743, issued 2006 WL 3085610, subsequent determination. United States 120.1

Laboratory, as wholly-owned corporation of University of Utah, a body politic and corporate under Utah law, was arm of the state and thus not a “person” against which suit could be brought by private relator under False Claims Act (FCA), even though it raised most of its own funding and potential judgment might not be paid directly from state treasury; lab was component of university health sciences center, which was state-assisted but derived self-support from its sub-units,

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lab was subject to supervision and management by university regents, it had tax exempt status, its revenues went to university, its financial records were blended with those of university, and any loss by lab would reduce total funds available to university and necessitate increased state outlays. U.S. ex rel. Sikkenga v. Regence BlueCross BlueShield of Utah, D.Utah 2004, 334 F.Supp.2d 1278, reversed and remanded 472 F.3d 702, on remand 2007 WL 2713913. United States 122

Research institution, which was department or division of university and did not have any legal status as corporation or other recognized legal entity, was not "person" against which False Claims Act (FCA) claim on behalf of the United States could be asserted; given state of common law when FCA was originally enacted, it was unlikely Congress would have understood term "person" to include non-legal entity, such as institution, which had no power to own property, enter into contracts, or sue or be sued. U.S. ex rel. Burlbaw v. Regents of New Mexico State University, D.N.M.2004, 324 F.Supp.2d 1209. United States 122

State prisoner did not state claim against prison or employees, under False Claims Act (FCA), by alleging that prison obtained federal funding for drug testing by falsely certifying that requirements for testing and disposal of samples were followed; prison and employees acting in official capacities were exempt from FCA, and there was no showing that prison employees in question were acting in their individual capacities. Alexander v. Gilmore, E.D.Va.2002, 202 F.Supp.2d 478. United States 122

45. ---- Vendors, persons liable

Where vendor caused purchasers to make application for bank loan wherein it was falsely represented that loan was wanted for home improvements when it was wanted and was used to buy vendor's real property, and fraudulent application became one of essential documents which induced the Federal Housing Administration [now Department of Housing and Urban Development] to guaranty payment of the bank loan, claim was grounded in fraud and in view of fact that government was compelled to pay an innocent third person upon default on the loan, government was entitled to assert a claim against vendor under former § 231 of this title. U. S. v. Veneziale, C.A.3 (N.J.) 1959, 268 F.2d 504. United States 120.1

Real estate vendors caused United States to pay out money, and thus were liable to United States under False Claims Act (FCA) for damages and civil penalties arising from their illegal provision of down payments for home mortgage loans insured by Department of Housing and Urban Development (HUD), where vendors admitted in criminal prosecution that they had defrauded HUD by making down payments for borrowers, that they falsely certified on HUD-1 Addendum that they had not provided down payments, and that HUD would not have insured loans if it knew that they had made down payments. U.S. v. Eghbal, C.D.Cal.2007, 475 F.Supp.2d 1008, affirmed 548 F.3d 1281, certiorari denied 2009 WL 1725899. United States 120.1

46. ---- Miscellaneous persons liable

Under the Medicare Act, a Medicare Part B carrier was absolutely immune from liability on a claim under the qui tam provisions of the False Claims Act (FCA), asserting that the carrier had recklessly approved false claims for durable medical equipment, despite an unsupported claim that the carrier had not designated either certifying officers or disbursing officers. U.S. ex rel. Feingold v. Palmetto Government Benefits Administrators, S.D.Fla.2007, 477 F.Supp.2d 1187,

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affirmed 278 Fed.Appx. 923, 2008 WL 2097615, rehearing and rehearing en banc denied 285 Fed.Appx. 743, 2008 WL 2977960, certiorari denied 129 S.Ct. 1001, 173 L.Ed.2d 293. United States 122

Home health aide service providers who violated Medicare cost reporting rule could be held liable, under False Claims Act (FCA), only for annual cost reports in which they falsely certified their compliance with rule; interim reimbursement claims, though based on improperly reported costs, contained no explicit falsehoods. Visiting Nurse Ass'n of Brooklyn v. Thompson, E.D.N.Y.2004, 378 F.Supp.2d 75. Health 535(4); United States 120.1

Where interim director of state employee's work department, who was also employee of consulting firm that contracted with employer, was acting as agent for state employer when he allegedly terminated employee in violation of Federal Claims Act (FCA) whistleblower provision, firm could not be held vicariously liable, even if such liability existed under the FCA for director's actions. Orell v. UMass Memorial Medical Center, Inc., D.Mass.2002, 203 F.Supp.2d 52. States 53

Physician who received Medicare payments for anesthesia services and his billing secretary who was responsible for preparing, computing, calculating, and submitting to Medicare the claims for the anesthesia services would be found jointly and severally liable for submitting false Medicare claims in violation of the False Claims Act. U.S. v. Cabrera-Diaz, D.Puerto Rico 2000, 106 F.Supp.2d 234. United States 122

Attorneys for bridge bank and for Federal Deposit Insurance Corporation (FDIC) were not liable for conspiracy under False Claims Act for alleged activities which occurred after “put” which was subject of alleged conspiracy had been paid; goal of any conspiracy to get “put” allowed or paid was achieved as of that date. U.S. ex rel. S. Prawer & Co. v. Verrill & Dana, D.Me.1997, 962 F.Supp. 206. Conspiracy 9

Cashier was grocery store's agent, for purposes of imposing civil fine, under False Claims Act, against store owner for redeeming food stamps which cashier had discounted and exchanged for cash. U.S. v. Truong, E.D.La.1994, 860 F.Supp. 1137. United States 122

Psychiatrist and his wife, who was responsible for overseeing psychiatrist's billing operation, would be presumed liable for Medicare and Medicaid bills submitted in excess of equivalent of twelve 45 to 50-minute submissions in single day, where bills were improperly submitted for time that was not spent providing patient services due to office staff's presumption that psychiatrist worked at least 45 minutes on matter whenever psychiatrist saw patient, both parties agreed that appropriate benchmark for excessive billing would be equivalent of 12 submissions, and there was unrefuted testimony that psychiatrist worked very long hours. U.S. v. Krizek, D.D.C.1994, 859 F.Supp. 5, supplemented 909 F.Supp. 32, affirmed in part and remanded 111 F.3d 934, 324 U.S.App.D.C. 175, on remand 7 F.Supp.2d 56. United States 120.1

Defendants who obtained Federal Housing Administration [now Department of Housing and Urban Development] mortgage insurance for third person's loan by misrepresenting third person's income could have been held liable under former § 231 of this title when Administration sustained loss in satisfying claim made by mortgage holder. U. S. v. Polly, W.D.N.C.1966, 255 F.Supp. 610. United States 120.1

47. State or local governments

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Westlaw.

False Claims Act (FCA) did not subject a State or state agency to liability under Act; state was not a "person" for purposes of qui tam liability under FCA. Vermont Agency of Natural Resources v. U.S. ex rel. Stevens, U.S.Vt.2000, 120 S.Ct. 1858, 529 U.S. 765, 146 L.Ed.2d 836. United States 120.1

Federal funds distributed in aid to states were as much in need of protection from fraudulent claims as any other federal money, and former § 231 [now § 3729] of this title did not make extent of their safeguard dependent upon bookkeeping devices used for their distribution. U. S. ex rel. Marcus v. Hess, U.S.Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. United States 121

Municipalities are not amenable to qui tam suit under False Claims Act (FCA); treble damages mandated by Act are punitive, and Congress did not clearly manifest intent to abrogate local governmental common law immunity from punitive damage awards by including local governments within meaning of term "person." U.S. ex rel. Dunleavy v. County of Delaware, C.A.3 (Pa.) 2002, 279 F.3d 219, vacated 123 S.Ct. 1619, 538 U.S. 918, 155 L.Ed.2d 308. United States 122

County, which operated hospital where research on treatment of drug-dependent pregnant women was conducted, was not immune from punitive damages under False Claims Act (FCA), in qui tam action by former research project director alleging that county fraudulently obtained funds for project from federal government. U.S. ex rel. Chandler v. Cook County, Ill., C.A.7 (Ill.) 2002, 277 F.3d 969, mandate stayed 282 F.3d 448, certiorari granted 122 S.Ct. 2657, 536 U.S. 956, 153 L.Ed.2d 833, affirmed 123 S.Ct. 1239, 538 U.S. 119, 155 L.Ed.2d 247, on remand 2003 WL 22284199. United States 122

Relator failed to state a claim upon which relief could be granted against Iowa Department of Human Services (DHS) employee, who allegedly made false claims to federal government through state program for housing developmentally disabled persons that received Medicaid funding, since employee was not a "person" for purpose of the False Claims Act (FCA) and relator failed to specifically allege nature of employee's specific duties or powers or how employee acted outside those duties in order that he might be liable in an individual capacity. U.S. ex rel. Gaudineer & Comito, L.L.P. v. Iowa, C.A.8 (Iowa) 2001, 269 F.3d 932, rehearing and rehearing en banc denied , certiorari denied 122 S.Ct. 2593, 536 U.S. 925, 153 L.Ed.2d 781. United States 122

School board, as local governmental unit, was not "person" subject to liability under False Claims Act (FCA). U.S. ex rel. Garibaldi v. Orleans Parish School Bd., C.A.5 (La.) 2001, 244 F.3d 486, rehearing and rehearing en banc denied 264 F.3d 1143, certiorari denied 122 S.Ct. 808, 534 U.S. 1078, 151 L.Ed.2d 693, rehearing denied 122 S.Ct. 1198, 534 U.S. 1172, 152 L.Ed.2d 137. United States 122

"Person" who may be liable under False Claims Act does not include the states, because Congress did not affirmatively indicate intent to include states in that term, and serious constitutional question under Eleventh Amendment would be raised by interpretation of term to include states. U.S. ex rel. Long v. SCS Business & Technical Institute, Inc., C.A.D.C.1999, 173 F.3d 870, 335 U.S.App.D.C. 331, supplemented 173 F.3d 890, 335 U.S.App.D.C. 351, certiorari denied 120 S.Ct. 2194, 530 U.S. 1202, 147 L.Ed.2d 231. United States 120.1

A state is a "person" within meaning of the False Claims Act, and thus qui tam suit can be brought against a state under

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the Act. U.S. ex rel. Stevens v. State of Vt. Agency of Natural Resources, C.A.2 (Vt.) 1998, 162 F.3d 195, certiorari granted 119 S.Ct. 2391, 527 U.S. 1034, 144 L.Ed.2d 792, reversed 120 S.Ct. 1858, 529 U.S. 765, 146 L.Ed.2d 836. United States 122

States are "persons" subject to liability under the False Claims Act. U.S. ex rel. Zissler v. Regents of University of Minnesota, C.A.8 (Minn.) 1998, 154 F.3d 870. United States 122

Where alleged overcharge required Illinois to pay out an excessive portion of federal grant to contractors, thus impairing remainder of amount of federal grants, it was Illinois, rather than federal government, whose treasury funds had been reduced by the overcharges and in view of fact that federal contribution to highway construction in Illinois for year in question was fixed sum, United States could not have proceeded under former § 231 of this title against contractors which had allegedly been engaged in highway construction project bid-rigging conspiracy. U. S. v. Azzarelli Const. Co., C.A.7 (Ill.) 1981, 647 F.2d 757. United States 120.1

Municipalities were included in definition of "person" under the False Claims Act (FCA), and thus city could not be immune from the application of liability, including for punitive damages, in former city auditor's qui tam action against city and debris removal contractors claiming that city knowingly paid contractors for work they did not fully perform. U.S. ex rel. Giles v. Sardie, C.D.Cal.2000, 191 F.Supp.2d 1117. United States 122

City housing authority was a statutory "person" subject to liability in a private lawsuit under the False Claims Act (FCA). U.S. ex rel. Rosales v. San Francisco Housing Authority, N.D.Cal.2001, 173 F.Supp.2d 987. United States 122

City was not "person" subject to qui tam suit for alleged violation of False Claims Act (FCA) in connection with renovation and operation of wastewater treatment plant; FCA's imposition of treble damages was essentially punitive in nature, rather than compensatory, and policy considerations favored municipal immunity from punitive damages, since such award would burden taxpayers FCA was meant to protect. U.S. ex rel. Satalich v. City of Los Angeles, C.D.Cal.2001, 160 F.Supp.2d 1092. United States 120.1

States are "persons" within meaning of False Claims Act (FCA) and are thus subject to suit under FCA. U.S. ex rel. Lindsey v. Trend Community Mental Health S ervices, W.D.N.C.1999, 88 F.Supp.2d 475. United States 122

County was "person" within meaning of False Claims Act (FCA) section rendering liable "any person who" submits false claims to federal government. U.S. ex rel. Chandler v. Hektoen Institute for Medical Research, N.D.Ill.1999, 35 F.Supp.2d 1078, on reconsideration in part 118 F.Supp.2d 902, reversed 277 F.3d 969, mandate stayed 282 F.3d 448, certiorari granted 122 S.Ct. 2657, 536 U.S. 956, 153 L.Ed.2d 833, affirmed 123 S.Ct. 1239, 538 U.S. 119, 155 L.Ed.2d 247, on remand 2003 WL 22284199. United States 122

State, city, and state and municipal agencies did not qualify as "persons" that could be sued by federal government under False Claims Act for submitting false claims for federal reimbursement of foster care expenditures. U.S. ex rel. Graber v. City of New York, S.D.N.Y.1998, 8 F.Supp.2d 343. United States 122

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Under principles of respondeat superior, acts of city employee in manipulating Section 235 subsidized mortgage housing program of municipal corporation could form the basis for municipal corporation's liability under False Claims Act, even though the corporation and officers denied awareness of employee's manipulation of program, and asserted that acts were not authorized or ratified by corporation, where they did not deny that administration of program by employee was within the scope of his duties as duly appointed Village Clerk, acts on which government based cause of action were performed by Clerk at Village Hall during business hours, and officers did not submit any evidence that Clerk's authority to administer program was contested by corporation or any of its officers, thus Clerk's acts were of the kind he was employed to perform, occurred within the authorized limits of time and space, and were intended, at least in part, to benefit municipal corporation. U.S. v. Incorporated Village of Island Park, E.D.N.Y.1995, 888 F.Supp. 419. Municipal Corporations 747(1)

Requisite "claim upon or against" government under former § 231 of this title included demands for payment presented to local government agencies, where same were in turn partially reimbursed by the United States. U. S. v. Jacobson, S.D.N.Y.1979, 467 F.Supp. 507. United States 120.1

Alleged false claims submitted to state medicaid programs were claims against United States within meaning of former § 231 of this title. U. S. ex rel. Davis v. Long's Drugs, Inc., S.D.Cal.1976, 411 F.Supp. 1144. United States 120.1

48. State sponsored institutions

Medical resident's qui tam action under False Claims Act (FCA) against state university school of medicine, in which United States government had not intervened, was barred by Eleventh Amendment, inasmuch as FCA did not unequivocally express congressional intent to abrogate states' sovereign immunity. U.S. v. Texas Tech University, C.A.5 (Tex.) 1999, 171 F.3d 279, rehearing and suggestion for rehearing en banc denied, certiorari denied 120 S.Ct. 2194, 530 U.S. 1202, 147 L.Ed.2d 231, certiorari denied 120 S.Ct. 2194, 530 U.S. 1203, 147 L.Ed.2d 231. Federal Courts 269

City housing authority was "employer" subject to liability under whistleblower provision of False Claims Act (FCA) for retaliation against employee, who reported that authority filed false claims that it was in compliance with security procedures required by federal housing authority, which provided it funds; double damages award under provision was compensatory, rather than punitive, such that it could be recovered from local government entity, and legislative history of provision supported expansive view of employer to include city authority. Wilkins v. St. Louis Housing Authority, E.D.Mo.2001, 198 F.Supp.2d 1080, affirmed 314 F.3d 927. Municipal Corporations 192

City housing authority was not immune from an award of damages under the False Claims Act (FCA), on theory that treble damages and substantial fines authorized under the FCA constitute punitive damages from which municipal entities are immune; although there is a punitive and deterrent dimension to damage provisions of the FCA, their primary purpose is to compensate the government and the qui tam relator. U.S. ex rel. Rosales v. San Francisco Housing Authority, N.D.Cal.2001, 173 F.Supp.2d 987. United States 122

Massachusetts Housing Finance Agency (MHFA) was a person, rather than an "arm of the state," and thus could not be deemed a state agency eligible for sovereign immunity under Eleventh Amendment in False Claims Act (FCA) claim

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filed by limited partnership against MHFA, although MHFA was described as "public instrumentality" performing an "essentially public function," agency board members were appointed by governor, and agency was not separately incorporated, where MHFA was not subject to executive branch control, could sue and be sued, purchase and acquire property, and make contracts in its own name, and did not receive any direct appropriations of public funds. U.S. ex rel. K & R Ltd. Partnership v. Massachusetts Housing Finance Agency, D.D.C.2001, 154 F.Supp.2d 19, dismissed 2003 WL 21058272. Federal Courts 269

State university and its health care center, although state institutions, were "persons" for purposes of former employee's qui tam action under False Claims Act, and were therefore subject to suit thereunder. U.S. ex rel. Foulds v. Texas Tech University, N.D.Tex.1997, 980 F.Supp. 864, reversed 171 F.3d 279, rehearing and suggestion for rehearing en banc denied, certiorari denied 120 S.Ct. 2194, 530 U.S. 1202, 147 L.Ed.2d 231, certiorari denied 120 S.Ct. 2194, 530 U.S. 1203, 147 L.Ed.2d 231. United States 120.1

49. Federal government agencies or officials

The Federal Housing Administration is a part of the "government of the United States" for purposes of this section. U.S. v. McNinch, U.S.N.C.1958, 78 S.Ct. 950, 356 U.S. 595, 2 L.Ed.2d 1001. United States 120.1

The Commodity Credit Corporation, a wholly owned government corporation was a part of the "government of the United States" for purposes of former § 231 of this title, and therefore false claims against such Corporation were covered by former § 231 of this title. Rainwater v. U.S., U.S.Ark.1958, 78 S.Ct. 946, 356 U.S. 590, 2 L.Ed.2d 996. See, also, U.S. v. McNinch, N.C., S.C., Va.1958, 78 S.Ct. 950, 356 U.S. 595, 2 L.Ed.2d 1001; U.S. v. Robbins, D.C.Kan.1962, 207 F.Supp. 799. United States 120.1

National Railroad Passenger Corporation (Amtrak) is not government entity, the presentation of false claim to which is presentation to federal government, of the kind actionable under the False Claims Act. U.S. ex rel. Totten v. Bombardier Corp., C.A.D.C.2004, 380 F.3d 488, 363 U.S.App.D.C. 180, rehearing en banc denied , certiorari denied 125 S.Ct. 2257, 544 U.S. 1032, 161 L.Ed.2d 1059. United States 120.1

Actions under former § 231 et seq. of this title were limited to actions which involved false demands for either the payment of money or transfer of property that had been presented to an official of the United States for approval. Hansen v. National Commission on Observance of Intern. Women's Year, C.A.9 (Idaho) 1980, 628 F.2d 533. United States 120.1

Contention that former § 231 of this title was inapplicable because defendant's false representations were made to and the consequent undeserved payments of money were made by private corporation which employed him were not sustained where it appeared that private corporation was operating an installation of United States government on a cost plus contract, under which United States paid or reimbursed the corporation for all operating costs, including sums allegedly obtained from corporation by defendant. U. S. v. Lagerbusch, C.A.3 (Pa.) 1966, 361 F.2d 449. United States 121

The former Reconstruction Finance Corporation and its subsidiary, the former Defense Supplies Corporation, acted merely as agencies of the government in payment of subsidies to livestock slaughterers, and any loss because of illegal procurement of subsidies by a slaughterer was the loss of the government, and it was entitled to bring action based there-

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on. U.S. v. Borin, C.A.5 (Tex.) 1954, 209 F.2d 145, certiorari denied 75 S.Ct. 33, 348 U.S. 821, 99 L.Ed. 647. War And National Emergency 129

Because statute authorizing National Railroad Passenger Corporation (Amtrak) declares that Amtrak "shall not be subject to title 31," False Claims Act (FCA), which is part of title 31, does not apply to Amtrak, and therefore Amtrak's receipt of government funds cannot bring Amtrak within reach of Act. U.S. ex rel. Totten v. Bombardier Corp., D.D.C.2001, 139 F.Supp.2d 50, reversed 286 F.3d 542, 351 U.S.App.D.C. 30, on remand 2003 WL 22769033. United States 120.1

50. Joint and several liability

Party who conspired to submit false claims to government was jointly and severally liable for damages assessed against coconspirators under False Claims Act, although jury did not assess damages against that party individually. Kelsoe v. Federal Crop Ins. Corp., E.D.Tex.1988, 724 F.Supp. 448. Conspiracy 14

Applicant and his employer corporation, which received benefits from federally guaranteed loan proceeds, were jointly and severally liable for a $10,000 per violation forfeiture under False Claims Act, where applicant had submitted false financial statements in federal loan guarantee application and loan then defaulted. U.S. v. Hill, N.D.Fla.1987, 676 F.Supp. 1158. United States 122

For a particular false claim, defendants found responsible are jointly and severally liable for double damages sustained by reason of claim, and jointly and severally liable for single forfeiture. U. S. v. Globe Remodeling Co., D.C.Vt.1960, 196 F.Supp. 652. United States 120.1; United States 122

Where parties who had contracts with United States for sale of meat products presented and conspired to present false claims in connection with each of 98 contracts, parties were jointly and severally liable for forfeiture of $2,000 on each of the contracts in addition to double the amount of damage United States sustained. U. S. v. American Packing Corp., D.C.N.J.1954, 125 F.Supp. 788. United States 122

51. Limitation of liability clauses

Substantial public interest in not enforcing prefiling release, entered into without United States' knowledge or consent, of False Claims Act (FCA) qui tam claim outweighed costs imposed on federal contractor, for purposes of determining whether release was valid under federal common law; any increase in costs imposed on contractor could further FCA's goals of preventing fraud. U.S. v. Northrop Corp., C.A.9 (Cal.) 1995, 59 F.3d 953, certiorari denied 116 S.Ct. 2550, 518 U.S. 1018, 135 L.Ed.2d 1069. Release 20

Where, during a national emergency, a contract was entered into between government and munitions manufacturer on cost plus fixed fee basis under which manufacturer was to make small arms ammunition under government inspection and supervision, and with government funds and government material, provisions in the contract exempting the manufacturer from liability for any but wrongful acts of corporate directors and certain of its supervisory employees was not void and ineffective as being against public policy and good morals. U.S. v. U.S. Cartridge Co., C.A.8 (Mo.) 1952, 198 F.2d 456, certiorari denied 73 S.Ct. 645, 345 U.S. 910, 97 L.Ed. 1345. United States 66

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52. Settlement

Prefiling release of former employee's subsequent qui tam action against former employer for alleged False Claims Act (FCA) violations was enforceable where, before execution of the release in settlement of state court litigation, the government was informed of employee's allegations about safety problems and had investigated them; thus, the public interest in having information brought forward that the government could not otherwise obtain was not implicated and did not override the general policy in favor of encouraging parties to settle. U.S. ex rel. Hall v. Teledyne Wah Chang Albany, C.A.9 (Wash.) 1997, 104 F.3d 230, amended on denial of rehearing. Release 20

No amount relating to either of the settlements with two of the defendants in a False Claims Act (FCA) suit could be deducted from the overall trebled compensatory damage total where no monetary payment had yet been received pursuant to the settlement agreements; receipt of those payments was contingent upon the resolution of the settling defendants' respective bankruptcy proceedings. U.S. ex rel. Miller v. Bill Harbert Intern. Const., Inc., D.D.C.2007, 501 F.Supp.2d 51. Damages 63

52a. Death of plaintiff

Relator's qui tam action brought pursuant to False Claims Act (FCA) was punitive, not remedial, in nature, and thus did not survive his death, absent allegations of personal or substantial harm to relator. U.S. ex rel. Harrington v. Sisters of Providence in Oregon, D.Or.2002, 209 F.Supp.2d 1085. Abatement And Revival 58(.5)

53. Abstention

Federal district court would abstain from hearing qui tam action under the False Claims Act based on pendency of Illinois State Court action arising out of same alleged fraudulent activity on behalf of government contractor, where federal complaint was not filed until almost three years after state court obtained jurisdiction, there had already been substantial progress in state court action, and there was no possibility that federal rights sought to be protected in False Claims Act suit would not be adequately protected in state court proceedings. U.S. ex rel. Hartigan v. Palumbo Bros., Inc., N.D.Ill.1992, 797 F.Supp. 624. Federal Courts 47.1

54. Estoppel

Government's representation that it would not proceed with civil claims against federal employee under False Claims Act (FCA) if it was shown that employee did not have significant assets did not preclude government from filing action under FCA to recover civil damages and penalties, absent evidence regarding parties' understanding of term “significant assets,” or showing that government made statement during plea negotiations during employee's prior criminal prosecution arising from same facts. U.S. v. Lamanna, W.D.N.Y.2000, 114 F.Supp.2d 193. Criminal Law 273.1(2); Estoppel 62.2(4)

Contractor was not ignorant of the facts, as required to assert estoppel against qui tam plaintiff, acting on behalf of United States in bringing False Claims Act suit; contractor was informed of procedures and regulations related to procurement and completion of project, and contractor's representative knew that submitting invoices without attached line items violated procedure. U.S. ex rel. Durcholz v. FKW Inc., S.D.Ind.1998, 997 F.Supp. 1143. Estoppel 62.2(4)

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Defendant's criminal conviction for filing false claims to Environmental Protection Agency (EPA) and for conspiring to file false claims to EPA collaterally estopped defendant from contesting issue of liability in civil action seeking to impose liability under False Claims Act; identical factual conduct and violation of law raised in civil action were distinctly put in issue and directly determined against defendant in his criminal trial. U.S. v. Peters, D.Neb.1996, 927 F.Supp. 363, affirmed 110 F.3d 616, certiorari denied 118 S.Ct. 162, 522 U.S. 860, 139 L.Ed.2d 106. Judgment 648

55. Res judicata

University employee's whistleblower and False Claims Act claims were barred by res judicata since they could and should have been asserted in her prior employment discrimination suit; whistleblower and False Claims Act claims asserted by employee, who alleged that her harassment and termination stemmed from her reporting of university pharmacy's submission of false claims to governmental health care programs, arose from the same operative facts as those upon which discrimination suit was based. Cole v. Board of Trustees of University of Illinois, C.A.7 (Ill.) 2007, 497 F.3d 770, certiorari denied 128 S.Ct. 1110, 169 L.Ed.2d 810. Judgment 585(2)

District court did not reach merits of public employee's False Claims Act (FCA) action, and employee's subsequent §§ 1983 action encompassing same facts thus was not barred under doctrine of res judicata, even though district court stated that it was dismissing action for failure to state claim, where district court determined that individual defendants were employee's supervisors and not his “employers” within meaning of FCA, essentially finding that such defendants, in their individual capacities, were not the proper parties to be named in FCA suit. Wilkins v. Jakeway, C.A.6 (Ohio) 1999, 177 F.3d 560, withdrawn from bound volume , amended and superseded.

Qui tam claims against defense contractor, asserting that fluid used in flight data transmitters did not comply with specifications and that contractor submitted false test certifications for transmitters, both arose out of same transactional nucleus of fact, inasmuch as both wrongful acts arose out of same attempt to be paid for noncompliant transmitters, and material fact was that invoices for transmitters were false; therefore, res judicata barred first claim after government, as intervenor, settled second claim. U.S. ex rel. Barajas v. Northrop Corp., C.A.9 (Cal.) 1998, 147 F.3d 905. Compromise And Settlement 17(1)

Qui tam claims concerning different grant to medical college than that covered by government's complaint-in-intervention and settlement with medical college were not barred by res judicata, inasmuch as false claims were not part of same transactional nucleus of fact. U.S. ex rel. Sarafoglou v. Weill Medical College of Cornell University, S.D.N.Y.2006, 451 F.Supp.2d 613. Judgment 585(3)

56. Criminal proceedings

Civil action in which Small Business Administration (SBA) sought to recover its losses arising from loan transaction under False Claims Act was not punitive in nature, so as to bar, under res judicata principles, subsequent criminal prosecution arising from same transaction; although treble damages were recoverable under False Claims Act, civil case was compensatory rather than punitive. U.S. v. Brekke, C.A.8 (Minn.) 1996, 97 F.3d 1043, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 1281, 520 U.S. 1132, 137 L.Ed.2d 356. Criminal Law 43

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Criminal convictions of defendant for filing false claims to Environmental Protection Agency (EPA) and for conspiring to file false claims to EPA did not present res judicata bar to False Claims Act suit against defendant regarding identical factual conduct. U.S. v. Peters, D.Neb.1996, 927 F.Supp. 363, affirmed 110 F.3d 616, certiorari denied 118 S.Ct. 162, 522 U.S. 860, 139 L.Ed.2d 106. Judgment 559

Where a defendant is convicted of a criminal offense based on his submission of false medicaid or medicare claims, such conviction forecloses all questions relevant to civil liability under the False Claims Act. U.S. v. Diamond, S.D.N.Y.1987, 657 F.Supp. 1204. Judgment 648

II. CLAIMS WITHIN SECTION

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81. Claims within section generally

Term “claims” in former § 231 of this title should not have been read in its narrow sense to have included only a demand based on liability of United States to claimant. U. S. v. Neifert-White Co., U.S.Mont.1968, 88 S.Ct. 959, 390 U.S. 228, 19 L.Ed.2d 1061. United States 120.1

Fact that actual expenses sought by business arm of Indian tribe under contract with Bureau of Indian Affairs (BIA) to

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perform brushing and road grading work were owed by tribal business, regardless of actual number of miles cleared, did not insulate employees of tribal business from claims under False Claims Act (FCA); entitlement to actual expenses under contract did not mean allegedly false submissions were not false claims. U.S. v. Menominee Tribal Enterprises, E.D.Wis.2009, 601 F.Supp.2d 1061, reconsideration denied 2009 WL 1373952, entered 2009 WL 2877083. United States 120.1

Not all false statements made to the federal government were "claims" within the meaning of former § 231 of this title. U. S. v. Greenberg, S.D.N.Y.1965, 237 F.Supp. 439. United States 120.1

Test as to whether false claim is made against United States is whether there is demand for money or for some transfer of public property or disbursement of public funds. U. S. v. Cherokee Implement Co., N.D.Iowa 1963, 216 F.Supp. 374. United States 121

82. Necessity of claim, claims within section

Presentment to government is not required as matter of law under sections of False Claims Act (FCA) prohibiting the making or use of a false record or statement in order to induce the government to pay or approve a claim or a conspiracy to defraud the government to pay or allow a false claim, so long as it can be shown that the claim was paid with government funds; evidence that claim has been "paid or approved" provides sufficient link to government, while evidence that claim was actually presented to government is not necessary. U.S. ex rel. Sanders v. Allison Engine Co., Inc., C.A.6 (Ohio) 2006, 471 F.3d 610, rehearing and rehearing en banc denied , certiorari granted 128 S.Ct. 491, 169 L.Ed.2d 337, vacated and remanded 128 S.Ct. 2123, 170 L.Ed.2d 1030. United States 122

Reverse false claims provision of False Claims Act does not require presentment to the United States government. U.S. ex rel. Bahrani v. Conagra, Inc., C.A.10 (Colo.) 2006, 465 F.3d 1189, certiorari denied 128 S.Ct. 388, 169 L.Ed.2d 264, on remand 2009 WL 751169. United States 120.1

There must have been claim presented upon or against government of the United States to have sustained civil liability under former § 231 of this title. U. S. v. Azzarelli Const. Co., C.A.7 (Ill.) 1981, 647 F.2d 757. United States 120.1

Informer's action will lie only in case where defendant presents claim against United States, or in rem against its property. U.S. ex rel. Kessler v. Mercur Corporation, C.C.A.2 (N.Y.) 1936, 83 F.2d 178, certiorari denied 57 S.Ct. 40, 299 U.S. 576, 81 L.Ed. 424. See, also, U.S. v. Cochran, C.A.Tex.1956, 235 F.2d 131, certiorari denied 77 S.Ct. 262, 352 U.S. 941, 1 L.Ed.2d 237; U.S. ex rel. Salzman v. Salant & Salant, D.C.N.Y.1938, 41 F.Supp. 196. United States 122

Government contractor did not present false compensation claim to officer or employee of United States government, as required for violation of False Claim Act (FCA), when contractor sought and obtained $3 million advance on contract to assist in development of new Iraq currency, from Coalition Provisional Authority (CPA), which governed Iraq after invasion; while bulk of personnel and financing for CPA came from United States, it was independent international agency. U.S. ex rel. DRC, Inc. v. Custer Battles, LLC, E.D.Va.2006, 444 F.Supp.2d 678, reversed 562 F.3d 295. United States 120.1

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Contractor's demands for payment under contracts to provide security services in Iraq fulfilled False Claims Act's (FCA) presentment requirement, even though contractor submitted allegedly false or fraudulent contract bids or invoices to Coalition Provisional Authority's (CPA) contracting officers, and it was unclear whether CPA was itself instrumentality of United States, where contracting officers were also employees of United States Armed Forces, and United States maintained dominion, control, and possession of seized and vested funds until Army was finally directed by CPA contracting officers to make payments directly to contractor. U.S. ex rel. DRC, Inc. v. Custer Battles, LLC., E.D.Va.2005, 376 F.Supp.2d 617, reversed 562 F.3d 295. United States 120.1

Contractor engaged in fabrication of base and enclosure assemblies for generator sets installed in United States Navy destroyers did not make a false claim, and, thus, contractor was not liable for conspiracy under the False Claims Act. U.S. ex rel. Sanders v. Allison Engine Co., S.D.Ohio 2003, 364 F.Supp.2d 713. Conspiracy 13; United States 120.1

Evidence established that employer, a defense contractor that provided engineering services to the United States government, made no “claim” to the government with respect to either of the issues former employees claimed were related to their firing, thus precluding imposition of liability on the contractor under the False Claims Act (FCA); there was no allegation that a claim was ever made to the government for a payment to a worker while she was on maternity leave, or for another individual's alleged double salary and benefits. Maturi v. McLaughlin Research Corp., D.R.I.2004, 326 F.Supp.2d 313, affirmed 413 F.3d 166. Labor And Employment 777

Under former § 231 of this title, any kind of fraud or deceit in dealings with the government was not enough, but fraud must have been used in connection with making a claim against the government. Cahill v. Curtiss-Wright Corp., W.D.Ky.1944, 57 F.Supp. 614. See, also, U.S. v. Howell, C.A.Cal.1963, 318 F.2d 162. United States 121

83. Indirect presentation of claim, claims within section

Provision of False Claims Act imposing civil liability on any person who “knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government” demands that the defendant made a false record or statement for the purpose of getting “a false or fraudulent claim paid or approved by the Government,” not proof that the defendant caused a false record or statement to be presented or submitted to the Government. Allison Engine Co., Inc. v. U.S. ex rel. Sanders, U.S.2008, 128 S.Ct. 2123, 170 L.Ed.2d 1030. United States 120.1

The fact that false claims were not presented directly to government, but made indirectly to it through government contractors, did not prevent recovery of forfeitures and double damages by United States from claimants under former § 231 of this title. Murray & Sorenson v. U.S., C.A.1 (R.I.) 1953, 207 F.2d 119. United States 122

Submission of false crop insurance claim to private insurer, which was a grantee of government funds, was not a presentment of a false claim to officer or employee of government, as required by FCA; insurance agent submitted allegedly false claims to private insurer, insurer made decision to pay claims, and insurer was later reimbursed through standard reinsurance agreement by government instrumentality. U.S. v. Hawley, N.D.Iowa 2008, 566 F.Supp.2d 918. United States 120.1

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Given his knowledge of university's grant agreements with government and his position as director of project to assist Russia in developing capital markets and foreign investments, university employee who violated provisions prohibiting investment by employees in Russia had knowledge of the falsity of information in claims he caused to be presented to the government, and thus violated False Claims Act (FCA), even though he did not file or review forms submitted to government; employee approved invoices or expenses while he was violating the investment provisions and it was foreseeable that those invoices and reports would be submitted to the government. U.S. v. President and Fellows of Harvard College, D.Mass.2004, 323 F.Supp.2d 151. United States 122

False claim submitted to government contractor is submitted "upon or against the government" under False Claims Act. U.S. ex rel. Luther v. Consolidated Industries, Inc., N.D.Ala.1989, 720 F.Supp. 919. United States 120.1

84. Sufficiency of claim, claims within section

False Claims Act "false record or statement" claim against pharmacy owner, alleging routine submission to Illinois Department of Public Aid of claims for medications that had been recycled, repackaged, and previously paid for by Illinois Medicaid, required showing of at least one instance of two separate Medicaid charges for same pill; inference from fact that pharmacy served nursing homes, that 60% of residents of homes were on Medicaid, and that 10% to 20% of pharmacy's dispensed medications were returned unused by patients, was insufficient. U.S. ex rel. Crews v. NCS Healthcare of Illinois, Inc., C.A.7 (Ill.) 2006, 460 F.3d 853. United States 122

In deciding whether given false statement is claim or demand for payment under False Claims Act, court should look to see if, within payment scheme, statement has practical purpose and effect, and poses attendant risk, of inducing wrongful payment. U.S. v. Rivera, C.A.1 (Puerto Rico) 1995, 55 F.3d 703, 139 A.L.R. Fed. 813, on remand 956 F.Supp. 1046. United States 120.1

United States stated claim against drug manufacturer under False Claims Act (FCA) for antecedent violation of Anti-Kickback Statute for claims submitted through Medicare program, on allegations that manufacturer fraudulently published false average wholesale price and then marketed "spread" between reimbursement rate and provider's acquisition cost, Medicare program required health care providers to affirmatively certify that they had complied with Anti-Kickback Statute, and failure to comply with kickback laws was, in and of itself, false statement to government. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2007, 491 F.Supp.2d 12. United States 122

Scienter requirement of False Claims Act (FCA) was negated by Coast Guard directions to companies to fully bill for labor expenses for time not worked, for time attributable to facility closures and delays due to inclement weather, contract workers' participation in Coast Guard Day, and contract workers' attendance at seminars, and Coast Guard operations system center security director and project officer thus failed to state FCA claim against company that was prime contractor for computer programming and support services at center, subcontractors, and companies that provided technical and computer services at the center for submission of false time sheets and invoices. U.S. ex rel. Werner v. Fuentez Systems Concepts, Inc., N.D.W.Va.2004, 319 F.Supp.2d 682, affirmed 115 Fed.Appx. 127, 2004 WL 2830713. United States 120.1

Proof of loss submitted to Federal Emergency Management Agency (FEMA) for payment under standard flood insurance

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policy (SFIP) is “claim” within meaning of False Claims Act prohibiting knowingly false or fraudulent claim for payment or approval by United States; proof of loss is attempt to cause government to pay money. Plywood Property Associates v. National Flood Ins. Program, D.N.J.1996, 928 F.Supp. 500. United States 120.1

85. Certificates or certifications, claims within section

Assuming, without deciding, the viability of “implied certification” theory of False Claims Act (FCA) liability, former offshore drilling unit worker failed to state claim under FCA subsection governing liability for knowingly making false claim for payment based on alleged illegal dumping of oil, oil waste, solid waste, grease, paint, and other hazardous substances into the Gulf of Mexico at night, in violation of terms of oil and gas lease granted to defendants by the United States; environmental requirements that worker referenced were not prerequisites to continuation of lease, which provided that it would be “subject to cancellation” if lessee failed to comply with any of its terms, i.e., that cancellation was only an option and government could exercise “other remedies” available against lessee. U.S. ex rel. Marcy v. Rowan Companies, Inc., C.A.5 (La.) 2008, 520 F.3d 384. United States 120.1

Allegations that hospital received federal funding and that, at various times, pharmaceuticals had been dispensed by hospital employees who were not licensed to do so under New Jersey law did not link hospital's alleged receipt of federal funds to compliance with New Jersey law regulating eligibility to dispense prescription drugs, as would support hospital employees' claim under false certification theory of False Claims Act, in qui tam action against hospital. Rodriguez v. Our Lady of Lourdes Medical Center, C.A.3 (N.J.) 2008, 552 F.3d 297, as amended. United States 122

Obligation of exporter of animal products to pay fees for in-lieu-of and replacement certificates when major or significant changes to original export certificate issued by United States Department of Agriculture (USDA) were necessary resulted from discovery of major or significant errors or omissions in original certificate necessitating new certificate, and thus arose from independent source, as required to be actionable under reverse false claims provision of False Claims Act. U.S. ex rel. Bahrani v. Conagra, Inc., C.A.10 (Colo.) 2006, 465 F.3d 1189, certiorari denied 128 S.Ct. 388, 169 L.Ed.2d 264, on remand 2009 WL 751169. United States 120.1

Pharmacy operator's conviction on federal charge of making false statement, consisting of false certification on Medicaid voucher that pharmacy had complied with federal regulations regarding storage and handling of controlled substances, did not render voucher a false claim actionable under False Claims Act; operator was not convicted of submitting false claim, and furthermore there was no showing that certification of compliance with regulations in question was prerequisite to Medicaid payment. U.S. ex rel. Crews v. NCS Healthcare of Illinois, Inc., C.A.7 (Ill.) 2006, 460 F.3d 853. United States 120.1

Subject in federally-funded acquired immune deficiency syndrome (AIDS) research study failed to allege that any particular certification of regulatory compliance was a condition of payment of government money, and, thus, subject failed to state a False Claims Act (FCA) claim premised upon an alleged false certification of compliance with statutory or regulatory requirements, in qui tam action alleging various acts of negligence and mismanagement by researcher, several of its participating medical professionals, and institutional review board for the study. U.S. ex rel. Gross v. AIDS Research Alliance-Chicago, C.A.7 (Ill.) 2005, 415 F.3d 601. United States 122

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Even if pharmacy's Medicaid claim certified its compliance with New Jersey Board of Pharmacy regulations as condition of payment, there was no proof that pharmacy made claim to Medicaid for improperly recycled medication, in violation of those regulations, as required to support False Claims Act (FCA) liability under "certification theory"; although approximately 60 percent of pharmacy's business was Medicaid, there was no proof that improperly recycled medication was paid for by Medicaid or that it was paid for by one of the other sources of payment for the medications that pharmacy dispensed. U.S. ex rel. Quinn v. Omnicare Inc., C.A.3 (N.J.) 2004, 382 F.3d 432. United States 122

Owners of apartment complex did not make "false claims" under the False Claims Act as a matter of law in housing assistance payment (HAP) vouchers submitted to the Department of Housing and Urban Development (HUD) during corrective action period after HUD notified them that they failed to maintain the property in a decent, safe, and sanitary condition, notwithstanding that owners certified in vouchers that the property was decent, safe, and sanitary, because vouchers were claims for money to which the owners were entitled under terms of HAP contract until HUD notified them that they had failed to take the necessary corrective action and that HAP payments would be abated. U.S. v. Southland Management Corp., C.A.5 (Miss.) 2003, 326 F.3d 669. United States 120.1

A contractor's false certification that its workers have been paid the prevailing wage rate required by Davis-Bacon Act may give rise to liability under the False Claims Act (FCA). U.S. ex rel. Plumbers and Steamfitters Local Union No. 38 v. C.W. Roen Const. Co., C.A.9 (Cal.) 1999, 183 F.3d 1088, certiorari denied 120 S.Ct. 2195, 530 U.S. 1203, 147 L.Ed.2d 232, on remand 2002 WL 73230. United States 120.1

School district's filing of forms listing information relevant to federal funding for special education programs and acceptance of federal funds for such programs, despite its alleged noncompliance with Individuals with Disabilities Education Act (IDEA), was not certification constituting "false claim" under False Claims Act (FCA), as forms did not contain any certification concerning regulatory compliance, and mere regulatory violations did not give rise to viable FCA action, especially since regulatory compliance was not sole basis for receiving funding. U.S. ex rel. Hopper v. Anton, C.A.9 (Cal.) 1996, 91 F.3d 1261, certiorari denied 117 S.Ct. 958, 519 U.S. 1115, 136 L.Ed.2d 844. United States 120.1

Forms which were supplied by government, filled in by contractor, and later certified by government indicating that goods conformed to contract were not invoices or representations by defense contractor and, thus, forms were not "claim" under False Claims Act. U.S. ex rel. Butler v. Hughes Helicopters, Inc., C.A.9 (Cal.) 1995, 71 F.3d 321. United States 120.1

The UB-92 forms submitted by Medicare provider, which invoiced services for which it was billing, were not "false claims" under False Claims Act (FCA) based on express false certification theory, where there was no evidence identifying a single patient who was held at provider's hospital longer than necessary in order to increase the billing rate. U.S. ex rel. Hockett v. Columbia/HCA Healthcare Corp., D.D.C.2007, 498 F.Supp.2d 25, reconsideration denied 587 F.Supp.2d 757. United States 120.1

Medical provider did not falsely imply that physician had performed certain hematology-oncology services that were not physician-only procedures by listing name of physician in particular field on form for Medicaid billing that requested name of attending physician, as required to support False Claims Act (FCA) claim based on submittal of forms seeking reimbursement for certain hospital and technical charges. U.S. ex rel. Woodruff v. Hawaii Pacific Health, D.Hawai'i

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2008, 560 F.Supp.2d 988. United States 120.1

Claim was stated that county violated False Claims Act (FCA), in connection with application for federal government block grants for housing, when advocacy group alleged that county certified that grant would be conducted and administered in accordance with Civil Rights Act and Fair Housing Act, when in fact county had not identified race as impediment to fair housing, as it was required to do, nor taken any action to overcome effect of race as housing impediment. U.S. ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York, S.D.N.Y.2007, 495 F.Supp.2d 375, motion to certify appeal denied 2007 WL 2402997. United States 122

Company's alleged implied false certification to federal government that it was in compliance with federal environmental, safety, and health law, as condition to government's payment of invoices to company for manufacturing explosive and pyrotechnic devices, was basis for company's liability under False Claims Act (FCA); even if company's affirmative certification was not required, company had allegedly withheld vital information regarding compliance with federal regulations, and FCA could be used to create liability if company's failure to abide by regulations amounted to material misrepresentations made to obtain a government benefit. U.S. ex rel. Holder v. Special Devices, Inc., C.D.Cal.2003, 296 F.Supp.2d 1167. United States 120.1

Employee's allegations that exporters of animal hides falsified or forged export certificates in violation of United States Department of Agriculture (USDA) regulations in order to avoid paying user fee necessary to obtain “in lieu of” certificates were actionable under False Claims Act (FCA). U.S. ex rel. Bahrani v. ConAgra, Inc., D.Colo.2002, 183 F.Supp.2d 1272. United States 120.1

Hospital operator's former officer, who claimed that operator did not ensure compliance with rule which required certification that 75% of the patient population at operator's rehabilition hospital met certain criteria, did not allege false statement or fraudulent course of conduct as required to state claim under the False Claims Act (FCA), but alleged only conduct that was negligent. U.S. ex rel. Mathews v. Healthsouth Corp., W.D.La.2001, 140 F.Supp.2d 706, reversed 54 Fed.Appx. 404, 2002 WL 31687686. United States 122

Physicians' alleged failure to meet professionally recognized standards of care in performing spirometry tests for which Medicare reimbursement was sought was not actionable under False Claims Act (FCA) under implied false certification theory, given absence of showing that Medicare reimbursements made to physicians for spirometry tests were conditioned upon physicians' compliance with statute requiring services to conform to relevant standard of care. U.S. ex rel. Mikes v. Straus, S.D.N.Y.1999, 84 F.Supp.2d 427, reconsideration denied 78 F.Supp.2d 223. United States 120.1

Allegedly prohibited financial relationships among healthcare providers and referring physicians falsified certifications that the Medicare services identified in the annual hospital cost reports complied with the laws and regulations dealing with the provision of healthcare services; thus, the allegedly false certifications violated the False Claims Act (FCA). U.S. ex rel. Thompson v. Columbia/HCA Healthcare Corp., S.D.Tex.1998, 20 F.Supp.2d 1017. United States 120.1

Former congressman's false certification to clerk of House of Representatives and House Committee on Administration that undetermined number of telephone toll calls were official constituted false “claim” within meaning of former § 231

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of this title when effect of such certification was not to trigger payment of money by United States but to insulate congressman certifier from having to reimburse United States for money expended by United States. U. S. v. Eilberg, E.D.Pa.1980, 507 F.Supp. 267. United States 120.1

United States failed to establish that self-certified small disadvantaged business (SDB) fraudulently certified its SDB status, obtained work to which it was not entitled, or filed claim that intentionally or recklessly misrepresented its status in violation of False Claims Act (FCA), Forfeiture of Fraudulent Claims Act (FFCA) or theories of common law fraud; all company's principals believed actual transfer of control to socially and economically disadvantaged individual occurred in connection with company's reorganization and that based upon counsel's assurances they would, after reorganization, collectively own fully qualified SDB, operating officials were subject to termination by individual, and individual owned 80% of company's stock and made decisions as president and chairperson of board of directors which were consistent with her level of expertise and experience in business and her understanding of requirements for maintenance of company's SDB status. H.B. Mac, Inc. v. U.S., Fed.Cl.1996, 36 Fed.Cl. 793, reversed 153 F.3d 1338. Fraud 28; United States 120.1

Progress payment vouchers submitted by company awarded contract for construction of government facility pursuant to Small Business Administration's (SBA) program for minority-owned businesses were “false claims” within meaning of False Claims Act, even though they did not overstate amount due; vouchers represented implied certification by company of its continuing adherence to requirements for participation in program, and, by deliberately withholding from SBA knowledge of its prohibited contractual arrangement with one of its subcontractors, company caused government to pay out funds in mistaken belief that it was furthering aims of program. Ab-Tech Const., Inc. v. U.S., Fed.Cl.1994, 31 Fed.Cl. 429, affirmed 57 F.3d 1084. United States 120.1

86. Financial loss to government, claims within section

Contractor that allegedly presented false claim to the National Railroad Passenger Corporation (Amtrak) to obtain payment for its allegedly defective railroad cars did so to get claim paid by Amtrak, and not by federal government, though government funded Amtrak's operations; accordingly, contractor's conduct was not actionable under section of the False Claims Act prohibiting any party from using false record or statement to get false claim “paid or approved by the Government.” U.S. ex rel. Totten v. Bombardier Corp., C.A.D.C.2004, 380 F.3d 488, 363 U.S.App.D.C. 180, rehearing en banc denied , certiorari denied 125 S.Ct. 2257, 544 U.S. 1032, 161 L.Ed.2d 1059. United States 120.1

False Claims Act (FCA) was applicable to portion of qui tam plaintiffs' complaint alleging that contractors that performed hazardous waste treatment and disposal services at site of chemical plant knowingly submitted false claims for payment from federal Superfund administered by the Environmental Protection Agency (EPA). Costner v. URS Consultants, Inc., C.A.8 (Ark.) 1998, 153 F.3d 667, rehearing and suggestion for rehearing en banc denied. United States 120.1

Responsible official's allegations that he would not have accepted and paid for milestone products under software system design contract, which were worthless without contractually complying software, but for false progress reports and representations by contractor stated claim for damages under False Claims Act. U.S. ex rel. Schwedt v. Planning Research Corp., C.A.D.C.1995, 59 F.3d 196, 313 U.S.App.D.C. 200, certiorari denied 116 S.Ct. 754, 516 U.S. 1068, 133 L.Ed.2d 701, on remand 1996 WL 554504. United States 120.1

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Claim was within purview of former § 231 of this title if it was grounded on fraud which might have resulted in financial loss to the government. Peterson v. Weinberger, C.A.5 (Tex.) 1975, 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96 S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. United States 120.1

Pharmacy benefit manager's (PBM) alleged billing of federal employees' health plan for services not rendered, fraudulently avoiding contractual penalties, fraudulently inducing physicians to authorize drug switches, and favoring one pharmaceutical manufacturer over other manufacturers had potential to cause financial loss to United States, and thus was actionable under False Claims Act (FCA), even though false claims would not result in immediate increase in government's contribution to Federal Employee Health Benefits Program (FEHBP) used to pay plan, where government's contribution to FEHBP was statistically weighted average of past years' subscription costs, and PBM's scheme could have reduced amount of money available for FEHBP in future. U.S. v. Merck-Medco Managed Care, L.L.C., E.D.Pa.2004, 336 F.Supp.2d 430. United States 120.1

False Claims Act [31 U.S.C.A. § 3729 et seq.] applies both to situations where individual falsely convinces Government to pay out funds, or to pay out too much in funds, and to situations where individual fraudulently pays too little to the Government. U.S. v. Douglas, E.D.Va.1985, 626 F.Supp. 621. United States 120.1

Government suffered damages for purposes of False Claims Act claim against military contractor, where it would not have authorized payment if it had been aware that contractor had not complied with inspection requirements, it had to deadline items until they could be field tested, and it lost interest on premature contract payments. BMY Combat Systems Div. of Harsco Corp. v. U.S., Fed.Cl.1997, 38 Fed.Cl. 109. United States 120.1

Telecommunications companies' alleged use of false statements to avoid or decrease their own obligation to make payments to federal government for electromagnetic spectrum licenses on which they had successfully bid was not in nature of demand for payment or reimbursement from federal government, and did not qualify as “claim,” as that term is used in the False Claims Act (FCA). U.S. ex rel. Finney v. Nextwave Telecom, Inc., S.D.N.Y.2006, 337 B.R. 479. United States 120.1

87. Money or property, claims within section

There was no possibility that physician employed by hospital could have filed a viable action under the False Claims Act (FCA) in protesting the hospital's application to be designated a center for a cancer study, and thus he was not entitled to the protection of the whistleblower provision of the FCA, because the application was not a “request or demand for money or property” as required to be a “claim” under the FCA, since, even if the application had been accepted, no money, either federal or private, would have been paid to the hospital, and the application was simply the first step in a process that ultimately might have led to the authorization of the payment of federal funds to the hospital. Dookeran v. Mercy Hospital of Pittsburgh, C.A.3 (Pa.) 2002, 281 F.3d 105. Labor And Employment 778

A claim within meaning of former § 231 of this title was a demand upon the government for payment of money or transfer of property. U. S. v. Howell, C.A.9 (Cal.) 1963, 318 F.2d 162. See, also, U.S. v. Marple Community Records, Inc., D.C.Pa.1971, 335 F.Supp. 95. United States 120.1

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Document labeled “Bill of Exchange” that convict and associate mailed to Secretary of Treasury constituted “claim for payment” under False Claims Act (FCA), where document directed Secretary of the United States Treasury to “charge back” $100 million to an account bearing convict's Social Security number and provided that failure to respond would constituted a confirmation of adjustment of amount. U.S. v. Williams, M.D.Fla.2007, 476 F.Supp.2d 1368. United States 120.1

A quasi-municipal corporation did not make “false claim” to obtain federal mineral lease funds, within meaning of False Claims Act (FCA); mineral lease funds were received from federal government by the state, so that there was no relationship between federal government and quasi-municipal corporation with respect to funds, and federal law provided that state could disburse funds without any federal restrictions, so that quasi-municipal corporation could not falsely represent that it was in compliance with applicable federal regulations governing receipt of mineral lease funds, as there were no such federal regulations. U.S. ex rel. Erickson v. Uintah Special Services Dist., D.Utah 2005, 395 F.Supp.2d 1088. United States 120.1

Title to funds confiscated by United States pursuant to International Emergency Economic Powers Act (IEEPA) from United States bank accounts held in name of former Republic of Iraq vested in United States upon issuance of Executive Order seizing funds, and thus contractor's demand for payment from those funds constituted “claim” within meaning of False Claims Act (FCA), even though vesting order stated that vested property “should be used to assist the Iraqi people and to assist in the reconstruction of Iraq.” U.S. ex rel. DRC, Inc. v. Custer Battles, LLC., E.D.Va.2005, 376 F.Supp.2d 617, reversed 562 F.3d 295. United States 120.1; War And National Emergency 29

Unsuccessful bidder for contract with Department of Justice (DOJ) failed to state “claim” under False Claims Act by alleging that successful bidder misrepresented information in its annual and interim reports to Securities and Exchange Commission (SEC); those reports were used by potential private investors, and thus there had been no request or demand upon government for money or property. U.S. ex rel. Alexander v. Dyncorp, Inc., D.D.C.1996, 924 F.Supp. 292. United States 122

A method of cheating the government which was established through mechanics other than a claim for money or property did not fall under former § 231 of this title or former §§ 232, 233, and 235 of this title [now §§ 3730 and 3731 of this title]. Grand Union Co. v. U. S., N.D.Ga.1980, 495 F.Supp. 331. United States 120.1

A “false claim” as used in former § 231 of this title which related to the presentation of false claims against the government was not confined to a claim for money or property but comprehended a claim for valuable services accompanied by the furnishing of medicine, drugs, food and the like to a veteran seeking hospitalization and were indisputably “property”. U.S. v. Alperstein, S.D.Fla.1960, 183 F.Supp. 548, affirmed 291 F.2d 455. United States 120.1

A “claim” within former § 231 of this title was restricted to the conventional meaning of demand for money or property to which a right was asserted against the government founded upon the government's own liability. U. S. v. Farina, D.C.N.J.1957, 153 F.Supp. 819. See, also, U.S. v. Howell, C.A.Cal.1963, 318 F.2d 162. United States 120.1

A “claim”, within former § 231 of this title, was not limited to one for money or property. U.S. ex rel. Rodriguez v.

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Weekly Publications, S.D.N.Y.1946, 68 F.Supp. 767. United States 122

88. Income tax, claims within section

Provision of False Claims Act excluding income tax matters from its scope barred relator's claim seeking damages arising from alleged false statements and claims made by seller of forward supply agreements in connection with "yield burning" scheme involving tax-free municipal bonds, even though relator did not seek to collect taxes, where seller's alleged fraud was failure to conform to Internal Revenue Service (IRS) rules for maintaining tax-exempt status of advance refunding bonds, and IRS had authority to recover precise amounts sought by relator. U.S. ex rel. Lissack v. Sakura Global Capital Markets, Inc., C.A.2 (N.Y.) 2004, 377 F.3d 145. United States 122

Employee allegedly terminated for threatening to expose employer's federal income tax deficiencies or evasions had no cause of action under whistleblower provisions of False Claims Act, since Act expressly excluded income tax matters from its scope. Almeida v. United Steelworkers of America Intern. Union, AFL-CIO, D.R.I.1999, 50 F.Supp.2d 115. Labor And Employment 777

89. Paying out by government, claims within section

Provision of False Claims Act imposing civil liability on any person who "knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government" requires that a defendant must intend that the government itself pay the claim, rather than just show that a false statement resulted in the use of government funds to pay a false or fraudulent claim. Allison Engine Co., Inc. v. U.S. ex rel. Sanders, U.S.2008, 128 S.Ct. 2123, 170 L.Ed.2d 1030. United States 120.1

Insurance agent's qui tam allegations that life insurance company and national bank schemed to sell military personnel life insurance in contravention of regulations governing such sales failed to state a claim under False Claims Act (FCA), where alleged fraud could not cause the government, as opposed to defrauded military personnel, to suffer any economic loss. U.S. ex rel. Sanders v. American-Amicable Life Ins. Co. of Texas, C.A.3 (Pa.) 2008, 545 F.3d 256. United States 122

False claim that is presented, not to federal government, but to federal grantee is not "presented...to an officer or employee of the United States Government," so as to be actionable under the False Claims Act, simply because payment will come out of funds that grantee received from federal government. U.S. ex rel. Totten v. Bombardier Corp., C.A.D.C.2004, 380 F.3d 488, 363 U.S.App.D.C. 180, rehearing en banc denied , certiorari denied 125 S.Ct. 2257, 544 U.S. 1032, 161 L.Ed.2d 1059. United States 120.1

False Claims Act (FCA) was inapplicable to extent that qui tam plaintiffs' complaint alleged that contractors that performed hazardous waste treatment and disposal services at site of chemical plant knowingly submitted false claims for payment from private trust fund; fund in question was underwritten by chemical company that was former owner of site, and no money in fund was provided by the United States government. Costner v. URS Consultants, Inc., C.A.8 (Ark.) 1998, 153 F.3d 667, rehearing and suggestion for rehearing en banc denied. United States 120.1

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As the False Claims Act (FCA) extends to fraudulent attempts to cause the Government to pay out sums of money, it is not necessary that payment actually be made as a result of the fraudulent document. U.S. v. Williams, M.D.Fla.2007, 476 F.Supp.2d 1368. United States 120.1

To establish claim under False Claims Act (FCA) for causing false claim to be paid, plaintiff must prove that: (1) defendant made, used or caused to be made or used false record or statement to get claim against United States paid or approved; (2) claim was false or fraudulent; (3) defendant knew that record or statement and claim were false or fraudulent; and (4) claim was actually paid or approved. U.S. v. Aguillon, D.Del.2009, 628 F.Supp.2d 542. United States 120.1

Allegations that service corporation and two individual defendants billed for computer, software and remote telephone switch purchase, installation and upgrade projects that were performed by or primarily by another entity, that contract modification was made, contrary to industry standard, to allow defendants to separately bill government for testing after work was completed, and that defendants submitted false charges to government for labor expenses relating to switching cable operations to new plant when in fact charges were to purchase a mobile communications trailer, building material, laptop computer, monitor and docking station, were sufficient for employee terminated by service corporation to state claim that corporation and two individual defendants presented or caused to be presented to United States government false or fraudulent claims for payment, or used false record or statement to get false or fraudulent claim paid or approved by government, in violation of False Claims Act (FCA). U.S. ex rel. Poisson v. Red River Service Corp., W.D.Okla.2008, 621 F.Supp.2d 1153. Labor And Employment 778

Allegedly inaccurate Vietnam Era Veterans Readjustment Assistance Act (VEVRAA) reports did not give rise to a claim under provision of False Claims Act (FCA) creating liability for any person who knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the government; even assuming the reports constituted a “false record,” those falsities did not get a false or fraudulent claim paid since the accuracy of the reports was not a condition to payment. U.S. ex rel. Kirk v. Schindler Elevator Corp., S.D.N.Y.2009, 606 F.Supp.2d 448. United States 120.1

Evidence that durable medical equipment company (DME) forwarded completed order forms and prescriptions to independent diagnostic testing facility (IDTF) alleged to have filed false Medicare claims in violation of False Claims Act, was insufficient to prove DME knowingly assisted in causing government to pay such fraudulent claims, where DME gave no suggestion or instruction to IDTF regarding its Medicare submissions, and in no way participated in such submissions. U.S. ex rel. Bane v. Breathe Easy Pulmonary Services, Inc., M.D.Fla.2009, 597 F.Supp.2d 1280. United States 122

Government's ultimate reimbursement of private crop insurer pursuant to standard reinsurance agreement did not demonstrate that agent who submitted allegedly false documents to private insurer to obtain crop insurance payments for ineligible individuals intended to get false claims paid by government, as required to violate FCA; claims themselves were never forward to or approved by government, nor was government's reimbursement of private insurer conditioned upon review of insurer's decision to pay claims. U.S. v. Hawley, N.D.Iowa 2008, 566 F.Supp.2d 918. United States 120.1

Insurance agent did not present, or knowingly assist another in presenting, a false or fraudulent claim for payment to an officer of employee of the United States government, as required for False Claims Act (FCA) civil liability, by signing

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and transmitting false crop insurance claim to private insurer, which paid claim, and was later reimbursed by the United States through the Federal Crop Insurance Corporation (FCIC), a government entity. U.S. v. Hawley, N.D.Iowa 2008, 544 F.Supp.2d 787, subsequent determination 566 F.Supp.2d 918. United States 120.1

Government contractor did not knowingly use false record or statement to obtain payment of false claim by government, as required for violation of False Claim Act, when contractor sought and obtained $3 million advance on contract to assist in development of new currency, from Coalition Provisional Authority (CPA), which governed Iraq after invasion; while bulk of personnel and financing for CPA came from United States, it was independent international agency. U.S. ex rel. DRC, Inc. v. Custer Battles, LLC, E.D.Va.2006, 444 F.Supp.2d 678, reversed 562 F.3d 295. United States 120.1

Unsuccessful bidders' allegedly false certifications of statutory/regulatory compliance made in connection with bids presented to Federal Communications Commission (FCC) for wireless telecommunications licenses did not give rise to actionable claims under False Claims Act (FCA) since such certifications were not made in connection with requests or demands for monetary compensation. U.S. ex rel. Taylor v. Gabelli, S.D.N.Y.2004, 345 F.Supp.2d 313, stay denied 345 F.Supp.2d 340. United States 120.1

The invoices sent by a health care provider to its patients' private health insurers are not cognizable as false claims under the False Claims Act (FCA), even if the government will reimburse provider for that which is subject of request for payment from the insurers, absent showing that any of the private insurers are provided with government funds or are reimbursed by the government. Cantrell v. New York University, S.D.N.Y.2004, 326 F.Supp.2d 468. United States 120.1

False Claims Act (FCA) applied to allegedly false cost and pricing data supplied to government, in connection with contract to provide Low Altitude Navigation and Targeting Infrared for Night (LANTIRN) pods, even though government was reselling pods to foreign governments, and contractor claimed that no government funds were being expended, as required under FCA. U.S. ex rel. Campbell v. Lockheed Martin Corp., M.D.Fla.2003, 282 F.Supp.2d 1324. United States 120.1

Unsuccessful bidder stated “claim” under False Claims Act by alleging that successful bidder had submitted false information to obtain revised wage determinations under contract with Department of Justice (DOJ), which would have had effect of causing government to pay out money that it would not otherwise have paid. U.S. ex rel. Alexander v. Dyncorp, Inc., D.D.C.1996, 924 F.Supp. 292. United States 122

Only action which had purpose and effect of causing the United States government to pay out money was clearly “claim” within purpose of former § 231 of this title. U. S. v. Lawson, D.C.N.J.1981, 522 F.Supp. 746. United States 120.1

Scope of former § 231 of this title was not meant to be limited to the particular evil of cheating the government by means of billing for worthless or nonexistent goods or at exorbitant prices and any actions which had the purpose and effect of causing the government to immediately pay out money were “claims” within the purpose of former § 231 of this title. U. S. v. Silver, E.D.N.Y.1974, 384 F.Supp. 617, affirmed 515 F.2d 505. United States 120.1

The United States was entitled to recover under former § 231 of this title for false claims, though no payments were

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made on the claims. U.S. v. American Precision Products Corp., D.C.N.J.1953, 115 F.Supp. 823. United States 122

False Claims Act does not apply to payments that allegedly were made wrongfully by federal government to another government agency. Wolf v. U.S., C.A.Fed.2005, 127 Fed.Appx. 499, 2005 WL 681996, Unreported, certiorari denied 126 S.Ct. 119, 546 U.S. 853, 163 L.Ed.2d 127, rehearing denied , rehearing denied 126 S.Ct. 720, 546 U.S. 1056, 163 L.Ed.2d 617. United States 120.1

90. Reverse claims, claims within section

Regulations of United States Department of Agriculture (USDA) did not create "obligation" to obtain in-lieu-of or replacement certificate and pay accompanying fee when minor changes to export certificate for animal products were required, within meaning of reverse false claims provision of False Claims Act, even though exporter's conduct in making such changes to certificate could subject it to potential fines and penalties for altering government certificate, but certain class of changes, those involving major or significant changes, did require issuance of in-lieu-of or replacement certificate, such that failure to obtain new certificate and pay resultant fee could amount to avoiding of obligation under Act's reverse false claims provision. U.S. ex rel. Bahrani v. Conagra, Inc., C.A.10 (Colo.) 2006, 465 F.3d 1189, certiorari denied 128 S.Ct. 388, 169 L.Ed.2d 264, on remand 2009 WL 751169. United States 120.1

Claim under False Claims Act (FCA) for using false record to avoid obligation requires plaintiff to prove "reverse false claim," that is, that defendant made or used, or caused someone else to make or use, false record in order to avoid or decrease obligation to federal government. U.S. ex rel. Schmidt v. Zimmer, Inc., C.A.3 (Pa.) 2004, 386 F.3d 235, on remand 2005 WL 1806502. United States 120.1

Mail courier service that took letters to Barbados and mailed them back into United States, thereby achieving significant postage cost savings for its customers, did not owe United States False Claims Act "obligation" to pay domestic postage, and thus, such remailing practice did not entitle government to recover from service under Act's "reverse false claims provision," which gives United States means to recover from someone who makes material misrepresentation to avoid paying some obligation owed to government. U.S. v. Q Intern. Courier, Inc., C.A.8 (Minn.) 1997, 131 F.3d 770, 162 A.L.R. Fed. 641. United States 120.1

Assistance agreement between bridge bank and Federal Deposit Insurance Corporation (FDIC), under which bridge bank could require FDIC to repurchase certain loans, did not create specific contractual "obligation to pay or transmit money" on part of bridge bank that survived repurchase of particular loan, and thus did not create obligation to repay that would support reverse false claim under False Claims Act; under assistance agreement, written concurrence from FDIC amounted to final approval of repurchase, and did not allow FDIC later to avoid repurchase upon concluding that it made incorrect decision, did not have sufficient information, or was defrauded. U.S. ex rel. S. Prawer & Co. v. Verrill & Dana, D.Me.1996, 946 F.Supp. 87, reconsideration denied 962 F.Supp. 206. United States 120.1

Under reverse false claims provision of False Claims Act, which penalizes making of false statement to conceal or avoid "obligation to pay or transmit money," money is not "owed" without specific contract remedy, judgment, or acknowledgment of indebtedness. U.S. ex rel. S. Prawer & Co. v. Verrill & Dana, D.Me.1996, 946 F.Supp. 87, reconsideration denied 962 F.Supp. 206. United States 120.1

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91. Endorsement or negotiation of checks, claims within section

Presentation of a check for payment was a "claim " under False Claims Act where defendant directly received money deposited by Railroad Retirement Board in deceased's account by allegedly writing checks. U.S. v. Savaree, W.D.N.Y.1997, 19 F.Supp.2d 58. United States 120.1

Actions of president of manufacturer of ordnance parts, which was continuing in operation under former § 701 et seq. of Title 11, in presenting to the United States for collection of funds relating to his contract unauthorized photostatic copy of original letters from banks to which proceeds of government contracts had been assigned and in then forging endorsement of officers of the payee banks and depositing the checks into manufacturer's account at different bank, causing the checks to be presented to and honored by the United States Treasury constituted the presentation of "claims" against the government within the meaning of former § 231 of this title. U. S. v. Silver, E.D.N.Y.1974, 384 F.Supp. 617, affirmed 515 F.2d 505. United States 122

An endorsement or negotiation of a check effected a transfer of the instrument, but was not a demand for money or property, and was not actionable under former § 231 of this title. U. S. v. Fowler, E.D.N.Y.1968, 282 F.Supp. 1. Bills And Notes 195; Bills And Notes 220; United States 122

92. Emergency Feed Program applications, claims within section

False application for assistance under 1955 Emergency Feed Program was "claim" contemplated by former § 231 of this title. Sell v. U. S., C.A.10 (Colo.) 1964, 336 F.2d 467. United States 121

Application of ranching partners to Farmers Home Administration county committee for surplus feed was not "claim" within former § 231 of this title. U. S. v. Robbins, D.C.Kan.1962, 207 F.Supp. 799. United States 120.1

93. Failure to remit commissions, claims within section

Alleged acts of defendants in submitting false accounts of their gross receipts from operation of dry cleaning and related services at military installations, and in failing to remit the proper portion as commissions from such operations to an Army and Air Force Exchange, did not constitute the making of a "claim" upon or against the government, within meaning of former § 231 of this title. U. S. v. Elliott, N.D.Cal.1962, 205 F.Supp. 581. United States 122

94. Federal housing applications, claims within section

An application for credit insurance under the Federal Housing Administration [now Department of Housing and Urban Development] program did not constitute a "claim" against the government, as that term was used in former § 231 of this title. U.S. v. McNinch, U.S.N.C.1958, 78 S.Ct. 950, 356 U.S. 595, 2 L.Ed.2d 1001. United States 120.1

Phrase "decent, safe, and sanitary," as applied in the context of assessing Section 8 housing conditions, was not too subjective to support a civil claim under the False Claims Act (FCA); phrase has a commonsense core of meaning and is capable, without additional definition, of being understood by a factfinder called upon to evaluate whether a certification

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of compliance with this standard is objectively true or false. U.S. v. Southland Management Corp., C.A.5 (Miss.) 2002, 288 F.3d 665, rehearing en banc granted 307 F.3d 352, on rehearing 326 F.3d 669. United States 122

The payment by the government under the terms of a Federal Housing Administration [now Department of Housing and Urban Development] guarantee or a mortgage constituted a "claim" within meaning of former § 231 of this title. U. S. v. Hibbs, C.A.3 (Pa.) 1977, 568 F.2d 347. United States 120.1

Lending institution's application to the Federal Housing Administration [now Department of Housing and Urban Development] for credit insurance on a home loan was not a claim against the government within meaning of former § 231 of this title. U.S. v. Ekelman & Associates, Inc., C.A.6 (Mich.) 1976, 532 F.2d 545. United States 120.1

Massachusetts Housing Finance Agency (MHFA), as mortgage lender, submitted claims, for purpose of relator's action under False Claims Act (FCA) alleging that MHFA submitted false claims for payment to Housing and Urban Development (HUD) under mortgage assistance program for owners of low-income housing projects, since MHFA requested money from government through forms submitted to government. U.S. ex rel. K & R Ltd. Partnership v. Massachusetts Housing Finance Agency, D.D.C.2006, 456 F.Supp.2d 46, affirmed 530 F.3d 980, 382 U.S.App.D.C. 67, rehearing en banc denied. United States 120.1

Persons making and using fraudulent Federal Housing Administration [now Department of Housing and Urban Development] credit application or completion certificate proximately caused presentation of claim for payment under guaranty obligation on loan. U. S. v. Globe Remodeling Co., D.C.Vt.1960, 196 F.Supp. 652. United States 120.1

Allegedly false applications for Federal Housing Administration [now Department of Housing and Urban Development] loans were not "claims" against United States, within former § 231 of this title, and United States could not have recovered on account thereof in a civil action, particularly where the loans were repaid. U. S. v. Tieger, D.C.N.J.1954, 138 F.Supp. 709, affirmed 234 F.2d 589, certiorari denied 77 S.Ct. 262, 352 U.S. 941, 1 L.Ed.2d 237. United States 120.1

95. Food stamp coupons, claims within section

In claim under this section, evidence which permitted the inference that check-out cashiers knowingly permitted Food and Nutrition Service agents to purchase ineligible nonfood items with food stamps presented substantial fact issue as to whether the grocery store violated this section, precluding summary judgment. Grand Union Co. v. U.S., C.A.11 (Ga.) 1983, 696 F.2d 888. Federal Civil Procedure 2483

Evidence established that food store owner knowingly presented a false claim for payment to the Government, in violation of the False Claims Act, by redeeming food stamps which had been illegally accepted in exchange for cash; owner had taken the required Food Stamp Program Quiz, he accepted greater amount of stamps than the cash he gave, and was identified as person who made exchanges and redeemed the stamps. U.S. v. Tran, S.D.Tex.1998, 11 F.Supp.2d 938. United States 121

Presenting for redemption illegally obtained food stamps is a "claim," within meaning of False Claims Act, and violates

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the Act. U.S. v. Truong, E.D.La.1994, 860 F.Supp. 1137. United States 120.1

Food and Nutrition Service (FNS) established that grocery store owner made at most one false or fraudulent claim for payment on food stamps, damaging FNS in amount of $122.73, representing redemption of coupons for ineligible items, sales tax, and overcharge, and thus, FNS was entitled to recover three times such amount, along with civil penalty of $5,000, under the False Claims Act. Pena v. U.S. Dept. of Agriculture, Food and Nutrition Service, E.D.Ark.1992, 811 F.Supp. 419. United States 122

Allegations that corporation, through actions of its officers and employees, violated the False Claims Act by knowingly accepting, acquiring, possessing and presenting for redemption stolen food stamps and by knowingly making and using false records and statements to obtain the payment of false claims adequately alleged claims under the Act. Blusal Meats, Inc. v. U.S., S.D.N.Y.1986, 638 F.Supp. 824, affirmed 817 F.2d 1007. United States 120.1

Retail grocery store's fraudulent redemption of food stamp coupons constituted a “claim” within meaning of former § 231 et seq. of this title. Grand Union Co. v. U. S., N.D.Ga.1980, 495 F.Supp. 331. United States 120.1

96. Guaranties, claims within section

Without a finding that bank's negligent misrepresentation in certificate of acquisition or construction was sufficient to void government's obligation under contract of guaranty given by Farmers Home Administration in connection with loan to sauerkraut processor, bank could not be considered to have submitted “false claim” within meaning of False Claims Act formerly section 231 et seq. of this title. Brunswick Bank & Trust Co. v. U.S., C.A.Fed.1983, 707 F.2d 1355. United States 120.1

The obtaining of a guaranty of a loan was not the making of a “claim” within meaning of former § 231 of this title. U.S. v. McNinch, C.A.4 (N.C.) 1957, 242 F.2d 359, certiorari granted 78 S.Ct. 16, 355 U.S. 808, 2 L.Ed.2d 28, affirmed in part, reversed in part on other grounds 78 S.Ct. 950, 356 U.S. 595, 2 L.Ed.2d 1001. United States 122

Under former § 231 of this title, “claim” was used in its normal connotation as a demand for money or for some transfer of public property and did not include fraud in inducing United States to make a guarantor's promise, performance of which was conditioned upon event which never occurred. U. S. v. Tieger, C.A.3 (N.J.) 1956, 234 F.2d 589, certiorari denied 77 S.Ct. 262, 352 U.S. 941, 1 L.Ed.2d 237. United States 122

False Claims Act applies to fraudulent applications for government loan guarantees that result in Government's being called upon to disburse funds on those guarantees. U.S. v. Ettrick Wood Products, Inc., W.D.Wis.1988, 774 F.Supp. 544, adopted in part 683 F.Supp. 1262. United States 120.1

Applicant for federal loan guarantee who filed false statements did not seek to get a false claim against the Government paid, that is he did not seek to have holder of mortgage or note make demand on guaranteeing agency; rather, he seeks to get the guarantee, which by itself is not a “claim” under False Claims Act. U.S. v. Hill, N.D.Fla.1987, 676 F.Supp. 1158. United States 120.1

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97. Loan applications, claims within section

The payment to a lender out of public funds of a sum to be applied by it on a veteran's loan constituted the making and payment of a claim. U.S. v. De Witt, C.A.5 (Tex.) 1959, 265 F.2d 393, certiorari denied 80 S.Ct. 121, 361 U.S. 866, 4 L.Ed.2d 105. United States 122

Homeowners association did not make false claim by agreeing that loan proceeds would be used to repair hurricane damage, as required for condominium owner's False Claims Act (FCA) claims against homeowners association, board members, management company and management company's operator; there was no evidence that board used loan money to repair roofs that were not damaged by hurricane, and board's decision to deposit money into reserve account did not preclude it from later spending money on hurricane repairs. U.S. ex rel. Crenshaw v. Degayner, M.D.Fla.2008, 622 F.Supp.2d 1258, reconsideration denied 2008 WL 4613084. United States 120.1

Where United States actually made loan by reason of false application, there may have been claim under former § 231 of this title. U. S. v. Cherokee Implement Co., N.D.Iowa 1963, 216 F.Supp. 374. United States 121

98. Offers, claims within section

An offer gave rise to no rights to make a demand of either money or property, nor was it, per se, a demand for either money or property; it was merely a calling upon another to enter into a contract and it could not have been deemed to be a “claim” within the intendment of former § 231 of this title. U. S. v. Farina, D.C.N.J.1957, 153 F.Supp. 819. Contracts 16; United States 120.1

99. Separate claims, claims within section

Psychiatrist submitted separate “claim,” for purposes of computing civil penalties under False Claims Act, when he submitted each form listing codes identifying various services provided to single Medicare patient, not when he listed each such code, where form asked medical provider to supply, in addition to codes and other information, total charges for services provided to patient. U.S. v. Krizek, C.A.D.C.1997, 111 F.3d 934, 324 U.S.App.D.C. 175, on remand 7 F.Supp.2d 56. United States 122

Each document attached to applications made to government for funds did not constitute a separate false bill, receipt, voucher, roll, account, claim, certificate, affidavit or deposition within meaning of former § 231 of this title. U. S. v. Woodbury, C.A.9 (Or.) 1966, 359 F.2d 370. United States 120.1

Each separate financial report that state university hospital, which received Medicare funds in connection with its clinical trials for vaccines for malignant melanoma, submitted to the government for Medicare reimbursement that failed to report income from fees for services performed, which the university received from third parties, including patients' private health insurers, could potentially support a claim under the False Claims Act (FCA). Cantrell v. New York University, S.D.N.Y.2004, 326 F.Supp.2d 468. United States 120.1

Each individual false payment demand under a government contract which called for numerous payments constituted

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"false claim" under former § 231 of this title. Alsco-Harvard Fraud Litigation, D.C.D.C.1981, 523 F.Supp. 790. United States 120.1

Presentation of each social security check by defendant's depositories to the Treasurer of the United States constituted a "claim" within meaning of former § 231 of this title. U. S. v. Fowler, E.D.N.Y.1968, 282 F.Supp. 1. United States 120.1

In action by United States to recover under former § 231 of this title for presentation of fraudulent claims in connection with each of several contracts, wherein it appeared that there was an overall conspiracy affecting each of the contracts in question, incidents of fraud on individual contracts could have been shown by proof of acts with relation to those contracts which resulted in the presentation of separate and fraudulent claims. U. S. v. American Packing Corp., D.C.N.J.1954, 125 F.Supp. 788. United States 120.1

Each of 105 fraudulent vouchers upon which the government paid nearly $1,000,000 to defendants for wire and cable supplied to Army and Navy under three contracts was a separate claim. U.S. v. Collyer Insulated Wire Co., D.C.R.I.1950, 94 F.Supp. 493. United States 122

Severance of claim against individual physician was not warranted, in qui tam action against various physicians, including individual physician, alleging that physicians conspired to defraud the United States by getting false or fraudulent Medicare claims paid in violation of the False Claims Act; individual physician was alleged to have participated in conspiracy along with other physicians, which necessarily involved common questions of law and fact. U.S. ex rel. Finks v. Huda, S.D.Ill.2001, 205 F.R.D. 225. Federal Civil Procedure 81

99a. Referrals or kickbacks, claims within section

Allegations that owners of a medical services company routinely provided medical services for which they submitted claims for reimbursement to Medicare, that they violated the Anti-Kickback Statute by paying kickbacks to pharmacists and others which were camouflaged as rental payments or commissions, and that owners certified that they complied with the Anti-Kickback Statute, which was a condition of receiving reimbursement from the Medicare program, stated claim against owners under the False Claims Act. McNutt ex rel. U.S. v. Haleyville Medical Supplies, Inc., C.A.11 (Ala.) 2005, 423 F.3d 1256. United States 122

United States stated violation of Anti-Kickback Statute against drug manufacturer on allegations that manufacturer directly offered kickbacks to health care providers with improper intent to induce purchase of drugs. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2007, 491 F.Supp.2d 12. United States 75(6)

Relator failed to show that hospital allocated or paid portion of purchase price of physician practices for non-compete clause or goodwill in violation of Antikickback Statute (AKS) or Stark Act, in lawsuit under False Claims Act (FCA), since hospital paid fair market value in purchasing physician practices, and no part of purchase price was payment for anticipated referrals; there was nothing illegal per se about hospital acquiring physician's practice, existence of non-compete agreement, or entering into subsequent employment contract with that hospital. U.S. ex rel Perales v. St. Margaret's Hosp., C.D.Ill.2003, 243 F.Supp.2d 843. United States 122

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100. Veterans' hospitalization applications, claims within section

Application for treatment at Veterans' Administration Hospital was not "claim" within meaning of former § 231 of this title. U. S. v. Schmidt, E.D.Wis.1962, 204 F.Supp. 540. United States 120.1

False claim by veteran for the purpose of obtaining free hospital services from the government knowing that he was not entitled to such free services constituted a "claim" against the government within former § 231 of this title. U.S. v. Alperstein, S.D.Fla.1960, 183 F.Supp. 548, affirmed 291 F.2d 455. United States 120.1

101. Miscellaneous claims within section

Claim by contractor hired to build winches for Department of Defense that gear subcontractor's breach of contractual quality assurance requirements for gears, through change in gear manufacturing process without notice after approval of initial batch of gears, had created a risk of serious injury to persons connected with Department who used winches, and that government would have rejected gears produced had it known of change, alleged an "injury" to government sufficient to state claim under False Claims Act (FCA) in qui tam suit by contractor. Varljen v. Cleveland Gear Co., Inc., C.A.6 (Ohio) 2001, 250 F.3d 426. United States 122

Allegation that contractor knowingly submitted false progress reports stating that software delivered under design contract entered with Pension and Welfare Benefits Administration (PWBA) was complete, when in fact it was not, stated claim pursuant to False Claims Act's civil penalty provisions, though contractor did not submit bill for software; goal of receiving payment was implicit in submission of goods, and accompanying progress reports had purpose of getting claim approved. U.S. ex rel. Schwedt v. Planning Research Corp., C.A.D.C.1995, 59 F.3d 196, 313 U.S.App.D.C. 200, certiorari denied 116 S.Ct. 754, 516 U.S. 1068, 133 L.Ed.2d 701, on remand 1996 WL 554504. United States 122

Contractor providing security for Baghdad airport, pursuant to contract with Coalition Provisional Authority (CPA), did not violate False Claims Act (FCA) by promising to provide 138 security workers; request for proposals (RFP) did not call for specific number of workers, none was provided in proposal, reference to 138 security employees occurred when that number was selected for a contractor explanation of the pricing of its proposal, contractor initially provided over 138 security employees, precluding necessary finding that false statement was made with scienter, and staffing statement was not material to general airport contract. U.S. ex rel. DRC, Inc. v. Custer Battles, LLC, E.D.Va.2007, 472 F.Supp.2d 787, affirmed 562 F.3d 295. United States 120.1

Development Fund for Iraq (DFI) was not property of United States, and thus contractor's demand for payment from those funds did not constitute "claim" within meaning of False Claims Act (FCA), even though corpus of account was held at Federal Reserve Bank of New York, and United States provided portion of money held by DFI, where DFI was established through coordinated effort of United Nations and Coalition Provisional Authority (CPA) in Iraq to fund relief and reconstruction efforts in Iraq, DFI held funds from United Nations "Oil for Food" program, revenues from export sales, international donations, and repatriated Iraqi assets, DFI was recorded on books of Central Bank of Iraq, and CPA was required to consult with Iraqi interim administration before approving expenditures from DFI funds. U.S. ex rel. DRC, Inc. v. Custer Battles, LLC., E.D.Va.2005, 376 F.Supp.2d 617, reversed 562 F.3d 295. United States 120.1

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Contractor's post-contract requests for equitable adjustment (REA) did not constitute false claims; REAs did not contain any misrepresentations, nor did contractor try to mislead the government. U.S. ex rel. Bettis v. Odebrecht Contractors of California, Inc., D.D.C.2004, 297 F.Supp.2d 272, affirmed 393 F.3d 1321, 364 U.S.App.D.C. 250. United States 120.1

Relator failed to show that amount of physician's compensation from hospital to relocate to area was determined in manner that took volume or value of referrals into account, in lawsuit under False Claims Act (FCA) alleging violation of Antikickback Statute (AKS) and Stark Act; even though physician technically maintained independent contractor status, compensation agreement essentially functioned like employment agreement and compensation agreement provided necessary exceptions and fixed level of compensation for term of agreement. U.S. ex rel Perales v. St. Margaret's Hosp., C.D.Ill.2003, 243 F.Supp.2d 843. United States 122

Alleged presentation for payment of proposals for purchase of technology by manufacturer of sensors and analytical technologies pertaining to radioactive materials, under defense department's “Russian Program,” even though such technology was available in the United States, supported claim for liability under the False Claims Act. U.S. ex rel. Kozhukh v. Constellation Technology Corp., M.D.Fla.1999, 64 F.Supp.2d 1239. United States 120.1

Government contractor's failure to submit payroll reports, in and of itself, causes no economic loss to government and is not “claim” within meaning of False Claims Act (FCA). U.S. ex rel. Windsor v. DynCorp, Inc., E.D.Va.1995, 895 F.Supp. 844. United States 120.1

Complaint on behalf of United States alleging that government contracts expressly required compliance with environmental regulations and that government contractor knowingly failed to comply with regulations and falsely certified that it had complied, in order to induce payments under contracts, stated cause of action under the False Claims Act. U.S. ex rel. Fallon v. Accudyne Corp., W.D.Wis.1995, 880 F.Supp. 636. United States 122

Claims made against city board of education were “claims” against United States within meaning of False Claims Act, where city and its board of education had applied for funds from the Economic Development Administration, funds were granted and letters of credit were provided to board of education construction account, false requests for funds were paid by checks drawn on that account, and Government control of money remained through requirement that board of education comply with EDA regulations and specifications. U.S. v. Board of Educ. of City of Union City, D.N.J.1988, 697 F.Supp. 167. United States 121

Mobile home owner's action to secure payment from National Flood Insurance Program was a “claim” within the meaning of the False Claims Act, 31 U.S.C.A. § 3729. Thevenot v. National Flood Ins. Program, W.D.La.1985, 620 F.Supp. 391. United States 121

Sworn verification submitted by the Postmaster, who was alleged coconspirator in Post Office robbery, of financial condition of his Post Office after robbery did not constitute a “claim” within former § 231 of this title, despite contention that purpose of submitting such form was to relieve Postmaster of financial liability, since submission did not have purpose or effect of causing United States government to pay out money, but, rather, government was attempting to use allowance of damages and forfeiture under former § 231 of this title to recover from Postmaster twice the amount of gov-

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ernment property lost from robbery plus $2,000 forfeiture amount. U. S. v. Lawson, D.C.N.J.1981, 522 F.Supp. 746. United States 120.1

Postmaster's approvals of private claims against United States government for private registry items lost as result of Post Office robbery was not a "claim" under former § 231 of this title which would have entitled government to damages recovery against Postmaster, who was allegedly coconspirator in the robbery, where, although Postmaster approved claims and passed them along, he acted only as a conduit for the claims which had already been presented to government for payment and at no time in connection with submission of the claims did Postmaster make any false, fictitious, or fraudulent representations of any material facts. U. S. v. Lawson, D.C.N.J.1981, 522 F.Supp. 746. United States 120.1

Defendants made no "claim" within former § 231 of this title when they applied for and sent newspapers by second-class postage. U. S. v. Marple Community Record, Inc., E.D.Pa.1971, 335 F.Supp. 95. United States 120.1

Where, after Veterans' Administration's approval of automobile purchase order contract for veteran, factory retail price was increased with approval of Office of Price Administration, and automobile seller's salesman delivered automobile without radio and seat covers ordered but added other items so that, for original sales price to be paid by government, veteran was getting his money's worth, but Administration was not notified of price change nor was its approval of the adjustment obtained, seller did not make a "false claim" for price of automobile under former § 231 of this title. U.S. v. Beaty Chevrolet Co., E.D.Tenn.1953, 116 F.Supp. 810. United States 120.1

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131. Frauds within section generally

Former § 231 of this title was not designed to reach every kind of fraud practiced on the government. U.S. v. McNinch, U.S.N.C.1958, 78 S.Ct. 950, 356 U.S. 595, 2 L.Ed.2d 1001. See, also, Hagney v. U.S., 1978, 570 F.2d 924, 215 Ct.Cl. 412; U.S. v. Howell, C.A.Cal.1963, 318 F.2d 162; U.S. v. Silver, D.C.N.Y.1974, 384 F.Supp. 617, affirmed 515 F.2d 505 ; U.S. v. Marple Community Record, Inc., D.C.Pa.1971, 335 F.Supp. 95; Woodbury v. U.S., D.C.Or.1964, 232 F.Supp. 49, affirmed in part, reversed in part on other grounds 359 F.2d 370. United States 120.1

Former § 231 of this title interdicted material misrepresentations made to qualify for government privileges or services. U. S. ex rel. Weinberger v. Equifax, Inc., C.A.5 (Fla.) 1977, 557 F.2d 456, rehearing denied 561 F.2d 831, certiorari denied 98 S.Ct. 768, 434 U.S. 1035, 54 L.Ed.2d 782, rehearing denied 98 S.Ct. 1477, 435 U.S. 918, 55 L.Ed.2d 511. United States 120.1

Former § 231 of this title did not deal with or denounce fraud in general terms and was not read as having done so. U.S. v. Cochran, C.A.5 (Tex.) 1956, 235 F.2d 131, certiorari denied 77 S.Ct. 262, 352 U.S. 941, 1 L.Ed.2d 237. United States 120.1

It was not every attempted fraud against the United States that fell within purview of former § 231 of this title, but only those which came clearly within its terms. U.S. v. Cochran, C.A.5 (Tex.) 1956, 235 F.2d 131, certiorari denied 77 S.Ct. 262, 352 U.S. 941, 1 L.Ed.2d 237. United States 120.1

Former § 231 of this title was intended to reach all types of fraud, without qualification, that result in financial loss to the government. U. S. v. Fowler, E.D.N.Y.1968, 282 F.Supp. 1. United States 120.1

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132. Common law, frauds within section

Remedy of recovery of money under common law doctrine of payment by mistake was available to United States and was independent of former § 231 of this title which related to filing of false claims. U. S. v. Mead, C.A.9 (Cal.) 1970, 426 F.2d 118. United States 69(6)

Former § 231 of this title was not in derogation of common law but merely provided another remedy which government could have invoked to protect itself from fraud. U. S. v. Mead, C.A.9 (Cal.) 1970, 426 F.2d 118. United States 120.1

Former § 231 of this title did not abrogate the right of the government to pursue its common law remedy for recovery of funds obtained by fraud of livestock slaughterers in obtaining subsidy payments. U.S. v. Borin, C.A.5 (Tex.) 1954, 209 F.2d 145, certiorari denied 75 S.Ct. 33, 348 U.S. 821, 99 L.Ed. 647. Fraud 31

The remedy provided by former § 231 of this title did not preclude United States as plaintiff from maintaining common law action to recover in tort for deceit. United States v. Silliman, C.C.A.3 (N.J.) 1948, 167 F.2d 607, certiorari denied 69 S.Ct. 48, 335 U.S. 825, 93 L.Ed. 379. United States 126

Requirements of common law fraud are: (1) there must be a material representation by defendant; (2) representation must be false; (3) it must be made with knowledge of its falsity; (4) it must be made with intention that plaintiff act on it, and (5) plaintiff must have acted on it and suffered an injury for which he sues. U.S. v. Cripps, E.D.Mich.1978, 460 F.Supp. 969. Fraud 3

133. Accounts, frauds within section

An account including items for services not actually rendered or moneys not actually paid is a false account. U.S. v. Russell, W.D.Tex.1884, 19 F. 591. United States 121

134. Appraisals, frauds within section

Where the United States made independent investigation prior to paying any money under lease of property, the United States did not rely on appraisals submitted by lessors and hence could not have recovered under former § 231 of this title on theory that lessors defrauded the United States in misrepresenting the value of property leased. U. S. v. Goldberg, E.D.Pa.1958, 158 F.Supp. 544. Fraud 21

135. Bankruptcy claims, frauds within section

Submission of inflated legal bills for approval by the United States Bankruptcy Court does not violate the False Claims Act, at least absent assertion of a reverse false claim cause of action or allegation that the government was a creditor in any of the bankrupt estates. Hutchins v. Wilentz, Goldman & Spitzer, C.A.3 (N.J.) 2001, 253 F.3d 176, certiorari denied 122 S.Ct. 2360, 536 U.S. 906, 153 L.Ed.2d 182. United States 120.1

136. Bribery, frauds within section

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Kickbacks can give rise to cause of action under False Claims Act (FCA). U.S. ex rel. Barrett v. Columbia/HCA Healthcare Corp., D.D.C.2003, 251 F.Supp.2d 28. United States 120.1

Government could not recover under the False Claims Act from person who bribed government official to influence the official's decisions regarding loan approvals. U.S. v. Shaw, S.D.Miss.1989, 725 F.Supp. 896. United States 120.1

137. Bid rigging, frauds within section

Bid-rigging scheme, in which contractors who are suppose to compete against each other to submit lowest bid, conspire to artificially fix the low bid and the bidder who will be awarded the contract, is a fraudulent course of conduct which can give rise to False Claims Act violations; claims for payment submitted under the rigged contract constitute false claims within the meaning of the Act. U.S. v. Incorporated Village of Island Park, E.D.N.Y.1995, 888 F.Supp. 419. United States 120.1

138. Certificates or certifications, frauds within section

Falsely certifying compliance with the Stark or Anti-Kickback Acts in connection with a claim submitted to a federally funded insurance program is actionable under the False Claims Act (FCA). U.S. ex rel. Kosenske v. Carlisle HMA, Inc., C.A.3 (Pa.) 2009, 554 F.3d 88. United States 120.1

It was not merely the making of corrections to export certificates issued by United States Department of Agriculture (USDA) by exporter's employees that could be actionable under reverse false claims provision of False Claims Act, but rather the making of those corrections over signature and certification of USDA official who had not actually seen or approved those changes, and therefore exporter's liability under Act was not precluded on grounds that no false statements to government were made. U.S. ex rel. Bahrani v. Conagra, Inc., C.A.10 (Colo.) 2006, 465 F.3d 1189, certiorari denied 128 S.Ct. 388, 169 L.Ed.2d 264, on remand 2009 WL 751169. United States 120.1

Section 8 housing owners' alleged false certifications in housing assistance payment (HAP) vouchers, submitted to United States Department of Housing and Urban Development (HUD), that their property was in a “decent, safe, and sanitary” condition were “material,” as required to establish civil claim under the False Claims Act (FCA); HUD conditioned HAP payments upon certification of compliance with the “decent, safe, and sanitary” standard established in the HAP contract. U.S. v. Southland Management Corp., C.A.5 (Miss.) 2002, 288 F.3d 665, rehearing en banc granted 307 F.3d 352, on rehearing 326 F.3d 669. United States 120.1

Plaintiff's observations that leak detection system installed for local agency in connection with fuel storage tanks funded by the federal government was malfunctioning and that the tanks were operational despite not being certified fell far short of setting forth a prima facie case under the False Claims Act, as those observations did not show that the agency made a “false or fraudulent” statement to the federal government at the time of funding. Pfingston v. Ronan Engineering Co., C.A.9 (Cal.) 2002, 284 F.3d 999. United States 122

Physicians' Medicare forms, containing certification that services shown on form were medically necessary, did not con-

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tain express false certification upon which False Claims Act (FCA) action could be based, even if physicians failed to properly calibrate spirometers such that results of pulmonary function tests were unreliable, inasmuch as plaintiff challenged only quality of tests provided, not decision to order tests for patients. Mikes v. Straus, C.A.2 (N.Y.) 2001, 274 F.3d 687. United States 120.1

Allegation that government contractor submitted, to Department of Energy (DOE), subcontractor's allegedly false certification that there were no conflicts of interest between contractor and subcontractor, in seeking government approval of subcontract, supported claim under False Claims Act; where certification was prerequisite to approval of subcontract, each claim for payment would be submitted under contract which was fraudulently approved. Harrison v. Westinghouse Savannah River Co., C.A.4 (S.C.) 1999, 176 F.3d 776. United States 122

Government contractor that operated inventory tracking system at Army facility, which allegedly deleted certain inventory items from its computer database without authorization, did not violate False Claims Act section making it unlawful for any person who has possession, custody, or control of property or money used, or to be used, by government and, intending to defraud government or willfully to conceal property, delivers, or causes to be delivered, less property than amount for which person receives certificate or receipt, absent evidence that contractor received any type of certificate or receipt from government relating to return of property. U.S. ex rel. Aakhus v. Dyncorp, Inc., C.A.10 (N.M.) 1998, 136 F.3d 676. United States 122

Physician stated claim under False Claims Act (FCA) against health care provider and affiliated entities by alleging that they were required to certify in their annual cost reports that identified services were provided in compliance with laws and regulations regarding provision of healthcare services, as condition of their participation in Medicare program, and that they falsely certified as much when they submitted Medicare claims for services rendered in violation of Medicare anti-kickback statute and self-referral statutes, or Stark laws. U.S. ex rel. Thompson v. Columbia/HCA Healthcare Corp., C.A.5 (Tex.) 1997, 125 F.3d 899, rehearing denied, on remand 20 F.Supp.2d 1017. United States 122

School district's certification containing general assurances that district would generally comply with applicable federal law relating to special education programs did not support claim under False Claims Act (FCA), even if district failed to comply with federal regulations, as certification was not prerequisite to receiving federal funds under Individuals with Disabilities Education Act (IDEA), and evidence did not show that promise was false when made, in view of district's prior efforts to cure noncompliance with federal law. U.S. ex rel. Hopper v. Anton, C.A.9 (Cal.) 1996, 91 F.3d 1261, certiorari denied 117 S.Ct. 958, 519 U.S. 1115, 136 L.Ed.2d 844. United States 120.1

Medicare claims which were filed for services actually rendered by nursing home that was not a certified provider of services under the Health Insurance for the Aged Act, § 1395 et seq. of Title 42, and which contained certification that services had been rendered by physician were within purview of former § 231 of this title despite contentions that services had been performed by qualified people, that patients receiving services were entitled to them under medicare and that physician's certifications were not material to the claims. Peterson v. Weinberger, C.A.5 (Tex.) 1975, 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96 S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. United States 120.1

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Evidence that lender's employees forged signatures on loan documents submitted to Department of Housing and Urban Development (HUD) and that lender then falsely certified to HUD that all loan documents were properly executed raised a genuine dispute of fact regarding whether lender's certifications, which lender claimed were true to the best of its knowledge and belief, were knowingly false, precluding summary judgment in favor of lender on False Claims Act (FCA) claims. U.S. ex rel. Fago v. M & T Mortg. Corp., D.D.C.2007, 518 F.Supp.2d 108. Federal Civil Procedure 2498.4

Medical providers did not file facially false claims implying that physician performed service provided by a nurse practitioner, for purpose of False Claims Act (FCA) claim, by reporting physician's name on Medicaid claims forms for in-hospital hematology-oncology services on line that asked for the identity of physician who performed surgery or to whom patient was referred for follow-up, if any, where procedures were not surgical in nature and were not physician-only procedures. U.S. ex rel. Woodruff v. Hawaii Pacific Health, D.Hawai'i 2008, 560 F.Supp.2d 988. United States 120.1

Failure to show that contractor, setting reimbursement rates to be paid by government to schools implementing School Health and Related Services (SHARS) program, was required to certify compliance with particular regulations, precluded claim that contractor established false rates, leading to filing of claims violating False Claims Act (FCA). U.S. ex rel. Gudur v. Deloitte Consulting LLP, S.D.Tex.2007, 512 F.Supp.2d 920, affirmed 2008 WL 3244000. United States 122

Genuine issue of material fact existed as to whether government contractors received a certificate or receipt and delivered less money or property than the amount for which they received the certificate or receipt, precluding summary judgment for contractors in qui tam action brought by an employee, alleging claim under the False Claims Act (FCA) for false claims holdbacks. U.S. ex rel. Vargas v. Lackmann Food Service, Inc., M.D.Fla.2007, 510 F.Supp.2d 957. Federal Civil Procedure 2498.4

Genuine issues of material fact existed as to whether government contractor certified that subcontracts between itself and other subsidiaries of its corporate parent would be “at cost,” and whether contractor's accounting practices violated the governing federal regulations and cost accounting standards, precluding summary judgment in favor of relator on claim that contractor violated False Claims Act (FCA) by not complying with the language in its certified disclosure statement. U.S. ex rel. Oliver v. The Parsons Corp., C.D.Cal.2006, 498 F.Supp.2d 1260. Federal Civil Procedure 2498.4

Relator adequately pled the elements necessary to state a claims under False Claims Act (FCA) against successful bidders awarded wireless telecommunications licenses in Federal Communication Commission (FCC) auctions: relator averred that bidders and their owners (1) made or caused others to make statements in their applications claiming eligibility for federal bidding credits, (2) that such statements were false or fraudulent in contravention of the FCC's certification and disclosure requirements, (3) knew of their falsity, and (4) sought payment from the federal treasury through bidding credits. U.S. ex rel. Taylor v. Gabelli, S.D.N.Y.2004, 345 F.Supp.2d 313, stay denied 345 F.Supp.2d 340. United States 122

Nursing home owner did not violate False Claims Act (FCA) under false certification theory by allegedly falsifying patient records to reflect that patients were receiving routine care which had not been provided, and then submitting Medicare reimbursement claims to the government based on the altered records; qui tam plaintiff introduced no evidence to

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demonstrate that nursing home certified compliance with the applicable Medicare regulations as prerequisite to receiving federal payment. U.S. ex rel. Swan v. Covenant Care, Inc., E.D.Cal.2002, 279 F.Supp.2d 1212. United States 120.1

Government adequately stated False Claims Act (FCA) claim against general contractor and subcontractors based on allegations that they falsely certified in their Request for Equitable Adjustment (REA) that Government was liable for costs related to differing site conditions and that Government had superior knowledge about those site conditions. U.S. ex rel. Wilkins v. North American Const. Corp., S.D.Tex.2001, 173 F.Supp.2d 601. United States 122

In light of Department of Housing and Urban Development's (HUD) knowledge of the condition of the property, coupled with the proof of Section 8 housing owners' contemporaneous awareness of HUD's knowledge as a result of the communications between HUD and owners on the subject, there could be no reasonable finding that owners acted “knowingly,” for purposes of civil False Claims Act (FCA) claim, in submitting false certification in housing assistance payment (HAP) vouchers that the property was in a “decent, safe, and sanitary” condition. U.S. v. Southland Management Corp., Inc., S.D.Miss.2000, 95 F.Supp.2d 629, reversed 288 F.3d 665, rehearing en banc granted 307 F.3d 352, on rehearing 326 F.3d 669. United States 120.1

City did not defraud government, in violation of False Claims Act, by false certification in request for release of community development block grant (CDBG) funds for sewage lagoon that city complied with National Environmental Policy Act (NEPA) and applicable regulations, when in fact city had not conducted required archaeological survey; survey was not required in every case, and city complied with NEPA and regulations by considering need for survey and determining survey was unnecessary in present case. Castenson v. City of Harcourt, N.D.Iowa 2000, 86 F.Supp.2d 866. United States 120.1

Former employee failed to show that physicians, in submitting Medicare claims seeking reimbursement for spirometry tests, acted with scienter required for liability under False Claims Act (FCA) when she alleged that she had informed physicians that spirometers used to perform tests were not being properly calibrated and that tests were being performed by inadequately trained personnel; allegations did not show actual knowledge that claims submitted were untrue, nor demonstrate that physicians did not investigate, or remained intentionally ignorant about, their entitlement to reimbursement. U.S. ex rel. Mikes v. Straus, S.D.N.Y.1999, 84 F.Supp.2d 427, reconsideration denied 78 F.Supp.2d 223. United States 120.1

Certifications on Housing Assistance Payment (HAP) vouchers, that apartment units subsidized by the United States Department of Housing and Urban Development (HUD) were in a “decent, safe, and sanitary” condition, were not substantively “material” to the government's decision to make HAP payments and, thus, owner and manager of housing project did not violate the False Claims Act (FCA) by submitting false certifications. U.S. v. Intervest Corp., S.D.Miss.1999, 67 F.Supp.2d 637. United States 120.1

Where real estate salesman caused to be submitted to Federal Housing Administration [now Department of Housing and Urban Development] false certifications as to condition of properties to induce Administration to insure mortgages on properties and mortgagors subsequently defaulted, requiring United States to honor claims of mortgagee, “false claim,” within purview of former § 231 of this title, was mortgagee's claim for reimbursement. U. S. v. Hibbs, E.D.Pa.1976, 420 F.Supp. 1365, vacated 568 F.2d 347. United States 120.1

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Office manager of County Agricultural Stabilization and Conservation Committee, who used certain forms by which he certified over his signature that each voucher for lawful expenses of office was correct although he knew the certificates to be false was liable under former § 231 of this title for forfeiture of $2,000. U. S. v. Tate, E.D.Ky.1963, 218 F.Supp. 395. United States 122

Where certificate, which was part of invoice for automobile sold veteran, contained false statement in that radio and seat covers listed in invoice were not delivered because of increase in factory price of automobile, as authorized by former Office of Price Administration, presentation of invoice containing such certificate did not render automobile seller liable under former § 231 of this title, even in absence or showing that certificate was made with intent to defraud government. U.S. v. Beaty Chevrolet Co., E.D.Tenn.1953, 116 F.Supp. 810. United States 120.1

Contractor's progress payment application for performance and payment bonds and certifications on contracts for construction of government facilities were used by contractor to get fraudulent claims paid by government, and thus violated False Claims Act; contractor knowingly sought reimbursement of bond “costs” that included undisclosed rebates to its parent company. Morse Diesel Intern., Inc. v. U.S., Fed.Cl.2007, 74 Fed.Cl. 601, reconsideration granted in part 2007 WL 5177405. United States 120.1

Government did not prove by a preponderance of the evidence that contractor made a false statement when he indicated on fire suppression contracts with the Forest Service that he was furnishing the services of a particular type of commercial helicopter, precluding fraud counterclaims by the government under the Special Plea in Fraud statute, the False Claims Act, and the antifraud provision of the Contract Disputes Act. Crane Helicopter Ser., Inc. v. U.S., Fed.Cl.1999, 45 Fed.Cl. 410. United States 122

139. Commodity Credit Corporation, claims upon or against, frauds within section

Where Commodity Credit Corporation arranged to have tobacco price support program carried out in the field by producer associations authorized by the Corporation to make advances to eligible producers, directly or through auction warehouses, of the tobacco support prices, for which the Corporation would make reimbursement, only funds at risk were “public moneys”, and, therefore, tobacco growers' fraudulently induced claim to support price upon wrongful sale of tobacco under one grower's “within quota” card rather than under other's excess card came within reach of former § 231 of this title. U.S. v. Brown, C.A.4 (N.C.) 1960, 274 F.2d 107. United States 121

140. Competency or qualifications of applicants, frauds within section

City did not fraudulently represent to federal government, in connection with receipt of subsidy for public bus transportation, that it was in compliance with federal statute and regulations, at time it was launching pilot program of utilizing its general bus system to accommodate school children, which it could do so long as it did not violate statute prohibiting furnishing of school bus service on exclusive basis in competition with private bus companies; at that time all statements regarding public bus services for students were predictions, which could not be fraudulent unless made with present intent not to fulfill them, which was not established. U.S. ex rel. Lamers v. City of Green Bay, C.A.7 (Wis.) 1999, 168 F.3d 1013. United States 82(2)

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Credit reporting company employed by government to provide information on prospective government employees and which did not offer quasi-military armed forces for hire was not an organization "similar" to organization referred to in § 3108 of Title 5, and credit reporting company did not violate former § 231 of this title on theory it misrepresented its qualifications for federal employment. U. S. ex rel. Weinberger v. Equifax, Inc., C.A.5 (Fla.) 1977, 557 F.2d 456, rehearing denied 561 F.2d 831, certiorari denied 98 S.Ct. 768, 434 U.S. 1035, 54 L.Ed.2d 782, rehearing denied 98 S.Ct. 1477, 435 U.S. 918, 55 L.Ed.2d 511. United States 36; United States 120.1

Mailing statements submitted by for-profit travel agency were false, as required for reverse false claim liability under False Claims Act (FCA), where agency indicated on statements that mailings were eligible for non-profit postal rate as mailings of non-profit organizations, when in fact they were cooperative mailings with travel agency. U.S. v. Raymond & Whitcomb Co., S.D.N.Y.1999, 53 F.Supp.2d 436. United States 120.1

Small Business Administration loan applicants were liable for violation of False Claims Act where their knowingly false representations regarding capitalization resulted in granting of loan which would not otherwise had been made, and loss to Government when corporation became insolvent. U.S. v. Entin, S.D.Fla.1990, 750 F.Supp. 512. United States 122

Where there were material misrepresentations which went directly to competency and qualification of an applicant to perform government work, and applicant would not have been hired or his employment continued but for such misrepresentation, applicant's claims for salary were false and fraudulent, within former § 231 of this title. U.S. v. Johnston, W.D.Okla.1956, 138 F.Supp. 525. United States 121

141. Conspiracy to defraud, frauds within section

Provision of False Claims Act, which makes liable any person who "conspires to defraud the government by getting a false or fraudulent claim allowed or paid," requires that it be established that conspirators agreed that the false record or statement would have a material effect on the Government's decision to pay the false or fraudulent claim, but it is not necessary to show that the conspirators intended the false record or statement to be presented directly to the Government. Allison Engine Co., Inc. v. U.S. ex rel. Sanders, U.S.2008, 128 S.Ct. 2123, 170 L.Ed.2d 1030. Conspiracy 9

Where contracts for electrical work on Public Works Administration projects were made with local governmental units rather than United States, but substantial portion of contractors' pay came from United States, contractors' conduct in conspiring to rig bidding on such projects was within former § 231 of this title. U. S. ex rel. Marcus v. Hess, U.S.Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. United States 121; United States 122

Unsuccessful bidder for subcontract on pond dredging project for naval surface warfare center failed to show existence of conspiratorial agreement between center's general contractor and civilian contracting specialist to withhold bid of unsuccessful bidder and award subcontract to higher bidder, in violation of False Claims Act (FCA), even if contractor's site manager failed to correct specialist's misrepresentation about unsuccessful bidder's proposal during meeting with center officials; manager's alleged silence in face of misstatement did not support inference of agreement, and only other evidence of agreement, that contractor followed specialist's instructions by selecting higher bidder and later submitting its proposal using excavation line-items despite higher bidder's performance by dredging, did not tend to show sharing of

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conspiratorial objective. U.S. ex rel. Durcholz v. FKW Inc., C.A.7 (Ind.) 1999, 189 F.3d 542. Conspiracy 19

Where there was no showing of an agreement or conspiracy on part of logger and his crews to deliberately cut and remove unmarked trees from sale area of national forest, where United States did not establish that there was a scheme or plan or an effort to defraud the government by cutting and removing unmarked trees from sale area and where logger had agreed to pay for each and every unmarked tree the logging crews cut and removed and the forest service agreed to bill him for each and every unmarked tree cut and removed, United States failed to carry its burden of proving fraud under former § 231 et seq. of this title as to unmarked trees. Hageny v. U. S., Ct.Cl.1978, 570 F.2d 924, 215 Ct.Cl. 412. United States 120.1

To have recovered forfeitures and double damages under former § 231 of this title for conspiracy to defraud United States by raising bid for sale of faucets to government naval base construction contractors, at their purchasing agent's secret suggestion above price which otherwise would have been submitted, United States need not have proved that it paid unreasonably high price for faucets. Murray & Sorenson v. U.S., C.A.1 (R.I.) 1953, 207 F.2d 119. United States 122

In action by United States against corporation, its secretary-treasurer and government naval base construction contractors' purchasing agent for forfeitures and double damages under former § 231 of this title, evidence supporting district court's conclusion that defendants had at least tacit understanding resulting in contractors' payment of higher price for faucets sold to them by corporation than would otherwise have been bid by corporation was sufficient to support court's finding of conspiracy among defendants to defraud United States in violation of said section. Murray & Sorenson v. U.S., C.A.1 (R.I.) 1953, 207 F.2d 119. United States 122

Where government official told union official quantity of hats needed and maximum price government would pay and union official procured hat manufacturers to allocate among themselves the desired quantity and to submit bids for respective shares at such maximum price, action could not be maintained for damages, penalties or forfeiture on ground that union official and manufacturers were guilty of conspiracy to secure payment of a false claim. U.S. ex rel. Weinstein v. Bressler, C.C.A.2 (N.Y.) 1947, 160 F.2d 403. United States 122

An officer who conspires with others to obtain money by false accounts is guilty of falsification, though he may be ignorant of the items of any particular account. U.S. v. Russell, W.D.Tex.1884, 19 F. 591. United States 121

Allegations that two individual defendants agreed with service corporation to get false or fraudulent claims related to computer, software and remote telephone switch purchase, installation and upgrade projects paid by the United States, or to make a false record or statement to get such claims, and that each defendant performed some act to effect object of conspiracy, were sufficient for employee terminated by service corporation to state claim that individuals and corporation conspired to violate False Claims Act (FCA). U.S. ex rel. Poisson v. Red River Service Corp., W.D.Okla.2008, 621 F.Supp.2d 1153. Labor And Employment 778

Alleged conspirators' agreement upon scheme in which crop insurance claims were submitted to private insurer to secure payment for ineligible individuals could not demonstrate requisite purpose to defraud government by getting government to pay false claim, as required for FCA conspiracy claim, even though insurer was reimbursed by government pursuant to

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standard reinsurance agreement; proof was required that conspirators agreed that false record would have material effect on government's decision, yet insurer alone made decision to pay claims and false claims themselves were never forwarded to or approved by government, nor was reimbursement conditioned upon review of claims. U.S. v. Hawley, N.D.Iowa 2008, 566 F.Supp.2d 918. Conspiracy 19

Genuine issue of material fact as to whether insurance agent knowingly participated in a scheme, involving both a meeting of the minds and concerted action, to allow ineligible persons to obtain and make claims against federal crop insurance, precluded summary judgment in favor of either government or insurance agent on False Claims Act (FCA) conspiracy claim. U.S. v. Hawley, N.D.Iowa 2008, 544 F.Supp.2d 787, subsequent determination 566 F.Supp.2d 918. Federal Civil Procedure 2491.7

Quasi-municipal corporation established by county pursuant to Utah law did not conspire with county to falsely federal obtain mineral lease funds while allowing county to obtain Federal Payment in Lieu of Taxes (PILT) funds without reduction, as would violate the False Claims Act (FCA); although corporation performed multiple special services but was designated as a single purpose service district, such designation was not a misrepresentation, as Utah law did not distinguish between single purpose service district and any other type of special service district, federal government did not impose any regulations on state's distribution of mineral lease funds, federal government permitted PILT funds to be paid to county for any governmental purpose, no demand or request was made for PILT funds, and corporation was created as completely separate entity from county so that no offset of PILT funds based on corporation's receipt of mineral lease funds was required. U.S. ex rel. Erickson v. Uintah Special Services Dist., D.Utah 2005, 395 F.Supp.2d 1088. United States 120.1

Hospital did not engage in conspiratorious conduct under False Claims Act (FCA) by instructing its nurses to follow foreign doctor's orders, but sign his supervising physician's name on all medical orders; argument presupposed that certifications sent to Medicare were fraudulent and that, because foreign doctor was not licensed in Texas, fraud was presumed, Court addressed these arguments already and found them lacking, there was no credible evidence that conspiratorial agreement to defraud government existed. U.S. ex rel. Riley v. St. Luke's Episcopal Hosp., S.D.Tex.2002, 200 F.Supp.2d 673, amended 2002 WL 32116882, reversed and remanded 355 F.3d 370. Conspiracy 47(6)

Government adequately stated False Claims Act (FCA) conspiracy claim against general contractor and subcontractors based on allegations that there was an agreement among them to defraud Government by falsely certifying, in Request for Equitable Adjustment (REA), that Government was liable for costs related to differing site conditions and that Government had superior knowledge about those site conditions. U.S. ex rel. Wilkins v. North American Const. Corp., S.D.Tex.2001, 173 F.Supp.2d 601. Conspiracy 18

Former nurse anesthetists at university hospital failed to identify any agreement between hospital, anesthesiologists at hospital, and national anesthesiologist associations to defraud government or engage in any act that could constitute an attempt to defraud government, as required to state claim for conspiracy in qui tam action under False Claims Act based on false Medicare claims allegedly submitted by hospital and anesthesiologists; activities alleged consisted entirely of lawful pursuits, such as convincing legislatures and the public that it is beneficial to have doctor anesthesiologists, rather than nurse anesthetists, treat patients. U.S. ex rel. Amin v. George Washington University, D.D.C.1998, 26 F.Supp.2d 162. United States 122

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State investigator stated a claim for violation of the False Claims Act by the state; the investigator alleged that state officials did not prevent a proprietary school from presenting to the United States claims the state knew to be false, gave a description of the nature of the claims, named state officials involved and explained how they could advance themselves by participating in the conspiracy, alleged inaction in the face of knowledge of falsity of claims, which were communicated to them directly by the investigator, and alleged that the United States suffered damages as a result. U.S. ex rel. Long v. SCS Business & Technical Institute, D.D.C.1998, 999 F.Supp. 78, reversed 173 F.3d 870, 335 U.S.App.D.C. 331 , supplemented 173 F.3d 890, 335 U.S.App.D.C. 351, certiorari denied 120 S.Ct. 2194, 530 U.S. 1202, 147 L.Ed.2d 231. United States 122

Contracting officer and contractor on government project involving clearing of sedimentation ponds at naval facility did not conspire to defraud government, in violation of False Claims Act, because, even if officer engaged in fraudulent acts, there was no evidence that contractor's purpose was to defraud, and agreed upon acts were not fraudulent. U.S. ex rel. Durcholz v. FKW Inc., S.D.Ind.1998, 997 F.Supp. 1159, affirmed 189 F.3d 542. United States 120.1

In addition to civil penalty assessed under False Claims Act for each false claim submitted, Government was entitled to civil penalty for violation of Act's conspiracy clause; corollary to findings concerning false claims was conclusion that there was conspiracy to defraud Government by getting false or fraudulent claim allowed or paid. U.S. v. Macomb Contracting Corp., M.D.Tenn.1990, 763 F.Supp. 272. United States 122

Conviction of contractor on charges of conspiring to utilize collusive bidding scheme in connection with renovation and repair of residential properties which had been conveyed to Department of Housing and Urban Development by reason of foreclosure of insured mortgages established, for purposes of civil suit under former § 231 of this title, that contractor entered into an agreement to unlawfully influence the Department and that an overt act was committed in furtherance of the conspiracy. U.S. v. Cripps, E.D.Mich.1978, 460 F.Supp. 969. United States 120.1

Former § 231 of this title which imposed liability on any person who entered into any agreement or conspiracy to defraud the United States by obtaining payment of false claims proscribed the conspiracy itself, regardless of whether such conspiracy was ever effectuated and, therefore, liability did not require proof that any false or fraudulent claims were actually submitted to or paid by the government. U. S. v. Kates, E.D.Pa.1976, 419 F.Supp. 846. United States 122

In action by United States under former § 231 of this title to recover for false claims presented in connection with contracts for sale of meat products to government, evidence established that defendant had presented and conspired to present false claims. U. S. v. American Packing Corp., D.C.N.J.1954, 125 F.Supp. 788. United States 120.1

Where seller of butane gas for federal housing projects knowingly submitted claims for gas not delivered and manager of projects knowingly submitted to public housing authority reports including overcharges in items stating cost of gas, seller and manager thereby conspired to defraud the United States within former § 231 of this title. U.S. v. Gardner, N.D.Ala.1947, 73 F.Supp. 644. United States 122

142. Construction projects, frauds within section

Excavation contractor knowingly submitted false claim for construction of full-length of channel for government flood

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control project, in violation of False Claims Act (FCA), when it failed to construct 17.5 feet of 7000-foot channel, despite contractor's claim that it delivered essentially all of what it was to deliver; shortfall was not de minimis, particularly given government's concern with channel's structure in area of shortfall, which was designed to minimize channel's ecological impact. Commercial Contractors, Inc. v. U.S., C.A.Fed.1998, 154 F.3d 1357, rehearing denied. United States 120.1

Builder of subsidized housing was liable for double damages under former § 231 of this title where excess interest subsidies were paid as result of builder's falsification of construction costs. U. S. v. Ehrlich, C.A.9 (Cal.) 1981, 643 F.2d 634 , certiorari denied 102 S.Ct. 474, 454 U.S. 940, 70 L.Ed.2d 247. United States 120.1

Evidence supported findings and conclusions that there had been no violation of former § 231 of this title with respect to contract to supply refrigerators and other equipment for prefabricated houses constructed for critical defense housing area. U. S. v. Woodbury, C.A.9 (Or.) 1966, 359 F.2d 370. United States 122

Substantial evidence supported findings of violation of former § 231 of this title in that applications for funds were false because of failure to list creditors who might be able to file liens under law of Alaska with respect to prefabricated houses constructed for critical defense housing area, and because applications falsely stated amounts due and owing under site construction contract. U. S. v. Woodbury, C.A.9 (Or.) 1966, 359 F.2d 370. United States 122

Contractor did not furnish inaccurate data regarding either its cost or cost to government, as would provide remedy to government under the False Claims Act on ground that price was increased because inaccurate data was furnished to government, where reduction in recurring costs that contractor negotiated with third-party did not result in increased cost to government. U.S. ex rel. Sanders v. Allison Engine Co., S.D.Ohio 2003, 364 F.Supp.2d 713. United States 120.1

Housing authority, as relator, and United States established claim against subcontractor under False Claims Act (FCA), although federal agency never actually paid false claims made by subcontractor; annual subsidy from federal agency represented 99 percent of housing authority's operation budget, and its capital improvement program under which housing authority modernized its public housing communities was one hundred percent funded by federal agency. U.S. ex rel. Virgin Islands Housing Authority v. Coastal General Const. Services Corp., D.Virgin Islands 2004, 299 F.Supp.2d 483. United States 122

Government failed to prove that road contractor's differing site condition claim concerning special rock fill violated the False Claims Act (FCA); contractor's estimate of amount of SRF that would be available was not so unreasonable as to rise to level of a false claim, and government failed to establish that claim was submitted with reckless disregard of its truth or falsity. Trafalgar House Const., Inc. v. U.S., Fed.Cl.2007, 77 Fed.Cl. 48, affirmed 274 Fed.Appx. 898, 2008 WL 1734471. United States 120.1

143. Educational costs, frauds within section

Evidence failed to establish that state university officials “knowingly” misrepresented university's eligibility as a minority institution to obtain Department of Defense (DoD) set-aside contract grants in violation of False Claims Act (FCA); university officials relied on Department of Defense (DoD) assurances that it was an eligible “minority institution” since

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it was on Department of Education's (DoE) annual list of minority institutions. U.S. ex rel. Burlbaw v. Orenduff, C.A.10 (N.M.) 2008, 548 F.3d 931. United States 122

In action by government for alleged overpayment to school which had filed false statements of costs with Veterans' Administration, evidence sustained finding that school filed false and fraudulent statements. U. S. v. Sytch, C.A.3 (N.J.) 1958, 257 F.2d 475. Armed Services 127

Failure to show that reimbursement rates established by contractor, to be paid to schools for expenses of School Health and Related Services (SHARS) program, were higher than actual costs incurred by schools, precluded claim that contractor violated False Claims Act (FCA) by causing schools to receive compensation to which they were not entitled. U.S. ex rel. Gudur v. Deloitte Consulting LLP, S.D.Tex.2007, 512 F.Supp.2d 920, affirmed 2008 WL 3244000. United States 122

College student's failure to observe any procedural requirements for bringing of qui tam action on behalf of United States government precluded suit claiming that college had violated false claims statute by claiming student loan funds in excess of its entitlement. White v. Apollo Group, W.D.Tex.2003, 241 F.Supp.2d 710, appeal dismissed 163 Fed.Appx. 255, 2005 WL 3694656, certiorari denied 127 S.Ct. 301, 549 U.S. 929, 166 L.Ed.2d 228, rehearing denied 127 S.Ct. 760, 549 U.S. 1091, 166 L.Ed.2d 587. United States 122

144. Endorsement or negotiation of checks, frauds within section

Evidence amply supported district court's findings that defendant perpetrated knowing fraud on United States constituting both violation of this section and common-law conversion, by cashing checks mistakenly issued by Bureau of Indian Affairs for timber proceeds from parcel defendant had previously sold to another, with result that Department of Interior paid new owner $55,425.80. U.S. v. McLeod, C.A.9 (Wash.) 1983, 721 F.2d 282. Fraud 58(1); Trover And Conversion 40(4)

Act of corporation's officer and principal stockholder in endorsing and depositing for collection a government check known to have been issued to corporation by mistake in payment of obligation already satisfied was presentation of “false claim” within meaning of former § 231 of this title which rendered officer liable to government notwithstanding lack of direct personal benefit. Scolnick v. U. S., C.A.1 (Mass.) 1964, 331 F.2d 598. United States 120.1

Fact that checks received by president of manufacturing firm were issued to proper payees for debts actually owed by the government to those payees did not preclude finding that claims presented to the government by the corporate president were “false” within the meaning of former § 231 of this title where the president of the corporation was wholly unauthorized to present and demand to receive any money from the checks and where the president forged the name of the payee of each check. U. S. v. Silver, E.D.N.Y.1974, 384 F.Supp. 617, affirmed 515 F.2d 505. United States 120.1

Action of physician in endorsing and depositing for collection checks issued in payment of medicare claims for which physician had not rendered services constituted the making of a false claim as to each check. Peterson v. Richardson, N.D.Tex.1973, 370 F.Supp. 1259, affirmed 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96 S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. United States 120.1

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145. Estimates, frauds within section

Relator failed to show that contractor fraudulently induced government to award construction contract to it by submitting bid that did not conform with industry standards for accuracy, even if contractor failed to perform a detailed estimate of quantity of each work item required by contract in calculating cost estimates; disputed bid did not purport to be an opinion or an estimate, but rather was merely an offer to enter into a contract, and all that contractor represented was that it would perform work required at unit prices specified in bid in strict accordance with terms of solicitation. U.S. ex rel. Bettis v. Odebrecht Contractors of Cal., Inc., C.A.D.C.2005, 393 F.3d 1321, 364 U.S.App.D.C. 250. United States 120.1

Although cost estimate on which claim against government was based was knowingly prepared in a manner that differed from prior estimates there was no violation of former § 231 of this title where figures submitted were not shown to have been false and total figure accurately represented construction cost, although the distribution of total among various lines may have been somewhat misleading. McCarthy v. U. S., Ct.Cl.1982, 670 F.2d 996, 229 Ct.Cl. 361. United States 120.1

It was not logically impossible for government to prove requisite falsity in support of claim alleging that jet engine contractor violated False Claims Act (FCA) by falsely certifying that contract bid's cost estimates were based upon complete and current data and contractor's past experience in achieving certain predictions, despite contractor's contention that amounts certified had been estimated and that estimates, being inherently subjective, could not be fraudulent, given government's assertion that certified basis for estimates was not in fact used. U.S. v. United Technologies Corp., S.D.Ohio 2003, 255 F.Supp.2d 779. United States 122

Absence of any showing that contractor, hired to prepare reimbursement rates to be paid by federal government to schools covering expenses incurred in implementing School Health and Related Services (SHARS) program, fraudulently induced state to accept its rate-setting assistance, or that contractor created any false statements, precluded claim that contractor violated False Claims Act (FCA) by fraudulently inducing filing of false claims. U.S. ex rel. Gudur v. Deloitte Consulting LLP, S.D.Tex.2007, 512 F.Supp.2d 920, affirmed 2008 WL 3244000. United States 122

Question before court, in suit against shipbuilder for allegedly submitting fraudulent labor hour estimates to United States Maritime Administration in connection with application for construction differential subsidy on American-built ships, was reasonableness of labor estimates in light of data that existed at time estimates were submitted. U.S. v. Davis, S.D.N.Y.1992, 803 F.Supp. 830, affirmed in part , reversed in part 19 F.3d 770. United States 120.1

146. Failure to give information, frauds within section

In government's action against hospital administrator under False Claims Act (FCA), issue under materiality element was whether omissions in hospital's Medicare and Medicaid reimbursement claims, which failed to disclose that illegal referrals had occurred and that kickbacks were paid, could have influenced agency's decision, and therefore government did not have to provide testimony of agency decision-maker indicating that government was sure to enforce Stark Amendment to Medicare Act, which barred payment of claims arising from medical services rendered to improperly referred patients, to establish materiality. U.S. v. Rogan, C.A.7 (Ill.) 2008, 517 F.3d 449. United States 122

Government contractor that operated inventory tracking system at Army facility, which allegedly deleted certain invent-

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ory items from its computer database and submitted false record at end of its contract, did not violate False Claims Act section making it unlawful for any person to knowingly make, use, or cause to be made or used, false record or statement to conceal, avoid, or decrease obligation to pay or transmit money or property to government, where there was insufficient evidence establishing that items were deleted without authorization, and contractor's failure to include items would not affect its obligation to government absent evidence of willful misconduct or lack of good faith. U.S. ex rel. Aakhus v. Dyncorp, Inc., C.A.10 (N.M.) 1998, 136 F.3d 676. United States 122

Where contract allowed contractor a greater rental for equipment rented from third parties than it allowed for use of his own equipment in completion of a government project, suppression of truth by contractor that third party who had technical ownership of certain equipment would enjoy a substantial profit without actual risk or effort on his part because contractor and his representative had negotiated and financed the purchase of equipment in name of third party was itself a fraud on government. U. S. v. Grannis, C.A.4 (N.C.) 1949, 172 F.2d 507, certiorari denied 69 S.Ct. 1160, 337 U.S. 918, 93 L.Ed. 1727. United States 121

Relator's allegations that medical clinic and hospital entered into agreement whereby hospital would give clinic financial support in exchange for clinic's referring large volumes of patients to hospital were not sufficient to state concealment claim against clinic and hospital under False Claims Act (FCA), absent allegation of obligation to pay money to government and fraudulent concealment of that obligation. U.S. ex rel. Repko v. Guthrie Clinic, P.C., M.D.Pa.2008, 557 F.Supp.2d 522. United States 122

Government contractor's failure to disclose an organizational conflict of interest constitutes a false claim under the False Claims Act (FCA) under implied certification theory. U.S. v. Science Applications Intern. Corp., D.D.C.2008, 555 F.Supp.2d 40. United States 120.1

Applicant's failure to list in proposals for funding from Air Force pursuant to Small Business Innovation Research (SBIR) program that it had was engaged in similar research for Army demonstrated scienter necessary to support claim under False Claims Act (FCA), even though projects were not identical, and applicant's principal had given two presentations to Air Force regarding his work for Army, where solicitation instructions directed applicants to disclose both “activities directly related to the proposed effort” and “previous work not directly related to the proposed effort but similar,” and applicant considered Air Force project to be further development of technology that it had used in Army contracts. U.S. ex rel. Longhi v. Lithium Power Technologies, Inc., S.D.Tex.2007, 513 F.Supp.2d 866. United States 120.1

Federal government's allegations, that company that had entered into contracts with Nuclear Regulatory Commission (NRC) to provide technical assistance related to the recycling and reuse of radioactive material breached its obligations under the contracts to disclose organizational conflicts of interest (OCI) by engaging in relationships with certain organizations that created an appearance of bias in the technical assistance and support it provided the NRC, stated a claim against company under False Claims Act. U.S. v. Science Applications Intern. Corp., D.D.C.2007, 502 F.Supp.2d 75. United States 122

Government contractor's failure to list affiliated subcontractor among the companies with whom it engaged in interorganizational transfers rendered its Cost Accounting Standards Board (CASB) disclosure statements “false” within meaning of False Claims Act (FCA). U.S. ex rel. Oliver v. The Parsons Corp., C.D.Cal.2006, 498 F.Supp.2d 1260.

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United States 120.1

Absence of any actionable violation of the federal False Claims Act (FCA) or the California False Claims Act warranted dismissal of qui tam action brought by relator whose company was an unsuccessful bidder for a California Department of Transportation project against successful bidder; successful bidder fully disclosed particulars concerning its bid before it was awarded the project and before it submitted any claim for payment, and governments were fully aware of the facts surrounding the claim when they paid it. U.S. v. Shasta Services, Inc., E.D.Cal.2006, 440 F.Supp.2d 1108. States 188; United States 122

Relators did not identify any evidence that contractor engaged in fabrication of base and enclosure assemblies for generator sets installed in United States Navy destroyers did not truthfully disclose all cost and pricing data requested, or any evidence that there were inflated production and labor costs, as would support relators' failure to fully and truthfully disclose claim in qui tam False Claims Act suit against contractor. U.S. ex rel. Sanders v. Allison Engine Co., S.D.Ohio 2003, 364 F.Supp.2d 713. United States 122

Contractor providing trucks to government did not submit expressly false claims, in violation of False Claims Act, by submitting forms seeking payment for completed trucks and progress payments on others, which did not mention that trucks did not meet specifications regarding corrosion; specifications compliance was not issue at this contracting stage, and forms accurately reflected number of units, and in case of progress payment degree of completion. U.S. ex rel. Stebner v. Stewart & Stevenson Services, Inc., S.D.Tex.2004, 305 F.Supp.2d 694. United States 120.1

Failure of a real estate broker to disclose his realty corporation's involvement in a bid for Resolution Trust Corporation (RTC) property was actionable under the False Claims Act (FCA); under the listing agreement, the corporation was required to disclose any conflicts or potential conflicts of interest that developed in its representation of the RTC in the sale of the property. U.S. v. Bald Eagle Realty, D.Utah 1998, 1 F.Supp.2d 1311. United States 120.1

Alleged failure of applicant for grant from federal government for scientific research to disclose that data previously cited in grant applications were erroneous did not violate False Claims Act where there was no evidence that applicant was not continuing studies or had changed research plan at time of application and applicant at time of application did not have sufficient information with respect to data cited as would require that it be submitted with application. U.S. ex rel. Milam v. Regents of University of California, D.Md.1995, 912 F.Supp. 868. United States 120.1

Aircraft manufacturer's alleged concealment of its supplier's findings that continuous intergranular carbide network (CICN) existed in gears of helicopters which were sold to government involved issues of concealment and misrepresentation, rather than matters of scientific dispute, and was proper basis for government's claim under False Claims Act (FCA). U.S. ex rel. Roby v. Boeing Co., S.D.Ohio 1998, 184 F.R.D. 107. United States 120.1

Telecommunications companies' failure to inform federal government, in course of litigation with it over electromagnetic spectrum licenses upon which they had successfully bid but failed to make required payments, of existence of federal statute which was arguably applicable to parties' dispute, and about which government had both constructive and actual knowledge, could not be regarded as “false statements,” within the meaning of the False Claims Act (FCA). U.S. ex rel.

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Finney v. Nextwave Telecom, Inc., S.D.N.Y.2006, 337 B.R. 479. United States 120.1

147. Federal Housing Administration guaranties or mortgages, frauds within section

Evidence sustained finding that realtors had caused veterans to apply for Veterans' Administration guaranteed mortgages and Federal Housing Administration [now Department of Housing and Urban Development] insured loans and had caused the veterans to submit false information in support of the applications so that, when the mortgages went into default, government was entitled to recovery under former § 231 et seq. of this title. U.S. v. Ekelman & Associates, Inc., C.A.6 (Mich.) 1976, 532 F.2d 545. United States 120.1

Lending institution's claim for payment on guaranty obligation by Federal Housing Administration [now Department of Housing and Urban Development] was false claim, for purposes of former § 231 of this title, if guaranty obligation was induced by one or more false statements. U. S. v. Globe Remodeling Co., D.C.Vt.1960, 196 F.Supp. 652. United States 120.1

Claim for payment under Federal Housing Administration [now Department of Housing and Urban Development] guaranty obligation induced by fraud was a false claim, within scope of former § 231 of this title even if payment was made to presumably innocent lending institution. U. S. v. Globe Remodeling Co., D.C.Vt.1960, 196 F.Supp. 652. United States 120.1

147a. Department of Housing and Urban Development subsidized rents, frauds within section

Genuine issues of material fact as to whether landlord accepted side-rent from renters whose rent was subsidized by Department of Housing and Urban Development (HUD) precluded summary judgment in renters' action under False Claims Act. U.S. ex rel Sutton v. Reynolds, D.Or.2007, 564 F.Supp.2d 1183. Federal Civil Procedure 2498.4

148. Income tax returns, frauds within section

Former § 231 of this title did not authorize qui tam action to recover penalty and double damages sustained by United States by reason of false and fraudulent income tax returns. Olson v. Mellon, W.D.Pa.1933, 4 F.Supp. 947, affirmed 71 F.2d 1021, certiorari denied 55 S.Ct. 147, 293 U.S. 615, 79 L.Ed. 704, certiorari denied 55 S.Ct. 148, 293 U.S. 615, 79 L.Ed. 704. Internal Revenue 5246; Internal Revenue 2365

149. Inspections, frauds within section

In war fraud action by federal government against munitions manufacturer, evidence failed to support plaintiff's claim of defendant's violation of war contract by failure to maintain a satisfactory system of inspection of munitions manufactured under the contract, or that such failure constituted fraud leading to a false claim. U.S. v. U.S. Cartridge Co., E.D.Mo.1950, 95 F.Supp. 384, affirmed 198 F.2d 456, certiorari denied 73 S.Ct. 645, 345 U.S. 910, 97 L.Ed. 1345. United States 122

150. Invoices, frauds within section

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Where dealer in grain storage bins, in selling bins to grain farmers, allegedly furnished false invoices which overstated purchase price of bins and which were used in support of applications to Commodity Credit Corporation for loans to farmers in amounts exceeding 80 percent of actual purchase price, the supplying of the false information constituted "false claims" within meaning of former § 231 of this title. U. S. v. Neifert-White Co., U.S.Mont.1968, 88 S.Ct. 959, 390 U.S. 228, 19 L.Ed.2d 1061. United States 120.1

Invoices submitted by government photography contractor could be basis for False Claims Act (FCA) claim for knowing presentation of false or fraudulent claim for payment or approval, even if they only billed amount called for by fixed-price contract and did not contain any factual misrepresentations regarding monthly billings or contractor's request for equitable adjustment, in that invoices falsely impliedly certified that contractor had complied with contract provisions requiring recovery of silver from photography chemicals. Shaw v. AAA Engineering & Drafting, Inc., C.A.10 (Okla.) 2000, 213 F.3d 519. United States 120.1

Government contractor's alleged submission of false information to Department of Energy (DOE) in order to obtain DOE approval of contractor's proposal to hire subcontractor to conduct training related to in-tank precipitation process operations supported claim under False Claims Act, as each invoice for reimbursement of amounts paid out to subcontractor under such circumstances would constitute a claim under the Act. Harrison v. Westinghouse Savannah River Co., C.A.4 (S.C.) 1999, 176 F.3d 776. United States 120.1

Where wholesaler by bid incorporated into United States contract offered to furnish regulators of designated proprietary number but delivered regulators manufactured by wholesaler and bearing spurious proprietary labels and sent as part of claims for regulators so delivered invoices describing regulators by proprietary numbers and ordnance stock numbers, invoices meant that one of proprietary articles qualifying under ordnance stock number had been supplied and claims were false. U. S. v. National Wholesalers, C.A.9 (Cal.) 1956, 236 F.2d 944, certiorari denied 77 S.Ct. 719, 353 U.S. 930, 1 L.Ed.2d 724. United States 120.1

Markup of invoice by purported computer repair company to other repair company was fraudulent, for purposes of action brought by government against companies and owner alleging defendants violated the False Claims Act (FCA) by participating in a markup scheme inflating costs incurred by the government for repair of laptop computers; the two companies were owned by the same person, one company had no employees, paid no wages or salaries during its existence, used as its physical address other company's office space, used a post office box as its mailing address, and kept its records in owner's house or in his office at other company. U.S. v. Rachel, D.Md.2003, 289 F.Supp.2d 688. United States 120.1

Supplier of x-ray film to hospitals did not violate False Claims Act (FCA), by failing to note on invoices that accrued discounts affected purchase price and should be reported to government when seeking Medicaid and Medicare reimbursement for film expenses; notice was given as part of quarterly account statement issued by supplier and on checks representing payment of accrued amounts. U.S. ex rel. Walsh v. Eastman Kodak Co., D.Mass.2000, 98 F.Supp.2d 141. United States 120.1

Invoices requesting payment for tools supplied to government agency were false, for purposes of False Claims Act (FCA), where tools which could have legitimately met descriptions were not delivered. U.S. v. Advance Tool Co., W.D.Mo.1995, 902 F.Supp. 1011, affirmed 86 F.3d 1159, certiorari denied 117 S.Ct. 1254, 520 U.S. 1120, 137 L.Ed.2d

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334. United States 120.1

Where warehouseman submitted its invoice for payment for storage of oats to Commodity Credit Corporation when it had no knowledge of falsity of its claim, although Corporation paid for storage charges on some 6,000 bushels of oats which warehouseman did not actually have in storage, warehouseman was not liable for double amount of excess payments as damages and $2,000 as forfeiture imposed by former § 231 of this title with respect to false claims. U. S. v. Farmers Seed & Feed Co., M.D.Ga.1959, 181 F.Supp. 475. United States 120.1

Genuine issue of material fact remained as to whether contractor knowingly falsified invoices with purpose of receiving payment from Department of State (DOS), Overseas Building Operations (OBO), by certifying that contractor had paid subcontractor on contract to construct embassy in Tajikistan, thus precluding summary judgment on government's claim, under False Claims Act (FCA), against contractor following termination of contract for alleged default. Liquidating Trustee Ester DuVal of KI Liquidation, Inc. v. U.S., Fed.Cl.2009, 2009 WL 2523961. Federal Courts 1120

151. Leases, frauds within section

Where purchaser of agricultural land had received deed to property and subsequently entered into fictitious lease agreement with vendor, purchaser was properly found liable, under former § 231 of this title, for fraudulent violation of Cropland Adjustment Program. Baldridge v. Hadley, C.A.10 (N.M.) 1974, 491 F.2d 859, certiorari denied 94 S.Ct. 2608, 417 U.S. 910, 41 L.Ed.2d 214, rehearing denied 95 S.Ct. 159, 419 U.S. 886, 42 L.Ed.2d 130. United States 122

Although lease under which defendants operated cleaning facilities on military installations was between a bay area exchange and defendants, United States could bring an action to recover moneys allegedly wrongfully withheld by defendants by understanding their gross receipts of which they were to pay a specified percentage to the exchange. U. S. v. Howell, C.A.9 (Cal.) 1963, 318 F.2d 162. United States 126

Allegations that a lease arrangement between a manufacturer of orthotic and prosthetic devices and a group of referring physicians involved excessive rents in violation of the Stark Law, and that the certification of compliance with the Stark Law which the manufacturer submitted to the federal government in order to qualify for Medicare and Medicaid reimbursement was thereby rendered false, would, if proven, constitute a violation of the False Claims Act (FCA). Gublo v. NovaCare, Inc., D.Mass.1999, 62 F.Supp.2d 347. United States 120.1

152. Letters, frauds within section

Manufacturer of aerospace bearings did not violate False Claims Act by sending letter to government allegedly understating cleanliness problem in area where bearings were made; corrective action was taken on date that manufacturer became aware of problem, it was conceded that no knowingly false claim had been made prior to that date, and as government had paid for bearings made prior to discovery date there were no claims outstanding on date of letter to which Act applied. U.S. ex rel. Farrell v. SKF USA, Inc., W.D.N.Y.2002, 204 F.Supp.2d 576. United States 120.1

152a. Loans, frauds within section

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Monthly claims for interest reduction payments made by Massachusetts Housing Finance Agency (MHFA), as mortgage lender, were not false, for purpose of relator's action under False Claims Act (FCA) alleging that MHFA submitted false claims for payment to Housing and Urban Development (HUD) under mortgage assistance program for owners of low-income housing projects, although MHFA modified its borrowing costs by refunding its old bonds and issuing new ones; bond issue did not affect HUD subsidies because subsidies were to be based in part on interest paid on mortgage loan, as established by mortgage note, and mortgage notes unambiguously established fixed, permanent interest rates. U.S. ex rel. K & R Ltd. Partnership v. Massachusetts Housing Finance Agency, D.D.C.2006, 456 F.Supp.2d 46, affirmed 530 F.3d 980, 382 U.S.App.D.C. 67, rehearing en banc denied. United States 120.1

Relator failed to show that loans made to physicians, who were in position to make referrals to hospital, were in violation of Antikickback Statute (AKS) or Stark Act, in lawsuit under False Claims Act (FCA), since each physician to whom loan was made was charged appropriate amount of interest and each loan was repaid in full. U.S. ex rel Perales v. St. Margaret's Hosp., C.D.Ill.2003, 243 F.Supp.2d 843. United States 122

153. Medical services, frauds within section

Medicare statutes and regulations did not expressly condition compliance with certification requirement as prerequisite to receiving government payments, and thus hospital's allegedly false certification that it was in compliance with Medicare statutes and regulations, contained in annual cost report, could not form basis for cause of action under False Claims Act (FCA); although government considered substantial compliance a condition of ongoing Medicare participation, it did not require perfect compliance as an absolute condition to receiving Medicare payments for services rendered. U.S. ex rel. Conner v. Salina Regional Health Center, Inc., C.A.10 (Kan.) 2008, 543 F.3d 1211. United States 120.1

Government established reliance element of its claims for violations of False Claims Act (FCA) against hospital administrator based on omissions in hospital's Medicare and Medicaid reimbursement claims, which did not indicate that illegal referrals had occurred or that kickbacks were paid in violation of Stark Amendment to Medicare Act, which barred payment of claims arising from medical services rendered to improperly referred patients, given that the truth would have revealed that reimbursement was illegal. U.S. v. Rogan, C.A.7 (Ill.) 2008, 517 F.3d 449. United States 120.1

Medicare provider's querying actions did not constitute presentation or knowing, making, or using of false record to get claim to government paid or approved, for purposes of False Claims Act (FCA); query was designed to improve accuracy and timeliness of Medicare claims processing by reducing payment errors and providing carriers with updated entitlement and eligibility data on beneficiaries. U.S. ex rel. Sikkenga v. Regence Bluecross Blueshield of Utah, C.A.10 (Utah) 2006, 472 F.3d 702, on remand 2007 WL 2713913. United States 120.1

Alleged failure of Medicaid-provider pharmacy to credit Illinois Department of Public Aid (IDPA) and Medicaid, for medications dispensed to Medicaid patients in nursing homes but returned unused, did not violate False Claim Act or state whistleblower reward statute; there was no evidence of any specific voucher that had been billed to Medicaid, for drugs that were returned, with no credit given, no federal regulation required adjustment of claims, and, while state regulation did preclude IDPA payment for unused and returned drugs, pharmacy's claims were not false when filed. U.S. ex rel. Crews v. NCS Healthcare of Illinois, Inc., C.A.7 (Ill.) 2006, 460 F.3d 853. States 188; United States 120.1

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Complaint stated claim under False Claims Act (FCA) by alleging that Medicare provider certified its compliance with federal health care law knowing that certification to be false, and further stated FCA claim against seller of orthopedic implants for knowingly assisting in causing government to pay claims which were grounded in fraud, by alleging that seller created and pursued marketing scheme that it knew would, if successful, result in submission by provider and others similarly situated of compliance certifications required by Medicare that seller knew would be false. U.S. ex rel. Schmidt v. Zimmer, Inc., C.A.3 (Pa.) 2004, 386 F.3d 235, on remand 2005 WL 1806502. United States 122

Although pharmacy retained 50 percent of Medicaid payment when it received returned medications for recycling, such practice was not linked to actual submission of actual false claim, in violation of False Claims Act (FCA); there was no proof of single instance in which covered medication had been paid for by Medicaid, returned to pharmacy and redispensed and re-billed to Medicaid. U.S. ex rel. Quinn v. Omnicare Inc., C.A.3 (N.J.) 2004, 382 F.3d 432. United States 122

United States suffered sufficient pecuniary injury to give association of nurse anesthetists standing to pursue False Claims act suit against anesthesiologists and others for allegedly billing Medicare for “personal” direction or “medical direction” in cases that fell short of requirements for those designations, as government would have paid lower rate for same services if billed by hospitals as part of anesthetists' services, and in some cases, government paid personal performance rate to both anesthetist and anesthesiologist. Minnesota Ass'n of Nurse Anesthetists v. Allina Health System Corp., C.A.8 (Minn.) 2002, 276 F.3d 1032, rehearing and rehearing en banc denied , certiorari denied 123 S.Ct. 345, 537 U.S. 944, 154 L.Ed.2d 252. United States 122

Any claim by physicians for worthless services, in form of pulmonary function tests performed with spirometers that were not daily calibrated, was not made knowingly, and thus could not be basis for False Claims Act (FCA) claim, where spirometers' instruction manual, contrary to certain professional guidelines, indicated that daily calibration was not required, and physicians' former chief medical assistant testified that spirometers were sent out for periodic servicing. Mikes v. Straus, C.A.2 (N.Y.) 2001, 274 F.3d 687. United States 120.1

Owner and managing director of physical therapy clinic caused claims for Medicare payment to be submitted with false information, thereby satisfying causation element of government's claims under False Claims Act (FCA), when he directed clinic's Medicare billing service and office manager to substitute his father's provider identification number (PIN) for PIN of clinic's former licensed physical therapist, notwithstanding owner's contention that he did not “cause” false claims to be submitted because he did not tell service or office manager where to place father's PIN on claim forms. U.S. v. Mackby, C.A.9 (Cal.) 2001, 261 F.3d 821, on remand 221 F.Supp.2d 1106. United States 120.1

Former employee failed to state a claim against employer under the False Claims Act (FCA), based on allegation that employer refused to pay certain medical bills as ordered by workers' compensation board, and that employer “knew” that former employee would submit the bills to Medicare, as former employee did not allege that employer affirmatively instructed him to submit his medical bill claims to the government, and thus “caused” his claims to be submitted to the government. U.S. ex rel. Shaver v. Lucas Western Corp., C.A.8 (Ark.) 2001, 237 F.3d 932. United States 122

Laboratory's representation to government that laboratory, which sold blood plasma derivatives to federal agencies, had tested plasma in accordance with government requirements did not amount to false representation under False Claims

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Act, regardless of whether laboratory could have performed more effective testing, so long as laboratory in fact complied with such requirements. Luckey v. Baxter Healthcare Corp., C.A.7 (Ill.) 1999, 183 F.3d 730, certiorari denied 120 S.Ct. 562, 528 U.S. 1038, 145 L.Ed.2d 439. United States 120.1

Submission and approval of attendance records by Department of Veterans Affairs clinic's administrators and physicians for times that physicians were not actually present at clinic did not support liability under False Claims Act, absent evidence that administrators and physicians understood that their interpretation of affiliation agreement between clinic and university to permit some activities away from clinic was incorrect. U.S. ex rel. Hochman v. Nackman, C.A.9 (Cal.) 1998, 145 F.3d 1069. United States 121

Pacemaker manufacturer did not violate False Claims Act by advising patient to submit claims for cost associated with replacement of defective pacemaker to Medicare, even if manufacturer was liable for medical expenses, given that Medicare covered cost of medical services associated with replacing defective medical devices in absence of prior determination that payment from another source was expected promptly. U.S. ex rel. Glass v. Medtronic, Inc., C.A.8 (Minn.) 1992, 957 F.2d 605. United States 120.1

That company managing rehabilitation center did not gain from alleged Medicare fraud scheme did not negate company's participation in and responsibility for alleged fraud, in False Claims Act (FCA) suit related by former medical director of rehabilitation unit; complaint implicated rehabilitation center management company by naming specific employees of company who allegedly facilitated and participated in scheme to retain patients in hospital past their recommended discharge date. U.S. ex rel. McCready v. Columbia/HCA Healthcare Corp., D.D.C.2003, 251 F.Supp.2d 114. United States 122

That ambulatory surgery center was not required to file annual cost report or other document certifying compliance with Medicare statutes did not preclude determination that false certification of compliance was made in violation of False Claims Act (FCA), pursuant to implied certification theory, given that alleged violations of anti-kickback and self-referral laws would have affected government's decision to pay center's claims. U.S. ex rel. Barrett v. Columbia/HCA Healthcare Corp., D.D.C.2003, 251 F.Supp.2d 28. United States 120.1

Health care provider did not cause false claim to be paid, in violation of False Claims Act (FCA), as result of its billing for evaluation and management (E & M) services for patients at fraudulently higher billing rate than allowed under Medicare Part B, even though United States paid claims, where claims were down-coded by Medicare administrative contractor to current procedural terminology (CPT) codes with lower rate of reimbursement, and down-coded claims were not false at time they were paid. U.S. v. Aguillon, D.Del.2009, 628 F.Supp.2d 542. United States 120.1

Relator's general statements in complaint that hospital, relator's employer, falsified certifications that the Medicare services identified in the annual hospital costs reports complied with the laws and regulations dealing with the provision of healthcare services, and that certifications were prerequisites for payment under Medicare, were insufficient to allege with particularity a false certification theory of recovery under False Claims Act (FCA); relator failed to identify, for instance, when hospital falsified certifications and what the contents of those certifications were. U.S. ex rel. Smart v. Christus Health, S.D.Tex.2009, 626 F.Supp.2d 647. Federal Civil Procedure 636

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Claims for Medicare and Medicaid reimbursement that were submitted by medical doctor's pain management clinic using code for neuromuscular junction test were false, for purposes of government's claims under False Claims Act (FCA), given doctor's concessions that code was not appropriate for any service that he performed and that he did not perform neuromuscular junction test with electrical stimulation device, and given admission of clinic's billing manager that he knowingly and intentionally submitted false claims using neuromuscular junction test code. U.S. v. Stevens, W.D.Ky.2008, 605 F.Supp.2d 863. United States 120.1

The UB-92 forms submitted by Medicare provider, which invoiced services for which it was billing, were not “false claims” under False Claims Act (FCA) based on implied false certification theory, where there was no regulation or law that specifically conditioned Medicare payment on compliance with a law, regulation, or other requirement that provider allegedly violated. U.S. ex rel. Hockett v. Columbia/HCA Healthcare Corp., D.D.C.2007, 498 F.Supp.2d 25, reconsideration denied 587 F.Supp.2d 757. United States 120.1

False Claims Act (FCA) was violated when Medicaid claim was presented to state government in violation of Anti-Kickback statute, even if there was no express certification of compliance with statute, since FCA was remedial statute that had to be broadly read and compliance with anti-kickback statute was prerequisite to payment in Medicare program. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2007, 491 F.Supp.2d 12. United States 120.1

Genuine issues of material fact as to whether claim for reimbursement by independent diagnostic testing facility (IDTF), which IDTF knew was contingent upon receipt of written authorization by patient's physician, was a false statement directly linked to government's decision to pay for diagnostic testing precluded summary judgment in qui tam action alleging IDTF violated False Claims Act. U.S. ex rel. Bane v. Breathe Easy Pulmonary Services, Inc., M.D.Fla.2009, 597 F.Supp.2d 1280. Federal Civil Procedure 2498.4

Relator's allegations that District of Columbia and the District of Columbia Public School System submitted a claim for Medicaid reimbursement without maintaining documentation adequate to support that claim, and that all of the documentation was in relator's possession, were sufficient to allege that District submitted a false claim in violation of False Claims Act (FCA); although relator had prepared the supporting documentation on behalf of the District, the District did not have legal possession of it, given that another court had declared District's contract with relator void ab initio. U.S. ex rel. Davis v. District of Columbia, D.D.C.2008, 591 F.Supp.2d 30. United States 122

Genuine issue of material fact as to whether hospital intended false statements in bills sent to Medicaid to be used and be material to government's decision to pay or approve false claims precluded summary judgment in qui tam action against hospital on ground that relator could not satisfy False Claims Act's (FCA) “presentment” requirement. U.S. ex rel. Romano v. New York-Presbyterian Hosp., S.D.N.Y.2008, 571 F.Supp.2d 473. Federal Civil Procedure 2498.4

Allegations that 1393 claims submitted by Medicare provider over four-year period were fraudulent pled fraud with insufficient particularity; although complaint identified claims through incorporation of chart listing each claim by date, internal control number, referring physician, amount billed, and amount paid, complaint did not identify date of service, give example of tests performed, identify single patient, or explain why tests were medically unnecessary. U.S. ex rel. Serrano v. Oaks Diagnostics, Inc., C.D.Cal.2008, 568 F.Supp.2d 1136. Federal Civil Procedure 636

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Action alleging that operator of diabetes treatment centers violated Anti-Kickback Statute (AKS) and Stark Law by making payments to physicians in return for patient referrals could properly be pursued under False Claims Act (FCA), despite operator's contention that offending provider could receive reimbursement for Medicare claims even if it violated AKS, where form for submission of claims to Medicare required certification that payment of claims was conditioned on compliance with AKS and Stark Law. U.S. ex rel. Pogue v. Diabetes Treatment Centers of America, D.D.C.2008, 565 F.Supp.2d 153, reconsideration denied 576 F.Supp.2d 128. United States 120.1

There was no evidence that lumbar puncture, bone marrow aspiration, bone marrow biopsy, central nervous system chemotherapy, and certain neonatal services were physician-only procedures, or that billing codes used by medical provider in billing Medicaid for services were codes reserved for physician services only, as required to support False Claims Act (FCA) claim that medical providers submitted false claims for hospital services performed by nurse practitioners. U.S. ex rel. Woodruff v. Hawaii Pacific Health, D.Hawai'i 2008, 560 F.Supp.2d 988. United States 120.1

Former compliance officer for health care provider failed to plead fraud with particularity, as required under federal rules of civil procedure, for his False Claims Act (FCA) false-certification allegations regarding annual cost reports submitted for hospitals owned by provider, certifying compliance with the Stark Law and the Medicare and Medicaid Anti-Kickback Statute; while some of complaint's allegations were specific regarding how hospitals had violated the Stark Law and the Medicare and Medicaid Anti-Kickback Statute through patient referrals from physicians who had improper financial relationships with the hospitals, complaint did not specifically allege that referred patients were Medicare-eligible, nor did it provide anything more than scant detail regarding hospitals' submission of claims to the government for payment for services provided to referred patients. U.S. ex rel. Frazier v. IASIS Healthcare Corp., D.Ariz.2008, 554 F.Supp.2d 966. Federal Civil Procedure 636

Whether Medicare was or was not payor for any anesthesia claims was not material fact at issue tending to prove or disprove essential element of relators' claim in qui tam action that hospital submitted false claims to Medicare for anesthesia services, in violation of False Claims Act (FCA), since liability attached to knowing submission of false claim, but FCA did not require that Medicare actually pay claim. U.S. ex rel. El-Amin v. George Washington University, D.D.C.2007, 522 F.Supp.2d 135. United States 122

Qui tam relator, who was formerly employed by defendant hospital as an executive director in hospital's billing department, stated fraud claim, under both federal and Florida False Claims Act, with requisite particularity; even though relator had not supported all allegations in her complaint with specificity, relator had worked in hospital's billing department for one month and had personal experience with the billing process that provided the indicia of reliability to claim that fraudulent bills were submitted to Medicare and Medicaid, relator raised allegations regarding hospital's billing process, and relator submitted documentary exhibits to support contention that false claims were submitted. U.S. ex rel. Heater v. Holy Cross Hosp., Inc., S.D.Fla.2007, 510 F.Supp.2d 1027. Federal Civil Procedure 636

Government established with requisite particularity the probable validity of its claim for a debt against president and sole shareholder of Medicare provider, for purposes of government's claim under the Federal Debt Collection Procedures Act (FDCPA) for prejudgment remedies in connection with its claim against shareholder, i.e., attachment of real property shareholder owned individually, where special agent's affidavit describing health care fraud violations was sufficiently particularized, and special agent's sources of information were reliable, given that they had personal knowledge of the

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events about which they provided information. U.S. ex rel Doe v. DeGregorio, M.D.Fla.2007, 510 F.Supp.2d 877. United States 75.5

Medicare statutes and regulations did not expressly condition compliance with certification requirement as prerequisite to receiving government payments, and thus hospital's allegedly false certification that it was in compliance with Medicare statutes and regulations could not form basis for cause of action under False Claims Act (FCA), where agencies charged with enforcement of Medicare statutes and regulations chose not to impose sanctions or to deny funding, and professional organizations found that hospital met conditions of participation and accreditation. U.S. ex rel. Conner v. Salina Regional Health Center, Inc., D.Kan.2006, 459 F.Supp.2d 1081. United States 120.1

Government failed to demonstrate that Medicare services provider's claims for pulmonary rehabilitation services and simple pulmonary stress tests were false for purposes of False Claims Act (FCA) liability; government failed to prove that provider violated a controlling rule, regulation, or standard and failed dispute the overwhelming evidence that provider was following the instructions he received from his carrier in billing for pulmonary stress tests as part of his pulmonary rehabilitation program. U.S. v. Prabhu, D.Nev.2006, 442 F.Supp.2d 1008. United States 120.1

Genuine issues of material fact as to whether physicians who oversaw obstetric and gynecological OB/GYN care at hospital medical center were hospital employees and hospital had agreement with university about billing for midwife services precluded summary judgment for hospital in suit against it under False Claims Act. U.S. ex rel. Romano v. New York Presbyterian, S.D.N.Y.2006, 426 F.Supp.2d 174. Federal Civil Procedure 2498.4

Home health aide service providers who violated Medicare cost reporting rule made knowingly false submissions, within meaning of False Claims Act (FCA); dispute over rule's validity did not make their intentional noncompliance nonknowing. Visiting Nurse Ass'n of Brooklyn v. Thompson, E.D.N.Y.2004, 378 F.Supp.2d 75. United States 120.1

Relators and United States pled with sufficient particularity their claim that pharmacy benefit manager (PBM) violated False Claims Act (FCA) by billing for services not rendered, fraudulently avoiding contractual penalties, fraudulently inducing physicians to authorize drug switches, and favoring one pharmaceutical manufacturer over other manufacturers, even if complaints were poorly organized, where complaints specified general time frame over which PBM's conduct allegedly occurred, what contracts were involved, and what claims were false. U.S. v. Merck-Medco Managed Care, L.L.C., E.D.Pa.2004, 336 F.Supp.2d 430. Federal Civil Procedure 636

Government's allegations that private insurer improperly paid Medicare Secondary Payer (MSP) claims as the secondary payer when it should have paid them as primary payer, resulting in Medicare paying claims that insurer should have paid, were sufficient to allege “false or fraudulent” claim element of claim under False Claims Act (FCA). U.S. ex rel. Drescher v. Highmark, Inc., E.D.Pa.2004, 305 F.Supp.2d 451. United States 122

Nursing home owner did not violate False Claims Act (FCA) under worthless services theory by allegedly falsifying patient records to reflect that patients were receiving routine care which had not been provided, and then submitting Medicare reimbursement claims to the government based on the altered records; qui tam plaintiff did not allege that nursing home failed to provide any services to its patients, and only challenged level of care and amount of services which pa-

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tients received as a result of alleged under-staffing. U.S. ex rel. Swan v. Covenant Care, Inc., E.D.Cal.2002, 279 F.Supp.2d 1212. United States 120.1

Physician, as relator, failed to show that any claim submitted by hospital to government for payment was rendered false by reason of referral relationship in violation of Antikickback Statute (AKS) and Stark Act, in lawsuit under False Claims Act (FCA); even though physician had been contractually required to make referrals to hospital and hospital expected physician to reimburse it for staff assigned to his office who continued to work there after expiration of his services agreement, all claims made by hospital under services agreement were beyond statute of limitations and any former taint in allegedly improper relationship did not continue beyond contract. U.S. ex rel Perales v. St. Margaret's Hosp., C.D.Ill.2003, 243 F.Supp.2d 843. United States 122

Even if hospital fraudulently obtained Joint Commission on Accreditation of Healthcare Organizations (JCAHO) certification, thus making it appear eligible to participate in Medicare, that conduct did not give rise to liability under False Claims Act (FCA); lack of proper JCAHO certification would not affect the government's decision to pay in the sense required by the False Claims Act. U.S. ex rel. Ortega v. Columbia Healthcare, Inc., D.D.C.2003, 240 F.Supp.2d 8. United States 120.1

Allegation that review board reduced coding of insurance claim submitted by health care provider and its subsidiary hospital to federal government on one occasion did not sufficiently assert that defendants, who participated in various federal healthcare programs, including Medicare, Medicaid, and TriCare, engaged in prohibited practice of upcoding, i.e., mislabeling diagnoses or treatments on claim forms to increase reported value of claim, in violation of the False Claims Act (FCA); there was nothing in complaint to suggest pattern of upcoding, or even that single incident was intentional. U.S. ex rel. Obert-Hong v. Advocate Health Care, N.D.Ill.2002, 211 F.Supp.2d 1045. United States 122

Foreign doctor's status, as foreign doctor, did not make claims submitted to Medicare in which he participated, fraudulent, and thus Hospital was not liable under False Claims Act (FCA) to United States for alleged fraud; Medicare claims were submitted for medical evaluations and procedures admittedly performed by foreign licensed doctor, while acting under supervision of Texas licensed physician, payments were made to hospital based on patient's diagnosis related group, regardless of who actually provided treatment, and, because hospital was paid fixed amount for inpatient services based on diagnosis related group assigned, none of alleged procedures by foreign doctor could have altered amount of money paid to Hospital for particular patient's care, and thus foreign doctor's participation was immaterial. U.S. ex rel. Riley v. St. Luke's Episcopal Hosp., S.D.Tex.2002, 200 F.Supp.2d 673, amended 2002 WL 32116882, reversed and remanded 355 F.3d 370. United States 120.1

Claimant failed to establish that organization submitting claims to Medicare for payment of home oxygen equipment violated False Claims Act; while there may have been minor violations of regulations, or honest mistakes in filling out forms, requests for equipment were reviewed and signed by physicians, and there was no evidence of any fraudulent request actually being paid by Medicare. U.S. ex rel. Phillips v. Pediatric Services of America, Inc., W.D.N.C.2001, 142 F.Supp.2d 717, motion denied 223 F.Supp.2d 763. United States 122

Hospital operator's former officer's allegation that operator failed to provide intensive rehabilitative services at least three hours per day, five days per week, as allegedly required by Medicare rules, did not support claim under False Claims Act

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(FCA), absent any statutory or regulatory definition of "intensive rehabilitative services." U.S. ex rel. Mathews v. Healthsouth Corp., W.D.La.2001, 140 F.Supp.2d 706, reversed 54 Fed.Appx. 404, 2002 WL 31687686. United States 122

Home health care agency and its officers violated False Claims Act (FCA) by obtaining Medicare reimbursement funds for cost of funding employee stock option plan (ESOP) with knowledge that ESOP had not been properly funded; funds used to set up ESOP had been withdrawn immediately after depositing them, stock was not transferred to ESOP until over two years later, by which time it had become worthless, and officers had made misleading representations during audit in effort to hide misconduct. U.S. ex rel. Augustine v. Century Health Services, Inc., M.D.Tenn.2000, 136 F.Supp.2d 876, affirmed 289 F.3d 409, rehearing and suggestion for rehearing en banc denied. United States 120.1

Federal government's allegation that nursing home sought Medicare and Medicaid payments for care of its residents when it was so severely understaffed that it could not have possibly administered all of care that it was obligated to perform to obtain such payments, stated claim under False Claims Act (FCA). U.S. v. NHC Healthcare Corp., W.D.Mo.2000, 115 F.Supp.2d 1149. United States 122

Government stated claims under False Claims Act when it alleged that agreement under which testing laboratory performed routine dialysis blood tests at below-cost rate in exchange for referrals of nonroutine tests violated anti-kickback law, which prohibited offer or solicitation of remuneration in exchange for referrals of Medicare-payable services, and that agreement was intentionally concealed to induce government to make Medicare payments. U.S. ex rel. Kneepkins v. Gambro Healthcare, Inc., D.Mass.2000, 115 F.Supp.2d 35. United States 122

Fact that audit of anesthesiologist's Medicare claims revealed that 455 of the 461 sampled claims were overstated, falsely reported, unsupported, or undocumented demonstrated that physician and his billing secretary had either actual knowledge or constructive knowledge of the falsity within the meaning of the False Claims Act, in that they acted in reckless disregard of the truth, or certified information in support of the claims with neither personal knowledge of its accuracy nor reasonable investigative efforts. U.S. v. Cabrera-Diaz, D.Puerto Rico 2000, 106 F.Supp.2d 234. United States 120.1

Bills submitted by medical care provider to state health care program for services provided to program participants, including Medicaid participants, were not "false" within meaning of False Claims Act; although provider allegedly assessed program members co-payments in violation of state and federal law, bills did not assess copayment charges and did not expressly or implicitly promise compliance with law as condition of receiving payment. Lum v. Vision Service Plan, D.Hawai'i 2000, 104 F.Supp.2d 1237. United States 120.1

Plaintiff who brought action under the False Claims Act (FCA) alleging that physicians submitted false Medicare claim for venous ultrasound reports could not demonstrate the falsity of the claims under an implied false certification theory by proving that delivery of venous ultrasound services by physicians fell short of the requisite standard of care. U.S. ex rel. Swafford v. Borgess Medical Center, W.D.Mich.2000, 98 F.Supp.2d 822, affirmed 24 Fed.Appx. 491, 2001 WL 1609913, certiorari denied 122 S.Ct. 2292, 535 U.S. 1096, 152 L.Ed.2d 1051. United States 122

Even assuming that physicians submitted false Medicare claims for venous ultrasound reports because they did not re-

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view the underlying hard copy data from the ultrasound tests conducted by technicians, they were not liable under the False Claims Act (FCA), absent evidence that they acted either in deliberate indifference or reckless disregard of the truth of the claims. U.S. ex rel. Swafford v. Borgess Medical Center, W.D.Mich.2000, 98 F.Supp.2d 822, affirmed 24 Fed.Appx. 491, 2001 WL 1609913, certiorari denied 122 S.Ct. 2292, 535 U.S. 1096, 152 L.Ed.2d 1051. United States 120.1

Medicare service provider's allegedly improper calibration of its spirometers did not amount to false representation under False Claims Act; no government calibration standards existed and provider's certifications neither explicitly nor implicitly suggested that its spirometry machines had been calibrated in accordance with any such standards. U.S. ex rel. Mikes v. Straus, S.D.N.Y.1999, 78 F.Supp.2d 223. United States 120.1

Provider of coding and billing services for emergency physician groups seeking Medicaid or Medicare reimbursement was liable, under False Claims Act, for coding claims at levels that were not justified by supporting documentation and for coding claims in manner contrary to instruction of one payor as to services provided after hours or on Sundays or holidays. U.S. ex rel Trim v. McKean, W.D.Okla.1998, 31 F.Supp.2d 1308. United States 120.1

Relator failed to state claim under False Claims Act (FCA) when he alleged that providers of air ambulance services overcharged Medicare, Medicaid, and other federally supported programs by converting nautical miles flown to statute miles in billing government for air ambulance miles flown, given relator's failure to establish that claims were false by showing that providers were required or expected to submit claims in nautical miles, rather than statute miles. U.S. ex rel. Cox v. Iowa Health System, S.D.Iowa 1998, 29 F.Supp.2d 1022. United States 120.1

Claim for Federal Employees Compensation Act (FECA) benefits filed by army hospital clerical assistant for alleged on-the-job injury resulting in surgery for an incarcerated abdominal hernia was false claim, for which Government was entitled to recover civil penalty under False Claims Act; surgeon's letter substantiating employee's version of cause of injury was unreliable, location of hernia was inconsistent with any lifting injury, and employee knew there was no basis for claim when made. U.S. v. Bottini, W.D.La.1997, 19 F.Supp.2d 632, affirmed 159 F.3d 1357. United States 120.1

Medicare/Medicaid provider charged with violations of False Claims Act for submitting claims for both Medicare/Medicaid and non-Medicare/Medicaid patients for in excess of 24 hours of service in one calendar day, could only be found to have violated Act on days in which more than 24 hours of claims were submitted specifically for Medicare/Medicaid patients; mere proof that more than 24 hours were claimed for one given day, was not sufficient to establish that provider had knowingly or recklessly submitted false Medicare/Medicaid claims. U.S. v. Krizek, D.D.C.1998, 7 F.Supp.2d 56, remanded 192 F.3d 1024, 338 U.S.App.D.C. 187. United States 120.1

Even if medical services were necessary and actually rendered, allegations that health care provider submitted reimbursement requests to federal government although individual doctors had referred Medicare and Medicaid patients to provider in violation of federal anti-kickback and self-referral statutes stated prima facie case of False Claims Act violations. U.S. ex rel. Pogue v. American Healthcorp, Inc., M.D.Tenn.1996, 914 F.Supp. 1507, transferred to 238 F.Supp.2d 258. United States 122

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Qui tam plaintiff could bring private cause of action under False Claims Act based on alleged kickbacks paid to physicians for referring patients for federally funded medical services in violation of Medicare fraud and abuse statute; it was possible plaintiff could show that kickbacks allegedly paid to physicians somehow tainted claims for Medicare reimbursement or rendered claims constructively false or fraudulent, thus creating connection between violation of fraud and abuse statute and False Claims Act. U.S. ex rel. Roy v. Anthony, S.D.Ohio 1994, 914 F.Supp. 1504. United States 122

Psychiatrist and his wife, who was responsible for overseeing psychiatrist's billing operation, acted with reckless disregard as to truth or falsity of Medicare and Medicaid submissions, and, as such, they would be deemed to have violated False Claims Act, where wife failed to establish how much time psychiatrist spent on particular matter and simply presumed that 45 to 50 minutes had been spent, and psychiatrist failed utterly in supervising office staff in making their submissions on his behalf. U.S. v. Krizek, D.D.C.1994, 859 F.Supp. 5, supplemented 909 F.Supp. 32, affirmed in part and remanded 111 F.3d 934, 324 U.S.App.D.C. 175, on remand 7 F.Supp.2d 56. United States 120.1

Government's allegations that physicians used false records which resulted in fraudulent claims to medicare/medicaid was sufficient to state claim for relief under False Claims Act, even if Government suffered no loss because level of reimbursement was fixed under medicaid. U.S. v. Kensington Hosp., E.D.Pa.1991, 760 F.Supp. 1120. United States 122

Where each physician had done nothing but submit perfectly appropriate medicaid claims after performing valuable and necessary medical services and there was no suggestion of any fraud, former § 231 of this title afforded no basis for qui tam or informer action brought against physicians. U. S. ex rel. Hughes v. Cook, S.D.Miss.1980, 498 F.Supp. 784. United States 122

Evidence that physician's signatures on medicare claims were forged and testimony by secretary to director of nursing home that the director instructed her to sign physician's name and include the physician's code number and evidence that nursing home had recently had direct payments from medicare carrier suspended showed that nursing home director violated former § 231 of this title by submitting the claims in question. Peterson v. Richardson, N.D.Tex.1973, 370 F.Supp. 1259, affirmed 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96 S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. United States 120.1

Relator's allegations of more than 200 false claims for off-label uses of human growth hormone not approved by Food and Drug Administration (FDA), which were submitted to both Medicaid and other federal programs from citizens in Indiana, met heightened pleading standards for fraud claim against pharmaceutical companies, where claims included drug for which reimbursement was sought, medical diagnosis accompanying claim, diagnosis and reimbursement dates, and prescription dosage. U.S. ex rel. Rost v. Pfizer, Inc., D.Mass.2008, 253 F.R.D. 11. Federal Civil Procedure 636

Government's allegations that hospitals knowingly submitted claims for Medicare payment of non-covered services provided in connection with investigational cardiac devices that were not “reasonable and necessary” within meaning of Medicare manual provision were sufficient to state false or fraudulent element of claim under the False Claims Act (FCA); as pled, hospitals' claims were legally false under express or implied certification theory, as they expressly or impliedly certified compliance with Medicare provision. In re Cardiac Devices Qui Tam Litigation, D.Conn.2004, 221 F.R.D. 318. United States 122

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While pharmaceutical providers operating in New Jersey had admittedly failed to credit Medicaid for pharmaceuticals ordered for Medicaid patients that were later returned to providers and resold in State of New Jersey, this failure did not, as matter of law, rise to level of False Claims Act violation, in absence of any clear federal or state statutory or regulatory authority to support contention that credits to Medicaid for returned or unused drugs were required. In re Genesis Health Ventures, Inc., Bkrtcy.D.Del.2002, 272 B.R. 558, subsequently affirmed 112 Fed.Appx. 140, 2004 WL 2296093. United States 120.1

United States failed to establish fraud, within meaning of False Claims Act, though debtors, whose company obtained Medicaid reimbursement for seat-lift chairs sold to customers, made additions to physicians' diagnoses in order to comply with technical reimbursement requirements, absent showing that debtors knew representations were false or that they made representations with purpose of defrauding Government. U.S. v. Stelweck, E.D.Pa.1989, 108 B.R. 488. United States 122

New Jersey regulations that entitled Medicaid-provider pharmacy to recycle and redispense returned medications precluded relator's claim that pharmacy violated False Claims Act (FCA) by submitting successive claims for same medications, since regulation did not require pharmacies to credit Medicaid for recycled and redispensed medications and thus initial sale and subsequent sale of returned medication were separate transactions. In re Genesis Health Ventures, Inc., C.A.3 (Del.) 2004, 112 Fed.Appx. 140, 2004 WL 2296093, Unreported. United States 120.1

Former Medicare hearing officer for Medicare insurer failed to show that insurer inflated its claims count and fraudulently certified its compliance with the Medicare Carriers Manual (MCM) in order to ensure its full payment without penalties, its contract renewal, and its bonus eligibility, in violation of the False Claims Act (FCA). U.S. ex rel. Watson v. Connecticut General Life Ins. Co., C.A.3 (Pa.) 2004, 87 Fed.Appx. 257, 2004 WL 234970, Unreported. United States 122

Medicare insurer's policy of encouraging resubmissions of claims for benefits that were denied for being incomplete, rather than encouraging claimants to seek review, did not result in insurer knowingly presenting to government fraudulent claim for payment, which would be actionable under the False Claims Act (FCA); insurer's policy did not result in any claim for payment beyond what insurer would have received, policy was not manipulative or wrongful, and insurer believed policy was most efficient and cost-effective way to deal with such claims. U.S. ex rel. Watson v. Connecticut General Life Ins. Co., E.D.Pa.2003, 2003 WL 303142, Unreported, affirmed 87 Fed.Appx. 257, 2004 WL 234970. United States 120.1

154. Dental services, frauds within section

Insurance claim forms prepared by dentist so as to disguise routine dental check-up as “limited consultation” for oral cancer examination was “false claim” in violation of False Claims Act. U.S. v. Lorenzo, E.D.Pa.1991, 768 F.Supp. 1127. United States 120.1

155. Overcharging for goods and services, frauds within section

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Former § 231 of this title was primarily directed against government contractors' billing for nonexistent or worthless goods or charging exorbitant prices for delivered goods. U. S. ex rel. Weinberger v. Equifax, Inc., C.A.5 (Fla.) 1977, 557 F.2d 456, rehearing denied 561 F.2d 831, certiorari denied 98 S.Ct. 768, 434 U.S. 1035, 54 L.Ed.2d 782, rehearing denied 98 S.Ct. 1477, 435 U.S. 918, 55 L.Ed.2d 511. United States 120.1

Relators pled with sufficient particularity claim that contractor and subcontractors violated False Claims Act (FCA) by improperly charging United States for nonconforming and substandard tooling used to manufacture and assemble airplanes for United States, even though they did not plead with particularity actual presentment of false claims to United States, where relators stated that their allegations made upon "information and belief" were based on their extensive experience with contractor, provided specific contract numbers for contracts, gave numerous examples of specific tools for which United States was improperly charged or overcharged, explained basis for concluding billing was improper, identified management level employees and tool engineers who were aware of or participated in fraudulent schemes alleged, and identified specific difficulties particular to case that hindered their ability to identify specific false claims submitted. U.S. ex rel. Howard v. Lockheed Martin Corp., S.D.Ohio 2007, 499 F.Supp.2d 972. Federal Civil Procedure 636

Wife of owner of computer repair companies acted at least in reckless disregard of the truth or falsity of information being submitted by one company to other and eventually to the Internal Revenue Service (IRS), for purposes of action brought by government alleging violations of the False Claims Act (FCA) arising from a fraudulent markup scheme inflating costs incurred by the government for repair of laptop computers, where wife served on the board of directors of computer repair company and had obligations with respect to the performance of those duties, was identified in documents as an incorporator, officer, and director of fraudulent company, and both wife and owner admitted that she allowed owner to use her name and her identity to conduct business for her. U.S. v. Rachel, D.Md.2003, 289 F.Supp.2d 688. United States 120.1

Former § 231 of this title was designed to apply to particular kind of cheating which was inhibiting war effort at time it was passed, that is, the practice of fraudulently overcharging government for goods supplied and services rendered. U. S. v. Marple Community Record, Inc., E.D.Pa.1971, 335 F.Supp. 95. United States 120.1

Evidence supported conclusion that contractor attempted to practice fraud against the United States in the proof, statement, and establishment of an equitable adjustment claim submitted to the contracting officer, by deliberately inflating its demand for increased material costs allegedly incurred as a result of government-caused delay; claim was inflated by including amounts provided for in purchase order price escalation clauses neither billed by vendors nor paid by contractor, on delivered and undelivered parts. UMC Electronics Co. v. U.S., Fed.Cl.1999, 43 Fed.Cl. 776, affirmed 249 F.3d 1337. United States 73(9)

156. Reports, frauds within section

Home health care agency and its officers submitted false claims, in violation of False Claims Act (FCA), by submitting cost reports to obtain Medicare reimbursement funds for contributions made to employee stock ownership plan (ESOP); even though cost reports were technically accurate on day they were filed, funds contributed to ESOP were withdrawn immediately after they were deposited, so that reports became inaccurate, officers never filed amended cost reports, although they had continuing duty to do so, and officers did not replace withdrawn amounts. U.S. ex rel. Augustine v. Century Health Services, Inc., C.A.6 (Tenn.) 2002, 289 F.3d 409, rehearing and suggestion for rehearing en banc denied.

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United States 120.1

Home health care agency and its officers acted knowingly, in violation of the False Claims Act (FCA), in submitting fraudulent cost reports to Medicare, seeking reimbursement for contributions made to employee stock ownership plan (ESOP), which were immediately withdrawn, and certifying their compliance with Medicare regulations, and in making misrepresentations to government auditor; officers testified that they were familiar with Medicare regulations requiring filing of amended cost reports to document their failure to timely replace the withdrawn funds, but they failed to submit amended reports, and evidence showed that officers intentionally misled auditor about ESOP funds. U.S. ex rel. Augustine v. Century Health Services, Inc., C.A.6 (Tenn.) 2002, 289 F.3d 409, rehearing and suggestion for rehearing en banc denied. United States 120.1

Evidence was insufficient to establish that statements made by university to National Institutes of Health (NIH) in its annual progress reports under grant for researching infectious cause of birth defects were false or material, as required to support doctoral candidate's qui tam action under False Claims Act; alleged false statements about amount of data that university had computerized, university's alleged inclusion of abstract of candidate's work without mentioning her name and its inclusion of abstract of another candidate's work which allegedly plagiarized candidate's work would not have affected multimillion dollar grant. U.S. ex rel. Berge v. Board of Trustees of the University of Alabama, C.A.4 (Md.) 1997, 104 F.3d 1453, 41 U.S.P.Q.2d 1481, certiorari denied 118 S.Ct. 301, 522 U.S. 916, 139 L.Ed.2d 232. United States 122

Genuine issue of material fact as to whether false crop insurance applications and acreage reports could have been submitted without agent's signature, and thus whether agent used or made false statements, or at least caused them to be made, precluded summary judgment in favor of agent on False Claims Act (FCA) claim. U.S. v. Hawley, N.D.Iowa 2008, 544 F.Supp.2d 787, subsequent determination 566 F.Supp.2d 918. Federal Civil Procedure 2498.4

False quarterly reports and false interim report fell within provision of False Claims Act prohibiting knowing use of false record or statement to get false claim, even though each individual report did not trigger separate payments, where release of funds from United States was predicated upon grant agreement which required periodic submission of accurate reports. U.S. v. Board of Educ. of City of Union City, D.N.J.1988, 697 F.Supp. 167. United States 121

False Claims Act, 31 U.S.C.A. § 3729 et seq., applied to Government's action against four filmmakers which arose after naval officer allegedly submitted false report which understated flight time in connection with making of film for which Navy was to be reimbursed. U.S. v. Douglas, E.D.Va.1985, 626 F.Supp. 621. United States 120.1

Evidence in government's action brought on allegations that defendant made and presented 34 payroll reports which falsely certified that wages were true and correct established that defendant helped in preparation and made or caused to be made such reports and that they were false. U. S. v. Greenberg, S.D.N.Y.1965, 237 F.Supp. 439. United States 122

Evidence in action under former § 231 of this title established that false payroll reports were presented to government by defendant personally or caused to be presented at his discretion, and that he caused the reports to be made falsely, knowing them to be false, to obtain payment on claims. U. S. v. Greenberg, S.D.N.Y.1965, 237 F.Supp. 439. United States 122

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Where seller of butane gas for federal housing projects knowingly submitted claims for gas not delivered and manager of projects knowingly submitted reports to federal public housing authority including overcharges in items stating cost of gas, seller and manager thereby presented "false claims" to United States within former § 231 of this title. U.S. v. Gardner, N.D.Ala.1947, 73 F.Supp. 644. United States 121

Where seller of butane gas for federal housing projects knowingly submitted claims for gas not delivered and manager of projects knowingly submitted to federal public housing authority quarterly reports including such overcharges in items, stating cost of gas, seller and manager thereby made, used, or caused to be made or used false invoices, claims, and certificates, knowing them to contain fraudulent, fictitious statements or entries within former § 231 of this title. U.S. v. Gardner, N.D.Ala.1947, 73 F.Supp. 644. United States 121

157. Research grant applications, frauds within section

Applicant's representation in proposals for Small Business Innovation Research (SBIR) program grant that it had "cooperative arrangements" with other local laboratories was made with scienter necessary to support claim under False Claims Act (FCA), even if it had discussed possible cooperation with laboratories, and did not claim to have reached agreements, where, at time proposals were submitted, no agreement or arrangement was in place with either laboratory beyond fee-for-service like any other member of public. U.S. ex rel. Longhi v. Lithium Power Technologies, Inc., S.D.Tex.2007, 513 F.Supp.2d 866. United States 120.1

Alleged failure of applicant for grant from federal government for scientific research to disclose that data previously cited in grant applications were false and that retractions of journal articles containing data were planned did not violate False Claims Act; one retraction was submitted but published, and federal agency making grant was informed of second retraction prior to date of application. U.S. ex rel. Milam v. Regents of University of California, D.Md.1995, 912 F.Supp. 868. United States 120.1

158. Reverse false claims, frauds within section

Former offshore drilling unit worker who alleged failure to comply with Clean Water Act requirement to report immediately upon becoming aware of relevant polluting discharge failed to state claim under "reverse false claims" provision of False Claims Act (FCA) governing liability for knowingly concealing obligation to pay; asserted obligation to pay was potential and contingent in nature. U.S. ex rel. Marcy v. Rowan Companies, Inc., C.A.5 (La.) 2008, 520 F.3d 384. United States 120.1

Discretion afforded to officials of United States Department of Agriculture (USDA) to determine whether to issue new certificates for export of animal products and to charge authorized fees, based on need to make significant or major changes to original certificate, did not render obligation to pay fees for in-lieu-of and replacement certificates contingent and thus outside scope of reverse false claims provision of False Claims Act. U.S. ex rel. Bahrani v. Conagra, Inc., C.A.10 (Colo.) 2006, 465 F.3d 1189, certiorari denied 128 S.Ct. 388, 169 L.Ed.2d 264, on remand 2009 WL 751169. United States 120.1

Chemical manufacturer did not violate "reverse false claim" provision of False Claims Act (FCA) by allegedly conceal-

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ing polyvinyl chloride (PVC) emissions during open lid loss through false emissions records in order to avoid potential fine or monetary penalty; there was no “obligation to pay” within meaning of that provision. U.S. ex rel. Bain v. Georgia Gulf Corp., C.A.5 (La.) 2004, 386 F.3d 648, on subsequent appeal 208 Fed.Appx. 280, 2006 WL 3093637. United States 120.1

Failure of Medicaid-provider pharmacy to give Medicaid 100% credit for returned medications did not violate reverse false claim provision of False Claim Act (FCA), since there was no federal or New Jersey Medicaid statute or regulation which specifically required pharmacy to credit Medicaid and there was absence of any Medicaid or other regulation requiring provider pharmacies to credit at specific rate, and although pharmacy had obligation to monitor facility's crediting system, that obligation did not expressly include obligation to credit Medicaid for returned medications. U.S. ex rel. Quinn v. Omnicare Inc., C.A.3 (N.J.) 2004, 382 F.3d 432. United States 120.1

United States' allegations that aircraft maintenance government contractor knowingly misidentified aircraft wings on inventory schedule to avoid accounting for full value of wings were sufficient to state “reverse false claim” under False Claims Act, where complaint contained express references to contractor's obligation under its contracts to account for full value of government property. U.S. v. Pemco Aeroplex, Inc., C.A.11 (Ala.) 1999, 195 F.3d 1234. United States 122

The reverse false claims provision of the False Claims Act (FCA) did not encompass alleged conduct of importers in making false statements to avoid paying customs duties, fines, and taxes, where the claims were based on theory of contingent obligations and importers did not have a contract or lease with the government and did not ask for money or benefits from the government, and where the government had not brought a criminal or civil action against the defendants, and thus had no judgment against them. American Textile Mfrs. Institute, Inc. v. The Limited, Inc., C.A.6 (Ohio) 1999, 190 F.3d 729, rehearing and suggestion for rehearing en banc denied, certiorari denied 120 S.Ct. 1556, 529 U.S. 1054, 146 L.Ed.2d 461. United States 120.1

“Obligation,” within meaning of provision of False Claims Act governing liability for “reverse false claims,” under which a party makes a false claim to avoid obligation to pay money or property to the government, did not encompass potential or contingent obligations, and thus did not encompass chemical company's potential future obligation to pay customs inspection fees for its shipments, which it sought to avoid by participating in customs agency's Customs-Trade Partnership Against Terrorism (C-TPAT) program, for purposes of relator's qui tam action claiming that chemical company and warehousing company falsified documents relating to their participation in program; obligation to pay inspection fees was contingent upon whether or not customs agency chose to inspect shipments, and there was no way to determine the amount companies would have owed in the event inspections had taken place. Zelenka v. NFI Industries, Inc., D.N.J.2006, 436 F.Supp.2d 701, affirmed 260 Fed.Appx. 493, 2008 WL 131463. United States 120.1

Purchaser of crude oil from federal and Indian leases, which falsified records of oil amounts taken, could be held liable under False Claims Act, even if it paid entire purchase price to lessees, who in turn submitted royalty payments to federal government; Act covered indirect reverse false claims. U.S. ex rel. Koch v. Koch Industries, Inc., N.D.Okla.1999, 57 F.Supp.2d 1122. United States 120.1

Travel agency's wrongful use of non-profit postal rate for cooperative mailing between for-profit and non-profit organizations created obligation to United States sufficient for reverse false claims liability under False Claims Act (FCA),

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where agency signed Postal Service mailing statement indicating that signature of mailer certified that it would be liable for any revenue deficiencies assessed on mailing, whether due to finding that mailing was cooperative or for other reasons. U.S. v. Raymond & Whitcomb Co., S.D.N.Y.1999, 53 F.Supp.2d 436. United States 120.1

Evidence did not support finding that transit system owned and operated by city had made false statements and representations to Federal Transit Administration (FTA) in order to avoid repayment of improperly received grant funds, in violation of False Claims Act (FCA), by falsely maintaining that system's plan to bus school children comported with federal requirements; city appeared to have been innocently mistaken regarding precise “tripper” service requirements, and city made attempts to comply after complaints were filed with FTA. U.S. ex rel. Lamers v. City of Green Bay, E.D.Wis.1998, 998 F.Supp. 971, affirmed 168 F.3d 1013. United States 122

Assistance agreement between bridge bank and Federal Deposit Insurance Corporation (FDIC), under which bridge bank could require FDIC to repurchase certain loans, did not create specific contractual “obligation to pay or transmit money” on part of bridge bank that survived repurchase of particular loan, and thus did not create obligation to repay that would support reverse false claim under False Claims Act. U.S. ex rel. S. Prawer & Co. v. Verrill & Dana, D.Me.1997, 962 F.Supp. 206. United States 120.1

Chapter 7 trustee did not violate the “reverse false claims provision” of the False Claims Act by allegedly failing to inform the United States that debtor had arranged financing to make up past due payments on estate property financed by the United States; trustee made no “statement” or “record” within meaning of the Act, trustee had no duty to inform the United States that debtors had a loan commitment, and, prior to public sale of the subject property, the United States was aware that debtor claimed that a loan commitment had been obtained. In re Krikava, Bkrtcy.D.Neb.1999, 236 B.R. 701. Bankruptcy 3009; Bankruptcy 3011; United States 120.1

159. Social security benefits, frauds within section

Evidence tended to show that defendant perpetrated a fraud upon the government in demanding and receiving checks for social security benefits for the months of January to September, 1964. U. S. v. Fowler, E.D.N.Y.1968, 282 F.Supp. 1. United States 122

160. Surplus Property Act violations, frauds within section

A violation of the Surplus Property Act of 1944, former § 1611 et seq. of the Appendix to Title 50, fell within the prohibition of former § 231 of this title although it did not involve a presentation of a false claim for money. U S v. Guzzone, E.D.N.Y.1958, 168 F.Supp. 711, modified on other grounds 273 F.2d 121. United States 121

161. Veterans' hospitalization applications, frauds within section

The United States had right to maintain action against veteran for hospitalization benefits received for nonservice connected disability on ground that veteran had received benefits after signing statement under oath that he was unable to defray necessary expenses when he was, in fact financially able to do so. U. S. v. Shanks, C.A.10 (Colo.) 1967, 384 F.2d 721. United States 120.1; United States 126

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False statements of financial worth made in connection with sworn application by veteran for treatment of nonservice connected illness in veterans' hospital were false “claims”, “certificates” or “affidavits” used for purpose of obtaining payment of claim upon the United States within meaning of former § 231 of this title. Alperstein v. U.S., C.A.5 (Fla.) 1961, 291 F.2d 455. United States 120.1

False statement of honorably discharged veteran of armed services of United States made for purpose of obtaining admission and free medical treatment in a Veterans' Administration hospital created no liability under former § 231 of this title. U.S. v. Borth, C.A.10 (Kan.) 1959, 266 F.2d 521. United States 120.1

Application for treatment at Veterans' Administration hospital was not “false, fictitious or fraudulent,” within meaning of former § 231 of this title, although applicant negatively answered question whether he was financially able to pay necessary expenses of hospital, where face of application disclosed insurance coverage which could not have been ignored by Administration officials, and applicant made full and complete disclosure of his assets. U. S. v. Schmidt, E.D.Wis.1962, 204 F.Supp. 540. United States 120.1

Veteran, who was admitted to Veterans' Administration hospital for surgical repair of hernia, which was not service-connected, after signing under oath an application with a false negative answer to question inquiring whether he was financially able to pay necessary expenses of hospital care, was guilty of making a false, fictitious, or fraudulent claim against the United States, though he stated in addendum that he had a net worth of some $50,000 with current assets of $10,000. U.S. v. Petrik, D.C.Kan.1956, 154 F.Supp. 598. United States 121

162. Veterans' loan guaranties, frauds within section

Evidence supported implied finding, in suit under former § 231 [now § 3729] of this title against home builder for making false claims to induce Veterans' Administration to grant loan guaranties and pay cash gratuities in connection with purchase of home by veteran, that builder learned of veteran's abandonment of intention to occupy before delivery of deed and mortgage and disbursement of funds by lender. Beckwith v. U. S., C.A.5 (Tex.) 1961, 293 F.2d 471. United States 120.1

163. Vouchers, frauds within section

Under False Claims Act (FCA), government could recover benefit of its bargain with military contractor, which was value that helicopter would have had if it had been of specified quality, for loss of military helicopter on contractor's failure to ensure quality of parts used for remanufacture of helicopter; even though only one part on helicopter was defective, part was “flight critical,” necessary for flight, and contractor billed government for remanufactured helicopters as units, not as assemblages of assorted parts. U.S. ex rel. Roby v. Boeing Co., C.A.6 (Ohio) 2002, 302 F.3d 637, rehearing and suggestion for rehearing en banc denied, certiorari denied 123 S.Ct. 2641, 539 U.S. 969, 156 L.Ed.2d 675. United States 122

Even if government contractor's executive vice president violated criminal statute aimed at “revolving door” abuses by former government employees by representing contractor in matters related to contract, vouchers submitted to government by contractor did not make implicit certification that statute had not been violated, so as to provide basis for action

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under False Claims Act (FCA), absent requirement that contractor certify compliance with statute as condition of its contract. U.S. ex rel. Siewick v. Jamieson Science and Engineering, Inc., C.A.D.C.2000, 214 F.3d 1372, 341 U.S.App.D.C. 459. United States 120.1

Evidence in action under former § 231 of this title supported findings that defendants had caused to be submitted false vouchers wherein work of some employees was charged as direct labor, whereas in fact such work was indirect labor for which no charge was to be made. U.S. v. Ueber, C.A.6 (Mich.) 1962, 303 F.2d 462. United States 122

In action for penalty under former § 231 of this title against wholesaler who bid to furnish 6,600 regulators of designated proprietary number and who furnished regulators of its own manufacture and only 250 regulators of such proprietary number, proof did not establish that two vouchers for 128 regulators were false. U. S. v. National Wholesalers, C.A.9 (Cal.) 1956, 236 F.2d 944, certiorari denied 77 S.Ct. 719, 353 U.S. 930, 1 L.Ed.2d 724. United States 122

If knowledge of munitions manufacturer's employees involved in acts depriving Ordnance Department of inspection of ammunition could have been imputed to manufacturer and those who presented vouchers on manufacturer's behalf for payment of the ammunition, the presentation of pay vouchers therefor represented a “false claim,” within former § 231 of this title. U.S. v. U.S. Cartridge Co., E.D.Mo.1950, 95 F.Supp. 384, affirmed 198 F.2d 456, certiorari denied 73 S.Ct. 645, 345 U.S. 910, 97 L.Ed. 1345. United States 122

164. Miscellaneous frauds within section

Government photography contractor submitted work orders to government quality assurance evaluator at least in part to justify contractor's request for equitable adjustment payment, and, thus, work orders could be basis for liability under False Claims Act (FCA), notwithstanding that production quantities recorded on work orders did not determine exact amount of equitable adjustment settlement; government contracting officers testified that they relied on work orders in deciding to grant equitable adjustment. Shaw v. AAA Engineering & Drafting, Inc., C.A.10 (Okla.) 2000, 213 F.3d 519. United States 120.1

Allegation that government contractor lied about scope of subcontract for provision of training related to in-tank precipitation process operations, in order to get Department of Energy (DOE) to approve a sole-source extension of subcontract for $880,000, and that contractor submitted claims for work that was beyond scope of contract, did not support claim under False Claims Act, as alleged lie was immaterial to sole-source extension, and DOE was aware of terms of contract. Harrison v. Westinghouse Savannah River Co., C.A.4 (S.C.) 1999, 176 F.3d 776. United States 122

Government contractor's interpretation of excavation contract for flood control project as permitting payment based on volume of earth moved as computed from contract drawings, regardless of whether it actually excavated up to lines in drawings, was so unreasonable as to defeat contractor's assertion, in action under Contract Disputes Act (CDA), False Claims Act (FCA), and Forfeiture of Fraudulent Claims Act (FFCA), that it pressed its claims based on good faith belief of entitlement, given clear and unambiguous language of excavation contract regarding excavation required and basis for compensation. Commercial Contractors, Inc. v. U.S., C.A.Fed.1998, 154 F.3d 1357, rehearing denied. United States 120.1

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Government contractor knowingly presented false claims to government, for payment under contracts to supply United States Army with jeep brake-shoe kits, within meaning of False Claims Act, because contractor had at least reckless disregard for falsity of such claims in view of its failure to test brake shoes in accordance with contractual requirements. U.S. ex rel. Compton v. Midwest Specialties, Inc., C.A.6 (Ohio) 1998, 142 F.3d 296. United States 120.1

Former employee, of seller of digital telecommunications switches to the military, failed to show that seller violated False Claims Act when it sold switch to government, despite contention that seller knew switch was defective when it sold switch, where switch was installed, it had bugs, bugs were fixed, and then seller billed the Army and was paid. U.S. ex rel. Anderson v. Northern Telecom, Inc., C.A.9 (Wash.) 1995, 52 F.3d 810, as amended , certiorari denied 116 S.Ct. 700, 516 U.S. 1043, 133 L.Ed.2d 657. United States 122

In civil action by the government for recovery of double damages and forfeitures under provisions of former § 231 of this title evidence sustained finding that government failed to establish defendants through fraud delivered substandard meat to the Army, or that defendants presented false claims for payments. U.S. v. Cherkasky Meat Co., C.A.3 (Pa.) 1958, 259 F.2d 89. United States 122

Contractor providing trucks to government did not violate False Claims Act (FCA) by submitting payment claims for completed trucks and progress payment requests for other trucks, which were impliedly false due to failure to mention alleged nonconformity of trucks to corrosion specifications; contractor was under no obligation to disclose nonconformance or deficiencies in submitting documents. U.S. ex rel. Stebner v. Stewart & Stevenson Services, Inc., S.D.Tex.2004, 305 F.Supp.2d 694. United States 120.1

Manufacturer's alleged mischarging of employee time under multiple contracts with Department of Defense, and presentation of mischarged time to Department for payment or approval, supported claim of liability under False Claims Act. U.S. ex rel. Kozhukh v. Constellation Technology Corp., M.D.Fla.1999, 64 F.Supp.2d 1239. United States 120.1

Army hospital clerical assistant's violation of regulations governing right to benefits under Federal Employees Compensation Act (FECA), by not returning to full employment at a time when he was fully capable of doing so, did not convert claim for abdominal injury after falling in his office, which was valid when presented, to a false claim under False Claims Act. U.S. v. Bottini, W.D.La.1997, 19 F.Supp.2d 632, affirmed 159 F.3d 1357. United States 120.1

Contracting officer's alleged fraudulent conduct in approving delivery order for project that involved clearing of two sedimentation ponds at naval facility, despite knowledge that unsuccessful bidder for subcontract had submitted lower bid than successful bidder, was material to government's decision to approve and pay on delivery order, for purpose of unsuccessful bidder's action against officer under False Claims Act. U.S. ex rel. Durcholz v. FKW Inc., S.D.Ind.1998, 997 F.Supp. 1159, affirmed 189 F.3d 542. United States 122

Submission of false and fraudulent claims to a city redevelopment authority could have violated former § 231 of this title. U. S. v. Kates, E.D.Pa.1976, 419 F.Supp. 846. United States 121

Fraud associated with obligation owed by individual to government was not within purview of former § 231 of this title.

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U. S. v. Marple Community Record, Inc., E.D.Pa.1971, 335 F.Supp. 95. United States 120.1

Extraction from United States of money or property not rightfully due was within purview of former § 231 of this title. U. S. v. Marple Community Record, Inc., E.D.Pa.1971, 335 F.Supp. 95. United States 120.1

In action by United States against government contractor under former § 231 of this title and for commonlaw fraud, evidence established that contractor made false claims upon United States knowing such claims to be false, fictitious and fraudulent, used false bills, receipts, etc., knowing them to contain fraudulent and fictitious statements, intentionally made false statements to United States which were material and upon which United States relied, negligently made misrepresentations to United States which were material and upon which United States relied, and overcharged United States by making statements containing misrepresentations which were material and upon which United States relied. U. S. v. Foster Wheeler Corp., S.D.N.Y.1970, 316 F.Supp. 963, modified on other grounds 447 F.2d 100. United States 120.1

Former § 232 of this title was not intended to apply where there was no collusive bidding in obtaining government contracts, nor any conspiracy between successful bidder and government officials, nor any failure of performance. U.S. ex rel. Edelstein v. Brussell Sewing Mach. Co., S.D.N.Y.1943, 51 F.Supp. 760. United States 122

Liability under the False Claims Act (FCA) could not be based on practice of filing false statements with the United States Customs Service concerning country of origin of apparel imports, on theory that fines and penalties which could be assessed for such mismarketing constituted “obligations” owed by importers to the government, and that when entry documents were falsified, importers attempted to avoid obligation owed to the government; obligation to pay marking duties occurred only if importer failed to take corrective action and Customs then proceeded to levy duties. U.S. ex rel. American Textile Mfrs. Institute, Inc. v. The Limited, Inc., S.D.Ohio 1998, 179 F.R.D. 541, affirmed 190 F.3d 729, rehearing and suggestion for rehearing en banc denied, certiorari denied 120 S.Ct. 1556, 529 U.S. 1054, 146 L.Ed.2d 461. United States 120.1

Medicare insurer's policy of encouraging resubmission of incomplete claims for benefits was not wrongful or otherwise fraudulent or in violation of any Medicare regulations, which would be actionable under the False Claims Act (FCA). U.S. ex rel. Watson v. Connecticut General Life Ins. Co., C.A.3 (Pa.) 2004, 87 Fed.Appx. 257, 2004 WL 234970, Unreported. United States 120.1

IV. REMEDIES OR RELIEF

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191. Election of remedies, remedies or relief

Where basis for both administrative proceedings and civil action for recovery of subsidy payments made pursuant to farm support program was that payee had made false statements to United States concerning eligibility requirements under program, doctrine of election of remedies had no application. U.S. v. Thomas, C.A.5 (Tex.) 1983, 709 F.2d 968. Election Of Remedies 1

United States should have been permitted to elect whether to proceed first with civil action under former § 231 of this title or with criminal prosecution based on same transaction in absence of showing of prejudice to defendants in respective actions or of a want of diligence on the part of United States in prosecution of the suit with which it elected to proceed. U.S. v. Baker-Lockwood Mfg. Co., C.C.A.8 (Mo.) 1943, 138 F.2d 48. Criminal Law 43

192. Exclusive nature of remedy, remedies or relief

The right of the United States to sue for recovery of money obtained from it by means of a fraudulent claim was one existing at common law, and the remedy given by former § 231 of this title was cumulative, and not exclusive. Pooler v. U.S., C.C.A.1 (Me.) 1904, 127 F. 519, 62 C.C.A. 317. United States 126

193. Alternative remedies, remedies or relief

A plaintiff may have set forth alternative legal bases for recovery; and it was permissible for government to proceed under § 489(b) of Title 40, as well as under former § 231 of this title, against defendants who had pleaded guilty to indictment charging them with conspiring to violate former § 231 of this title by causing veterans to file false statements in applications for veterans' priority certificates in connection with purchase of surplus trucks from War Assets Administration. United States v. Guzzone, C.A.2 (N.Y.) 1959, 273 F.2d 121. Federal Civil Procedure 82.1

Alternative legal remedies were not adequate, and thus they did not preclude equitable relief sought by government to recover Medicare reimbursement overpayments made to home health services provider (HHA), since Medicare provider agreements created statutory rights, not contractual rights, showing of wrongful conduct was required to establish guilt under Anti-Kickback Act or liability under False Claims Act, government was not required to pursue administrative action before seeking overpayment action, and judicial economy and legislative intent would not have been served by requiring government to pursue its legal remedies. U.S. ex rel. Roberts v. Aging Care Home Health, Inc., W.D.La.2007, 474 F.Supp.2d 810. Health 535(1)

Government may have set forth alternative legal grounds for recovery and used the remedy under former § 231 of this title in conjunction with other theories. U. S. v. Krietemeyer, S.D.Ill.1980, 506 F.Supp. 289. Federal Civil Procedure 82.1

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Where government contended that defendant dairy had entered into conspiracy with other dairies in restraint of trade and commerce in dairy products in violation of Sherman Antitrust Act, §§ 1 to 7 of Title 15, and that conspiracy resulted in government having to pay higher prices for dairy products for certain of its institutions, government's remedy was not restricted to § 15a of Title 15 permitting government to recover for actual damage proximately caused it by violation of Sherman Antitrust Act, but was entitled, alternatively, to seek recovery of forfeitures and double damages authorized by former § 231 of this title. U. S. v. Beatrice Foods Co., D.C.Utah 1971, 330 F.Supp. 577. United States 122

194. Damages, remedies or relief--Generally

Damages award based on full contract price of brake shoes supplied by government contractor was proper, in action under False Claims Act alleging that contractor sought payment for required brake shoes without performing required production testing, because government received no value under contract. U.S. ex rel. Compton v. Midwest Specialties, Inc., C.A.6 (Ohio) 1998, 142 F.3d 296. United States 122

In view of failure to dispute value of sight drafts paid to persons represented to be eligible to receive payments under farm support program, United States was entitled to recover double damages, based upon face amount of drafts, under sections 3729-3731 of this title in civil action brought to recover subsidy payments made pursuant to farm support program as result of submission of false or fraudulent statements concerning eligibility to participate in program. U.S. v. Thomas, C.A.5 (Tex.) 1983, 709 F.2d 968. United States 120.1

Jury's assessment of $46,538.40 in damages against contractor's vice president, for claim in amount of $77,564 for conspiring to rig bids on construction contracts in Egypt funded by United States, in violation of False Claims Act (FCA), was not excessive to point of shocking conscience, as required for remittitur, when considered in relation to jury's overall damages award of $3.4 million on contract, since jury was not required to find that premium paid by government on contract was distributed evenly across all 56 false claims, and vice president by his own wrong had prevented precise computation of difference between what government paid and what would have been paid without bid-rigging agreement. Miller v. Holzmann, D.D.C.2008, 563 F.Supp.2d 54. Federal Civil Procedure 2377; United States 122

Treble damages would be assessed under False Claims Act against anesthesiologist and his billing secretary for submitting false Medicare claims. U.S. v. Cabrera-Diaz, D.Puerto Rico 2000, 106 F.Supp.2d 234. United States 122

Under the 1986 amendments to False Claims Act, violator was liable to treble rather than double damages, absent any indication that violator cooperated fully with investigation or voluntarily furnished information about violations. U.S. v. Macomb Contracting Corp., M.D.Tenn.1990, 763 F.Supp. 272. United States 122

195. ---- Actual damages, remedies or relief

Having been found to have violated False Claims Act (FCA) based on filing of 1,812 Medicare and Medicaid reimbursement claims that omitted material information, hospital administrator could be required to repay to government entire amount that hospital received on those claims, regardless of whether patients for whom claims were submitted received some, or even all, of medical care reflected in claim forms, whether government would have paid for patients' care had they obtained it elsewhere, or whether private insurers would have paid hospital for patients' care had hospital not billed

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United States. U.S. v. Rogan, C.A.7 (Ill.) 2008, 517 F.3d 449. United States 122

False claim was actionable under former § 231 of this title even though United States had suffered no measurable damages from claim. U. S. v. Hughes, C.A.7 (Ind.) 1978, 585 F.2d 284. United States 120.1

The United States could have recovered from one who had violated former § 231 of this title only the damages that it had actually suffered after having entered into transaction, plus the statutory penalties. U. S. v. Cooperative Grain & Supply Co., C.A.8 (Neb.) 1973, 476 F.2d 47. United States 120.1; United States 122

Even if forfeiture under former § 231 of this title depended upon showing of actual suffering of damage by government and a fair ratio of forfeiture to damage, finding that government had not suffered any "legally recoverable damages" due to action of defendants did not purport to exclude all injury and clearly judge meant no more than that no calculable damage was shown. Toepleman v. U.S., C.A.4 (N.C.) 1959, 263 F.2d 697, certiorari denied 79 S.Ct. 1119, 359 U.S. 989, 3 L.Ed.2d 978. United States 122

Relator, who alleged that District of Columbia and the District of Columbia Public School System submitted a claim for Medicaid reimbursement without maintaining documentation adequate to support that claim, failed to allege that the false claim had caused damage to the government, as required to obtain treble damages under the False Claims Act (FCA); relator alleged that the District was entitled to receive $60 million in Medicaid reimbursement, and that the District submitted a $60 million cost claim. U.S. ex rel. Davis v. District of Columbia, D.D.C.2008, 591 F.Supp.2d 30. United States 122

Government's damages from false billing by university physicians of Medicaid program for services provided by certified nurse midwives satisfied any statutory requirement of damages as element of claim for penalty against hospital under False Claims Act, even though university reached settlement allegedly satisfying United States' claim; for all the time between payment of the allegedly fraudulent bills and the ultimate restoration of its funds through an extended legal proceeding, the government had suffered damages. U.S. ex rel. Romano v. New York Presbyterian, S.D.N.Y.2006, 426 F.Supp.2d 174. United States 122

Government received benefit of bargain, in acquiring trucks from contractor, precluding claim that contractor violated False Claims Act (FCA) by requesting payment without disclosing in invoices that there was alleged noncompliance with specifications regarding corrosion; corrosion issue had been addressed, albeit not at level sought by qui tam plaintiff, and government was satisfied by specific ten year warranty of noncorrosion. U.S. ex rel. Stebner v. Stewart & Stevenson Services, Inc., S.D.Tex.2004, 305 F.Supp.2d 694. United States 120.1

Proof of damage as result of alleged false claim is not a necessary element in establishing liability, under False Claims Act, for knowingly presenting, or causing to be presented, to an officer or employee of the United States Government, a false or fraudulent claim for payment or approval or for knowingly making, using, or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the government, as focus of inquiry was to the claim and the conduct of the claimant, rather than its effect on the government. U.S. ex rel Trim v. McKean, W.D.Okla.1998, 31 F.Supp.2d 1308. United States 122

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Plaintiff need not allege actual damages to recover under False Claims Act. U.S. ex rel. Pogue v. American Healthcorp, Inc., M.D.Tenn.1996, 914 F.Supp. 1507, transferred to 238 F.Supp.2d 258. United States 122

Actual injury is not required for claim under False Claims Act. U.S. v. Kensington Hosp., E.D.Pa.1991, 760 F.Supp. 1120. United States 122

Under former § 231 of this title, the government was entitled to a judgment in an amount reflecting only the actually defective or inferior wire and cable delivered to the government by persons making such false claims. U.S. v. Collyer Insulated Wire Co., D.C.R.I.1950, 94 F.Supp. 493. United States 122

Federal government's damages in action under the False Claims Act would be calculated, for purpose of estimating government's claim in government contractor's Chapter 11 proceeding, on dollar-for-dollar basis in light of undisclosed contingency reserve included in contractor's "best estimate" of cost of completing contract, without any reduction for negotiation concessions made by contractor. In re Bicoastal Corp., Bkrtcy.M.D.Fla.1991, 124 B.R. 598. Bankruptcy 2829; United States 122

196. ---- Bankruptcy claims, damages, remedies or relief

United States was not entitled to treble its allowed claim against debtor-public contractor due to contractor's fraud in overcharging on public contracts pursuant to False Claims Act. In re Bicoastal Corp., Bkrtcy.M.D.Fla.1991, 134 B.R. 50. United States 122

197. ---- Consequential damages, remedies or relief

Language of former § 231 of this title did not include consequential damages resulting from delivery of defective goods. U. S. v. Aerodex, Inc., C.A.5 (Fla.) 1972, 469 F.2d 1003. United States 122

Consequential damages were not recoverable under the False Claims Act (FCA). U.S. ex rel. Roby v. Boeing Co., S.D.Ohio 1999, 79 F.Supp.2d 877. United States 122

198. ---- Punitive damages, remedies or relief

Section 8 housing tenant was not entitled to award of damages for landlord's alleged violation of the Connecticut Unfair Trade Practices Act (CUTPA), where penalties imposed against landlord under the False Claims Act (FCA), for improperly demanding additional rent payments from tenant, served purpose of punitive damages, actual damages requested would be duplicative of those already awarded, and award of attorney fees would be duplicative of those awarded. Coleman v. Hernandez, D.Conn.2007, 490 F.Supp.2d 278. Antitrust And Trade Regulation 389(2); Antitrust And Trade Regulation 397

The punitive nature of the civil penalties and damages awarded under the False Claims Act (FCA) did not cause Massachusetts Housing Finance Agency (MHFA) to be immune from those damages in qui tam action under FCA, where MHFA would pay damages, rather than the Commonwealth, and MHFA charter did not attempt to limit damages awar-

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ded against MHFA for intentional violations of the law, such as were alleged. U.S. ex rel. K & R Ltd. Partnership v. Massachusetts Housing Finance Agency, D.D.C.2001, 154 F.Supp.2d 19, dismissed 2003 WL 21058272. United States 120.1

Damages available under False Claims Act include exemplary damages, which municipal defendants would be immune from paying in absence of contrary congressional intent, considering that available damages exceeded actual damages suffered by federal government and that Act had punitive as well as remedial purpose. U.S. ex rel. Graber v. City of New York, S.D.N.Y.1998, 8 F.Supp.2d 343. Municipal Corporations 743; United States 122

Although government set exemplary damages for losses resulting from contractor's bribery of federal agent, such damages would not be awarded where it was too difficult to separate the proportion of the cost of litigation relating to the bribery and the proportion resulting from the balance of the litigation. U.S. v. Cripps, E.D.Mich.1978, 460 F.Supp. 969. United States 75(5)

Due process balancing test for award of punitive damages was not applicable to determination of treble damages under the False Claims Act, because potentially subjective punitive damages are not at issue; Congress, not a jury, has prescribed in the Act a civil penalty range and mandated the imposition of treble damages. Morse Diesel Intern., Inc. v. U.S., Fed.Cl.2007, 79 Fed.Cl. 116, reconsideration denied 81 Fed.Cl. 311. Constitutional Law 4426; United States 122

199. ---- Nominal damages, remedies or relief

Under former § 231 of this title, mere establishment of the existence of a conspiracy to defraud the United States government without proof of damages, entitled the United States to recover the $2,000 forfeiture provided for in former § 231 of this title and also seemed to allow the recovery of double damages, even if the latter were only nominal in amount. U. S. v. Kates, E.D.Pa.1976, 419 F.Supp. 846. United States 122

Where wire and cable supplied to Army and Navy by defendants making false claims against government were of some value and some of wire and cable was used but any assessment of substantial damages would be speculative and guesswork, double nominal damages would be assessed. U.S. v. Collyer Insulated Wire Co., D.C.R.I.1950, 94 F.Supp. 493. United States 122

200. ---- Apportionment, damages, remedies or relief

Recovery in action brought by the state of Colorado in the name of the United States as a qui tam plaintiff under the False Claims Act to recover against a care center and its shareholders for allegedly filing false cost reports with the Colorado Department of Social Services for medicaid reimbursement required an allocation of damages in accord with the shared funding of the program which paid the fraudulent claims and, hence, required an award which allowed the qui tam plaintiff to recover for itself its share of the fraudulent overpayment, not doubled, and the United States to recover its amount doubled. U.S. ex rel. Woodard v. Country View Care Center, Inc., C.A.10 (Colo.) 1986, 797 F.2d 888. United States 122

Relator in qui tam action was entitled to 25% of proceeds of judgment, since it was original source of information and it

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spent great deal of time and resources detecting and investigating the fraud. U.S. ex rel. Virgin Islands Housing Authority v. Coastal General Const. Services Corp., D.Virgin Islands 2004, 299 F.Supp.2d 483. United States 122

Relator deserved close to maximum statutory share, 24%, of proceeds from $85.7 million settlement of qui tam False Claims Act suit against hospital management company, where relator's initial allegations and knowledge of hospital cost accounting formed foundation for recovery, relator and his counsel contributed decisively to nearly every aspect of case from initial investigation through conclusion of long and complex mediation, including overcoming government's initial reluctance to intervene, government possessed no awareness of company's allegedly fraudulent practices prior to relator's complaint, and relator bore oppressive personal burden in initiating and sustaining case. U.S. ex rel. Alderson v. Quorum Health Group, Inc., M.D.Fla.2001, 171 F.Supp.2d 1323. United States 122

Proceeds from Medicare/Medicaid fraud lawsuit, commenced as qui tam action with prosecution assumed by government, from which qui tam relator was to receive compensation under False Claims Act, included amounts defendants agreed to pay to government under terms of settlement agreement rather than amount of judgments entered against defendants, which could be enforced if payment obligations under agreement were not honored. U.S. ex rel. Fox v. Northwest Nephrology Associates, P.S., E.D.Wash.2000, 87 F.Supp.2d 1103. United States 122

Proof of the extent and duration of each defendant's participation in a conspiracy to defraud the United States was relevant to question of amount of damages each conspirator must pay but had no bearing on issue of liability. U. S. v. Kates, E.D.Pa.1976, 419 F.Supp. 846. Conspiracy 19

201. ---- Causation, damages, remedies or relief

Before United States could have recovered double damages pursuant to former § 231 of this title, United States must have demonstrated element of causation between false statements and loss and thus, in context of federal housing case, United States must have shown that false statements in application were the cause of subsequent mortgage defaults. U. S. v. Miller, C.A.5 (La.) 1981, 645 F.2d 473. United States 120.1

In action under former § 231 of this title against real estate salesman alleging that false certification submitted by salesman induced Federal Housing Administration [now Department of Housing and Urban Development] to insure certain mortgages upon which mortgagors defaulted, requiring United States to honor claims of mortgagee, government was not entitled, as damages, to recover amount of statutory forfeitures and double amount of damages alleged, since damages were sustained by United States because of defaults by mortgagors and to some extent were increased by unexpected diminution of property value caused by lead paint injunction and neither of those events were caused by or related to the false certifications. U. S. v. Hibbs, C.A.3 (Pa.) 1977, 568 F.2d 347. United States 120.1

In order to have recovered damages under former § 231 of this title based on claimed false certifications by real estate broker to Federal Housing Administration [now Department of Housing and Urban Development], the United States was required to show that the government had paid a claim based upon a certificate containing false information which had resulted in damages sustained ‘by reason of‘ the doing or committing the act. U. S. v. Hibbs, C.A.3 (Pa.) 1977, 568 F.2d 347. United States 120.1

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Absent evidence showing that the presence of the non-genuine signatures on various documents submitted to Department of Housing and Urban Development (HUD) by home mortgage lender to obtain insurance was in any way related to the actual reason that various borrowers defaulted, lender was not liable under False Claims Act (FCA) for actual damages to the government flowing from the lender's false submissions. U.S. ex rel. Fago v. M & T Mortg. Corp., D.D.C.2007, 518 F.Supp.2d 108. United States 122

Insurance agent could cause damages to government, as required for liability under False Claims Act (FCA) for making or using false documents to obtain payment or approval of a false crop insurance claim on behalf of persons not eligible for insurance, even if government would have sustained identical losses, had persons with true interest in crops applied for insurance and obtained the payments for crop damage. U.S. v. Hawley, N.D.Iowa 2008, 544 F.Supp.2d 787, subsequent determination 566 F.Supp.2d 918. United States 120.1

Government established probable validity of its claim that sole shareholder of Medicare provider individually caused false Medicare claims to be submitted, for purposes of government's claim under the Federal Debt Collection Procedures Act (FDCPA) for prejudgment remedies in connection with its claim against shareholder, i.e., attachment of real property shareholder owned individually, where two confidential witnesses singled shareholder out individually as having participated in alleged fraudulent coding of Medicare submission forms, and audit supported those witnesses' assertions. U.S. ex rel Doe v. DeGregorio, M.D.Fla.2007, 510 F.Supp.2d 877. United States 75.5

Government sufficiently alleged chain of causation between private insurer's violations of the Medicare Secondary Payer (MSP) rules and providers' submission of claims to Medicare for payment to state claim under False Claims Act (FCA); government alleged that insurer incorrectly denied claims or paid claims as secondary payer when it should have paid as the primary payer as result of its violations of MSP rules, that claims were then returned to providers which originally submitted them, and that the providers then submitted the claims to Medicare for payment. U.S. ex rel. Drescher v. Highmark, Inc., E.D.Pa.2004, 305 F.Supp.2d 451. United States 122

Small Business Administration (SBA) was not entitled to recover amounts paid to lender under loan guaranty agreement based on claim that misrepresentation by lender, that specified limits on amount of proceeds from loan which could be applied to satisfaction of prior debt had not been exceeded, violated False Claims Act; Act required that misrepresentation cause loss, and default of borrower which triggered payment of guaranty occurred because of destruction of business by fire. U.S. v. First Nat. Bank of Cicero, N.D.Ill.1990, 736 F.Supp. 891, reversed on other grounds 957 F.2d 1362. United States 53(8)

Medicare insurer's alleged actions of engaging in deceptive practices to ensure that it received a favorable contractor performance evaluation (CPE) from government did not support claim under False Claims Act, absent showing that insurer caused or attempted to cause through its actions a claim for payment to be presented to government that it would not have paid had CPE been deficient. U.S. ex rel. Watson v. Connecticut General Life Ins. Co., E.D.Pa.2003, 2003 WL 303142, Unreported, affirmed 87 Fed.Appx. 257, 2004 WL 234970. United States 120.1

202. ---- Deductions, damages, remedies or relief

In computing double damages which were authorized by former § 231 et seq. of this title, the government's actual dam-

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ages were doubled before any subtractions were made for compensatory payments previously received by the government from any source; thus, in computing double damages to be assessed against subcontractor, which made three shipments of falsely branded electron tubes to prime contractor which caused prime contractor to submit false claims to United States for radio kits, government's damages under former § 231 et seq. of this title were required to have been calculated by doubling the amount of its original loss and only then deducting the prime contractor's damage payment from that doubled amount. U. S. v. Bornstein, U.S.N.J.1976, 96 S.Ct. 523, 423 U.S. 303, 46 L.Ed.2d 514. United States 120.1

Amount of damages to which United States was entitled in civil action to recover subsidy payments made pursuant to farm support program as result of submission of false or fraudulent statements concerning eligibility to participate in program would not be reduced by benefit to Government from increased production resulting from payee's farm operations. U.S. v. Thomas, C.A.5 (Tex.) 1983, 709 F.2d 968. United States 120.1

In calculating amount of damages under False Claims Act (FCA), credit for payment made on fraudulently obtained federally insured mortgages would be applied once actual damages had been trebled. U.S. v. Stella Perez, D.Puerto Rico 1993, 839 F.Supp. 92, reversed 55 F.3d 703, 139 A.L.R. Fed. 813, on remand 956 F.Supp. 1046. United States 122

Where contractor who utilized collusive bidding scheme to obtain repair contracts on residential property conveyed to Department of Housing and Urban Development by foreclosure of insured mortgages admitted a 10 percent profit and admitted amount by which contracts were inflated, that is, profits he allowed collusive bidders to retain, the United States was entitled to recover double the amount of all such profits and the contractor was entitled to reduce his double damages by amount government had recovered from the other contractors. U.S. v. Cripps, E.D.Mich.1978, 460 F.Supp. 969. United States 120.1

In computing double damages authorized by former § 231 of this title, total gross damages were doubled before subtraction was made for compensatory payments. U. S. v. Canada, S.D.Ind.1977, 425 F.Supp. 91. United States 120.1

In determining damages of United States under former § 231 of this title, credit due defendant should have been first deducted from single damages as finally determined and remainder should have been doubled for purpose of determining amount of damages to which United States was entitled. U. S. v. Klein, W.D.Pa.1964, 230 F.Supp. 426, affirmed 356 F.2d 983. United States 122

Amounts government had recovered after initial loss on false claim by insured lending institution were subtracted after, not before, doubling initial loss to establish recovery. U. S. v. Globe Remodeling Co., D.C.Vt.1960, 196 F.Supp. 652. United States 120.1

203. ---- Measure, damages, remedies or relief

Under former § 231 et seq. of this title government's actual damages, as result of shipments of falsely branded electron tubes to prime contractor by subcontractor which caused prime contractor to submit false claims to United States for radio kits, were equal to difference between market value of the tubes it received and retained and the market value that the tubes would have had if they had been of the specified quality. U. S. v. Bornstein, U.S.N.J.1976, 96 S.Ct. 523, 423 U.S. 303, 46 L.Ed.2d 514. United States 120.1

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Government was entitled to statutory penalty of $5,000 and $147,000 in treble damages for contractor's violation of False Claims Act, even though government sought only $98,000 in damages, treble damages were three times amount of difference between amount of original invoice and amount of altered invoice which was submitted by contractor to government. Young-Montenay, Inc. v. U.S., C.A.Fed.1994, 15 F.3d 1040. United States 122

Damages recoverable under former § 231 of this title from general contractor, who was convicted of bid rigging in connection with various contracts to refurbish properties acquired by Department of Housing and Urban Development, were measured by difference between the amount the government actually paid in reliance on the false claims and the amount it would have paid had there been fair, open and competitive bidding; such amount was not merely the difference between the amount paid out by the government and the actual cost of performance to the successful bidder, especially in face of contractor's assertion that industry-wide profits figures would have demonstrated that his profit margin was neither unusual nor excessive. Brown v. U. S., Ct.Cl.1975, 524 F.2d 693, 207 Ct.Cl. 768. United States 120.1

Where government contractor agreed to supply new bearings to Navy and invoiced government accordingly, and reworked bearings were supplied, claims for $27,000 for new bearings were false, and measure of damages under former § 231 of this title was twice $27,000 plus $2,000 penalty for each invoice, though it cost government $160,919.18 to remove and replace the reworked bearings from aircraft engines. U. S. v. Aerodex, Inc., C.A.5 (Fla.) 1972, 469 F.2d 1003. United States 122

Ordinarily measure of government's damages under former § 231 of this title was the amount paid out by reason of false statements over and above what it would have paid if claims had been truthful. U. S. v. Woodbury, C.A.9 (Or.) 1966, 359 F.2d 370. United States 120.1

Where dairyman delivered recombined milk in violation of his contract with the United States for delivery of fresh milk and presented claims for payment for delivery of fresh milk, damages would not be limited to difference between value of milk delivered and value of that contracted to be delivered, but would be based on percentage of milk which was unused. Faulk v. U.S., C.A.5 (Tex.) 1952, 198 F.2d 169. United States 122

Where dairyman had defrauded federal government by delivering reconstituted milk in place of fresh milk and charging for fresh milk, fact that government was unable to prove with absolute mathematical accuracy the amount of milk unconsumed by the troops, the measure of damages being based upon percentage of unused milk, did not preclude recovery of double damages. Faulk v. U.S., C.A.5 (Tex.) 1952, 198 F.2d 169. United States 122

Under the False Claims Act (FCA), amount of damages sustained by government based on landlord's false statements, i.e., improper demand of additional rent payments from Section 8 housing tenant, was treble the total of improper rental subsidy payments made to landlord on six occasions, plus civil penalty of $5,500 for each of the six violations. Coleman v. Hernandez, D.Conn.2007, 490 F.Supp.2d 278. United States 122

Supplier who made false claims for payment to government agency would not have damages limited to amount government paid for tool where government failed to present sufficient evidence concerning fair market value of tools. U.S. v. Advance Tool Co., W.D.Mo.1995, 902 F.Supp. 1011, affirmed 86 F.3d 1159, certiorari denied 117 S.Ct. 1254, 520 U.S.

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1120, 137 L.Ed.2d 334. United States 120.1

Measure of damages under former § 231 of this title in cases involving collusive bidding was the difference between what the government actually paid the contractor and what it would have paid for the same work in the competitive market. U.S. v. Cripps, E.D.Mich.1978, 460 F.Supp. 969. United States 120.1

In action by United States, under former § 231 of this title, to recover for false claims presented in connection with contract for sale of meat products to government, damage to government was difference between value of what government was entitled to receive under the contracts, and the value of what it actually received. U. S. v. American Packing Corp., D.C.N.J.1954, 125 F.Supp. 788. United States 120.1

In action by United States, under former § 231 of this title, to recover for false claims presented in connection with 98 contracts for sale of meat products to government, wherein United States' loss on each contract was almost incapable of determination, the sum total of all the improper material furnished in fulfilling contract could have been used in measuring the amount of loss. U. S. v. American Packing Corp., D.C.N.J.1954, 125 F.Supp. 788. United States 120.1

In action by United States under former § 231 of this title, to recover for false claims presented in connection with contracts for sale of meat products, damage to United States was calculated upon price differential between lowest market quotation for grades of meat which would have met the contract requirement and highest market quotation for types of meat actually furnished. U. S. v. American Packing Corp., D.C.N.J.1954, 125 F.Supp. 788. United States 120.1

Damages suffered by the United States from falsity or fraud of corporations were under former § 231 of this title, irrespective of mitigation, difference between what United States advanced in reliance on such false claims and what the United States would have advanced if the false items had not been included in the claims. U.S. v. American Precision Products Corp., D.C.N.J.1953, 115 F.Supp. 823. United States 120.1

In determining damage in action for forfeitures and double damages under this section for allegedly making false claims against government for meat products sold, sum total of all improper material furnished in fulfilling contracts could be used in measuring amount of government's loss rather than individual losses suffered by government in each contract. U.S. v. American Packing Corp., D.C.N.J.1953, 113 F.Supp. 223. United States 122

204. ---- Mitigation, damages, remedies or relief

Employee of city housing authority, who prevailed on his retaliation action against authority under whistleblower provision of False Claims Act (FCA), was not prevented from recovering back pay based on his alleged failure to mitigate damages, as authority did not allege failure to mitigate damages as affirmative defense and issue was not presented to jury. Wilkins v. St. Louis Housing Authority, E.D.Mo.2001, 198 F.Supp.2d 1080, affirmed 314 F.3d 927. Municipal Corporations 192

Defendant, who was sued by United States under former § 231 of this title, was not entitled to mitigation of damages because of payments made to United States by third party in settlement of claim of United States for damages. U. S. v.

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Klein, W.D.Pa.1964, 230 F.Supp. 426, affirmed 356 F.2d 983. Damages 59

Bankruptcy dividend received by United States from manufacturers was not credited in mitigation of damages in action under former § 231 of this title. U.S. v. American Precision Products Corp., D.C.N.J.1953, 115 F.Supp. 823. United States 120.1

Damages of the United States under former § 231 of this title were not mitigated by goods which the United States never received. U.S. v. American Precision Products Corp., D.C.N.J.1953, 115 F.Supp. 823. United States 120.1

205. ---- Multiple violations, damages, remedies or relief

Under former § 231 of this title, lump sum in damages, including $2,000 forfeit, should have been assessed for each separate Public Works Administration project in connection with which defendants conspired to rig bidding, since incidence of the fraud on each additional project was clearly individualized. U. S. ex rel. Marcus v. Hess, U.S.Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

Award of treble damages was warranted in qui tam False Claims Act (FCA) multi-claim suit alleging that group health insurer had caused insureds to file large numbers of false claims for Social Security Disability Insurance (SSDI). U.S. ex rel. Loughren v. Unumprovident Corp., D.Mass.2009, 604 F.Supp.2d 269. United States 122

Amount of actual damages sustained by the government, to be trebled pursuant to the False Claims Act (FCA) in a suit against a technology company regarding a scheme to defraud the government in contracts solicited under the federal Small Business Innovation Research Program (SBIR), was the amount paid out on the four contracts at issue, i.e., $1,657,455, despite claim that the government had gotten what it paid for and was therefore not damaged; batteries developed through the SBIR funding belong to the company, not the government, and in any event, the value of the program lay not in innovation, but in innovation by eligible small businesses for whom the funding was intended, which was precisely what the company denied to the government. U.S. ex rel. Longhi v. Lithium Power Technologies, Inc., S.D.Tex.2008, 530 F.Supp.2d 888, affirmed 575 F.3d 458. United States 122

Nigeria's alleged repayment of loans made to it by United States Export-Import Bank's for the purchase of defendant manufacturer's industrial pumps did not nullify government's damages, arising out of manufacturer's alleged violations of False Claims Act (FCA) by failing to disclose improper commissions paid to Nigerian sales agent on supplier's certificates sent by manufacturer to Bank; compliance with the supplier's certificates was critical to eligibility for Bank financing rendering manufacturer liable for the full loan amount for the harm imposed upon Bank, and, even though Nigeria had repaid the loans at issue, Nigeria had failed to repay other Bank loans totaling over $973 million, $618 million of which had eventually been forgiven. U.S. ex rel. Purcell v. MWI Corp., D.D.C.2007, 520 F.Supp.2d 158. United States 122

School board which, through outside contractor, charged rates to federal programs for federal unemployment insurance in violation of False Claims Act (FCA) was liable, not for number of contracts it entered into with outside contractor or number of times it agreed to participate in improper rate system, but number of times it made claims to government that were false. U.S. ex rel. Garibaldi v. Orleans Parish School Bd., E.D.La.1999, 46 F.Supp.2d 546, vacated 244 F.3d 486,

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rehearing and rehearing en banc denied 264 F.3d 1143, certiorari denied 122 S.Ct. 808, 534 U.S. 1078, 151 L.Ed.2d 693, rehearing denied 122 S.Ct. 1198, 534 U.S. 1172, 152 L.Ed.2d 137, reentered 2003 WL 22174241. United States 122

206. ---- Tax deductibility, damages, remedies or relief

Amount paid by taxpayer in settlement of suit under former § 231 of this title and characterized as common law contractual damages in settlement offer accepted by United States was deductible as ordinary and necessary business expense under § 162(a) of Title 26 or as loss under § 165 of Title 26, and allowance of such deduction did not frustrate public policy since payments were compensatory and remedial, not penal. Grossman & Sons, Inc. v. C.I.R., Tax Ct.1967, 48 T.C. 15.

207. Back pay, remedies or relief

Plaintiff who brought whistleblower suit under False Claims Act (FCA) alleging that she had been terminated from employment in retaliation for her reports of alleged Medicare fraud by her employer did not sustain damages sufficient to support recovery of double back pay, where plaintiff started job with a new employer on day after her termination, with an equal if not better salary and benefits package. Hammond v. Northland Counseling Center, Inc., C.A.8 (Minn.) 2000, 218 F.3d 886. Labor And Employment 866

Former employee, who prevailed in her action against employer under whistleblower-protection provision of False Claims Act, could recover both double back pay and compensation for emotional distress, despite employer's contention that this constituted duplicative recovery. Neal v. Honeywell, Inc., C.A.7 (Ill.) 1999, 191 F.3d 827. Labor And Employment 866

Back pay awarded to employee of city housing authority, who prevailed on his retaliation claim against employer under whistleblower provision of False Claims Act (FCA), would be doubled, pursuant to FCA, after deduction of mitigating income; deduction of mitigating income before doubling of award avoided windfall to employee of doubling amount he did not lose, as well as fully compensated employee under FCA. Wilkins v. St. Louis Housing Authority, E.D.Mo.2001, 198 F.Supp.2d 1080, affirmed 314 F.3d 927. Municipal Corporations 192

Employee of city housing authority, who prevailed on retaliation claim under whistleblower provision of False Claims Act (FCA) against authority, was only entitled to $ 10,000 in front pay to compensate employee for lost wages from date of jury's finding of back pay to date employee reasonably should have been able to find replacement employment; it was not likely employee would have remained in position until he retired, and employee did not mitigate damages by looking for work in the private sector, in other fields, or in other locations. Wilkins v. St. Louis Housing Authority, E.D.Mo.2001, 198 F.Supp.2d 1080, affirmed 314 F.3d 927. Municipal Corporations 192

208. Emotional distress, remedies or relief

Award of $200,000 for emotional distress was not excessive in former employee's action against employer for retaliatory discharge and harassment in violation of whistleblower-protection provision of False Claims Act, where manager's threats to physically injure whoever the whistleblower was took former employee's case out of the ordinary. Neal v. Honeywell, Inc., C.A.7 (Ill.) 1999, 191 F.3d 827. Labor And Employment 867

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209. Fees and costs, remedies or relief

Relator in qui tam action brought pursuant the False Claims Act (FCA) was not entitled to personal expenses incurred during litigation, including travel expenses and reimbursement for time away from his business. U.S. ex rel. Harrison v. Westinghouse Savannah River Co., C.A.4 (S.C.) 2003, 352 F.3d 908. United States 122

Award of attorney fees against the plaintiff under the False Claims Act is reserved for rare and special circumstances. Pfingston v. Ronan Engineering Co., C.A.9 (Cal.) 2002, 284 F.3d 999. United States 122

Government contractor that was defendant in qui tam action under False Claims Act could not challenge relators' entitlement to more than nominal attorneys' fees and costs following settlement in which contractor agreed to pay such fees and costs, on grounds that relators would have lost had they litigated to judgment count that was not taken over by attorney general; contractor did not appeal from judgment on settlement and had no business invoking defenses it could have raised had case been litigated to judgment, as it could not demand benefits of favorable outcome in litigation without taking risk of loss. U.S. ex rel. Fallon v. Accudyne Corp., C.A.7 (Wis.) 1996, 97 F.3d 937. United States 122

District court did not abuse its discretion in awarding costs to military contractor which prevailed in False Claims Act (FCA) litigation where contractor committed no impropriety or misconduct and where magistrate, whose findings district court adopted, reduced requested award by 75% after careful analysis. U.S. ex rel. Lindenthal v. General Dynamics Corp., C.A.9 (Cal.) 1995, 61 F.3d 1402, certiorari denied 116 S.Ct. 1319, 517 U.S. 1104, 134 L.Ed.2d 472. United States 122

For purposes of determining amount which United States was entitled to recover under former § 231 et seq. of this title which followed default on Federal Housing Administration [now Department of Housing and Urban Development] insured and Veteran's Administration guaranteed mortgages which had been obtained through presentation of false information, government was entitled to the reasonable expenses incurred in preserving the property following default. U.S. v. Ekelman & Associates, Inc., C.A.6 (Mich.) 1976, 532 F.2d 545. United States 120.1

Assessment of attorneys' fees against trustee of foundation of which qui tam plaintiff was “instrumentality” was justified where trustee knew from 13 previous lawsuits brought in his individual capacity that mandamus relief which he sought could not be granted, and 14th lawsuit filed in official capacity was based on identical facts and brought against substantially same defendants. Public Interest Bounty Hunters v. Board of Governors of Federal Reserve System, N.D.Ga.1982, 548 F.Supp. 157. Mandamus 190

Where qui tam action was dismissed for lack of jurisdiction on ground that action was based upon evidence or information in possession of the United States at time action was brought, court had no authority to allow relator compensation for his services in drawing complaint and other services in connection with the action. U.S. ex rel. McLaughlin v. American Chain & Cable Co., S.D.N.Y.1945, 62 F.Supp. 302. Federal Civil Procedure 2728

Government contractor was not entitled to recover statutory costs after prevailing in employee's False Claims Act (FCA) suit, in light of chilling effect taxing of costs would have on future FCA actions; case was close and difficult, employee acted in good faith and with propriety, and subcontractors involved in project had been found liable for dumping toxic

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waste during construction as result of employee's other FCA suits. U.S. ex rel. Pickens v. GLR Constructors, Inc., S.D.Ohio 2000, 196 F.R.D. 69. United States 122

Costs of inspection and repair incurred by the government as a result of a contractor's false representation that a product passed inspection pursuant to the contract are recoverable as single damages under the False Claims Act (FCA). BMY--Combat Systems Div. of Harsco Corp. v. U.S., Fed.Cl.1998, 44 Fed.Cl. 141. United States 122

210. Penalties, remedies or relief--Generally

In addition to treble damages, the False Claims Act requires court to award not less than $5,000 and not more than $10,000 for each false claim or statement submitted to the government, even if no damages were caused by the false submissions. In re Schimmels, C.A.9 (Nev.) 1996, 85 F.3d 416. United States 122

In action by the United States, based upon false claims, the United States was entitled to recover a forfeiture of $2,000 for each false claim made and in addition double the amount of damages sustained by reason of such false claims. U. S. v. Grannis, C.A.4 (N.C.) 1949, 172 F.2d 507, certiorari denied 69 S.Ct. 1160, 337 U.S. 918, 93 L.Ed. 1727. United States 122

211. ---- Actual damages, penalties, remedies or relief

No damages need be shown in order to recover civil penalty under False Claims Act. U.S. ex rel. Hagood v. Sonoma County Water Agency, C.A.9 (Cal.) 1991, 929 F.2d 1416, on remand. United States 122

Former § 231 of this title permitted recovery of the forfeiture without the proving of actual damages. U. S. v. Rohleder, C.C.A.3 (Pa.) 1946, 157 F.2d 126.

Imposition of $5,000 civil penalty against subcontractor under False Claims Act (FCA) for each false claim submitted to federal agency was within court's broad discretion, although that penalty was minimum that could have been imposed; United States suffered no actual damages, United States did not document any of its detection, investigation, and litigation costs, subcontractor was punished by incarceration on his conviction in collateral criminal matter, and subcontractor had inability to pay. U.S. ex rel. Virgin Islands Housing Authority v. Coastal General Const. Services Corp., D.Virgin Islands 2004, 299 F.Supp.2d 483. United States 122

Under former § 231 of this title, United States was entitled to recover $2,000 forfeiture even in absence of proof of actual damages because of expense incurred in efforts to protect its funds and property. U. S. v. Hibbs, E.D.Pa.1976, 420 F.Supp. 1365, vacated 568 F.2d 347. United States 122

Fact that United States suffered no actual damages from actions of president of ordance parts contractor in taking checks, which were made payable to banks for distribution to the contractor, which was continuing in operation under former § 701 et seq. of Title 11, and two of its subcontractors, and forging the names of the payees and depositing the checks to the contractor's account did not preclude finding that president was subject to forfeiture provisions of former § 231 of

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this title as, even though the subcontractors were eventually made whole, government was exposed to potential double liability. U. S. v. Silver, E.D.N.Y.1974, 384 F.Supp. 617, affirmed 515 F.2d 505. United States 122

Forfeiture under former § 231 of this title was in nature of punitive damages and should not have been precluded by finding that no actual damages have as yet been suffered by government. U. S. v. Fox Lake State Bank, N.D.Ill.1963, 225 F.Supp. 723. United States 120.1

It was not necessary that United States suffered actual damage before forfeitures under former § 231 of this title could have been collected. U. S. v. Cherokee Implement Co., N.D.Iowa 1963, 216 F.Supp. 374. United States 122

Subcontractor, who was required to submit weekly payrolls for work performed on National Guard Armory, and who submitted to United States two false payrolls, was liable to United States, which sustained no actual damages, for two forfeitures of $2,000 each under former § 231 of this title. U. S. v. Sanders, E.D.Ark.1961, 194 F.Supp. 955. United States 122

Where corporate government contractor sued for costs and damages resulting from termination of government contract and United States counterclaimed pursuant to former § 231 of this section which provided that everybody knowingly making a false claim against United States should have forfeited $2,000 and paid double the damages sustained, since United States neither alleged nor proved damages, its recovery upon showing of fraud was limited to $2,000. Wagner Iron Works v. U.S., Ct.Cl.1959, 174 F.Supp. 956, 146 Ct.Cl. 334. United States 122

The forfeiture imposed for fraudulent claims under former § 231 of this title amounted to a congressional declaration of liquidated damages, and could have been awarded without allegation or proof of specific damage. U.S. v. Johnston, W.D.Okla.1956, 138 F.Supp. 525. United States 122

212. ---- Injury, penalties, remedies or relief

Former § 231 of this title permitted recovery of forfeiture even though government was not injured by assertion of claim. U. S. v. Tieger, C.A.3 (N.J.) 1956, 234 F.2d 589, certiorari denied 77 S.Ct. 262, 352 U.S. 941, 1 L.Ed.2d 237.

Former employers properly invoked defense that United States suffered no injury, in former employee's False Claims Act (FCA) qui tam action; even if it was not necessary for employee to demonstrate monetary damages, she was still required to prove that United States was injured by filing that occurred with knowledge of false or fraudulent claim. U.S. ex rel. Mikes v. Straus, S.D.N.Y.1996, 931 F.Supp. 248, motion to certify appeal denied 939 F.Supp. 301. United States 122

Alleged kick-back scheme, whereby bids for provision of housing in connection with relief effort were inflated to assure that defendant officials would receive kick-back, caused injury to funds or property of United States sufficient to support cause of action under False Claims Act [31 U.S.C.A. §§ 3729-3731]; federal Government had significant role in administration of disaster program, funds were characterized as “federal” funds, and state had duty to return to Federal Government any of funds advanced to state which were in excess of actual expenditures. U.S. v. Killough, M.D.Ala.1986, 625 F.Supp. 1399. United States 120.1

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213. ---- Amount, penalties, remedies or relief

On proof by United States of making by defendant of claim on United States, having known it to be false, United States was entitled, without proof of damage, to recover $2,000 forfeiture under former § 231 of this title. Fleming v. U.S., C.A.10 (N.M.) 1964, 336 F.2d 475, certiorari denied 85 S.Ct. 889, 380 U.S. 907, 13 L.Ed.2d 795. United States 122

To the government, a false claim, successful or not, in always costly, and government could have protected itself against such costs though damages was not explicitly or nicely ascertainable; and former § 231 of this title, which assessed cost of a single false claim at $2,000, even when applied to a multiple offender, was not unreasonable when balanced against expense of constant Treasury vigil necessitated by such false claims. Toepleman v. U.S., C.A.4 (N.C.) 1959, 263 F.2d 697, certiorari denied 79 S.Ct. 1119, 359 U.S. 989, 3 L.Ed.2d 978. United States 94

Sole shareholder of Medicare provider failed to show that government seized more than was allegedly owed for his and provider's violations of the False Claims Act (FCA), as required to quash writs of attachment issued as to real property he owned individually, pursuant to the Federal Debt Collection Procedure Act (FDCPA), where evidence showed that value of encumbered assets was less than government sought to recover. U.S. ex rel Doe v. DeGregorio, M.D.Fla.2007, 510 F.Supp.2d 877. United States 75.5

Appropriate civil penalty in a False Claims Act (FCA) suit was $10,000 for each false claim; breadth of the conspiracy at issue was intricate, far-reaching, and involved a deliberate attempt to rig bids, and imposing a minimum penalty would have served as little deterrent to would-be bid-riggers on future contracts in countries in which the successful completion of construction projects, within budget, would be vital to the restoration of the country's infrastructure. U.S. ex rel. Miller v. Bill Harbert Intern. Const., Inc., D.D.C.2007, 501 F.Supp.2d 51. United States 122

Each of 10 fraudulent subcontracting bills submitted to housing authority was false payment demand upon government under False Claims Act, and, therefore, each warranted separate, individual, civil penalty of $5,000, although there was only one claim. U.S. ex rel. Virgin Islands Housing Authority v. Coastal General Const. Services Corp., D.Virgin Islands 2004, 299 F.Supp.2d 483. United States 122

Civil penalties would not be assessed under False Claims Act against anesthesiologist and his billing secretary for submitting false Medicare claims on ground that if court were to impose civil penalties of between $5,000 and $10,000 for each one of the 455 false claims, as suggested in the Act, in addition to the treble damages that had been imposed, total would be an excessive fine of between $2,275,000 and $4,550,000. U.S. v. Cabrera-Diaz, D.Puerto Rico 2000, 106 F.Supp.2d 234. United States 122

Total of $1,575,036 in damages and penalties for illegal redemption of food stamps in violation of False Claims Act was not grossly disproportional to gravity of defendant's alleged offense, and thus did not violate the Excessive Fines Clause; Government was willing to limit its request to the minimum amount authorized by the False Claims Act, which would result in treble damages of $255,036 and a $5,000 penalty per each of the 264 false claims. U.S. v. Byrd, E.D.N.C.2000, 100 F.Supp.2d 342. Agriculture 2.6(5)

Defendant's four civil penalties under False Claims Act would be assessed at statutory minimum of $5,000 each, even

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though government incurred investigative costs of $92,042.21, and even though restitution ordered in criminal proceeding did not account for costs of detection, investigation and prosecution; given treble damages awarded in favor of government, government was already receiving over $200,000 in excess of what it had proven it lost. U.S. v. Peters, D.Neb.1996, 927 F.Supp. 363, affirmed 110 F.3d 616, certiorari denied 118 S.Ct. 162, 522 U.S. 860, 139 L.Ed.2d 106. United States 122

Double jeopardy clause did not bar imposition, under False Claims Act, of minimum civil penalty of $5,000 for each of four violations, and treble the relatively large amount of actual damages, i.e., $153,476 despite defendant's criminal convictions based on same conduct; damages and civil penalties to which government was entitled under Act, $480,428, could not be said to bear no rational relation to remedial goal of making government whole for its proven losses of $245,518.21. U.S. v. Peters, D.Neb.1996, 927 F.Supp. 363, affirmed 110 F.3d 616, certiorari denied 118 S.Ct. 162, 522 U.S. 860, 139 L.Ed.2d 106. Double Jeopardy 25

Fine of $5,000 for each of defendant's 23 violations of False Claims Act was not excessive; defendant had committed fraudulent acts in connection with Minority Business Development Agency (MBDA) grants by utilizing employees, whose salaries were funded by federal grant monies, in private matters for defendant's firm. U.S. v. Boutte, E.D.Tex.1995, 907 F.Supp. 239, affirmed 108 F.3d 332. United States 122

Civil penalty of $290,000 for False Claim Act violations that resulted in actual damages of $1,630 was constitutionally excessive, and would be reduced to $35,000. U.S. ex rel. Smith v. Gilbert Realty Co., Inc., E.D.Mich.1993, 840 F.Supp. 71. Fines 1.3; United States 122

Imposing civil penalty of $2,000 against contractor eight times for each false certification presented penalized contractor solely for its own wrongful acts and was permissible under False Claims Act. U.S. v. Zan Mach. Co., Inc., E.D.N.Y.1992, 803 F.Supp. 620. United States 122

Civil penalty in amount of $5,000 for each of 32 claims would be imposed upon defense contractor's shareholders for submitting false claims to Government, where Government did not present any reason why higher fine of $10,000 per claim was appropriate. U.S. v. Fliegler, E.D.N.Y.1990, 756 F.Supp. 688. United States 122

Where physician was found to have submitted 39 false medicare claims, court was mandated to impose $2,000 forfeiture for each claim, despite asserted lack of relationship between the $549.04 that physician acquired from filing of the false claims and the total $78,000 forfeiture penalty; declining to follow *Peterson v. Weinberger*, 508 F.2d 45 (5th Cir.); *United States v. Greenberg*, 237 F.Supp. 439 (S.D.N.Y.). U.S. v. Diamond, S.D.N.Y.1987, 657 F.Supp. 1204. United States 122

Mobile home owner was liable to the United States for $2,000 penalty and cost of litigation for violating the False Claims Act in submitting claim for flood loss under the National Flood Insurance Program, even though the government did not pay any money for the claim. Thevenot v. National Flood Ins. Program, W.D.La.1985, 620 F.Supp. 391. United States 122

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Where contractor unlawfully claimed $1,635,544 for false reimbursement on bond premiums and obtained $688,678 for false indemnity payments to its parent company, it was liable for civil penalty of $50,000 and treble damages of $6,972,666 under the False Claims Act, for a total of $7,022,666, notwithstanding contractor's claim that the alleged fraud on the contracts was not pervasive was limited to only a few mid-level employees, as key executives knowingly defrauded the government on six separate occasions involving four significant federal contracts. Morse Diesel Intern., Inc. v. U.S., Fed.Cl.2007, 79 Fed.Cl. 116, reconsideration denied 81 Fed.Cl. 311. United States 122

Government established that contractor violated the False Claims Act (FCA) by presenting a false claim for payment and knowingly using false records or statements to support the claim, rendering it liable for statutory penalty of $10,000. Daewoo Engineering and Const. Co., Ltd. v. U.S., Fed.Cl.2006, 73 Fed.Cl. 547, affirmed 557 F.3d 1332, rehearing and rehearing en banc denied , petition for certiorari filed 2009 WL 1976052. United States 122

Government contractor who submitted four false certifications that subcontractors had been paid was liable under the False Claims Act (FCA) for civil penalties of $5,000 per claim, notwithstanding contractor's contentions that the four submissions should have been treated as a single violation for civil penalty purposes, and that total penalty amount was excessive in light of actual damages; each certification was a separate and independent act, and penalties were not excessive in light of fact that contract was potentially worth $3.4 million. Lamb Engineering & Const. Co. v. U.S., Fed.Cl.2003, 58 Fed.Cl. 106. United States 122

Contractor's submission of equitable adjustment claim for increased material costs, based on costs that were never billed by vendors, warranted imposition of civil penalty of $10,000.00 under the False Claims Act. UMC Electronics Co. v. U.S., Fed.Cl.1999, 43 Fed.Cl. 776, affirmed 249 F.3d 1337. United States 122

United States was entitled to recover from contractor following default termination $5,000 as civil penalty under False Claims Act, along with $600,000, three times damages it suffered as result of contractor's fraud. Daff v. U.S., Fed.Cl.1994, 31 Fed.Cl. 682, affirmed 78 F.3d 1566, rehearing denied , in banc suggestion declined. United States 75(5); United States 122

214. ---- Multiple violations, penalties, remedies or relief

Number of forfeitures under former § 231 et seq. of this title was not necessarily measured by number of contracts involved in a case. U. S. v. Bornstein, U.S.N.J.1976, 96 S.Ct. 523, 423 U.S. 303, 46 L.Ed.2d 514. United States 122

Former § 231 et seq. of this title permitted recovery of multiple forfeitures and gave the United States a cause of action against a subcontractor who caused a prime contractor to submit a false claim to the government. U. S. v. Bornstein, U.S.N.J.1976, 96 S.Ct. 523, 423 U.S. 303, 46 L.Ed.2d 514. United States 122

Subcontractor, which made three shipments of falsely branded electron tubes to prime contractor which caused prime contractor to submit false claims to the United States for radio kits, was liable, under former § 231 et seq. of this title, for three $2,000 forfeitures representing the three separate shipments, and subcontractor was not liable for a forfeiture for each of 35 false claims presented by prime contractor to government, even though each of the 35 invoices included claims for payment for falsely marked tubes. U. S. v. Bornstein, U.S.N.J.1976, 96 S.Ct. 523, 423 U.S. 303, 46 L.Ed.2d

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514. United States 122

Builder of subsidized housing was liable, under former § 231 of this title, for one forfeiture for each monthly voucher submitted to Department of Housing and Urban Development by mortgagee, even though builder did only one act of inflating construction costs to cause false claims to be filed, where builder knew false claim would be submitted by mortgagee each month, builder could have prevented filing of additional claims, and builder, had he submitted the claims himself, would have been liable for one forfeiture for each monthly voucher. U. S. v. Ehrlich, C.A.9 (Cal.) 1981, 643 F.2d 634, certiorari denied 102 S.Ct. 474, 454 U.S. 940, 70 L.Ed.2d 247. United States 122

The $2,000 penalty provided for under former § 231 of this title was recoverable for each of the 14 purchase orders that were subject of general contractor's bid rigging in connection with various contracts to refurbish properties by the Department of Housing and Urban Development; penalty was not to be levied only against each “project” rather than against each purchase order, especially since contractor was paid by the Department, not for each house he worked on, but for each purchase order submitted for processing. Brown v. U. S., Ct.Cl.1975, 524 F.2d 693, 207 Ct.Cl. 768. United States 122

Award to United States of $100,000 under former § 231 of this title for filing of false medicare claims was within district court's discretion, despite contention that since district court found that 120 false claims had been filed, it should have assessed a $2,000 forfeiture for each false claim, or a total of $240,000. Peterson v. Weinberger, C.A.5 (Tex.) 1975, 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96 S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. United States 120.1

Government cannot recover forfeiture more than once for same false claim submitted by government contractor. Acme Process Equipment Co. v. U. S., Ct.Cl.1965, 347 F.2d 509, 171 Ct.Cl. 324, certiorari granted 86 S.Ct. 1367, 384 U.S. 917, 16 L.Ed.2d 438, reversed on other grounds 87 S.Ct. 350, 385 U.S. 138, 17 L.Ed.2d 249, rehearing denied 87 S.Ct. 738, 385 U.S. 1032, 17 L.Ed.2d 680. United States 122

Where defendant, who operated feed mill, and who was certified dealer under Emergency Feed Program, caused 15 purchase orders to be presented to county committee for purpose of obtaining dealers' certificates, knowing that statements contained therein that feed had actually been delivered to buyers were false, defendant was liable for $2,000 forfeitures for 15 violations of former § 231 of this title and for double damages suffered by United States as result of filing of one of the purchase orders, though defendant intended to deliver later to the buyers feed not designated surplus feed grain. Fleming v. U.S., C.A.10 (N.M.) 1964, 336 F.2d 475, certiorari denied 85 S.Ct. 889, 380 U.S. 907, 13 L.Ed.2d 795. United States 122

If the two prime contractors submitted to United States 54 vouchers based on 422 invoices, which were submitted by subcontractor and contained false claims for direct labor, assessment of a $2,000 forfeiture against subcontractor for each of the 54 vouchers, rather than one forfeiture for each subcontract, was proper. U.S. v. Ueber, C.A.6 (Mich.) 1962, 299 F.2d 310. United States 122

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Where contractor presented to government ten vouchers covering fictitious claims for the rental of 130 automobiles and trucks, to which vouchers were attached schedules for each of the automobiles and trucks, which schedules contained false statements as to ownership and valuation of vehicles, government was entitled to recover a forfeiture of $2,000 for each of the ten vouchers, but was not entitled to recover in addition such forfeiture for each of the schedules for the 130 automobiles and trucks. U. S. v. Grannis, C.A.4 (N.C.) 1949, 172 F.2d 507, certiorari denied 69 S.Ct. 1160, 337 U.S. 918, 93 L.Ed. 1727. United States 122

In government's action to recover forfeitures under former § 231 of this title for submitting false claims for materials supplied on a Navy shipbuilding project by subcontractor who submitted false bids in connection with 90 purchase orders under 16 subcontracts, government could have recovered forfeiture of $2,000 on each of the 16 subcontracts, but not on each of the 90 purchase orders, where the fraud was with respect to the contracts, and the purchase orders were merely part of such contracts. U. S. v. Rohleder, C.C.A.3 (Pa.) 1946, 157 F.2d 126. United States 122

Assessment of fullest amount of civil penalties allowed by False Claims Act (FCA) was warranted in qui tam multi-claim suit alleging that group health insurer had caused insureds to file large numbers of false claims for Social Security Disability Insurance (SSDI). U.S. ex rel. Loughren v. Unumprovident Corp., D.Mass.2009, 604 F.Supp.2d 269. United States 122

For purposes of calculating the civil penalty portion of a damages award in a False Claims Act (FCA) suit against a technology company regarding a scheme to defraud the government in contracts solicited under the federal Small Business Innovation Research Program (SBIR), the court would assess one forfeiture for each of the four contracts at issue, rather than for each of 54 vouchers submitted under the contracts, but would assess the maximum amount for each forfeiture because the defendants' fraud was systematic and knowing. U.S. ex rel. Longhi v. Lithium Power Technologies, Inc., S.D.Tex.2008, 530 F.Supp.2d 888, affirmed 575 F.3d 458. United States 122

Home health care agency and its officers, who violated False Claims Act (FCA) by obtaining Medicare reimbursement funds for cost of funding employee stock option plan (ESOP) with knowledge that ESOP had not been properly funded, were jointly and severably liable for treble amount of fraudulently obtained funds plus $5,000 penalty for each of 20 false cost reports submitted. U.S. ex rel. Augustine v. Century Health Services, Inc., M.D.Tenn.2000, 136 F.Supp.2d 876, affirmed 289 F.3d 409, rehearing and suggestion for rehearing en banc denied. United States 122

Purchaser of crude oil from federal and Indian leases, which falsified records of oil amounts taken, was not subject to False Claims Act penalty for each false record entry, nor for each monthly, multiple-lease royalty report, but rather for each lease as it was falsely reported on monthly. U.S. ex rel. Koch v. Koch Industries, Inc., N.D.Okla.1999, 57 F.Supp.2d 1122. United States 120.1

Civil penalty of $5,000 was appropriate, under False Claims Act (FCA), for each of 20 instances of false claims submitted for payment where no particular reason for applying higher penalty was presented. U.S. v. Stella Perez, D.Puerto Rico 1993, 839 F.Supp. 92, reversed 55 F.3d 703, 139 A.L.R. Fed. 813, on remand 956 F.Supp. 1046. United States 122

Even though provision of False Claims Act mandating $2,000 penalty on each false claim was remedial in nature, impos-

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ition of $130,000 sanction against defendant guilty of 65 claims of medicare fraud violated double jeopardy's protections against multiple punishments, where defendant had already been convicted of criminal charges and sentenced to two years and $5,000 penalty for same acts, and penalty bore no rational relationship to Government's loss of $585. U.S. v. Halper, S.D.N.Y.1987, 664 F.Supp. 852, probable jurisdiction noted 108 S.Ct. 2818, 486 U.S. 1053, 100 L.Ed.2d 920, vacated on other grounds 109 S.Ct. 1892, 490 U.S. 435, 104 L.Ed.2d 487. Double Jeopardy 139.1

Government was entitled to recover, from defendants found liable under False Claims Act for submitting false claims to Government, twice amount of Government's damages, postjudgment interest, and civil penalties of $2,000 for conspiracy and $2,000 for each of three false loan applications, without regard to claim that portion of disbursements made as result of false claims was “returned” for use in certain contract work; defendants' liability arose from submission of false documents to Small Business Administration, Administration's reliance on false documents in disbursing funds, and loans' never being repaid. U.S. v. Uzzell, D.D.C.1986, 648 F.Supp. 1362. United States 122

Government in action under former § 231 of this title was entitled to recover $2,000 for each of 18 false invoices, as statutory forfeitures. U. S. v. Jacobson, S.D.N.Y.1979, 467 F.Supp. 507. United States 120.1

Under former § 231 of this title the government was entitled to recover one forfeiture of contractor's conspiracy which utilized conclusive bidding scheme in obtaining repair contract on residential property conveyed to Department of Housing and Urban Development by reason of foreclosure of insured mortgages as well as one forfeiture for each false claim. U.S. v. Cripps, E.D.Mich.1978, 460 F.Supp. 969. United States 120.1

Upon finding that defendant was liable under former § 231 of this title on count which involved two false claims, government was entitled to two forfeiture payments. U. S. v. Canada, S.D.Ind.1977, 425 F.Supp. 91. United States 122

Where real estate salesman caused to be submitted to Federal Housing Administration [now Department of Housing and Urban Development] false certificates as to condition of property for purpose of inducing Administration to insure mortgages on properties and mortgagors subsequently defaulted on mortgages, requiring United States to honor claims of mortgagee, United States was entitled only to one $2,000 forfeiture for each defaulted property, even though several false representations were made in various certifications submitted to government to induce it to issue its mortgage insurance commitment on each property. U. S. v. Hibbs, E.D.Pa.1976, 420 F.Supp. 1365, vacated on other grounds 568 F.2d 347. United States 122

Each presentation of a check by person who had forged names of payers on 12 government checks constituted a separate claim within the meaning of former § 231 of this title thus entitling the United States to 12 forfeitures totalling $24,000. U. S. v. Silver, E.D.N.Y.1974, 384 F.Supp. 617, affirmed 515 F.2d 505. United States 122

Physician and nursing home director who submitted 120 false claims for medicare payments were liable for $2,000 forfeiture for each of 50 of the false claims plus double damages for all 120 false claims. Peterson v. Richardson, N.D.Tex.1973, 370 F.Supp. 1259, affirmed 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96 S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. United States 120.1

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In view of government's position in suit under former § 231 of this title that number of forfeitures was within discretion of court, in view of prior settlement of action brought by defendant against government, fact that defendant had already been convicted in criminal prosecution, and concession that government had not proved out-of-pocket damages, only three forfeitures based on three contracts involved, rather than eight forfeitures based on eight dates of certifications of false payrolls or 34 forfeitures based on 34 false payrolls, would have been decreed. U. S. v. Greenberg, S.D.N.Y.1965, 237 F.Supp. 439. United States 122

In action for forfeitures and double damages under former § 231 of this title for allegedly making false claims against government for meat products sold, forfeitures could properly have been assessed in each individual count if government properly proved that defendants had violated any or all of three classes of infractions set forth in complaint. U.S. v. American Packing Corp., D.C.N.J.1953, 113 F.Supp. 223. United States 122

Where seller of butane gas for federal housing projects knowingly submitted claims for gas not delivered and manager of projects submitted to public housing authority nine quarterly reports including overcharges in items stating cost of gas, United States was entitled to recover forfeiture under former § 231 of this title for each of nine violations of former § 231 of this title in addition to double amount of damages sustained. U.S. v. Gardner, N.D.Ala.1947, 73 F.Supp. 644. United States 122

215. Indemnification, remedies or relief

Neither contribution nor indemnity is available in qui tam action under False Claims Act, even if qui tam plaintiff participated in wrongdoing; Act was not intended to ameliorate liability of wrongdoers by providing remedy against qui tam plaintiff who has “unclean hands.” Mortgages, Inc. v. U.S. Dist. Court for Dist. of Nev. (Las Vegas), C.A.9 (Nev.) 1991, 934 F.2d 209. Equity 65(1)

Arbitrator's determination that air carrier was contractually obliged to indemnify broker for any damages assessed against it in United States' action under False Claims Act (FCA) alleging that air carrier and broker had overcharged for freight transportation services was based on good faith assessment of law presented to him, and thus arbitration award was not subject to vacation based on arbitrator's manifest disregard of federal case law allegedly prohibiting broker from obtaining indemnification for FCA-related damages unless and until it was found free of FCA liability, where arbitrator acknowledged case law cited by carrier, but relied on the case law propounded by broker, concluding that FCA defendant “may maintain a claim for independent damages that is not dependent on a finding that the defendant is liable.” U.S. ex rel. Watkins v. AIT Worldwide Logistics, Inc., E.D.Va.2006, 441 F.Supp.2d 762. Alternative Dispute Resolution 329

False Claims Act (FCA) did not provide an implied right of action for indemnification or contribution. U.S. v. Dynamics Research Corp., D.Mass.2006, 441 F.Supp.2d 259. Contribution 5(6.1); Indemnity 64

If defendants and third-party plaintiffs were liable under former § 231 of this title, they were not entitled to indemnification from the third-party defendant, even if it could have been proven that he too would have been jointly and severally liable under former § 231 of this title. U. S. v. Kennedy, C.D.Cal.1977, 431 F.Supp. 877. Indemnity 64

216. Interest, remedies or relief

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Prejudgment interest may not be awarded in addition to double damages and penalties under this section. U.S. v. McLeod, C.A.9 (Wash.) 1983, 721 F.2d 282. Interest 39(2.55)

Physician from whom funds due under medicare were withheld as offset against false claims under investigation was not entitled to interest for period that sums were withheld prior to payment of the sums to the physician upon his posting of bond to indemnify government for any amount which might ultimately be found due the government. Peterson v. Weinberger, C.A.5 (Tex.) 1975, 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96 S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. United States 110

United States was not entitled to award of interest on amount of fraudulent medicare claims from date payment was made on the claims in addition to the double damages plus specified sum which the United States recovered under former § 231 of this title. Peterson v. Weinberger, C.A.5 (Tex.) 1975, 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96 S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. United States 120.1

Prejudgment interest should not have been assessed on amount recovered under former § 231 of this title. Peterson v. Weinberger, C.A.5 (Tex.) 1975, 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96 S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. United States 120.1

Interest could properly have been recovered as item of “damage” under former § 231 of this title. U. S. v. Cooperative Grain & Supply Co., C.A.8 (Neb.) 1973, 476 F.2d 47. United States 120.1

Since recovery specified in former § 231 of this title, namely, double damages plus a specified sum, was chosen to make sure that government was made completely whole, it was error to assess prejudgment interest in favor of government on the amount found to be recoverable. U. S. v. Foster Wheeler Corp., C.A.2 (N.Y.) 1971, 447 F.2d 100. Interest 39(2.20)

Interest was not allowed government on judgment for penalty and double damages under former § 231 of this title. U. S. v. Globe Remodeling Co., D.C.Vt.1960, 196 F.Supp. 652. United States 120.1; United States 122

Interest value of premature contract payments made by the government pursuant to fraudulent invoices submitted by contractor was recoverable as single damages under the False Claims Act (FCA). BMY--Combat Systems Div. of Harsco Corp. v. U.S., Fed.Cl.1998, 44 Fed.Cl. 141. United States 122

217. Injunctions, remedies or relief

Physician failed to establish that he would suffer irreparable harm if terminated by hospital, as required to support his claim for preliminary injunction barring hospital from firing him in his lawsuit alleging that he was terminated in violation of the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the False Claims Act; lost income, damaged reputation, and inability to find another job was not irreparable harm. Bedrossian v. Northwestern Memorial Hosp., C.A.7 (Ill.) 2005, 409 F.3d 840. Injunction 138.69

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Government established a likelihood of success in showing that defendant physician knowingly and willfully submitted false claims to Medicare to obtain reimbursement to which he was not entitled in violation of three different fraud statutes, and was therefore entitled to preliminary injunction under statute authorizing injunctions against fraud. U.S. v. Sriram, N.D.Ill.2001, 147 F.Supp.2d 914. Injunction 138.24

Even if Government could use a civil violation under False Claims Act as the basis for an asset freeze under statute authorizing injunctions against fraud, statute did not permit the amount frozen to include a sum that accounted for trebled damages and civil penalties. U.S. v. Sriram, N.D.Ill.2001, 147 F.Supp.2d 914. Injunction 138.31

218. Rescission or termination of contract, remedies or relief

Relator could not seek disgorgement of all $9 million that the government paid to contractor for subcontracted work in qui tam action brought under the False Claims Act (FCA); although contractor ran afoul of the fair bidding requirements, there was no evidence adduced at trial suggesting that subcontractor failed to perform the work that it was required to perform under the subcontract or that the government did not receive the benefit of the work performed, and relator presented no evidence that the government did not get what it paid for or that another firm could have performed the work for less. U.S. ex rel. Harrison v. Westinghouse Savannah River Co., C.A.4 (S.C.) 2003, 352 F.3d 908. United States 122

Where contractor, without knowledge of management, received payment on fraudulent claim, and after fraud became known, government agents with apparent knowledge of Assistant Secretary of Army conducted proceedings justifying conclusion that resumption of production would have been authorized, in reliance on which contract restaffed and kept plant in operating condition, supplemental agreement untouched by issue of fraud resulted, and government's attempted termination thereafter on basis of former § 231 of this title was wrongful and not justified by its prior reservation of right to cancel for fraud. Carrier Corp. v. U. S., Ct.Cl.1964, 328 F.2d 328, 164 Ct.Cl. 666. United States 72.1(2)

If contracts entered into by federal government for purchase of rubber tires were induced by fraud consisting of bidders submitting collusive bids, government, on discovery of the fraud, would have choice of either rescinding the contracts, restore what had been received, and recover what had been paid, or of enforcing the contracts and recovering damages resulting from the fraud, but the government could not have both remedies. Mandel v. Cooper Corporation, S.D.N.Y.1941, 42 F.Supp. 317. United States 75(2)

219. Setoffs, remedies or relief

In determining amount which contractor was entitled to recover under contract entered into with Department of Housing and Urban Development, Court of Claims [now United States Claims Court] adopted assessment contained in official housing and urban development audit report prepared by special team which had examined contractor's record; amount already paid to contractor, together with $10,000 to which government was entitled as result of contractor's five violations of former § 231 of this title, was subtracted from total audit figure to arrive at amount of contractor's ultimate recovery. Miller v. U. S., Ct.Cl.1977, 550 F.2d 17, 213 Ct.Cl. 59. United States 74(13)

Contractors' settlement payments for claims of conspiracy to rig bids on three construction contracts in Egypt funded by

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United States, in violation of False Claims Act (FCA), and judgment assessing damages against nonsettling contractor's vice president for conspiracy claim, represented “common damages,” as required for set-off of vice president's damages by simple pro tanto partial credit against overall liability of $13.7 million for which settling contractors shared joint and several liability, since settlement payments were not allocated among three contracts, but rather, were structured as undivided lump sums. Miller v. Holzmann, D.D.C.2008, 563 F.Supp.2d 54. Damages 63

Non-settling defendant in a False Claims Act (FCA) suit was not entitled to an offset of his liability by the amount of plaintiffs' settlements with other defendants; the non-settling defendant had no claim to pay less than this proportionate share of the total loss, regardless of the amount offset by the settling defendants. U.S. ex rel. Miller v. Bill Harbert Intern. Const., Inc., D.D.C.2007, 501 F.Supp.2d 51. Damages 63

Since Department of Health, Education, and Welfare [now Department of Health and Human Services] had right to withhold medicare payments as an offset for any final judgment rendered against physician under former § 231 [now § 3729] of this title and since suspension of physician's payments was not malicious nor unreasonable, United States was not liable for the conduct of its employees in suspending the physician's payments. Peterson v. Richardson, N.D.Tex.1973, 370 F.Supp. 1259, affirmed 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96 S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. United States 78(12)

Where school knowingly submitted false vouchers to Veterans' Administration, including overcharges for training rendered to veterans, each of vouchers submitted to Administration constituted separate violation of former § 231 of this title which prohibited presentation of false claims and conspiracy to defraud United States in payment of false claims, which authorized setoff up to $2,000 against claim of school's assignee suing to recover on unpaid vouchers for each of fraudulent vouchers submitted. First Nat. Bank of Birmingham v. U.S., N.D.Ala.1953, 117 F.Supp. 486. United States 120.1

Where management agreement between Chapter 11 debtors and purchaser of their health care facilities provided that purchaser was entitled to payment from debtors only for Medicaid/Medicare payments that they “received,” and not for any such payments that they were “owed,” from operating these facilities during transition period, purchaser had no claim to compel payment of Medicaid/Medicare payments which debtors earned but which, as result of agreement between debtors and the United States to have these Medicaid/Medicare payments offset based on government's claims against debtors under the False Claims Act, were never received. In re Integrated Health Services, Inc., Bkrtcy.D.Del.2003, 303 B.R. 577 . Bankruptcy 2921

220. Complaint, remedies or relief--Generally

Relators in qui tam action under False Claims Act (FCA) against provider of prescription drug benefits under federal health insurance plans did not allege fraud with requisite particularity in asserting claim based upon provider's alleged noncompliance with requirements of cost-saving program involving replacement of prescribed drugs with less expensive alternatives, given absence of information showing that provider had actual knowledge that health plans were being billed for cost savings on prescriptions which were altered without requisite doctor approval, or that provider otherwise ignored or disregarded situation; at best, alleged scheme involved breach of contract dispute between provider, plans, and government. U.S. ex rel. Fowler v. Caremark RX, L.L.C., C.A.7 (Ill.) 2007, 496 F.3d 730, rehearing and suggestion for rehearing en banc denied, certiorari denied 128 S.Ct. 1246, 170 L.Ed.2d 66. Federal Civil Procedure 636

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Qui tam relator failed to plead with sufficient particularity claim that defendants defrauded medicaid program, in violation of False Claims Act (FCA); although relator cited particular patients, dates, and corresponding medical records for services he contended were not eligible for government reimbursement, the complaint failed to allege any discrete incident of fraudulent submission of reimbursement claim by any defendant, and it did not state that relator had firsthand knowledge of the submission of any false claims. U.S. ex rel. Atkins v. McInteer, C.A.11 (Ala.) 2006, 470 F.3d 1350. Federal Civil Procedure 636

Subject in federally-funded acquired immune deficiency syndrome (AIDS) research study failed to plead with requisite particularity that fraudulent statement's purpose was to coax a payment of money from the government, as would support False Claims Act (FCA) claim premised upon an alleged false certification of compliance with statutory or regulatory requirements, in qui tam action alleging various acts of negligence and mismanagement by researcher, several of its participating medical professionals, and institutional review board for the study, where alleged false statements, identified only by a categorical and essentially undecipherable listing of various “forms, written reports and study results” the defendants filed with the government at some point during course of the study, shed no light on nature or content of individual forms or why any particular false statement would have caused government to keep funding study, much less when any payments occurred or how much money was involved. U.S. ex rel. Gross v. AIDS Research Alliance-Chicago, C.A.7 (Ill.) 2005, 415 F.3d 601. Federal Civil Procedure 636

Former District of Columbia Metropolitan Police Department (MPD) employee failed to allege in her amended complaint that she attempted to stop false claim against government, as required to state claim for retaliation under False Claims Act. Owens v. District of Columbia, D.D.C.2009, 631 F.Supp.2d 48. District Of Columbia 7

United States' claim that health care provider billed Medicare for “nonexistent or worthless goods, or charged exorbitant prices” was sufficient to allege potential economic harm to government, as required to state claim under False Claims Act (FCA) for presenting false claim for payment, even if provider's claims were not actually paid. U.S. v. Aguillon, D.Del.2009, 628 F.Supp.2d 542. United States 122

Paragraph of False Claims Act (FCA) complaint would not be dismissed due to government failure to plead fraud with sufficient particularity where government's interrogatory answers and subsequent opposition briefs adequately supplemented the paragraph; allowing the government to supplement its allegations in paragraph would further judicial economy. U.S. v. Science Applications Intern. Corp., D.D.C.2008, 555 F.Supp.2d 40. Federal Civil Procedure 636

Although complaint alleged particularized details about drug manufacturer's underlying scheme to induce doctors to prescribe drug by granting them a variety of kickbacks, including rebates and other off-invoice discounts, educational grants, and the like, complaint failed to allege False Claims Act (FCA) claim with sufficient particularity where there were no particularized allegations regarding the false claims that were actually submitted to the federal government. U.S. ex rel. Duxbury v. Ortho Biotech Products, L.P., D.Mass.2008, 551 F.Supp.2d 100, affirmed in part , reversed in part 579 F.3d 13. Federal Civil Procedure 636

Relator's allegations in qui tam action against pharmaceutical company under False Claims Act of discount, cash bribe, premix bag, and improper fees, grants, and gifts were sufficiently particular to state claim under False Claims Act for pharmaceutical company's regional office and for years in which relator worked; relator identified particular time when a

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particular sales representative allegedly discounted drug price for a specific hospital on condition that hospital no longer stock competing drug for physicians requesting the drug. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2008, 538 F.Supp.2d 367. Federal Civil Procedure 636

Private investigator asserting a qui tam claim that a Medicare Part B carrier recklessly approved false claims for durable medical equipment in violation of the False Claims Act (FCA) failed to plead fraud with the requisite particularity; the investigator had no firsthand knowledge of any fraudulent conduct on the part of the carrier, and it was insufficient that he had reason to believe fraudulent practices were industry wide. U.S. ex rel. Feingold v. Palmetto Government Benefits Administrators, S.D.Fla.2007, 477 F.Supp.2d 1187, affirmed 278 Fed.Appx. 923, 2008 WL 2097615, rehearing and rehearing en banc denied 285 Fed.Appx. 743, 2008 WL 2977960, certiorari denied 129 S.Ct. 1001, 173 L.Ed.2d 293. Federal Civil Procedure 636

Allegation in suit under False Claims Act (FCA) that subcontractor knowingly caused the submission of false claims to the government arguably encompassed an assertion that subcontractor knew, through its officers or employees, that false claims were presented to the government relating to subcontractor's work. U.S. ex rel Smith v. Boeing Co., D.Kan.2007, 505 F.Supp.2d 974. United States 122

Qui tam relator satisfied federal procedure rule requirements for stating claim of fraud with particularity, when relator alleged that county fraudulently certified to United States, in connection with receipt of block grants for housing programs, that county had considered race as impediment to fair housing and taken steps to address problem, with knowledge that it had considered income rather than race. U.S. ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York, S.D.N.Y.2007, 495 F.Supp.2d 375, motion to certify appeal denied 2007 WL 2402997. Federal Civil Procedure 636

Complaint alleged violation of the False Claims Act (FCA) with particularity sufficient to satisfy rule requiring that allegations of fraud be pled with particularity, where it alleged time, place, specific content of misrepresentations, and identities of parties to the misrepresentation. U.S. v. Sequel Contractors, Inc., C.D.Cal.2005, 402 F.Supp.2d 1142. Federal Civil Procedure 636

Complaint of qui tam relator, when read in conjunction with disclosures submitted to the government, satisfied heightened pleading requirements of False Claims Act (FCA) action against drug manufacturer, which allegedly engaged in fraudulent scheme to increase submission of off-label prescriptions of drug for payment by Medicaid; complaint and disclosures detailed both general framework of purported Medicaid fraud and provided more specific information on individuals, locations, precise statements alleged to be false and time-frames involved. U.S. ex rel. Franklin v. Parke-Davis, Div. of Warner- Lambert Co., D.Mass.2001, 147 F.Supp.2d 39, motion to amend denied 2002 WL 32128635. Federal Civil Procedure 636

Qui tam plaintiff failed to allege with particularity fraud claims against corporations who allegedly made false statements to Customs Service upon arrival at United States airports that employees did not have goods subject to import duties, although plaintiff mentioned two specific incidents, as plaintiff failed to provide date on which statements were made, and failed to identify individuals making statements. U.S. ex rel. Vallejo v. Investronica, Inc., W.D.N.Y.1998, 2 F.Supp.2d 330. Federal Civil Procedure 636

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Rule requiring that fraud actions be pled with particularity applies to False Claims Act, even after 1986 amendments to Act. U.S. ex rel. Stinson, Lyons, Gerlin & Bustamante, P.A. v. Blue Cross Blue Shield of Georgia, Inc., S.D.Ga.1990, 755 F.Supp. 1055. Federal Civil Procedure 636

Complaint, which alleged that the defendants defrauded housing authority by making false claims but which failed to allege that fraudulent claims were made against the United States and that the Treasury of United States had been harmed, failed to state a claim under Federal False Claims Act section allowing Government to recover civil penalties and damages from persons making false claims against the Government. U.S. ex rel. Simmons v. Smith, S.D.Ala.1985, 629 F.Supp. 124. United States 120.1; United States 122

Nurse's complaint failed to plead fraud with sufficient particularity to state claim under False Claims Act; nurse alleged that health care provider directed surgical nurses to designate on operative report all surgeries as “major” even if such surgeries would previously have been designated “minor,” and that operative reports were used to prepare DRG forms which were used to prepare patients' Medicaid and Medicare bills but did not allege directive's effect on the DRG form and patients' bills. Wisz v. C/HCA Development, Inc., N.D.Ill.1998, 181 F.R.D. 385. Federal Civil Procedure 636

221. ---- Conspiracy, complaint, remedies or relief

Relator's allegations that District of Columbia and the District of Columbia Public School System conspired with others to defraud the United States Government by inducing the United States Government to pay or approve false or fraudulent Medicare claims and that by reason of the payments or approvals, the United States Government had been damaged, and continued to be damaged, in substantial amount, were insufficient to allege that the United States has suffered damage as a result of the alleged false claim, as required to state conspiracy claim under the False Claims Act (FCA); relator contended that the government owed the District $60 million and that the government paid the District $60 million. U.S. ex rel. Davis v. District of Columbia, D.D.C.2008, 591 F.Supp.2d 30. Conspiracy 18

Relator's allegations that medical clinic and hospital entered into an agreement whereby hospital would give clinic financial support in exchange for clinic's referring large volumes of patients to hospital were sufficient to state conspiracy claim against clinic and hospital under False Claims Act (FCA). U.S. ex rel. Repko v. Guthrie Clinic, P.C., M.D.Pa.2008, 557 F.Supp.2d 522. Conspiracy 9

Government stated claim against federal employee alleged to have violated False Claims Act by conspiring to make or present false or fraudulent claims for payment to United States in connection with employee's alleged approval of budgets containing inflated rates for consulting services; complaint alleged that employee conspired with consultant and Director of Office of Small Disadvantaged Business to collect inflated payments, described in detail actions allegedly undertaken to ensure that consulting services would be included in budget of bank administering loan program, and contained specific allegations of damages of approximately $120,000. U.S. v. Bouchey, D.D.C.1994, 860 F.Supp. 890. Conspiracy 18

Law firm could not maintain claim under False Claims Act that insurer conspired to defraud government by getting false or fraudulent claim paid or allowed; complaint was void of any allegations of agreement. U.S. ex rel. Stinson, Lyons, Gerlin & Bustamante, P.A. v. Provident Life & Acc. Ins. Co., S.D.Fla.1989, 721 F.Supp. 1247. United States 122

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Government's allegation that corporation, through its officers and employees, knowingly accepted, acquired, possessed, and presented for redemption stolen food stamps did not state a claim for conspiracy under the False Claims Act. Blusal Meats, Inc. v. U.S., S.D.N.Y.1986, 638 F.Supp. 824, affirmed 817 F.2d 1007. Conspiracy 18

222. Counterclaims, remedies or relief

Under former § 231 of this title, government which sustained damages of $48,000 during period 1948 to 1950 which arose out of false statement for costs filed by school with Veterans' Administration was entitled to have that amount doubled and school's counterclaim for period in 1951 for more than $17,000 would not have been considered in connection with doubling of damages. U. S. v. Sytch, C.A.3 (N.J.) 1958, 257 F.2d 475. United States 120.1

Government contractors stated recoupment counterclaim against government in its False Claims Act (FCA) and common-law suit seeking damages and civil penalties for alleged fraudulent invoices; counterclaim, alleging breach of contract, arose from same transaction as government's claims since it relied on same contract, sought same kind of relief via offset of government's recovery, and did not exceed amount sought by government. U.S. v. Intrados/International Management Group, D.D.C.2003, 277 F.Supp.2d 55. United States 130(7)

Former employers' counterclaim for punitive damages in employee's False Claims Act (FCA) qui tam action, based on employee's alleged extortion attempt and misuse of judicial system, would be dismissed for public policy reasons; allowing such counterclaims might chill would-be relators from bringing FCA claims. U.S. ex rel. Mikes v. Straus, S.D.N.Y.1996, 931 F.Supp. 248, motion to certify appeal denied 939 F.Supp. 301. United States 122

United States claims court has jurisdiction over counterclaims made by government under False Claims Act. BMY-Combat Systems Div. of Harsco Corp. v. U.S., Cl.Ct.1992, 26 Cl.Ct. 846. Federal Courts 1087

223. Removal, remedies or relief

Related federal qui tam action that was unsealed, which had been brought under False Claims Act (FCA) against pharmaceutical companies, did not constitute “order or other paper,” to permit removal, within meaning of statute that governed procedure for removal, where federal action was not within state court litigation that had been removed and had been brought under state tort laws to recover Medicare Part B co-payments from pharmaceutical companies, federal action did not resolve matter of law that was controlling in state case, and there was no express authorization for removal from superior court. Hawaii v. Abbott Laboratories, Inc., D.Hawai'i 2006, 469 F.Supp.2d 842. Removal Of Cases 79(1)

Federal government's service of unsealed qui tam complaint under False Claims Act (FCA) did not provide ground for defendant to remove parallel state court false claim action to federal court, pursuant to the “other paper or order” requirement, even though both actions involved same defendant, and arguably involved similar factual situations and legal issues. Hawaii v. Abbott Laboratories, Inc., D.Hawai'i 2006, 469 F.Supp.2d 835, appeal denied 469 F.Supp.2d 842. Removal Of Cases 79(1)

Related federal qui tam action that was unsealed, which had been brought under False Claims Act (FCA) against pharmaceutical companies, did not constitute “order or other paper,” to permit removal, within meaning of statute that governed

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procedure for removal, where federal action was not within state court litigation that had been removed and had been brought under state tort laws to recover Medicare Part B co-payments from pharmaceutical companies, federal action did not resolve matter of law that was controlling in state case, and there was no express authorization for removal from superior court. Hawaii v. Abbott Laboratories, Inc., D.Hawai'i 2006, 469 F.Supp.2d 842. Removal Of Cases 79(1)

Plaintiff's allegation of federal False Claims Act (FCA) violation as an element of her state civil conspiracy claim did not present a sufficiently compelling federal question which would fundamentally alter state-law nature of her claim and did not permit defendants to remove her action to federal court; there was no compelling federal interest presented in plaintiff's fundamentally state law civil conspiracy claim, because that federal interest was protected through other means--*i.e.*, detailed requirements imposed on FCA qui tam litigants. Young v. Matagorda County Hosp. Dist., S.D.Tex.1997, 986 F.Supp. 1064. Removal Of Cases 25(1)

224. Venue, remedies or relief

Transfer from Massachusetts to Rhode Island was warranted in qui tam action under False Claims Act (FCA) alleging that Rhode Island city, its mayor, and other city officials made misrepresentations to United States Department of Housing and Urban Development (HUD) in order to obtain HUD funds, even though allegedly false claims were mailed to HUD officials in Massachusetts, where all other relevant events occurred in Rhode Island, relator did not identify any witnesses from Massachusetts he definitely intended to call at trial, relator and all individual defendant resided in Rhode Island, United States did not intervene in case and expressed no preference as to where case was litigated, and judges of District of Rhode Island were fully capable of deciding issues presented by case. U.S. ex rel. Ondis v. City of Woonsocket, Rhode Island, D.Mass.2007, 480 F.Supp.2d 434. Federal Courts 106.5

Venue for action against medicare provider and its president for submitting false claims for new seat lift chairs in violation of False Claims Act and in violation of Department of Health and Human Services (HHS) regulations was in Western Division, not Eastern Division, of Southern District of Ohio; even though provider had developed considerable business presence outside of Western Division, all defendants, both corporate and personal, were residents of county in Western Division. U.S. v. Fesman, S.D.Ohio 1991, 781 F.Supp. 511. Federal Courts 92

225. Discovery, remedies or relief

District court was not required to permit discovery before granting county's motion to dismiss qui tam action brought under the False Claims Act (FCA) for lack of subject matter jurisdiction, since court treated motion as a facial attack and considered only the complaint and the attached exhibits, and court did not decide any issues of disputed fact, but rather accepted all of relators' allegations in the complaint as true. McElmurray v. Consolidated Government of Augusta-Richmond County, C.A.11 (Ga.) 2007, 501 F.3d 1244, rehearing and rehearing en banc denied 255 Fed.Appx. 504, 2007 WL 4302139. Federal Civil Procedure 1269.1; Federal Courts 30; Federal Courts 32; Federal Courts 34

In order to meet required strong showing of particularized need, government attorney seeking disclosure of materials produced during grand jury investigation of corporation's alleged False Claims Act (FCA) violations was required to submit petition addressing factors, including but not limited to, whether grand jury investigation of corporation was ongoing, whether grand jury investigation was undertaken in good faith, and not as pretext to collect information for use in civil investigation, which civil division attorneys would receive any disclosed materials, whether disclosed materials would be

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shared with private parties, including private plaintiffs in qui tam actions, and whether government sought to disclose all materials produced to grand jury or more limited subset of them. In re Grand Jury Matter, D.Mass.2008, 553 F.Supp.2d 11, ordered unsealed 553 F.Supp.2d 14. Grand Jury 41.50(5)

Self-critical analysis privilege did not exist in qui tam action brought under False Claims Act, as Congress considered competing interests in enacting the Act, and provided its own version of privilege through statutory provisions exempting information from disclosure. U.S. ex rel. Falsetti v. Southern Bell Tel. and Tel. Co., N.D.Fla.1996, 915 F.Supp. 308. Witnesses 196.4

In relator's qui tam action against his former employer, a corporation that sold industrial pumps to Nigeria, in which government intervened, employer did not make showing of substantial need sufficient to overcome government's work product and joint-prosecution privileges, for purpose of its motion to compel production of notes government took during interviews with relator, where employer already had relator's statement of material evidence, which it claimed contained same subject matter as the interview notes, and it did not provide District Court with any way to conclude that it did not have information it sought. U.S. ex rel. Purcell v. MWI Corp., D.D.C.2006, 238 F.R.D. 321. Federal Civil Procedure 1604(1)

Discovery was warranted as to sales and marketing of human growth hormone in pharmaceutical companies' marketing region that included Indiana, where relator bringing fraud action against pharmaceutical companies alleged that off-label claims that were approved by Indiana's Drug Utilization Review Board were the result of illegal kickbacks and that companies engaged in marketing practices that caused submission of false claims by doctors. U.S. ex rel. Rost v. Pfizer, Inc., D.Mass.2008, 253 F.R.D. 11. Federal Civil Procedure 1272.1

Exit interview documents created by direct endorser of federally-insured mortgages in connection with internal fraud investigation were not protected by work product doctrine from discovery in qui tam action under False Claims Act, where all documents were created prior to filing of lawsuit, almost all were created before relator began working for endorser, and documents stated that they were “strictly for use by the Human Resources Department to assist in evaluating current policies and practices and identifying potential areas for improvement.” U.S. ex rel. Fago v. M & T Mortg. Corp., D.D.C.2006, 238 F.R.D. 3, reconsideration denied 242 F.R.D. 16. Federal Civil Procedure 1604(1)

Due to defendant's complete failure to produce or even identify by category additional medical records prior to the close of discovery in suit alleging submission of false Medicare claims in violation of the False Claims Act, defendant would be deprived of the use of such documents pursuant to the terms of the sampling order providing for discovery by randomly selected sample chosen from master list of each category of claims submitted to Medicare, and precluding use of any claims documents not produced during the sampling process. Hill v. Morehouse Medical Associates, Inc., N.D.Ga.2006, 236 F.R.D. 590. Federal Civil Procedure 1636.1

In action brought against corporate defendants under False Claims Act, stemming from allegedly improper use of Minority Small Business Development Program, documents relating to accounting, financial statements and other financial history of defendants would be properly discoverable, subject to temporal limitation regarding defendants' actual participation in program and exclusion of documents referring to capital contributions or investments made by shareholders, acquisition of assets from individual defendants, state and federal tax returns and documents submitted to Internal Revenue

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Service (IRS) relating to request for ruling; financial structure and status of various corporations involved related to government's claim that corporations were manipulated to have Section 8(a) corporation serve as “front” for non-Section 8(a) corporations. U.S. ex rel. Fisher v. Network Software Associates, D.D.C.2003, 217 F.R.D. 240. Federal Civil Procedure 1588

226. Limitations, remedies or relief

Government's action under False Claims Act (FCA) commenced, for limitations purposes, on date its complaints-in-intervention were filed in relator's qui tam suit. U.S. v. The Baylor University Medical Center, C.A.2 (Conn.) 2006, 469 F.3d 263. Limitation Of Actions 124

Private mortgage lender's interest in federal reimbursement in connection with default on federally insured loan became “claim” for purposes of False Claims Act and its statute of limitations when lender filled out HUD form requiring it to furnish detailed information about loan and default and informing lender about method through which it could obtain payment once mortgage was assigned; therefore, government's civil action under Act against those allegedly involved in diverting loan proceeds was time barred when not brought within six years of date lender filed form. U.S. v. Rivera, C.A.1 (Puerto Rico) 1995, 55 F.3d 703, 139 A.L.R. Fed. 813, on remand 956 F.Supp. 1046. Limitation Of Actions 58(1)

31 U.S.C.A. § 3729, 31 USCA § 3729

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Effective:[See Notes]

United States Code Annotated Currentness
Title 31. Money and Finance (Refs & Annos)
Subtitle III. Financial Management
Chapter 37. Claims (Refs & Annos)
Subchapter III. Claims Against the United States Government (Refs & Annos)
§ 3730. Civil actions for false claims

(a) Responsibilities of the Attorney General.--The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

(b) Actions by private persons.--(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure. [FN1] The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall--

(A) proceed with the action, in which case the action shall be conducted by the Government; or

(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

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(c) Rights of the parties to qui tam actions.--(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2)(A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as--

(i) limiting the number of witnesses the person may call;

(ii) limiting the length of the testimony of such witnesses;

(iii) limiting the person's cross-examination of witnesses; or

(iv) otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

(4) Whether or not the Government proceeds with the action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

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(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) Award to qui tam plaintiff.--(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government [FN2] Accounting Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 3729 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of section 3729, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice.

(4) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

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(e) Certain actions barred.--(1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.

(2)(A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

(B) For purposes of this paragraph, "senior executive branch official" means any officer or employee listed in paragraphs (1) through (8) of section 101(f) of the Ethics in Government Act of 1978 (5 U.S.C. App.).

(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.

(4)(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government [FN2] Accounting Office report, hearing, audit, or investigation, or from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

(f) Government not liable for certain expenses.--The Government is not liable for expenses which a person incurs in bringing an action under this section.

(g) Fees and expenses to prevailing defendant.--In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.

(h) Relief from retaliatory actions.--

(1) In general.--Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, or agent on behalf of the employee, contractor, or agent or associated others in furtherance of other efforts to stop 1 or more violations of this subchapter.

(2) Relief.--Relief under paragraph (1) shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained a

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s a result of the discrimination, including litigation costs and reasonable attorneys' fees. An action under this subsection may be brought in the appropriate district court of the United States for the relief provided in this subsection.

CREDIT(S)

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 978; Pub.L. 99-562, §§ 3, 4, Oct. 27, 1986, 100 Stat. 3154, 3157; Pub.L. 100-700, § 9, Nov. 19, 1988, 102 Stat. 4638; Pub.L. 101-280, § 10(a), May 4, 1990, 104 Stat. 162; Pub.L. 103-272, § 4(f)(1)(P), July 5, 1994, 108 Stat. 1362; Pub.L. 111-21, § 4(d), May 20, 2009, 123 Stat. 1624.)

[FN1] See, now, Rule 4(i) of the Federal Rules of Civil Procedure.

[FN2] So in original. Probably should be “General”.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1982 Acts

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3730(a)	31:233	R.S. § 3492.
3730(b)(1)	31:232(A), (B) (less words between 3d and 4th commas).	R.S. § 3491(A)-(E); restated Dec. 23, 1943, ch. 377, § 1, 57 Stat. 608; June 11, 1960, Pub.L. 86-507, § 1(28), (29), 74 Stat. 202.
3730(b)(2)	31:232(C) (1st-3d sentences, 5th sentence proviso).	
3730(b)(3)	31:232(C) (4th sentence, 5th sentence less proviso).	
3730(b)(4)	31:232(C) (last sentence), (D)	
3730(c)(1)	31:232(E)(1)	
3730(c)(2)	31:232(E)(2) (less proviso)	
3730(d)	31:232(B) (words between 3d and 4th commas), (E)(2) (proviso).	

In the section, the words “civil action” are substituted for “suit” for consistency in the revised title and with other titles of the United States Code.

In subsection (a), the words “Attorney General” are substituted for “several district attorneys of the United States [subsequently changed to ‘United States attorneys’ because of section 1 of the Act of June 25, 1948 (ch. 646, 62 Stat. 909)] for the respective districts, for the District of Columbia, and for the several Territories” because of 28:509 [section 509 of Title 28, Judiciary and Judicial Procedure]. The words “by persons liable to such suit” are omitted as surplus. The words “and found within their respective districts or Territories” are omitted because of the restatement. The words “If

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the Attorney General finds that a person has violated or is violating section 3729, the Attorney General may bring a civil action against the person" are substituted for "and to cause them to be proceeded against in due form of law for the recovery of such forfeiture and damages" for clarity and consistency. The words "as the district judge may order" are omitted as surplus. The words "of the Attorney General" are substituted for "the person bringing the suit" for consistency in the section.

In subsection (b)(1), the words "Except as hereinafter provided" are omitted as unnecessary. The words "for a violation of section 3729 of this title" are added because of the restatement. The words "and carried on", "several" and "full power and" are omitted as surplus. The words "of the action" are substituted for "to hear, try, and determine such suit" to eliminate unnecessary words. The words "Trial is in the judicial district within whose jurisdictional limits the person charged with a violation is found or the violation occurs" are substituted for "within whose jurisdictional limits the person doing or committing such act shall be found, shall wheresoever such act may have been done or committed" for consistency in the revised title and with other titles of the Code. The words "withdrawn or" and "judge of the" are omitted as surplus. The words "Attorney General" are substituted for "district attorney [subsequently changed to 'United States attorneys' because of section 1 of the Act of June 25, 1948 (ch. 646, 62 Stat. 909)], first filed in the case" because of 28:509.

In subsection (b)(2), before clause (A), the words "bill of", "Whenever any such suit shall be brought by any person under clause (B) of this section" and "to the effective prosecution of such suit or" are omitted as surplus. The words "served on the Government under rule 4 of this Federal Rules of Civil Procedure (28 App. U.S.C.)" are substituted for "notice . . . shall be given to the United States by serving upon the United States Attorney for the district in which such suit shall have been brought . . . and by sending, by registered mail, or by certified mail, to the Attorney General of the United States at Washington, District of Columbia" because of 28:509 [§ 509 of Title 28, Judiciary and Judicial Procedure] and to eliminate unnecessary words. The words "proceed with the action" are added for clarity. Clause (A) is substituted for "shall fail, or decline in writing to the court, during said period of sixty days to enter any such suit" for clarity and consistency. In clause (B), the words "a period of" and "therein" are omitted as surplus.

In subsection (b)(3), the words "within said period" are omitted as surplus. The words "proceeds with the action" are substituted for "shall enter appearance in such suit" for consistency. The words "In carrying on such suit" and "and may proceed in all respects as if it were instituting the suit" are omitted as surplus.

In subsection (b)(4), the words "unless the Government proceeds with the action" are added because of the restatement. The words "shall dismiss an action brought by the person on discovering" are substituted for "shall have no jurisdiction to proceed with any such suit . . . or pending suit . . . whenever it shall be made to appear that" to eliminate unnecessary words. The words "or any agency, officer, or employee thereof" are omitted as unnecessary. The text of 31:232(C) [former § 232(c) of this title] (last sentence proviso) and (D) [former § 232(D) of this title] is omitted as executed.

In subsection (c), the words "herein provided", "fair and . . . compensation to such person", and "involved therein, which shall be collected" are omitted as surplus.

In subsection (c)(2), the words "whether heretofore or hereafter brought" are omitted as unnecessary. The words "bringing the action or settling the claim" are substituted for "who brought such suit and prosecuted it to final judgment, or to settlement" for clarity and consistency. The words "as provided in clause (B) of this section" are omitted as unne-

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cessary. The words “the civil penalty” are substituted for “forfeiture” for clarity and consistency. The words “to his own use”, “the court may”, and “to be allowed and taxed according to any provision of law or rule of court in force, or that shall be in force in suits between private parties in said court” are omitted as surplus.

Subsection (d) is substituted for 31:232(B) [former § 232(B) of this title] (words between 3d and 4th commas) and (E)(2) [former § 232(E)(2) of this title] (proviso) to eliminate unnecessary words.

1986 Acts. Senate Report No. 99-345, see 1986 U.S. Code Cong. and Adm. News, p. 5266.

1988 Acts. Senate Report No. 100-503, see 1988 U.S. Code Cong. and Adm. News, p. 5969.

1990 Acts. Detailed Explanation Prepared by House and Senate Legislative Counsel, see 1990 U.S. Code Cong. and Adm. News, p. 169.

1994 Acts. House Report No. 103-180, see 1994 U.S. Code Cong. and Adm. News, p. 818.

2009 Acts. Senate Report No. 111-10, see 2009 U.S. Code Cong. and Adm. News, p. 430.

Statement by President, see 2009 U.S. Code Cong. and Adm. News, p. S21.

References in Text

Rule 4 of the Federal Rules of Civil Procedure, referred to in subsec. (b)(2) and (3), is classified to Title 28, Judiciary and Judicial Procedure.

Section 101(f) of the Ethics in Government Act of 1978, referred to in subsec. (e)(2)(B), is section 101(f) of Pub.L. 95-521, Title I, Oct. 26, 1978, 92 Stat. 1842, as amended, which is set out in Appendix 4 of Title 5, Government Organization and Employees.

Codifications

Amendment by section 9(b) of Pub.L. 100-700 executed to subsecs. (c)(4) and (d)(4) of this section as probable intent of Congress in spite of directory language which directed amendment of section 3730 of Title 28, which is impossible of execution.

Amendments

2009 Amendments. Subsec. (h). Pub.L. 111-21, § 4(d), rewrote subsec. (h), which formerly read: “Any employee who is

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discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate district court of the United States for the relief provided in this subsection."

1994 Amendments. Subsec. (e)(2)(B). Pub.L. 103-272, § 4(f)(1)(P), substituted "paragraphs (1) through (8)" for "section paragraphs (1) through (8)".

1990 Amendments. Subsec. (e)(2)(B). Pub.L. 101-280 substituted "paragraphs (1) through (8) of section 101(f)" for "201(f)".

1988 Amendments. Subsec. (c)(4). Pub.L. 100-700, § 9(b)(1), substituted "with the action" for "with action".

Subsec. (d)(3). Pub.L. 100-700, § 9(a)(1), (2), added par. (3). Former par. (3) was redesignated (4).

Subsec. (d)(4). Pub.L. 100-700, § 9(a)(1), redesignated former par. (3) as (4).

Pub.L. 100-700, § 9(b)(2), substituted "bringing the action" for "bringing the actions".

1986 Amendments. Subsec. (a). Pub.L. 99-562, § 3, inserted subsection heading and struck out provision that the person may be arrested and bail set for an amount not more than $2,000 and 2 times the amount of damages sworn to in an affidavit of the Attorney General.

Subsec. (b)(1). Pub.L. 99-562, § 3, inserted subsection heading and struck out provision relating to district court jurisdiction and to venue. See section 3732 of this title.

Subsec. (b)(2). Pub.L. 99-562, § 3, substituted provision that the complaint and disclosure be served pursuant to Rule 4(d)(4) of the Federal Rules of Civil Procedure, the complaint be filed in camera, it remain under seal for at least 60 days and not be served on the defendant until ordered by the court, and that the Government have the right to intervene within 60 days of receipt of both complaint and material evidence for provision that the complaint and disclosure be filed pursuant to Rule 4 of the Federal Rules of Civil Procedure, the Government proceed with the action by entering an appearance by the 60th day after being notified, and that the person bring the action proceed if the Government does not enter, or give written notice of intent to enter, by the end of the 60 day period or does not proceed with reasonable diligence within 6 months after entering an appearance, or within such additional time as al
lowed.

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Subsec. (b)(3). Pub.L. 99-562, § 3, substituted provision permitting the Government to make motions for extensions and directing that the defendant not be required to respond to any complaint until 20 days after the complaint is unsealed and served upon the defendant for provision that if the Government proceed with the action, the action by conducted only by the Government and the Government not be bound by an act of the person bringing the action. See subsec. (c)(1) of this section.

Subsec. (b)(4). Pub.L. 99-562, § 3, substituted provision that before the expiration of the 60 day period or any extensions granted, the Government proceed with the action, in which case the Government conduct the action, or notify the court that it declines to take over the action, in which case the person bring the action has the right to conduct the action for provision that unless the Government proceeds with the action, the court dismiss an action brought by a person on discovering the action is based on evidence or information the Government had when the action was brought.

Subsec. (b)(5). Pub.L. 99-562, § 3, added par. (5).

Subsec. (c). Pub.L. 99-562, § 3, inserted subsection heading and substitute provision relating to the rights of the parties to qui tam actions for provision determining the amount of the proceeds the person bring the action may receive if the Government proceeds with the action and the amount of such proceeds if the Government does not proceed with the action.

Subsec. (d). Pub.L. 99-562, § 3, added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub.L. 99-562, § 3, added subsec. (e).

Subsec. (f). Pub.L. 99-562, § 3, redesignated former subsec. (d) as (f), and in subsec. (f) as so designated, inserted subsection heading.

Subsec. (g). Pub.L. 99-562, § 3, added subsec. (g).

Subsec. (h). Pub.L. 99-562, § 4, added subsec. (h).

Effective and Applicability Provisions

2009 Acts. Except as otherwise provided under Pub.L. 111-21, § 4(f)(1), (2), amendments made by Pub.L. 111-21, § 4, shall take effect on May 20, 2009, and shall apply to conduct on or after May 20, 2009, see Pub.L. 111-21, § 4(f), set out as a note under 31 U.S.C.A. § 3729.

1990 Acts. Amendment by Pub.L. 101-280, effective Jan. 1, 1991, see section 10(c) of Pub.L. 101-280, set out as a note under section 2397a of Title 10, Armed Forces.

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I. GENERALLY

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1. Constitutionality

Qui tam actions pursued under False Claims Act (FCA) in which government does not intervene do not violate constitutional doctrine of separation of powers by impinging upon Executive Branch's constitutional duty to take care that laws are faithfully executed. Riley v. St. Luke's Episcopal Hosp., C.A.5 (Tex.) 2001, 252 F.3d 749. Constitutional Law 2543; United States 40; United States 122

False Claims Act's (FCA) qui tam provisions do not violate Appointments Clause; qui tam relators are not officers of United States. Riley v. St. Luke's Episcopal Hosp., C.A.5 (Tex.) 2001, 252 F.3d 749. United States 35; United States 122

Qui tam provisions of False Claims Act do not contradict constitutional principal of separation of powers; provision crafted with particular care to maintain primacy of Executive Branch in prosecuting false-claims action, even when relator has initiated the process, by reserving government's ability to intervene, allowing it to remain informed of developments in litigation, move to have relator's role restricted and to have relator's filing sealed for 60 days or more. U.S. ex rel. Taxpayers Against Fraud v. General Elec. Co., C.A.6 (Ohio) 1994, 41 F.3d 1032, rehearing and suggestion for rehearing en banc denied. Constitutional Law 2390; United States 122

Qui tam provisions of False Claims Act did not violate Article III standing requirements by granting standing to private parties to sue for injuries to federal treasury resulting from false claim against United States; FCA effectively assigned government's claims to qui tam plaintiffs, who could then sue based upon injury to federal treasury. U.S. ex rel. Kelly v. Boeing Co., C.A.9 (Wash.) 1993, 9 F.3d 743, certiorari denied 114 S.Ct. 1125, 510 U.S. 1140, 127 L.Ed.2d 433. United States 122

1943 amendment of former § 232 of this title which deprived district court of jurisdiction to proceed with informer's action when it appeared that suit was based upon evidence or information in possession of United States at time suit was brought, was not unconstitutional on theory that the filing of the complaint in a qui tam action was the acceptance of a contract which constituted property and a vested right in the informer which Congress could not take away. Sherr v. Anaconda Wire & Cable Co., C.C.A.2 (N.Y.) 1945, 149 F.2d 680, certiorari denied 66 S.Ct. 143, 326 U.S. 762, 90 L.Ed. 458. See, also, U.S. ex rel. Bayarsky v. Brooks, D.C.N.J.1953, 110 F.Supp. 175, affirmed 210 F.2d 257. Constitutional Law 2648; United States 94

False Claims Act (FCA) provisions allowing private relators to bring qui tam suits under FCA did not violate separation of
powers doctrine by diminishing or altering Executive Branch powers under Take Care clause, where FCA allowed government to intervene within 60 days of receipt of complaint and material evidence, government, as intervenor, could dis-

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miss or settle the action, and government could request copies of all pleadings and deposition transcripts, and government retained ability to elect to pursue its claim through any alternate remedy available. U.S. ex rel. K & R Ltd. Partnership v. Massachusetts Housing Finance Agency, D.D.C.2001, 154 F.Supp.2d 19, dismissed 2003 WL 21058272. United States 40; United States 122

Right of defendants to due process is not infringed by private relator's financial reward in qui tam action brought under False Claims Act; reward is simply fee out of government's recovery for filing or prosecuting action, constitutes appropriate incentive, and does not create inherent conflict with overall administration of justice. Friedman v. Rite Aid Corp., E.D.Pa.2001, 152 F.Supp.2d 766. Constitutional Law 3972; United States 122

Private relator in qui tam action acts as representative agent of government, not as "officer of the United States," and thus use of private relator under False Claims Act does not violate Appointments Clause; qui tam relator has no employment relationship with government, relator is not vested with governmental power, and government may assume control of qui tam action at any time. Friedman v. Rite Aid Corp., E.D.Pa.2001, 152 F.Supp.2d 766. United States 35; United States 122

False Claim Act's qui tam provision did not violate the Take Care Clause of the U.S. Constitution under the separation of powers doctrine when the Attorney General refuses to intervene in the action; under qui tam provision, the executive branch retained sufficient control over relators to ensure that the executive could perform his constitutionally assigned obligations. U.S. ex rel. Wright v. Cleo Wallace Centers, D.Colo.2000, 132 F.Supp.2d 913. United States 40; United States 122

Qui tam provisions of False Claims Act (FCA) that permitted private parties to sue in name of United States for injuries to federal treasury did not violate constitutional provision requiring President to "take care" that laws be faithfully executed; government's authority under FCA to intervene and manage suit gave sufficient degree of executive control to satisfy constitutional requirements. U.S. ex rel. Phillips v. Pediatric Services of America, Inc., W.D.N.C.2000, 123 F.Supp.2d 990. United States 40; United States 120.1

Qui tam provision of False Claims Act (FCA) did not vest relator with governmental authority such that he was Article II "officer," and thus FCA did not appoint private party to fulfill executive function in violation of Appointments Clause, even if government declined to intervene, as relator's responsibility extended to only one case. U.S. ex rel. Phillips v. Pediatric Services of America, Inc., W.D.N.C.2000, 123 F.Supp.2d 990. United States 35; United States 120.1

Qui tam provisions in False Claims Act (FCA) allowing relator to proceed with lawsuit in absence of intervention by government did not unconstitutionally encroach upon executive branch's powers under Take Care Clause; executive branch, which could terminate lawsuit over relators objections as long as relator had opportunity for hearing, retained sufficient control over litigation. U.S. ex rel. Downy v. Corning, Inc., D.N.M.2000, 118 F.Supp.2d 1160. United States 40; United States 122

Qui tam provisions of False Claims Act did not violate principle of separation of powers; FCA provided executive branch with sufficient control over qui tam suits. U.S. ex rel. Chandler v. Hektoen Institute for Medical Research, N.D.Ill.1999,

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35 F.Supp.2d 1078, on reconsideration in part 118 F.Supp.2d 902, reversed 277 F.3d 969, mandate stayed 282 F.3d 448, certiorari granted 122 S.Ct. 2657, 536 U.S. 956, 153 L.Ed.2d 833, affirmed 123 S.Ct. 1239, 538 U.S. 119, 155 L.Ed.2d 247, on remand 2003 WL 22284199. Constitutional Law 2390; United States 122

Qui tam provisions of the False Claims Act (FCA) do not violate the separation of powers by assigning to the relator the executive branch right to prosecute the action; executive branch can intervene and control the entire litigation, and this control protects the separation of the executive from the judicial branch. U.S. ex rel. Thompson v. Columbia/HCA Healthcare Corp., S.D.Tex.1998, 20 F.Supp.2d 1017. Constitutional Law 2390; United States 122

False Claims Act does not violate Article III of the Constitution on theory that it grants standing to private individuals to sue for fraud against the government in qui tam action when those individuals allegedly have not suffered any injury; though plaintiffs' stake as taxpayers was tiny, they, as former employees of defendant, were also unwilling participants in alleged fraud and allegedly suffered embarrassment and risk of retaliation, plaintiffs stood to gain substantial amount if they prevailed on their qui tam action, and they were asserting substantial governmental interest effectively assigned or transferred to them. U.S. ex rel. Robinson v. Northrop Corp., N.D.Ill.1993, 824 F.Supp. 830. Federal Courts 13; United States 122

False Claims Act (FCA) does not violate separation of powers doctrine; even though qui tam plaintiff has relative freedom in pursuing suit, executive branch has control of prosecution of cases and ultimate disposition. U.S. ex rel. Burch v. Piqua Engineering, Inc., S.D.Ohio 1992, 803 F.Supp. 115. Constitutional Law 2545(2); United States 122

Qui tam provisions of the False Claims Act did not violate the appointments clause of the Constitution, on the theory that it allowed individuals not appointed in accordance with the clause to conduct litigation; qui tam plaintiffs had little authority, and were suing pursuant to statute which invited the executive to take over the litigation. U.S. Dept. of Housing and Urban Development ex rel. Givler v. Smith, E.D.Pa.1991, 775 F.Supp. 172. United States 35; United States 122

Qui tam provisions of False Claims Act did not violate doctrine of separation of powers, despite contention that provisions unconstitutionally undermined authority of executive branch; executive branch retained sufficient, although not absolute or total, control over litigation. U.S. ex rel. Truong v. Northrop Corp., C.D.Cal.1989, 728 F.Supp. 615. Constitutional Law 2390; United States 122

The *quitam* provisions of the False Claims Act do not violate the separation of powers doctrine by impermissibly placing prosecutorial functions in the hands of private individuals, or the courts; the *quitam* provisions afford the executive branch sufficient control over the litigation. U.S. ex rel. Newsham v. Lockheed Missiles and Space Co., Inc., N.D.Cal.1989, 722 F.Supp. 607. United States 94; Constitutional Law 2442; Constitutional Law 2403

Former § 232(C) of this title which provided that court shall have no jurisdiction to proceed with any such a suit when suit was based upon evidence in possession of the United States at time the suit was brought, was constitutional as against contention that it deprived informer of a vested right. U.S. ex rel. McLaughlin v. American Chain & Cable Co., S.D.N.Y.1945, 62 F.Supp. 302. Constitutional Law 2647; United States 94

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2. Purpose

The chief purpose of former §§ 231 [now § 3729] and 232 of this title was to provide for restitution of money taken from government by fraud and the device of double damages plus a specified sum was chosen to make sure that government was made completely whole. U. S. ex rel. Marcus v. Hess, U.S.Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. United States 122

Public disclosure bar to qui tam actions under False Claims Act (FCA) is designed to deter parasitic qui tam actions following public disclosure of information. U.S. v. Emergency Medical Associates of Illinois, Inc., C.A.7 (Ill.) 2006, 436 F.3d 726, rehearing and rehearing en banc denied. United States 122

False Claims Act's jurisdictional scheme is designed to promote private citizen involvement in exposing fraud against government, while at same time preventing parasitic suits by opportunistic latecomers who had nothing to add to fraud exposure. U.S. ex rel. Rabushka v. Crane Co., C.A.8 (Mo.) 1994, 40 F.3d 1509, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 2579, 515 U.S. 1142, 132 L.Ed.2d 829. United States 122

Purpose of False Claims Act is to discourage fraud against government, and whistleblower provision is intended to encourage those with knowledge of fraud to come forward. Robertson v. Bell Helicopter Textron, Inc., C.A.5 (Tex.) 1994, 32 F.3d 948, certiorari denied 115 S.Ct. 1110, 513 U.S. 1154, 130 L.Ed.2d 1075. United States 120.1; Labor And Employment 776

Qui tam provisions of the False Claims Act (FCA) are remedial rather than penal, and thus a qui tam action brought under the FCA survives death of plaintiff; purpose of qui tam provisions is to provide individuals with incentive to inform the government of fraudulent activity and to compensate such individuals for time and expense of coming forward; provisions in no way act to penalize FCA defendant. U.S. v. NEC Corp., C.A.11 (Fla.) 1993, 11 F.3d 136, as amended. Abatement And Revival 57

Former § 232 of this title was designed to encourage the apprehension of profiteers by providing financial incentives to private parties to expose and prosecute fraud against the government. U. S. v. Burmah Oil Co. Ltd., C.A.2 (N.Y.) 1977, 558 F.2d 43, certiorari denied 98 S.Ct. 511, 434 U.S. 967, 54 L.Ed.2d 454. United States 120.1

Former §§ 231 [now § 3729] and 232 of this title, were enacted to insure vigorous prosecution of suits to recover damages for frauds perpetrated against the United States and to guard against laxity of government enforcement officers. U.S. v. Baker-Lockwood Mfg. Co., C.C.A.8 (Mo.) 1943, 138 F.2d 48. United States 122

In enacting whistleblower protection provision of False Claim Act, Congress aimed to make employees feel more secure in reporting fraud to the United States. Tighe v. Career Systems Development Corp., D.Mass.1996, 915 F.Supp. 476. Labor And Employment 776

Former § 232 of this title ha
d for its purpose exclusion from its coverage of “parasitical claims,” based upon information acquired in government ser-

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vice. U.S. ex rel. McCans v. Armour & Co., D.C.D.C.1956, 146 F.Supp. 546, affirmed 254 F.2d 90, 102 U.S.App.D.C. 391, certiorari denied 79 S.Ct. 57, 358 U.S. 834, 3 L.Ed.2d 71, rehearing denied 79 S.Ct. 220, 358 U.S. 901, 3 L.Ed.2d 152. United States 122

The legislative intent in amending former § 232 of this title in 1943 was to restrict and limit informer suits to cases in which facts are voluntarily disclosed to the Justice Department, which facts were not then in its possession and were of a substantial nature, credible and trustworthy, and which were material to matter under investigation. U.S. ex rel. Coates v. St. Louis Clay Products Co., E.D.Mo.1946, 65 F.Supp. 645. United States 122

The purpose of 1943 amendment of former § 232 of this title was to eliminate the former practice by which many persons filed suits based on information and alleged facts obtained bodily from indictments returned in the United States courts, from newspaper stories, and from Congressional investigations without basis of any original information in possession of informer. U.S. ex rel. Sherr v. Anaconda Wire & Cable Co., S.D.N.Y.1944, 57 F.Supp. 106, affirmed 149 F.2d 680, certiorari denied 66 S.Ct. 143, 326 U.S. 762, 90 L.Ed. 458. United States 122

3. Construction

Amendments of 1986 to qui tam provisions of False Claims Act must be analyzed in context of twin goals of rejecting suits which government is capable of pursuing itself, while promoting those which government is not equipped to bring on its own. U.S. ex rel. Springfield Terminal Ry. Co. v. Quinn, C.A.D.C.1994, 14 F.3d 645, 304 U.S.App.D.C. 347, rehearing in banc declined. United States 122

View that all provisions of former § 232 of this title should have been liberally construed to foster the bringing of claims was disapproved. Pettis ex rel. U. S. v. Morrison-Knudsen Co., Inc., C.A.9 (Idaho) 1978, 577 F.2d 668. United States 120.1

4. Construction with other laws

To have nullified former §§ 80 and 82 to 86 of Title 18 which governed fraudulent claims against United States by strict interpretation, because of dislike of former § 232 of this title which governed action against one presenting fraudulent claim, would have been to exercise a “veto power” which Supreme Court did not posses. U. S. ex rel. Marcus v. Hess, U.S.Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. Constitutional Law 2507(1)

In interpreting so much of former §§ 80 and 82 to 86 of Title 18, which prohibited fraudulent claims against United States as said sections shared with former § 232 of this title on the same subject, court should have given it careful scrutiny lest those were brought within its reach who were not clearly included, but after such scrutiny must have given it the fair meaning of its intendment. U. S. ex rel. Marcus v. Hess, U.S.Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. United States 121

Former § 232 of this title which authorized informer's action against one presenting fraudulent claim against United States need not have been interpreted with utmost strictness, especially where to have done so would have detracted from

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meaning of former §§ 80 and 82 to 86 of Title 18, which governed fraudulent claims. U. S. ex rel. Marcus v. Hess, U.S.Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. United States 122

Qui tam action brought by former employee of fiscal intermediary for Medicare Part A claims, under False Claims Act (FCA), alleging that intermediary knowingly presented or caused to be presented false or fraudulent claims to the United States government, was not action "arising under" Medicare Act and thus was not barred by statute revoking federal-question jurisdiction in the district courts over cases "arising under" that Act. U.S. v. Blue Cross and Blue Shield of Alabama, Inc., C.A.11 (Ala.) 1998, 156 F.3d 1098. Federal Courts 192.5

Section of False Claims Act (FCA) providing for award of fees and "expenses" upon finding that relator's claim was not frivolous, clearly vexatious or brought primarily for purposes of harassment did not constitute express provision for "costs" which displaced discretion to award costs under rule of civil procedure and, thus, award of costs to military contractor which prevailed in follow-on contractor's FCA action was not error. U.S. ex rel. Lindenthal v. General Dynamics Corp., C.A.9 (Cal.) 1995, 61 F.3d 1402, certiorari denied 116 S.Ct. 1319, 517 U.S. 1104, 134 L.Ed.2d 472. United States 122

Court of Federal Claims did not have jurisdiction over former federal employee's wrongful discharge claim against the United States, alleging that he was terminated from his position when he pressed for full investigation of his allegations of fraudulent mishandling of government contracts; subsequently enacted provisions of False Claims Act did not give federal employee, who had no remedy under Civil Service Reform Act (CSRA) because of his probationary status, a right to sue in Court of Federal Claims under Act's section creating remedy for employee who suffers retaliation from employer as result of activities in furtherance of qui tam suit and Act provision stating that employee may bring action in federal district court for relief did not support waiver of sovereign immunity in the Court of Federal Claims, especially in light of CSRA's comprehensive treatment of review of federal personnel actions. LeBlanc v. U.S., C.A.Fed.1995, 50 F.3d 1025. Federal Courts 1079

The provisions of former § 191 [now § 3713] of this title, relative to priority of payment of claims by the United States in certain cases, applied to a judgment obtained against a defendant in a qui tam action instituted in the name of the United States under former § 231 [now § 3729] of this title. U.S. v. Griswold, C.C.Or.1881, 8 F. 496, 7 Sawy. 296.

Neither Anti-Kickback law nor the Stark law provides for a private right of enforcement nor does the qui tam statute authorize private persons to bring civil claims for violations of the Anti-Kickback and Stark laws outside the context of the False Claims Act (FCA). U.S. ex rel. Villafane v. Solinger, W.D.Ky.2008, 543 F.Supp.2d 678. Action 3; Health 507; United States 122

Congress, by granting Federal Communications Commission (FCC) the authority to construct a remedial scheme to address violations of FCC regulations, did not intend to "preempt" remedies under False Claims Act (FCA) for abuse of FCC's public bidding procedure for wireless telecommunications licenses. U.S. ex rel. Taylor v. Gabelli, S.D.N.Y.2004, 345 F.Supp.2d 313, stay denied 345 F.Supp.2d 340. United States 122

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Whether insurer that acted as Medicare contractor was entitled to statutory immunity under Social Security Act with regard to claim that it violated False Claims Act (FCA) by presenting false or fraudulent claims for payment against the Medicare Trust Fund or by billing Center for Medicare and Medicaid Services (CMS) for contractual administrative services performed in breach of the parties' contract could not be resolved on motion to dismiss. U.S. ex rel. Drescher v. Highmark, Inc., E.D.Pa.2004, 305 F.Supp.2d 451. Federal Civil Procedure 1831

State statute prohibiting retaliation against employee for disclosing information to government or in furthering false claim action did not provide protection from retaliation for federal whistleblowers. Hoefer v. Fluor Daniel, Inc., C.D.Cal.2000, 92 F.Supp.2d 1055. Labor And Employment 776

This section does not authorize a private party to override section 7401 of Title 26 providing that no civil action for collection or recovery of taxes shall be commenced unless the Secretary of the Treasury authorizes or sanctions proceedings and Attorney General directs that action be commenced to recover penalties or damages allegedly sustained by government by virtue of false income tax statements. U.S. ex rel. U.S.-Namibia (Southwest Africa) Trade & Cultural Council, Inc. v. Africa Fund, S.D.N.Y.1984, 588 F.Supp. 1350. Internal Revenue 5229

Recital within § 95 of Title 2 that payments approved by Committee on House Administration of House of Representatives were conclusive upon all departments and officers of government did not preclude United States from bringing suit under former § 231 [now § 3729] of this title against former Congressman for allegedly misrepresenting, in his monthly certifications to such Committee, as official an undetermined number of telephone toll calls which were paid for out of House contingent fund and for which, but for alleged misrepresentations, former Congressman would have had to reimburse United States. U. S. v. Eilberg, E.D.Pa.1980, 507 F.Supp. 267. United States 120.1

Federal government was not a “person” who could be compelled under federal rule to comply with a discovery subpoena in qui tam action in which it had elected not to intervene and was therefore also not a real party in interest; rather, parties seeking discovery had to employ the Administrative Procedure Act (APA) to obtain the relevant discovery from federal agency. U.S. ex rel. Taylor v. Gabelli, D.D.C.2005, 233 F.R.D. 174. Federal Civil Procedure 1266; Witnesses 16

False Claims Act (FCA) claims asserted by relator against Chapter 11 debtor, in which the government had not intervened, did not fall within exception to the automatic stay for actions by a governmental unit to enforce its police or regulatory power. U.S. ex rel. Fullington v. Parkway Hosp., Inc., E.D.N.Y.2006, 351 B.R. 280. Bankruptcy 2402(1)

Qui tam relator asserting claim against debtor under False Claims Act (FCA) was not “governmental unit,” and thus relator's claim did not fall within exception to automatic stay for continuance of governmental action to enforce police powers, where government had declined to intervene. U.S. ex rel. Goldstein v. P & M Draperies, Inc., D.Md.2004, 303 B.R. 601. Bankruptcy 2402(1)

False Claims Act, which is designed to prevent or stop fraud, is in nature of police or regulatory law, a suit under which is, of necessity, a proceeding to enforce “police or regulatory power” of government, within meaning of statutory exception to automatic stay. U.S. ex rel. Doe v. X, Inc., E.D.Va.2000, 246 B.R. 817. Bankruptcy 2402(1)

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5. Construction with constitutional provisions

Medical resident's retaliation claim under False Claims Act (FCA) against state university school of medicine, in which United States government had not intervened, was barred by Eleventh Amendment, inasmuch as resident, not United States, "commenced and prosecuted" action within meaning of Eleventh Amendment. U.S. v. Texas Tech University, C.A.5 (Tex.) 1999, 171 F.3d 279
, rehearing and suggestion for rehearing en banc denied, certiorari denied 120 S.Ct. 2194, 530 U.S. 1202, 147 L.Ed.2d 231, certiorari denied 120 S.Ct. 2194, 530 U.S. 1203, 147 L.Ed.2d 231. Federal Courts 269

Qui tam action by two Arkansas residents, alleging that Arkansas and its department of education violated False Claims Act by obtaining federal education funding with false claims of compliance with federal civil rights laws, was not barred by Eleventh Amendment; real party in interest was United States. U.S. ex rel. Rodgers v. State of Ark., C.A.8 (Ark.) 1998, 154 F.3d 865, rehearing and suggestion for rehearing en banc denied , certiorari dismissed 119 S.Ct. 2387, 527 U.S. 1018, 144 L.Ed.2d 768. Federal Courts 268.1

Section of federal False Claims Act which provides cause of action to employee who suffers adverse employment action because of lawful acts done in furtherance of False Claims Act action did not abrogate Eleventh Amendment immunity of state university; statutory language was silent on issue of immunity. U.S. ex rel. Moore v. University of Michigan, E.D.Mich.1994, 860 F.Supp. 400. Federal Courts 265

Suit brought against Congressman under former § 232 of this title was not barred by U.S.C.A. Art. 1, § 5, cl. 2, relating to punishment and expulsion of members of Congress, since the suit sought neither the expulsion nor punishment of defendant, but was in the nature of a civil, remedial action, and since the Justice Department, in seeking return of funds allegedly procured by misrepresentations, could not have been said to have invaded Congress' prerogative to punish or expel. U. S. ex rel. Hollander v. Clay, D.C.D.C.1976, 420 F.Supp. 853. United States 14

6. Law governing

Six-year statute of limitations in the False Claims Act (FCA) does not govern FCA civil actions for retaliation; rather, in assessing timeliness of FCA retaliation claim, court should borrow the most closely analogous state limitations period. Graham County Soil & Water Conservation Dist. v. U.S. ex rel. Wilson, U.S.2005, 125 S.Ct. 2444, 545 U.S. 409, 162 L.Ed.2d 390, rehearing denied , rehearing denied 126 S.Ct. 24, 545 U.S. 1158, 162 L.Ed.2d 922, on remand 424 F.3d 437
. Labor And Employment 856

Where the defendant was arrested and held to bail under former § 233 of this title, subsequent proceedings touching the arrest were governed by the law of the state in which the action was brought, pursuant to the requirements of former § 724 of Title 28 and in the absence of a state statute which authorized the discharge of a defendant in arrest, who was not charged in execution within a certain time after judgment, the court would have adopted the common law practice in such cases and would have discharged the defendant unless he was charged in execution within two terms next after the judgment was rendered, reckoning the term wherein the judgment was obtained as one. U.S. v. Griswold, D.C.Or.1880, 11 F. 807, 6 Sawy. 255.

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Claim of retaliation in violation of False Claims Act was governed by New York's residuary three-year statute of limitations for personal injury claims, not the one-year statute of limitations in whistleblower statute, two-year statute of limitations for retaliatory terminations arising out of employee complaints about employer violations of labor laws, or limitations period of New York Human Rights Law. McKenna on Behalf of U.S. v. Senior Life Management, Inc., S.D.N.Y.2006, 429 F.Supp.2d 695. Labor And Employment 856

Former employee's retaliatory discharge claim against employer under False Claim Act (FCA) was subject to most analogous statute of limitations under state law, rather than FCA's six-year statute of limitations for actions asserting liability for false claims. U.S. ex rel. Hinden v. UNC/Lear Services, Inc., D.Hawai'i 2005, 362 F.Supp.2d 1203. Labor And Employment 856

Employer's law firm could not bring counterclaim under the New Jersey Frivolous Claims Act (NJFCA) for costs and attorney fees in connection with defending employees' claims under the Federal False Claims Act; request for costs and fees under the NJFCA had to be brought by motion or application. Mruz v. Caring, Inc., D.N.J.1999, 39 F.Supp.2d 495. Costs 198

The United States as a sovereign seeking to collect its debts cannot be bound by either legislative or judicial acts of a member state. U. S. v. Miller, E.D.Pa.1955, 134 F.Supp. 276, affirmed 229 F.2d 839. States 18.93

The effect of release of some of defendants from further liability on judgment against all of them, with reservation of rights against remaining defendants, in informer's action under former § 231 [now § 3729] of this title to recover penalties for defrauding United States, was determined by federal law exclusively. U. S. ex rel. Marcus v. Hess, W.D.Pa.1945, 60 F.Supp. 333, affirmed 154 F.2d 291. Federal Courts 412.1

A statute of a state which required a plaintiff to give an undertaking for costs and damages before procuring an arrest, did not apply to a qui tam action in the name of the United States, pursuant to former § 232 of this title, since general words in a statute do not include the government or affect its rights unless such purpose be clear and indisputable upon the face of the Act. U.S. v. Griswold, D.C.Or.1877, 26 F.Cas. 42, 5 Sawy. 25, 10 Chi.Leg.N. 50, No. 15266.

7. State law and regulation

County employee had remedy for wrongful discharge under anti-retaliation provision of False Claims Act, and thus employee could not bring state law wrongful discharge action against county under Wisconsin law. Haka v. Lincoln County, W.D.Wis.2008, 533 F.Supp.2d 895. Counties 67; States 18.49

Existence of statutory relief, in form of False Claims Act section affording relief to employees discharged for acts done in furtherance of Act, precluded claim by representative of company sued under Act that her termination for bid rigging whistleblowing violated public policy of District of Columbia. Elemary v. Philipp Holzmann A.G., D.D.C.2008, 533 F.Supp.2d 116. Labor And Employment 852

If defense contractor was not found vicariously liable for its supplier's violations of False Claims Act (FCA) or Anti-

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Kickback Act (AKA), it could assert independent damages claims against supplier under Massachusetts unfair trade practices statute; however, if contractor was found liable, Massachusetts statutory claim would be preempted by the FCA or AKA because, in such scenario, that claim would have the effect of providing for indemnification prohibited under federal statutes. U.S. v. Dynamics Research Corp., D.Mass.2006, 441 F.Supp.2d 259. Antitrust And Trade Regulation 132; States 18.84

Federal False Claims Act did not preempt state wrongful discharge tort action against employer for retaliation against federal whistleblower after he allegedly informed federal government that employer overbilled government on contracts. Hoefer v. Fluor Daniel, Inc., C.D.Cal.2000, 92 F.Supp.2d 1055. States 18.49; Labor And Employment 757

Whistleblower's claim for recovery under New Jersey's Conscientious Employee Protection Act (CEPA) was not preempted by her claim for recovery under Federal Claims Act (FCA). Palladino ex rel. U.S. v. VNA of Southern New Jersey, Inc., D.N.J.1999, 68 F.Supp.2d 455. Labor And Employment 757; States 18.49

False Claims Act does not preempt state statutes and rules, such as attorney-client privilege, that regulate attorney's disclosure of client confidences. U.S. ex rel. Doe v. X Corp., E.D.Va.1994, 862 F.Supp. 1502. Attorney And Client 32(13); States 18.67

While False Claims Act permits any person, with four enumerated exceptions, to bring qui tam suit, it does not authorize that person to violate state laws in the process. U.S. ex rel. Doe v. X Corp., E.D.Va.1994, 862 F.Supp. 1502. United States 122

8. Civil nature of action

In former § 231 [now § 3729] of this title which provided that persons committing prohibited acts, which included presentation of fraudulent claims against United States, shall “forfeit and pay” $2,000 and double damages, the quoted words did not force conclusion that former § 232 of this title was “criminal” but was consistent with a “civil action” for damages. U. S. ex rel. Marcus v. Hess, U.S.Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. United States 122

The remedy by informer's action against one presenting fraudulent claim against the United States does not lose quality of a “civil action” because more than precise amount of so-called actual damage is recovered. U. S. ex rel. Marcus v. Hess, U.S.Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. United States 122

Suits by United States for forfeitures and double damages under former § 231 [now § 3729] of this title were not penal, but imposed civil sanction, as their purpose was to provide for restitution to government of money taken from it by fraud. Murray & Sorenson v. U.S., C.A.1 (R.I.) 1953, 207 F.2d 119. United States 122

Payment demands issued by Minerals Management Service (MMS) and MMS's audit of oil company's royalties practices did not constitute “civil money penalty proceedings” which would bar qui tam suit against oil company for fraudulent

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underpayment of royalties pursuant to False Claims Act; payment demands did not assert knowing underpayment of royalties and did not seek civil monetary penalties, and no notice of noncompliance or penalty notices for underpayment of royalties were issued by MMS. U.S. ex rel. Johnson v. Shell Oil Co., E.D.Tex.1998, 26 F.Supp.2d 923. United States 122

Former §§ 231 et seq. of this title imposed civil sanctions for the knowing submission to the government of a false claim for money or property. Grand Union Co. v. U. S., N.D.Ga.1980, 495 F.Supp. 331. United States 120.1

Action under former § 231 [now § 3729] of this title was civil action to recover an award of damages of a compensatory nature, payable to the United States for injuries to its property rights, and was not a criminal prosecution, and was not a civil action for a penalty. First Nat. Bank of Birmingham v. U.S., N.D.Ala.1953, 117 F.Supp. 486. United States 120.1

An informer's action to recover penalty under former § 231 [now § 3729] of this title and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for work was a “civil action” to recover civil sanctions for acts committed in violation of former §§ 80 and 82 to 86 of Title 18, and such action was not barred by previous criminal proceedings against defendants, respecting a conspiracy in regard to bidding. U. S. ex rel. Marcus v. Hess, W.D.Pa.1941, 41 F.Supp. 197, reversed 127 F.2d 233, certiorari granted 63 S.Ct. 40, 317 U.S. 613, 87 L.Ed. 498, reversed 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. Judgment 559

The gravamen of action in nature of qui tam suit, on behalf of United States, to recover penalty, provided for by former § 231 [now § 3729] of this title, and double damages for presentation of false, fictitious or fraudulent claim against the government, was fraud. United States ex rel. Rodriguez v. Weekly Publications, S.D.N.Y.1949, 9 F.R.D. 179. United States 122

An informer's action under former § 231 [now § 3729] of this title, although penal in character, was a “civil action” to which the Federal Rules of Civil Procedure, Title 28, applied. U.S. ex rel. Coates v. St. Louis Clay Products Co., E.D.Mo.1943, 3 F.R.D. 289. Federal Civil Procedure 35

9. Retroactive effect

Amendment to jurisdictional provision of False Claims Act (FCA) permitting qui tam suits based on information in government's possession under certain circumstances did not apply retroactively to conduct occurring before its effective date; in permitting actions by expanded universe of plaintiffs with different incentives, amendment changed substance of existing cause of action for qui tam defendants by attaching new disability to past transactions or considerations. Hughes Aircraft Co. v. U.S. ex rel. Schumer, U.S.Cal.1997, 117 S.Ct. 1871, 520 U.S. 939, 138 L.Ed.2d 135, on remand 119 F.3d 796. United States 122

The date the allegedly false claim was submitted, rather than the date of disclosure to the government, controls in determining applicability of 1986 amendments to the False Claims Act, which allow qui tam suit even after the government has the information, if not publicly disclosed. U.S. ex rel. Cantekin v. University of Pittsburgh, C.A.3 (Pa.) 1999, 192 F.3d 402, certiorari denied 121 S.Ct. 192, 531 U.S. 880, 148 L.Ed.2d 133. United States 122

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District court did not have jurisdiction of qui tam claims under the False Claims Act (FCA), reported before the 1986 amendments to the Act, where the relators contacted government officials and reported their observations in 1984, four years before the qui tam action was filed, the government found their information to be sufficient to start an investigation and conducted several audits targeted to respond to the relators' allegations, and while the government decided not to prosecute the relators' claims, the government had sufficient information on which to base this decision, and possessed that information when the action was brought. U.S. ex rel. Newsham v. Lockheed Missiles & Space Co., Inc., C.A.9 (Cal.) 1999, 190 F.3d 963, certiorari denied 120 S.Ct. 2196, 530 U.S. 1203, 147 L.Ed.2d 232. United States 122

Amendment to jurisdictional provision of False Claims Act (FCA) permitting qui tam suits based on information in government's possession under certain circumstances did not apply retroactively to presentation of false claims occurring before its effective date; retroactive application would render government contractor subject to cause of action that did not exist when it engaged in conduct later made actionable. U.S. v. Hughes Aircraft Co., C.A.9 (Cal.) 1998, 162 F.3d 1027, on remand 2000 WL 33775399. United States 120.1

Amendment to False Claims Act (FCA) eliminating “prior government knowledge” defense applied retrospectively to conduct which occurred prior to amendment's effective date; amendment did not infringe on substantive rights of government contractor. Hyatt v. Northrop Corp., C.A.9 (Cal.) 1996, 80 F.3d 1425, vacated 117 S.Ct. 2476, 521 U.S. 1101, 138 L.Ed.2d 986, on remand 137 F.3d 1179. United States 122

Although qui tam action brought by follow-on contractor of United States Air Force as relator against designer of pilot training system would have been barred under former version of False Claims Act (FCA) jurisdictional provision which barred actions brought by relators based on information government had when action was brought, amended jurisdictional provision applied retrospectively to confer jurisdiction to hear claim which was not based on public disclosure. U.S. ex rel. Lindenthal v. General Dynamics Corp., C.A.9 (Cal.) 1995, 61 F.3d 1402, certiorari denied 116 S.Ct. 1319, 517 U.S. 1104, 134 L.Ed.2d 472. United States 122

Even assuming that amendment to False Claims Act, under which a relator's qui tam claim under Act was barred by “public disclosure” of allegations or transactions rather than by action being based on “information the Government had,” applied prospectively only, amendment did not bar qui tam claims under Act of former employee of seller of digital telecommunications switches to the military, against seller, alleging seller knowingly sold defective switches to government before amendment, despite fact that employee disclosed information respecting his claims to government after amendment; amendment did not change consequences of seller's conduct, but only those of employee's conduct. U.S. ex rel. Anderson v. Northern Telecom, Inc., C.A.9 (Wash.) 1995, 52 F.3d 810, as amended , certiorari denied 116 S.Ct. 700, 516 U.S. 1043, 133 L.Ed.2d 657. United States 122

Amendment to False Claims Act, replacing bar to maintenance of qui tam action by private party when information regarding claim was in possession of government with provision barring private action when subject matter of claim was publicly known, was applicable to transactions occurring prior to date of amendment; as only effect of amendment was to broaden circumstances under which qui tam action could be brought, and government had right to bring action before and after amendment, there was no impairment of any preexisting right of alleged violator, or imposition of additional liability. U.S. v. Hercules, Inc., D.Utah 1996, 929 F.Supp. 1418. United States 122

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Attorney fees provision of amendments to False Claims Act (FCA) do not have retroactive effect and, therefore, applied to case involving conduct predating effective date of amendments but filed subsequent to amendments where all attorney fees were incurred after effective date of amendments and defendant had some control in its strategic litigation decisions. U.S. ex rel. Newsham v. Lockheed Missiles and Space Co., Inc., N.D.Cal.1995, 907 F.Supp. 1349, order vacated on reconsideration 1997 WL 858547, affirmed in part , reversed in part 171 F.3d 1208, amended and superseded 190 F.3d 963 , certiorari denied 120 S.Ct. 2196, 530 U.S. 1203, 147 L.Ed.2d 232. United States 122

As amendment to False Claims Act (FCA) allowing original source of information to bring action merely gave federal courts jurisdiction to hear claims that preexisted its enactment, district court had subject matter jurisdiction over original sources' lawsuit against employer, brought subsequent to amendment to FCA and based on events occurring prior to amendment; original sources were assignees of government's claims, government's claims were still valid, amendments did not create new federal cause of action where none previously existed, and no substantive rights of employer were affected by jurisdictional modification. U.S. ex rel. Newsham v. Lockheed Missiles and Space Co., Inc., N.D.Cal.1995, 907 F.Supp. 1349, order vacated on reconsideration 1997 WL 858547, affirmed in part , reversed in part 171 F.3d 1208, amended and superseded 190 F.3d 963, certiorari denied 120 S.Ct. 2196, 530 U.S. 1203, 147 L.Ed.2d 232. Federal Courts 4

10. Duty of government

Former § 232 of this title did not impose upon the United States any duty to warn an informer, prior to receiving his information, that his revelations might have resulted in a loss of his rights to bring a qui tam or informer action. Pettis ex rel. U. S. v. Morrison-Knudsen Co., Inc., C.A.9 (Idaho) 1978, 577 F.2d 668. United States 122

11. Contracting officer

In view of the provisions of former § 232 of this title which placed prosecution for damages and penalty resulting from acts covered by former § 231 [now § 3729] of this title in charge of United States Attorney and subjecting wrongdoer to criminal prosecution as well as to civil liability, in absence of a specific statute or executive order, disposition of a fraud case could not have been placed in hands of a contracting officer representing, not the Department of Justice, but the Department of War [now Department of Defense]. U. S. v. U. S. Cartridge Co., E.D.Mo.1948, 78 F.Supp. 81. Administrative Law And Procedure 315; United States 75.5

A contracting officer had no authority to determine or settle liability to government of a contractor under former § 231 [now § 3729] of this title, but his authority was limited, under § 106(c) of Title 41, to administrative settlement of disputes of fact arising in execution of contract, not crimes in nature of frauds of fact resulting from its execution. U. S. v. U. S. Cartridge Co., E.D.Mo.1948, 78 F.Supp. 81. Administrative Law And Procedure 315; United States 75.5

12. Persons liable

It was not merely the making of corrections to export certificates issued by United States Department of Agriculture (USDA) by exporter's employees that could be actionable under reverse false claims provision of False Claims Act, but rather the making of those corrections over signature and certification of USDA official who had not actually seen or approved those changes, and therefore exporter's liability under Act was not precluded on grounds that no false statements

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to government were made. U.S. ex rel. Bahrani v. Conagra, Inc., C.A.10 (Colo.) 2006, 465 F.3d 1189, certiorari denied 128 S.Ct. 388, 169 L.Ed.2d 264, on remand 2009 WL 751169. United States 120.1

Decision of United States Supreme Court resolving conflict between circuits and holding that local governments were "persons" amenable to qui tam actions under False Claims Act (FCA) did not create "extraordinary circumstances" warranting reopening of final judgment. U.S. ex rel. Garibaldi v. Orleans Parish School Bd., C.A.5 (La.) 2005, 397 F.3d 334, certiorari denied 126 S.Ct. 335, 546 U.S. 813, 163 L.Ed.2d 47. Federal Civil Procedure 2651.1

Although relator's False Claims Act (FCA) suit did not specify whether he was asserting claims against employees of laboratory, a state agency, in their official or personal capacities, course of proceedings in case demonstrated that employees were only named in their official capacities, and thus FCA suit could not be maintained against them. U.S. ex rel. Adrian v. Regents of University of California, C.A.5 (La.) 2004, 363 F.3d 398
. United States 120.1

Contractor's initial false certification in Procurement Under Review (PUR) package to the Department of Energy (DOE) recommending that DOE approve subcontract to subcontractor tainted all of the following invoices, and thus contractor could be held liable on all 26 of the submissions by contractor seeking government funding for work performed by subcontractor under the subcontract, notwithstanding fact that DOE became aware of the potential conflict but continued to pay the invoices. U.S. ex rel. Harrison v. Westinghouse Savannah River Co., C.A.4 (S.C.) 2003, 352 F.3d 908. United States 120.1

Corporation should be held liable under False Claims Act for fraud of agent who acts with apparent authority even if corporation received no benefit from agent's fraud. U.S. v. O'Connell, C.A.1 (Mass.) 1989, 890 F.2d 563, 107 A.L.R. Fed. 653. Corporations 423

Pharmaceutical company's parent company could not be held liable for wrongful acts of pharmaceutical company in relator's qui tam action under False Claims Act, absent evidence which supported piercing corporate veil. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2008, 538 F.Supp.2d 367. Corporations 215

Absent evidence showing that the presence of the non-genuine signatures on various documents submitted to Department of Housing and Urban Development (HUD) by home mortgage lender to obtain insurance was in any way related to the actual reason that various borrowers defaulted, lender was not liable under False Claims Act (FCA) for actual damages to the government flowing from the lender's false submissions. U.S. ex rel. Fago v. M & T Mortg. Corp., D.D.C.2007, 518 F.Supp.2d 108. United States 122

Under the Medicare Act, a Medicare Part B carrier was absolutely immune from liability on a claim under the qui tam provisions of the False Claims Act (FCA), asserting that the carrier had recklessly approved false claims for durable medical equipment, despite an unsupported claim that the carrier had not designated either certifying officers or disbursing officers. U.S. ex rel. Feingold v. Palmetto Government Benefits Administrators, S.D.Fla.2007, 477 F.Supp.2d 1187, affirmed 278 Fed.Appx. 923, 2008 WL 2097615, rehearing and rehearing en banc denied 285 Fed.Appx. 743, 2008 WL 2977960, certiorari denied 129 S.Ct. 1001, 173 L.Ed.2d 293. United States 122

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Real estate vendors caused United States to pay out money, and thus were liable to United States under False Claims Act (FCA) for damages and civil penalties arising from their illegal provision of down payments for home mortgage loans insured by Department of Housing and Urban Development (HUD), where vendors admitted in criminal prosecution that they had defrauded HUD by making down payments for borrowers, that they falsely certified on HUD-1 Addendum that they had not provided down payments, and that HUD would not have insured loans if it knew that they had made down payments. U.S. v. Eghbal, C.D.Cal.2007, 475 F.Supp.2d 1008, affirmed 548 F.3d 1281, certiorari denied 2009 WL 1725899. United States 120.1

Under Wisconsin law, county board of supervisors was extension of county and did not have independent existence from county, and thus county lacked capacity to be sued, as required for former county employee to bring False Claims Act and retaliation claims against board of supervisors. Haka v. Lincoln County, W.D.Wis.2008, 533 F.Supp.2d 895. Counties 208

Home health aide service providers who violated Medicare cost reporting rule could be held liable, under False Claims Act (FCA), only for annual cost reports in which they falsely certified their compliance with rule; interim reimbursement claims, though based on improperly reported costs, contained no explicit falsehoods. Visiting Nurse Ass'n of Brooklyn v. Thompson, E.D.N.Y.2004, 378 F.Supp.2d 75. Health 535(4); United States 120.1

No distinct possibility of False Claims Act (FCA) claim existed when county housing director reported alleged irregularities in re-bid process to Department of Housing and Urban Development (HUD), and county thus was not liable under FCA's whistle-blower provision for subsequently terminating him, given that it was his job to ensure compliance with HUD guidelines before HUD funds were expended, and nothing indicated he intended to step outside his job responsibilities and report fraud to government. Mack v. Augusta-Richmond County, Ga., S.D.Ga.2005, 365 F.Supp.2d 1362. Counties 67

Contractor engaged in fabrication of base and enclosure assemblies for generator sets installed in United States Navy destroyers did not make a false claim, and, thus, contractor was not liable for conspiracy under the False Claims Act. U.S. ex rel. Sanders v. Allison Engine Co., S.D.Ohio 2003, 364 F.Supp.2d 713. Conspiracy 13; United States 120.1

Laboratory, as wholly-owned corporation of University of Utah, a body politic and corporate under Utah law, was arm of the state and thus not a “person” against which suit could be brought by private relator under False Claims Act (FCA), even though it raised most of its own funding and potential judgment might not be paid directly from state treasury; lab was component of university health sciences center, which was state-assisted but derived self-support from its sub-units, lab was subject to supervision and management by university regents, it had tax exempt status, its revenues went to university, its financial records were blended with those of university, and any loss by lab would reduce total funds available to university and necessitate increased state outlays. U.S. ex rel. Sikkenga v. Regence BlueCross BlueShield of Utah, D.Utah 2004, 334 F.Supp.2d 1278, reversed and remanded 472 F.3d 702, on remand 2007 WL 2713913. United States 122

Evidence established that employer, a defense contractor that provided engineering services to the United States govern-

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ment, made no “claim” to the government with respect to either of the issues former employees claimed were related to their firing, thus precluding imposition of liability on the contractor under the False Claims Act (FCA); there was no allegation that a claim was ever made to the government for a payment to a worker while she was on maternity leave, or for another individual's alleged double salary and benefits. Maturi v. McLaughlin Research Corp., D.R.I.2004, 326 F.Supp.2d 313, affirmed 413 F.3d 166. Labor And Employment 777

Research institution, which was department or division of university and did not have any legal status as corporation or other recognized legal entity, was not “person” against which False Claims Act (FCA) claim on behalf of the United States could be asserted; given state of common law when FCA was originally enacted, it was unlikely Congress would have understood term “person” to include non-legal entity, such as institution, which had no power to own property, enter into contracts, or sue or be sued. U.S. ex rel. Burlbaw v. Regents of New Mexico State University, D.N.M.2004, 324 F.Supp.2d 1209. United States 122

University employee, who was in charge of project undertaken by a university division which received government grants, under Cooperative Agreements, to undertake project to assist Russia in developing capital markets and foreign investments, was not liable under False Claims Act (FCA), on basis that he violated provisions of those Agreements, which prohibited investment in Russia, even though his salary was paid out of government grants; employee did not take any actions to have claims submitted to the government. U.S. v. President and Fellows of Harvard College, D.Mass.2004, 323 F.Supp.2d 151. United States 122

Subcontractor was civilly liable under False Claims Act (FCA) for knowingly making, using, or causing to be made or used, false record or statement to get false or fraudulent claim paid or approved by government, although federal government never actually paid or approved subcontractor's claim; subcontractor's criminal conviction established that he knowingly presented false records “to get a claim paid or approved,” and approval or payment was not required for liability. U.S. ex rel. Virgin Islands Housing Authority v. Coastal General Const. Services Corp., D.Virgin Islands 2004, 299 F.Supp.2d 483. United States 122

Contractor could not be held liable under False Claims Act on theory that it submitted a bid that was intentionally undervalued with the goal of seeking subsequent modifications and adjustments to the contract price. U.S. ex rel. Bettis v. Odebrecht Contractors of California, Inc., D.D.C.2004, 297 F.Supp.2d 272, affirmed 393 F.3d 1321, 364 U.S.App.D.C. 250. United States 120.1

Interim director of state employee's work department, who allegedly violated whistleblower provision of Federal Claims Act (FCA) by terminating employee in retaliation for her disclosing falsification of time records by certain employees, could not be held individually liable for alleged violation under FCA. Orell v. UMass Memorial Medical Center, Inc., D.Mass.2002, 203 F.Supp.2d 52. States 53

Government contractor who submitted four false certifications that subcontractors had been paid was liable under the False Claims Act (FCA) for civil penalties of $5,000 per claim, notwithstanding contractor's contentions that the four submissions should have been treated as a single violation for civil penalty purposes, and that total penalty amount was excessive in light of actual damages; each certification was a separate and independent act, and penalties were not excessive in light of fact that contract was potentially worth $3.4 million. Lamb Engineering & Const. Co. v. U.S.,

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Fed.Cl.2003, 58 Fed.Cl. 106. United States 122

County medical center, under county charter, was sui juris, and thus could be sued by federal government, under False Claims Act (FCA), for alleged Medicare fraud, where medical center was given power, under county charter, to sue or be sued. U.S. v. Erie County Medical Center, W.D.N.Y.2002, 2002 WL 31655004, Unreported. Counties 208

13. Investigation and preparation of action

Diligence in enforcement of former § 231 [now § 3729] of this title required of the Department of Justice the careful and orderly investigation and preparation of the action to have been brought in order that government might have been able when suit was filed to prosecute it with fairness to defendants charged as well as to the public. U.S. v. Baker-Lockwood Mfg. Co., C.C.A.8 (Mo.) 1943, 138 F.2d 48. United States 122

14. Control of action

Congress could provide specifically for amount of new information which informer must produce to be entitled to reward, and right of action itself may be subject to control by an administrative official. U. S. ex rel. Marcus v. Hess, U.S.Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. Penalties 16

The district court had no equitable jurisdiction to control the exercise of the Attorney General's discretion as to bringing prosecutions under the False Claims Act, through an order directed to the Secretary of Health and Human Services (HHS), though it was alleged that the Secretary was the moving force behind threatened False Claims Act prosecutions. Ohio Hosp. Ass'n v. Shalala, C.A.6 (Ohio) 1999, 201 F.3d 418, rehearing and suggestion for rehearing en banc denied, certiorari denied 121 S.Ct. 762, 531 U.S. 1071, 148 L.Ed.2d 663. Federal Courts 7

Former § 232 of this title did not manifest Congressional intent to authorize a layman to carry on such a suit as an attorney for the United States, but meant that such a suit was to have been carried on in accordance with the established procedure, which required that only one licensed to practice law may have conducted proceedings in court for anyone other than himself. U. S. v. Onan, C.A.8 (Minn.) 1951, 190 F.2d 1, certiorari denied 72 S.Ct. 112, 342 U.S. 869, 96 L.Ed. 654.

An action brought by a private prosecutor under former § 231 [now § 3729] of this title was what was known at common law as a “popular” or qui tam action, and was under the sole and exclusive control of said prosecutor, subject to the restriction on his right to discontinue the same, contained in former § 232(B) of this title, and his interest or share in any judgment obtained therein was his absolute private property, and the United States could not have compromised, remitted, or released the same by pardon or otherwise. U.S. v. Griswold, D.C.Or.1885, 24 F. 361, 11 Sawy. 65. United States 122

In an action brought by an informer to recover damages and forfeitures for collecting false claims from the Treasury, the person who sues represents the United States therein, and also in all suits and proceedings brought or taken in aid of an execution, or to enforce the judgment therein, and is entitled to control the same. Bush v. U.S., C.C.Or.1882, 13 F. 625, 8 Sawy. 322. United States 122

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Where an action was brought by a private prosecutor, in the name of the United States, pursuant to former § 232 of this title, and judgment was obtained therein, the prosecutor had the right to institute and control all proper suits and proceedings in the name of the United States to enforce such judgment for their joint benefit; but if such further suit, for example a suit to set aside an alleged fraudulent conveyance by the judgment debtor, was instituted jointly by the United States Attorney and the original prosecutor, service of a subpoena to appear and answer a bill of review to set aside a decree rendered for the plaintiff in the latter suit was sufficient if made upon the United States Attorney. Bush v. U.S., C.C.Or.1882, 13 F. 625, 8 Sawy. 322.

Once United States declines to intervene in action for false claim or fraud brought by qui tam plaintiff, qui tam plaintiff has the right to conduct action and dismiss or settle case without consent of the Attorney General; decision not to intervene is tantamount to consent to have action dismissed. U.S. ex rel. Stinson, Lyons, Gerlin & Bustamante, P.A. v. Provident Life and Acc. Ins. Co., E.D.Tenn.1992, 811 F.Supp. 346. United States 122

An informer, who instituted action under authority of former § 231 [now § 3729] of this title, was entitled to prosecute the action to final judgment, and, when so prosecuted, he had a “property” in the judgment which could not have been taken from him by any settlement, compromise, or pardon on the part of the government, but he could not have discontinued the action without notice to the government and permission of the court, and United States Attorney was by former § 232 of this title required to supervise the procedure in the action. U. S. ex rel. Marcus v. Lord Electric Co., W.D.Pa.1942, 43 F.Supp. 12. United States 122

An action brought by a private prosecutor under former § 231 [now § 3729] of this title was subject to his control except as specially provided by former § 232 of this title. U.S. v. Griswold, D.C.Or.1877, 26 F.Cas. 42, 5 Sawy. 25, 10 Chi.Leg.N. 50, No. 15266.

15. Qui tam actions

Application of the jurisdictional bar of the False Claims Act (FCA) to qui tam suits involves a four-part inquiry: (1) whether the alleged public disclosure contains allegations or transactions from a listed source; (2) whether the alleged disclosure has been made public within the meaning of the Act; (3) whether the relator's complaint is based upon this public disclosure; and, if so, (4) whether the relator qualifies as an original source. U.S. ex rel. Grynberg v. Praxair, Inc., C.A.10 (Colo.) 2004, 389 F.3d 1038, certiorari denied 125 S.Ct. 2964, 545 U.S. 1139, 162 L.Ed.2d 888, on subsequent appeal 183 Fed.Appx. 724, 2006 WL 1531413. United States 122

Qui tam provisions of the False Claims Act allow private person to sue in the name of the United States and to share in any penalty recovered. In re Schimmels, C.A.9 (Nev.) 1996, 85 F.3d 416. United States 122

Action by private party against person violating the False Claims Act is a “qui tam” proceeding. Avco Corp. v. U.S. Dept. of Justice, C.A.D.C.1989, 884 F.2d 621, 280 U.S.App.D.C. 182. United States 122

Qui tam action filed under the False Claims Act (FCA) against the government of the Virgin Islands did not directly affect the title to land and thus could not support the filing of a lis pendens. Government of the U.S. ex rel. Callwood v. Government of the U.S. Virgin Islands, D.Virgin Islands 2003, 276 F.Supp.2d 434. Lis Pendens 3(1)

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College student's failure to observe any procedural requirements for bringing of qui tam action on behalf of United States government precluded suit claiming that college had violated false claims statute by claiming student loan funds in excess of its entitlement. White v. Apollo Group, W.D.Tex.2003, 241 F.Supp.2d 710, appeal dismissed 163 Fed.Appx. 255, 2005 WL 3694656, certiorari denied 127 S.Ct. 301, 549 U.S. 929, 166 L.Ed.2d 228, rehearing denied 127 S.Ct. 760, 549 U.S. 1091, 166 L.Ed.2d 587. United States 122

Qui tam suit under False Claims Act is not "commenced by the United States" for purposes of jurisdiction of Court of International Trade. U.S. ex rel. Felton v. Allflex USA, Inc., CIT 1997, 989 F.Supp. 259, 21 C.I.T. 1344, appeal dismissed 155 F.3d 570. Customs Duties 84(1)

Under the False Claims Act, the plaintiff, as an informer or "relator," brings suit and stands to receive a portion of any recovery, with remainder going to the state. U.S. ex rel. McDowell v. McDonnell Douglas Corp., M.D.Ga.1991, 755 F.Supp. 1038, affirmed 999 F.2d 1583. United States 122

Qui tam False Claims Act claim was not raised on allegation, in description of parties of suit, that one defendant knew that alleged conspiracy would "caus[e] Medicare to be defrauded out of billions of dollars over paid in artificially inflated claims for devices and procedures utilizing the cartel's supplies" and that "decreased access to healthcare" caused by conspiracy "would cause employers and health insurers to reduce coverage and benefits to the nation's citizens leading to injury and death," where amended complaint otherwise clearly set forth and numbered claims that were being raised. Medical Supply Chain, Inc. v. General Elec. Co., C.A.10 (Kan.) 2005, 144 Fed.Appx. 708, 2005 WL 1745590, Unreported, on remand 2007 WL 101783. United States 122

16. Relator's power

Pro se relator in qui tam False Claims Act (FCA) lawsuit may not bifurcate his claims from government's claims and proceed solely on his claims; interest of United States is always at risk in FCA case, regardless of whether it chooses to intervene or not. U.S. ex rel. Rockefeller v. Westinghouse Elec. Co., D.D.C.2003, 274 F.Supp.2d 10, affirmed 2004 WL 180264, rehearing and rehearing en banc denied , certiorari denied 125 S.Ct. 60, 543 U.S. 820, 160 L.Ed.2d 29. United States 122

Relator's claims against federal contractors for violating False Claims Act (FCA), by allegedly fraudulent business practices regarding missile defense contracts, were precluded on grounds that relator was not authorized to proceed pro se in representing United States in qui tam action, where relator's counsel had withdrawn, and relator was unable to retain new counsel. U.S. ex rel. Morgan v. Science Applications Intern. Co., D.D.C.2009, 604 F.Supp.2d 245. United States 122

Lay relator could not maintain qui tam action under False Claims Act without assistance of counsel. U.S. ex rel. Fisher v. Network Software Associates, D.D.C.2005, 377 F.Supp.2d 195. United States 122

Giving relator in qui tam action under the False Claims Act (FCA) power to control or extinguish communication between the government and defendants would be expanding relator's power beyond that specifically authorized by FCA, and would therefore be unconstitutional. U.S. by Dept. of Defense v. CACI Intern. Inc., S.D.N.Y.1995, 953 F.Supp. 74. United States 122

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17. Alternate remedy

Administrative proceedings in which Air Force had threatened to suspend or disbar contractor from entering into contracts with Department of Defense constituted “alternate remedy” to qui tam action under False Claims Act (FCA), and thus contractor's former employee who commenced qui tam action based on contractor's use of defective damping fluid and falsification of test results was entitled under FCA to relator's share of proceeds from settlement agreement arising from proceedings which required contractor to repair and replace defective flight data transmitters and to replace defective damping fluid, even though suspension or debarment proceeding was significantly different from FCA action, where government declined to intervene in qui tam action arising from defective fluid, choosing instead to go forward with suspension or debarment proceeding based on conduct that formed basis of action, and then settled relator's action for false testing, with result that relator was later found barred by claim preclusion from pursuing action for defective damping fluid. U.S. ex rel. Barajas v. U.S., C.A.9 (Cal.) 2001, 258 F.3d 1004. United States 122

Even if provision of False Claims Act (FCA) preserving rights of relator in qui tam action if government elected to pursue claim against defendant through alternate remedy created exception to categorical bar against private party intervention in qui tam actions, global settlement of qui tam action against medical laboratory was not “alternate remedy” to separate qui tam action that would-be intervenors had pursued against their employer, which merged with laboratory during action at issue; action initiated by would-be intervenors ended in settlement to which they consented, and fact that some of allegations settled in action at issue arose from discoveries made pursuant to settlement in would-be intervenors' action conferred no entitlement to share in second settlement under “but for” causation theory. U.S. ex rel. LaCorte v. Wagner, C.A.4 (N.C.) 1999, 185 F.3d 188. United States 122

Text of False Claims Act (FCA) does not compel conclusion that FCA retaliation claims are not subject to arbitration. U.S. ex rel. Cassaday v. KBR, Inc., S.D.Tex.2008, 590 F.Supp.2d 850. Alternative Dispute Resolution 121

Air Force's agreement with defense contractor resolving Air Force's suspension/debarment of contractor if contractor would, among other things, replace defective fluid in flight data transmitters and reimburse government for related costs, did not amount to resolution of civil False Claims Act (FCA) claim and, thus, was not “alternate remedy” in which qui tam relator was entitled to share under FCA. U.S. ex rel. Barajas v. Northrop Corp., C.D.Cal.1999, 65 F.Supp.2d 1097, reversed and remanded 258 F.3d 1004. United States 122

18. Waiver

Relator waived his right to appeal the district court's dismissal of contractor from the second amended False Claims Act (FCA) complaint by failing to replead claims against contractor in his third amended complaint where it would not have been futile to replead dismissed claims since the dismissals were based on pleading deficiencies. U.S. ex rel. Atkinson v. PA. Shipbuilding Co., C.A.3 (Pa.) 2007, 473 F.3d 506. Federal Courts 624

When government agreed to settle qui tam action arising under False Claims Act, it did not waive its right to argue that relators were barred from recovering portion of settlement proceeds attributable to certain claims on grounds that claims were subject to dismissal, absent government's intervention, as based on publicly disclosed information; rather, settlement agreement preserved government's right to contest issue of relators' share of proceeds. U.S. ex rel. Merena v. SmithKline Beecham Corp., C.A.3 (Pa.) 2000, 205 F.3d 97, as amended , on remand 114 F.Supp.2d 352. United States

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Waiver, the intentional relinquishment of a known right, could not have been inferred from United States government's decision not to pursue its contract claim against guarantor of Small Business Administration loan in guarantor's bankruptcy proceeding; hence, government did not waive right to seek penalties under former § 231 [now § 3729] of this title by such decision. U. S. v. RePass, C.A.2 (N.Y.) 1982, 688 F.2d 154. Estoppel 62.2(4)

Government did not waive joint-prosecution privilege in qui tam action, with respect to notes it took during interviews with relator, when it voluntarily provided relator's statement of material evidence. U.S. ex rel. Purcell v. MWI Corp., D.D.C.2006, 238 F.R.D. 321. Federal Civil Procedure 1600(5); Witnesses 219(1)

19. Settlements

Even if district court had jurisdiction over states without qui tam statutes and their settlement proceeds from pharmaceutical companies, pursuant to relator's suit alleging Medicare fraud under False Claims Act (FCA), no “common fund” was generated for benefit of non-qui tam states to which they had claim; non-qui tam states separately negotiated settlement agreements, the sum of which was not common fund in manner of class action award, relator did negotiate such settlements, non qui-tam states were not parties to suit, which did not create legal entitlement for such states whose only recourse, absent settlement, was to file suit on their own, states were not unjustly enriched at expense of relator whose attorney fees were paid by companies, and extension of common fund doctrine to non-qui tam states would essentially impose whistleblower reward statutes on 38 sovereign states that did not enact such statutes. U.S. ex rel. Bogart v. King Pharmaceuticals, C.A.3 (Pa.) 2007, 493 F.3d 323. United States 122

Releases signed by employee upon mediated settlement of her whistleblowing retaliation claim against employer were enforceable in employee's subsequent qui tam False Claims Act (FCA) suit against employer, since federal government had had ample opportunity to uncover and prosecute any fraud that had taken place; prior to releases employer had voluntarily disclosed employee's allegations to government and government had conducted its own inquiry with full access to employee, and thus interests served by enforcing releases outweighed interests served by not enforcing them. U.S. ex rel. Ritchie v. Lockheed Martin Corp., C.A.10 (Colo.) 2009, 558 F.3d 1161. United States 122

District court's modification of settlement agreement in qui tam suit under False Claims Act (FCA), which was impermissibly structured so that plaintiff received not only 30% of FCA recovery to which he was entitled, but also his costs and attorney fees from FCA proceeds, to comply with FCA requirements, did not invalidate agreement, even though agreement provided that it would be rendered “null and void” if it was not approved by court, where agreement also included a severability clause, and provided that court would determine plaintiff's share in accordance with FCA. U.S. ex rel Sharma v. University of Southern California, C.A.9 (Cal.) 2000, 217 F.3d 1141. United States 122

Value of released claims would be added to cash paid to the government in settlement for purposes of calculating the sum due the relator under False Claims Act (FCA); value of the claims, stated by defendants as having been part of the bargain of the settlement, was part of the value of the settlement since defendants had already filed their administrative claims by the time relator brought the FCA suit. U.S. v. U.S. ex rel. Thornton, C.A.5 (Tex.) 2000, 207 F.3d 769. United States 122

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Department of Housing and Urban Development's (HUD) settlement of dispute with county regarding county's allegedly improper retention of HUD funds did not impair relator's right to pursue qui tam action under False Claims Act (FCA), based on also based on county's retention of HUD funds, where government never exercised its rights to intervene in qui tam action. U.S. ex rel. Dunleavy v. County of Delaware, C.A.3 (Pa.) 1997, 123 F.3d 734, on remand 1998 WL 151030. United States 122

Law firm that received legal fees in settlement of qui tam action against government contractor under False Claims Act could be held jointly and severally liable with relators for government's share of proceeds after district court determined that portion of fees subsequently paid to relators by law firm represented proceeds of action, not legal fees; because firm received funds that belonged to government, it was responsible for turning money over to its rightful owner, and could not divest itself of that responsibility by transferring funds to its clients. U.S. v. Texas Instruments Corp., C.A.9 (Cal.) 1997, 104 F.3d 276, certiorari denied 117 S.Ct. 2409, 520 U.S. 1252, 138 L.Ed.2d 175. United States 122

Qui tam relators who disclosed information concerning adulteration of juice products which were being sold to government lacked standing to challenge validity of settlement agreements between juice maker and Department of Justice (DOJ) for allegedly failing to adhere to DOJ regulations concerning authority to settle claims; regulations were interpretive rules related to agency organization and management which did not create private right of action to challenge settlement agreements. U.S. v. American Production Industries, Inc., C.A.9 (Cal.) 1995, 58 F.3d 404. United States 127(1)

Completion agreement which was signed by all interested parties in government housing project except the government and which may have been a compromise of whatever breach of contract claims government agency may otherwise have had against claimant and his corporations, did not settle or release any claims of government against claimant under former § 231 [now § 3729] of this title. U. S. v. Woodbury, C.A.9 (Or.) 1966, 359 F.2d 370. United States 122

Relator was entitled to 24% of proceeds from $ 6,525,000 settlement of qui tam action under False Claims Act (FCA) against hospital, physician, and his oncology practice, since relator, at great financial, emotional, and physical cost to herself, provided significant information to government about fraud of which it had no prior knowledge, information provided formed foundation upon which multi-million dollar recovery stood, and contributions of relator's attorney were crucial to settlement. U.S. ex rel. Johnson Pochardt v. Rapid City Regional Hosp., D.S.D.2003, 252 F.Supp.2d 892. United States 122

A settlement between the private parties in a qui tam action should not prevent the government from ever pursuing a case against an entity accused of defrauding the government, because the government and the public are not represented during settlement negotiations, settlement between the private parties provides the government and the public with limited relief, if any, and government's ability to investigate and prosecute fraud against the United States, by pursuing claims under the False Claims Act, should not be impeded by a private settlement agreement. U.S. ex rel. Globe Composite Solutions, Ltd. v. Solar Const., Inc., D.Mass.2007, 528 F.Supp.2d 1. United States 122

Government's settlement of fraud claims against hospital authority and its agents, which included hospital management company, did not bar subsequent False Claims Act (FCA) claims against hospital management company for any false claims submitted thereafter; agreement's requirement that hospital conduct an internal audit of its billing procedures during the year after the settlement agreement became effective did not expand the time period of the release. U.S. ex rel.

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Whitten v. Community Health Systems, Inc., S.D.Ga.2008, 575 F.Supp.2d 1367. United States 122

In False Claims Act (FCA) cases where there is a settlement between the plaintiff and one defendant, the liability of the remaining non-settling defendants must be calculated with reference to the jury's allocation of the non-settling defendant's responsibility; this approach, based on the jury's determination of each defendant's proportionate share of liability, makes a non-settling defendant's liability completely untethered to the amount of settlement negotiated by the plaintiff with other defendants, and to that end, a plaintiff's good fortune in striking a favorable bargain with one defendant gives other defendants no claim to pay less than their proportionate share of the total loss. U.S. ex rel. Miller v. Bill Harbert Intern. Const., Inc., D.D.C.2007, 501 F.Supp.2d 51. Damages 63

Settlement agreement with medical college concerning False Claims Act (FCA) claim barred qui tam relator's claims against individual defendants relating to same grant as well, where individual defendants were expressly released from liability by settlement, even if government had only partially intervened in FCA litigation and individual defendants were not named as parties in complaint-in-intervention. U.S. ex rel. Sarafoglou v. Weill Medical College of Cornell University, S.D.N.Y.2006, 451 F.Supp.2d 613. Judgment 570(6); Judgment 632

Government taking over qui tam action involving Medicare/Medicaid fraud was not required to pay relator percentage of recovery, pursuant to False Claims Act, unless and until government received periodic payments from defendants as specified in settlement agreement terminating litigation. U.S. ex rel. Fox v. Northwest Nephrology Associates, P.S., E.D.Wash.2000, 87 F.Supp.2d 1103. United States 122

Government's objections and alternatives to proposed settlement of False Claims Act (FCA) action between relators and defendant were not valid; allocation of $600,000 to the FCA claims and $3,678,325 to the relators' retaliatory discharge claims and release language in the proposed settlement were reasonable. U.S. ex rel. Hullinger v. Hercules, Inc., D.Utah 1999, 80 F.Supp.2d 1234. United States 122

Settlement of qui tam action in which government chose not to intervene wherein defense contractor would pay $500,000, 72 percent of which would be paid to the United States and 28 percent of which would be paid to relator to settle False Claims Act claim was fair, adequate, and reasonable, and therefore would be approved despite government's objections. U.S. ex rel. Pratt v. Alliant Techsystems, Inc., C.D.Cal.1999, 50 F.Supp.2d 942. United States 122

Former employee, as qui tam relator, did not need Government's consent to settle private cause of action for retaliation leaving Government to handle claims under the False Claims Act; the settlement compensated the relator for the recovery of lost wages and other relief appropriate for wrongful discharge, the relator did not attempt to disguise or misappropriate money, and the Government dismissed the claims under the Act. U.S. ex rel. Summit v. Michael Baker Corp., E.D.Va.1999, 40 F.Supp.2d 772. United States 122

Government's postjudgment settlement of qui tam action brought under the False Claims Act for amount significantly less than amount of judgment ordered payable to government and relator, without notice to relator or her attorney, violated relator's rights under the Act, and government was required to transfer to relator full amount held in escrow. U.S. ex rel. Smith v. Gilbert Realty Co., E.D.Mich.1998, 9 F.Supp.2d 800. United States 122

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There was nothing in records of contractor's prior action against government including stipulations of settlement to justify finding that parties intended to dispose of the then pending suit by government against contractor under former § 231 [now § 3729] of this title. U. S. v. Greenberg, S.D.N.Y.1965, 237 F.Supp. 439. Compromise And Settlement 23(3)

Contractor, dealing with government contracting officer, both during execution of prime war contract and during and at time of signing supplemental contract covering settlement of claims arising under termination of prime contract, was chargeable with notice of extent of authority of contracting officer and, hence, could not rely upon settlement as also settling claims of government against contractor for war fraud arising out of prime contract, such settlement being beyond authority of contracting officer. U. S. v. U. S. Cartridge Co., E.D.Mo.1948, 78 F.Supp. 81. United States 75.5

In war fraud action against munitions manufacturer, supplementary contract forming basis of settlement of defendant's claims against government arising out of termination of prime contract could not be relied upon as a defense, where it specifically exempted settlement of liability concerning defects in, and guarantees or warranties relating to, any completed articles or component parts furnished to government by defendant. U. S. v. U. S. Cartridge Co., E.D.Mo.1948, 78 F.Supp. 81. United States 75.5

20. Releases

General release signed by employee upon mediated settlement of her whistleblowing retaliation claim against employer, defined as “waiver and release of any and all claims [employee] might have under federal, state, or local law,” was broad enough to encompass employee's subsequent qui tam False Claims Act suit against employer; suit under Act was brought in part for employee, not just for United States. U.S. ex rel. Ritchie v. Lockheed Martin Corp., C.A.10 (Colo.) 2009, 558 F.3d 1161. United States 122

Congress expressed no intent as to whether prefiling release of qui tam claim was void as matter of public policy, and federal common law thus would be applied to determine such issue; False Claims Act (FCA) was silent as to issue, and fact that Congress addressed enforceability of postfiling settlements of qui tam claims but not prefiling releases of such claims did not compel finding that it intended the latter to be enforceable. U.S. v. Northrop Corp., C.A.9 (Cal.) 1995, 59 F.3d 953, certiorari denied 116 S.Ct. 2550, 518 U.S. 1018, 135 L.Ed.2d 1069. Federal Courts 412.1

Enforcing prefiling release, entered into without United States' knowledge or consent, of False Claims Act (FCA) qui tam claim would impair substantial public interest, for purposes of determining whether release was valid under federal common law; FCA's incentives for private enforcement were vitally important, enforcement of prefiling release would dilute significantly those incentives, hypothesizing existence of other employees who possessed relevant information and were willing to come forward was too fragile a basis for enforcing release, preservation of incentive effect in prefiling period was public as opposed to private interest, and qui tam actions existed to vindicate the public interest only, not the private interest. U.S. v. Northrop Corp., C.A.9 (Cal.) 1995, 59 F.3d 953, certiorari denied 116 S.Ct. 2550, 518 U.S. 1018, 135 L.Ed.2d 1069. Release 20

In a qui tam action brought pursuant to former § 231 [now § 3729] of this title, thereby serving a federal purpose, the federal rule as to release of joint tortfeasors applies, so that the release of those defendants who contributed to payment of a portion of judgment against them did not release noncontributing defendants. U. S. ex rel. Marcus v. Hess, C.C.A.3

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(Pa.) 1946, 154 F.2d 291. Release 29(4)

Release of defendants contributing to payment of portion of judgment against them and other defendants from further liability thereon, with reservation of plaintiff's rights as to noncontributing defendants, does not release or discharge noncontributing defendants from liability for remainder of judgment. U. S. ex rel. Marcus v. Hess, C.C.A.3 (Pa.) 1946, 154 F.2d 291.

General release contained in relator's severance agreement with pharmaceutical company was not enforceable to bar subsequent qui tam action under False Claims Act (FCA); the government was aware of the substance of relator's allegations and had begun, but not completed, its investigation of these allegations as of the date of the release, and enforcement of the release would undermine important public interests associated with the FCA, as well as the countervailing interest in settling litigation. U.S. ex rel. Radcliffe v. Purdue Pharma, L.P., W.D.Va.2008, 582 F.Supp.2d 766. United States 122

General release executed by technology company in connection with stock sale to qui tam relators was unenforceable, on public policy grounds, with respect to relators' False Claims Act (FCA) action alleging scheme to defraud government in contracts solicited under federal Small Business Innovation Research Program (SBIR); government did not obtain requisite documents to allow it to investigate alleged fraud until after action had been filed. U.S. ex rel. Longhi v. Lithium Power Technologies, Inc., S.D.Tex.2007, 481 F.Supp.2d 815. Release 20

General release executed by former employee as part of settlement of employment discrimination dispute was unenforceable for public policy reasons to bar employee from bringing subsequent qui tam action against his former employer under False Claims Act (FCA), absent evidence that federal government had full knowledge of employee's allegations and investigated them before employee executed release; enforcement of release would threaten to nullify incentives Congress created in FCA to encourage those with knowledge of fraud to reveal what they know and to supplement government enforcement of FCA by bringing private enforcement suits. U.S. ex rel. Bahrani v. ConAgra, Inc., D.Colo.2002, 183 F.Supp.2d 1272. Release 20

Qui tam relator, alleging that hospitals and certain of their vendors violated False Claims Act (FCA) through hospitals' submission of inflated Medicare and Medicaid claims, released his claims against hospitals by signing settlement agreement by which he received portion of initial amount paid to government, even though relator was to receive portion of second payment to government, to be made after completion of audit conducted in same manner as audit resulting in first payment, and relator claimed there was difference in methodology. U.S. ex rel. Walsh v. Eastman Kodak Co., D.Mass.2000, 98 F.Supp.2d 141. United States 122

Federal common law governed issue of whether release signed by former federal employee barred his claims against his former employers; former employee claimed that federal officials violated his constitutional rights by constructively discharging him and also made claims under purported federal statutory provisions providing rewards and protection for "whistleblowers." Coleson v. Inspector General of Dept. of Defense, E.D.Va.1989, 721 F.Supp. 763. Federal Courts 412.1

Release in which employee discharged employer from all of his claims was ambiguous as to whether it released only

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those claims concerning employment termination and whether it released claims which he sought to assert under qui tam provisions of the False Claims Act. U.S. ex rel. Robinson v. Northrop Corp., N.D.Ill.1993, 149 F.R.D. 142. Release 25

Assuming Georgia law applied to determine scope of severance agreement's release that was signed in Georgia, language of release did not prevent former hospital employee from bringing action against hospital management company under the qui tam provision of the False Claims Act (FCA); management company was clearly referred to as a separate entity from the releasees, and release preserved a claim against management company arising out of employee's employment by releasees. U.S. ex rel. Whitten v. Triad Hosp., Inc., C.A.11 (Ga.) 2006, 210 Fed.Appx. 878, 2006 WL 3626992, Unreported, on remand 575 F.Supp.2d 1367. Release 27

21. Regulations

Qui tam plaintiff was required to comply with Department of Transportation regulations concerning legal proceedings between private litigants, and was not entitled to invoke regulation for proceedings in which United States is party, to obtain testimony from government official responsible for investigating allegations in administrative complaint, where government declined to intervene, effectively assigning its claim to qui tam plaintiff. U.S. ex rel. Lamers v. City of Green Bay, Wis., E.D.Wis.1996, 924 F.Supp. 96. United States 122

22. Awards to qui tam plaintiffs

Relator who failed to present evidence that false claims were knowingly submitted by university medical center and related company, rendering his qui tam action under False Claims Act (FCA) invalid, was not entitled to share of repayment made by center to government for erroneously double-billed amounts. U.S. ex rel. Hefner v. Hackensack University Medical Center, C.A.3 (N.J.) 2007, 495 F.3d 103. United States 122

Qui tam relator whose claim is subject to dismissal under statute, as result of being based on publicly disclosed information, may not receive any share of the proceeds attributable to that claim. U.S. ex rel. Merena v. SmithKline Beecham Corp., C.A.3 (Pa.) 2000, 205 F.3d 97, as amended , on remand 114 F.Supp.2d 352. United States 122

Qui tam relator was an “original source,” entitled to share in proceeds following government's settlement of False Claims Act suit against medical laboratory, even though government's suit was primarily based on information which was publicly disclosed before relator informed government of his directly and independently known information; relator provided substantial assistance to government, and hence public, in recovering monies allegedly lost due to fraud. U.S. ex rel. Merena v. Smithkline Beecham Corp., E.D.Pa.2000, 114 F.Supp.2d 352. United States 122

Tentative award of 20% of proceeds from qui tam action in which government intervened, under False Claims Act provision authorizing maximum recovery of 25%, would be made to relator physician who called attention to alleged Medicare/Medicaid fraud on part of medical association which had fired him, when government was not independently aware of alleged fraud, case was settled short of trial, and relator cooperated generally but did not do everything he was asked to do by government. U.S. ex rel. Fox v. Northwest Nephrology Associates, P.S., E.D.Wash.2000, 87 F.Supp.2d 1103. United States 122

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Relator in qui tam action was entitled to between 20% and 25% of proceeds of government's settlement with contractors; relator provided helpful information, spent great deal of time and effort in documenting fraud committed by contractors, suffered considerable personal and professional hardship in pursuing action, and was terminated by his employer. U.S. ex rel. Thornton v. Science Applications Intern. Corp., N.D.Tex.1998, 79 F.Supp.2d 655, vacated 207 F.3d 769. United States 122

False Claims Act (FCA) action brought by private relators against bank and others that was based on documents that relators obtained in discovery in earlier lawsuit was not primarily based on disclosures of information in civil hearing and, thus, relators were entitled under FCA to receive between 15% and 25% of proceeds from government's settlement of claim; majority of documents obtained by relators in discovery had not been filed and made public before qui tam action was brought. U.S. ex rel. S. Prawer & Co. v. Fleet Bank of Maine, D.Me.1998, 63 F.Supp.2d 59. United States 122

When qui tam action is filed under False Claims Act (FCA), fact that government intervenes and expands allegations of complaint, or settles action, including broader claims than alleged in qui tam action, should not preclude qui tam relator from receiving minimum statutory qui tam share of 15 percent of entire settlement, as well as percentage above 15 percent minimum up to maximum of 25 percent depending upon extent to which qui tam relator substantially contributed to prosecution of action. U.S. ex rel. Merena v. SmithKline Beecham Corp., E.D.Pa.1998, 52 F.Supp.2d 420, reversed 205 F.3d 97, as amended , on remand 114 F.Supp.2d 352. United States 122

Relators who brought qui tam action under False Claims Act (FCA) against laboratory for Medicare fraud provided substantial assistance to government in prosecuting action and thus were entitled to qui tam share of 17 percent of net settlement amount; relators were involved in investigation for years, provided government with information and documents about laboratory's fraudulent practices, explained in detail how laboratory's billing system worked, helped government understand laboratory's internal records, helped prepare for and evaluate witness interviews and identified potential witnesses. U.S. ex rel. Merena v. SmithKline Beecham Corp., E.D.Pa.1998, 52 F.Supp.2d 420, reversed 205 F.3d 97, as amended , on remand 114 F.Supp.2d 352. United States 122

In relators' action against government contractors under False Claims Act alleging that contractors failed to test or inspect computer components manufactured for military aircraft, relators were entitled only to 15% share of government's recovery in settlement with contractors rather than requested 25% share; relator who filed action did not report suspected fraud until after he retired from working for contractor, relators hindered investigation by opposing government's repeated motions for extensions of seal, and relators vigorously opposed settlement. U.S. ex rel. Coughlin v. International Business Machines Corp., N.D.N.Y.1998, 992 F.Supp. 137. United States 122

Qui tam plaintiff in action under False Claims Act (FCA) was entitled to only 15% of settlement amount, rather than 25% requested by plaintiff, where relator's contribution to successful settlement of the matter was minimal at best inasmuch as relator spent several years vigorously opposing settlement and such opposition was wholly without merit. U.S. ex rel. Burr v. Blue Cross and Blue Shield of Florida, Inc., M.D.Fla.1995, 882 F.Supp. 166. United States 122

Relator in qui tam action under False Claims Act was not limited to 10% of government's settlement with defendant, but would be awarded 15%, even though suit was based on government's criminal indictment, where False Claims Act litigation theory pursued by the Government was not pursued until after qui tam suit was filed, and this strategy resulted in

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damages growing from $37,579 in overpayments to final settlement of $243,158. U.S. v. Stern, M.D.Fla.1993, 818 F.Supp. 1521, opinion vacated in part on reconsideration 932 F.Supp. 277. United States 122

Qui tam plaintiff was entitled to monetary reward of 22 1/2 % of amount recovered by United States in civil fraud settlement with plaintiff's employer, even though plaintiff could have revealed information earlier, where plaintiff disclosed fraud on the United States, money was returned in full, and United States would recover a net profit. U.S. v. General Elec., S.D.Ohio 1992, 808 F.Supp. 580. United States 122

Court of Federal Claims lacked subject matter jurisdiction to adjudicate former qui tam plaintiff's claim that it was entitled to portion of government's recovery in alternative remedy proceeding against government contractor where (1) Court did not have subject matter jurisdiction over tort claim that governmental wrongfully interfered in claimant's qui tam suit, and (2) Court did not have jurisdiction to determine whether claimant had been proper qui tam plaintiff, and thus was entitled to share in recovery, because qui tam suits could only be heard in district courts. Stinson, Lyons & Bustamante, P.A. v. U.S., Fed.Cl.1995, 33 Fed.Cl. 474, affirmed 79 F.3d 136. Federal Courts 1073.1

23. Indemnity

Qui tam defendants have no right to indemnity under False Claims Act (FCA). U.S. ex rel. Longhi v. Lithium Power Technologies, Inc., S.D.Tex.2007, 481 F.Supp.2d 815. United States 122

False Claims Act (FCA) did not provide an implied right of action for indemnification or contribution. U.S. v. Dynamics Research Corp., D.Mass.2006, 441 F.Supp.2d 259. Contribution 5(6.1); Indemnity 64

Defendants in qui tam suit under the False Claims Act (FCA) regarding alleged false and/or fraudulent claims under Medicare and Medicaid programs would not be allowed to assert third-party claim for indemnification, particularly as qui tam defendants lack right to bring claims that will have effect of offsetting FCA liability. U.S. ex rel. Public Integrity v. Therapeutic Technology Inc., S.D.Ala.1995, 895 F.Supp. 294. United States 122

24. Retaliation--Generally

Behavior does not constitute “retaliation” under the False Claims Act (FCA) or the Major Fraud Act (MFA) unless it would be sufficient to constitute an adverse employment action under Title VII; accordingly, an action may be cognizable as “discrimination” under the FCA or the MFA if it is reasonably likely to deter employees from engaging in activity protected under either of these statutes. Moore v. California Institute of Technology Jet Propulsion Laboratory, C.A.9 (Cal.) 2002, 275 F.3d 838. Labor And Employment 824; Civil Rights 1245

The retaliation provision of the False Claims Act (FCA) is not a statement of a well-defined Oklahoma public policy, and thus cannot be the basis, standing alone, for a claim under Oklahoma's public policy exception to the employment-at-will doctrine. Shaw v. AAA Engineering & Drafting, Inc., C.A.10 (Okla.) 2000, 213 F.3d 519. Labor And Employment 776

Even assuming that qui tam suit brought against supervisor for submitting false claim to university would itself have

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failed without evidence that claim was resubmitted to the federal government, employee was not required to have developed winning qui tam action as element of claim that supervisor retaliated against him because of his protected conduct under False Claims Act (FCA), and, thus, fact that employee had not initiated private qui tam suit by time of his termination did not render his conduct unprotected, and did not defeat retaliation claim. U.S. ex rel. Yesudian v. Howard University, C.A.D.C.1998, 153 F.3d 731, 332 U.S.App.D.C. 56. Colleges And Universities 8.1(3)

Former District of Columbia Metropolitan Police Department (MPD) employee failed to allege in her amended complaint that she attempted to stop false claim against government, as required to state claim for retaliation under False Claims Act. Owens v. District of Columbia, D.D.C.2009, 631 F.Supp.2d 48. District Of Columbia 7

Former health center employee's complaint seeking relief, under False Claims Act (FCA), for her retaliatory discharge by employer sufficiently alleged that employee was terminated in retaliation for her protected activity of investigating employer's alleged fraudulent billings submitted to Medicare and Medicaid programs, that employer was aware of employee's conduct as she notified supervisor of false claims and of her intention "to do something about it," that employee contacted federal authorities, and that only days later employee was fired by supervisor who stated that she "wished the situation could be different." U.S. ex rel. Ellis v. Sheikh, W.D.N.Y.2008, 583 F.Supp.2d 434. Labor And Employment 858

To show violation of whistleblower provision of False Claims Act (FCA), employees must show (1) that they engaged in activity protected under the statute; (2) that the employer knew they engaged in protected activity; and (3) that the employer discriminated against them because they engaged in protected activity. U.S. ex rel. Woodruff v. Hawaii Pacific Health, D.Hawai'i 2008, 560 F.Supp.2d 988. Labor And Employment 776

Fire department employee failed to establish a causal connection between allegedly retaliatory action and his qui tam action under the False Claims Act (FCA) against city and health agency, as required to state a claim for illegal retaliation under whistleblower provision of the FCA, where there was no temporal proximity between initiation of the FCA suit and the allegedly retaliatory action, and allegedly retaliatory action would have been taken even in the absence of an FCA suit based on employee's refusal to obey a proper and unambiguous order. McAllan v. Von Essen, S.D.N.Y.2007, 517 F.Supp.2d 672. Municipal Corporations 198(2)

Genuine issue of material fact existed as to whether government food service contractors terminated employee in retaliation for her complaints about serving contaminated food, precluding summary judgment for contractors in qui tam action brought by an employee, alleging claim under the False Claims Act (FCA) for wrongful termination. U.S. ex rel. Vargas v. Lackmann Food Service, Inc., M.D.Fla.2007, 510 F.Supp.2d 957. Federal Civil Procedure 2498.4

Qui tam relator, an assistant professor and physician at medical college that submitted false claims under medical grant, sufficiently alleged retaliation for making her concerns about program activities known to state claim under whistleblower provision of FCA by alleging that she was excluded from meetings, recommended for "administrative referral" that would blemish her career, had some of patient appointments blocked, was removed from pediatric endocrinology division attending on-call schedule, and was formally removed from her role as research subject advocate on grant project. U.S. ex rel. Sarafoglou v. Weill Medical College of Cornell University, S.D.N.Y.2006, 451 F.Supp.2d 613. Labor And Employment 777

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Allegations by former county employee that he reported county employer's alleged violations of the False Claims Act (FCA) to representatives of the state and federal government, and that he was retaliated against for making such reports, stated claim for FCA retaliation, even without specific allegations that reports were made directly to county employer, and without showing of county's FCA violation. U.S. ex rel. Erickson v. Uintah Special Services Dist., D.Utah 2005, 395 F.Supp.2d 1088. Counties 67

Even if employee of government contractor engaged in protected activity under whistleblower provision of the False Claims Act (FCA) when he complained to supervisor about numerous transgressions on government project, including misuse of project property and government funds, employee did not establish that he was terminated because of his participation in the protected activity, as required for his prima facie case of retaliation against employer. Shekoyan v. Sibley Intern. Corp, D.D.C.2004, 309 F.Supp.2d 9, affirmed 409 F.3d 414, 366 U.S.App.D.C. 144, certiorari denied 126 S.Ct. 1337, 546 U.S. 1173, 164 L.Ed.2d 53. Labor And Employment 780

Employer's declining revenues was nonretaliatory reason for employee's termination after she had engaged in protected conduct under False Claims Act (FCA) whistleblower protection provision; supervisor was ordered to cut costs as a result of declining revenues, and many other administrative employees in same office were laid off as a result of budget cuts. Mann v. Olsten Certified Healthcare Corp., M.D.Ala.1999, 49 F.Supp.2d 1307. Labor And Employment 777

Jury's award of back pay to employee, claiming she was constructively discharged in retaliation for whistleblower activities, was not inconsistent with jury finding that denial of promotion four month's previously was not discriminatory; whistleblowing activity occurred during interim. Neal v. Honeywell, Inc., N.D.Ill.1998, 995 F.Supp. 889, affirmed 191 F.3d 827. Labor And Employment 866

Employer did not constructively discharge employee, in retaliation for employee's act of internally reporting falsified test data relating to employer's contract with federal government, in violation of False Claims Act, as two other facilities of employer offered employee positions that had same salary as she was earning and were appropriate to employee's education and experience, and employee declined such positions only because they did not constitute promotions. Neal v. Honeywell, Inc., N.D.Ill.1996, 942 F.Supp. 388, on reconsideration 958 F.Supp. 345. Labor And Employment 826

Audit report, which contained questions and concerns regarding various payments made by employer that failed to conform with employer's stated policies, was legitimate, nondiscriminatory reason for special services district employee's termination, in employee's retaliation action against employer under False Claims Act (FCA); audit was product of an outside, independent auditor, and any one of its findings would be sufficient grounds for terminating employee. U.S. ex rel. Erickson v. Uintah Special Services Dist., C.A.10 (Utah) 2008, 268 Fed.Appx. 714, 2008 WL 634979, Unreported. Labor And Employment 779

25. ---- Employee, retaliation

Lawn-care worker was not an “employee” of real estate agency and was thus not entitled to assert claim against agency under anti-retaliation provision of False Claims Act; worker set his own schedule for cutting lawns on properties managed by agency, owned his own tools, supervised his own assistance, did not receive employee benefits, and did not have tax status of an employee. Vessell v. DPS Associates of Charleston, Inc., C.A.4 (S.C.) 1998, 148 F.3d 407. Labor And

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Relator was not prime contractor's "employee," within meaning of False Claims Act (FCA), prohibiting retaliation by employer against employee for engaging in protected activity, although relator was employed by subcontractor that worked closely with prime contractor on projects to which relator was assigned, and thus relator's qui tam claim was precluded against prime contractor based on allegations that relator was fired in retaliation for engaging in whistleblower activity regarding contractor's allegedly fraudulent business practices with respect to missile defense contracts. U.S. ex rel. Morgan v. Science Applications Intern. Co., D.D.C.2009, 604 F.Supp.2d 245. Labor And Employment 777

Employee could maintain whistleblower retaliation action against employer under False Claims Act (FCA), even if employee did not work for employer at time he took action protected by FCA. Nguyen v. City of Cleveland, N.D.Ohio 2000, 121 F.Supp.2d 643. Labor And Employment 857

26. ---- Employer, retaliation

Members of state game and fish commission, in their individual capacities, were not "employers" of commission employee, as required to support claim against members that employee's discharge was retaliation in violation of False Claims Act (FCA); commission itself was employee's employer. U.S. ex rel. Golden v. Arkansas Game & Fish Com'n, C.A.8 (Ark.) 2003, 333 F.3d 867, rehearing and rehearing en banc denied , certiorari denied 124 S.Ct. 1069, 540 U.S. 1108, 157 L.Ed.2d 894. States 53

President and chief executive officer (CEO) of government contractor was not an "employer" within meaning of the False Claims Act (FCA), and thus could not be held liable in his individual capacity under FCA's retaliation provision, notwithstanding that CEO owned 85 percent of the shares of the company, served as the president and chairman of the board of directors, ran day-to-day operations, set salaries, and made hiring and firing decisions. U.S. ex rel. Siewick v. Jamieson Science and Engineering, Inc., C.A.D.C.2003, 322 F.3d 738, 355 U.S.App.D.C. 278, rehearing denied , rehearing en banc denied. Labor And Employment 857

Private university employee's former supervisor was not "employer" under False Claims Act (FCA), and thus could not be liable in his individual capacity under Act's retaliation provision. Yesudian ex rel. U.S. v. Howard University, C.A.D.C.2001, 270 F.3d 969, 348 U.S.App.D.C. 145. Colleges And Universities 8.1(3)

Former employee of government subcontractor failed to allege that parent and sister companies of his former employer had controlled or assigned him work, provided him tools, or had any role in his payment, provision of his benefits, or his tax treatment, as required to demonstrate existence of employer-employee relationship sufficient to state retaliation claim under whistleblower provision of False Claims Act (FCA). Campion v. Northeast Utilities, M.D.Pa.2009, 598 F.Supp.2d 638. Labor And Employment 777

President and chief executive officer (CEO) of medical facility was not physician's "de facto employer," for purposes of physician's retaliation claim under the False Claims Act (FCA), even if he set agendas, called meetings, focused debates, and influenced outcomes for facility; such conduct did not rise to level of dominion and control required to invoke de facto employer doctrine. U.S. ex rel. Lockyer v. Hawaii Pacific Health, D.Hawai'i 2007, 490 F.Supp.2d 1062, affirmed in

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part 2009 WL 2700321. Health 266

County commission and individual county commissioner were not liable for retaliatory discharge under False Claims Act (FCA), where commission and commissioner were not employers under state law, and they did not have an employment relationship with relator. U.S. ex rel. Erickson v. Uintah Special Services Dist., D.Utah 2005, 395 F.Supp.2d 1088. Counties 59

Former employee's supervisor at engineering firm was not an “employer” potentially liable in his individual capacity in employee's False Claims Act (FCA) retaliation action, even though supervisor was majority shareholder and executive vice president of firm with authority to hire and fire, as long as he was not alter ego of firm and as long as refusal to pierce corporate veil did not result in injustice; firm was separate and intact entity from supervisor since it had duly elected board of six directors including three outside directors, was financially solvent, met payroll of 11 employees, and maintained profit-sharing plan, and was alleged to have defrauded federal government, not its shareholders. U.S. ex rel. Siewick v. Jamieson Science and Engineering, Inc., D.D.C.2002, 191 F.Supp.2d 17, affirmed 322 F.3d 738, 355 U.S.App.D.C. 278, rehearing denied , rehearing en banc denied. Labor And Employment 857

State official was not “employer,” within meaning of False Claims Act (FCA) whistleblower protection provision, and thus was not individually liable for alleged retaliation under FCA. U.S. ex rel. McVey v. Board of Regents of University of California, N.D.Cal.2001, 165 F.Supp.2d 1052. States 79

City was “employer” subject to suit under False Claims Act for alleged retaliation against employee-whistleblower who reported that city allegedly filed false claims in connection with renovation and operation of wastewater treatment plant, even though city was not “person” subject to liability under FCA for submitting false claims; express terms of FCA protected employee in investigating potential claims against third parties, not just employer, city would have had motive to silence employee if city was, as alleged, conspiring with subcontractors to improperly obtain federal funds, and imposition of double damages for retaliation was compensatory in nature, rather than punitive. U.S. ex rel. Satalich v. City of Los Angeles, C.D.Cal.2001, 160 F.Supp.2d 1092. Municipal Corporations 218(3)

University faculty members who, while acting in their individual capacities, allegedly retaliated against university professor for his attempts to investigate and expose faculty members' alleged federal “grant fraud,” were not “employers,” within meaning of the False Claims Act. Miller v. Bunce, S.D.Tex.1999, 60 F.Supp.2d 620, affirmed 220 F.3d 584. United States 120.1

County was not employer of medical research project director and, thus, could not be held liable for retaliatory discharge under False Claims Act (FCA); although employee of county hospital eliminated some of director's responsibilities, director was hired and employed by medical research institute. U.S. ex rel. Chandler v. Hektoen Institute for Medical Research, N.D.Ill.1999, 35 F.Supp.2d 1078, on reconsideration in part 118 F.Supp.2d 902, reversed 277 F.3d 969, mandate stayed 282 F.3d 448, certiorari granted 122 S.Ct. 2657, 536 U.S. 956, 153 L.Ed.2d 833, affirmed 123 S.Ct. 1239, 538 U.S. 119, 155 L.Ed.2d 247, on remand 2003 WL 22284199. Labor And Employment 857

Board member who allegedly dominated related corporations may have been de facto “employer” under “whistleblower”

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provision of False Claims Act of employees who reported suspected Medicaid and tax fraud by corporations, but attorneys at law firm and other board members had no employment relationship and could not be held liable. Mruz v. Caring, Inc., D.N.J.1998, 991 F.Supp. 701. Labor And Employment 857

Company's president was not “employer” within meaning of whistleblower protection provision of False Claims Act and, thus, was not personally liable under Act, even though president actually discharged employee. U.S. ex rel. Lamar v. Burke, E.D.Mo.1995, 894 F.Supp. 1345. Labor And Employment 857

27. ---- Notice, retaliation

There was no evidence that relator's employer, whether construed to be consulting firm by which he was hired or university medical center that retained consulting firm, had knowledge that relator was engaged in protected conduct of investigating center's billing irregularities at the time relator's employment was terminated, precluding center's liability for retaliatory discharge in violation of False Claims Act (FCA). U.S. ex rel. Hefner v. Hackensack University Medical Center, C.A.3 (N.J.) 2007, 495 F.3d 103. United States 122

Former employee of defense contractor, whose job duties included overseeing government billings, failed to establish that supervisor was on notice that False Claims Act (FCA) litigation was a reasonable possibility when he were terminated, as required to support his FCA retaliation claim against former employer; employee only told supervisor about potential problem with subordinate who received double salary and asked supervisor to help resolve situation, employee never accused supervisor of engaging in fraudulent behavior, and fact that employee told subordinate that his actions were fraudulent had no consequence since he was a subordinate and employee was fired by supervisor. Maturi v. McLaughlin Research Corp., C.A.1 (R.I.) 2005, 413 F.3d 166. Labor And Employment 777

To establish discrimination because of protected activity, as required to support a retaliation claim under the False Claims Act, an employee must demonstrate that the employer had knowledge of the employee's protected activity and that the retaliation was motivated by the protected activity. Shekoyan v. Sibley Intern., C.A.D.C.2005, 409 F.3d 414, 366 U.S.App.D.C. 144, certiorari denied 126 S.Ct. 1337, 546 U.S. 1173, 164 L.Ed.2d 53. Labor And Employment 778

An employee has the burden of presenting enough evidence to demonstrate that the employer was on notice that the employee was either taking action in furtherance of a private qui tam action or assisting in an False Claims Act (FCA) action brought by the government, to prove a prima facie case of retaliation under the whistleblower provision of the FCA. Schuhardt v. Washington University, C.A.8 (Mo.) 2004, 390 F.3d 563. Labor And Employment 861

Record supported finding that employer was aware of employee's investigation into alleged misappropriation of federal funds, as required for employee to satisfy the notice requirements of the “whistleblower” provision of the False Claims Act (FCA); evidence showed that employee told three of employer's executives about his conversation with federal official concerning two executives' alleged diversion of nonprofit funds to for-profit entity in which they had a stake, that employee reported this conversation because he was concerned about jeopardizing employer's federal funding if the center was engaged in anything illegal or unallowable, and that employee refused to approve the purchase of computer equipment for the for-profit entity using nonprofit funds. Fanslow v. Chicago Mfg. Center, Inc., C.A.7 (Ill.) 2004, 384 F.3d 469. Labor And Employment 863(2)

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Even assuming that telephone company employee engaged in protected activity under the False Claims Act (FCA) by her refusal to falsify repair records, there was no evidence that employer had reason to believe that employee was contemplating a claim under the FCA or allegations of federal government fraud, thus defeating claim under FCA anti-retaliation provision. McKenzie v. BellSouth Telecommunications, Inc., C.A.6 (Tenn.) 2000, 219 F.3d 508. Labor And Employment 778; Labor And Employment 863(2)

Laboratory employee's investigation into laboratory's allegedly inadequate testing procedures for plasma to be sold to government agencies did not support claim that termination of employee violated whistleblower provision of False Claims Act, absent evidence that laboratory was aware that employee's activities were precursor to suit rather than mere voicing of employee's suggestion for improvement. Luckey v. Baxter Healthcare Corp., C.A.7 (Ill.) 1999, 183 F.3d 730, certiorari denied 120 S.Ct. 562, 528 U.S. 1038, 145 L.Ed.2d 439. Labor And Employment 778

Employers did not violate whistleblower provision of False Claims Act in terminating employee; employee did not initiate or assist in filing of qui tam action while he worked for employers, but merely reported alleged overcharging to supervisor, and there was no evidence that employers were aware of employee's report. Zahodnick v. International Business Machines Corp., C.A.4 (Md.) 1997, 135 F.3d 911. Labor And Employment 778

Service corporations and other individual defendants did not have notice that terminated employee had taken action in furtherance of *qui tam* action against defendants arising from allegedly false or fraudulent claims related to computer, software and remote telephone switch purchase, installation and upgrade projects entered into with United States, as was required for employee to state claim for violation of anti-retaliation provision of False Claims Act (FCA); defendants did not know of employee's investigation or that employee had reported defendants' activities to one or more federal agencies, offices or authorities. U.S. ex rel. Poisson v. Red River Service Corp., W.D.Okla.2008, 621 F.Supp.2d 1153. Labor And Employment 780

Government contractor's employees' allegations that contractor took action against them after they made internal complaints about “improper billing on Government contracts” and “improper billing to the Government” were sufficient to support inference that contractor knew employees were contemplating action under False Claims Act (FCA) necessary to state FCA retaliation claims. U.S. ex rel. Howard v. Lockheed Martin Corp., S.D.Ohio 2007, 499 F.Supp.2d 972. Labor And Employment 777

Failure of former employee to show that he disclosed to customers of government that there were problems in rooms where aerospace bearings were made precluded suit against employer for violation of whistleblower provision of False Claims Act. U.S. ex rel. Farrell v. SKF USA, Inc., W.D.N.Y.2002, 204 F.Supp.2d 576. United States 122

Employee of organization that submitted Medicare claims for home oxygen equipment failed to establish that her termination was in retaliation for her complaints that organization was violating False Claims Act; there was no showing that she ever communicated her concerns to any management employee of organization. U.S. ex rel. Phillips v. Pediatric Services of America, Inc., W.D.N.C.2001, 142 F.Supp.2d 717, motion denied 223 F.Supp.2d 763. Labor And Employment 778

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Complaints received by a manufacturer of orthotic and prosthetic devices from an employee relating his concerns that the manufacturer was overbilling the federal government for Medicare and Medicaid reimbursement were sufficient to put the manufacturer on notice that he intended to pursue a qui tam action under the False Claims Act (FCA), and thus he was empowered under the FCA to bring a "whistleblower" action against the manufacturer to challenge an allegedly retaliatory transfer, where the complaints explicitly referred to fraud upon the government, even if they did not mention the FCA. Gublo v. NovaCare, Inc., D.Mass.1999, 62 F.Supp.2d 347. Labor And Employment 778

Former laboratory employee failed to show that laboratory was aware that her ongoing complaints and investigation relating to allegedly inadequate procedures for testing purity of plasma used to make derivatives sold to federally subsidized hospitals was in furtherance of action under False Claims Act (FCA), and thus employee's dismissal did not trigger retaliation claim under FCA's whistleblower provision, where employee threatened laboratory with court action based on age discrimination and on ambiguous grounds, but never invoked FCA as ground for potential suit. Luckey v. Baxter Healthcare Corp., N.D.Ill.1998, 2 F.Supp.2d 1034, affirmed 183 F.3d 730, certiorari denied 120 S.Ct. 562, 528 U.S. 1038, 145 L.Ed.2d 439. Labor And Employment 777

Employee of real estate corporation stated case of retaliation for engaging in activities protected by False Claims Act, even though employer claimed it had no knowledge of her protected activities at time of dismissal; employee refused to issue check to son of administrator of real estate, alleging she believe administrator was funnelling money received from Department of Health and Human Services (HUD) to family members, and she made same statement to independent auditor approved by HUD and sent letter to Inspector General. Robinson v. Jewish Center Towers, Inc., M.D.Fla.1998, 993 F.Supp. 1475. Labor And Employment 777

Although university employee presented evidence showing that his supervisor knew that employee complained about preferential treatment of workers and vendors in the purchasing department, there was no evidence from which jury could have found that supervisor believed that employee was contemplating a qui tam suit against him or assisting government in an investigation and as such, employee did not establish claim of retaliatory discharge in violation of whistleblower provision of False Claims Act (FCA); employee never suggested to supervisor that he intended to utilize his allegations in furtherance of FCA action and gave no suggestion that he was going to report alleged improprieties to government officials. U.S. ex rel. Yesudian v. Howard University, D.D.C.1996, 946 F.Supp. 31, affirmed in part , reversed in part 153 F.3d 731, 332 U.S.App.D.C. 56. Colleges And Universities 8.1(3)

To prove second element of his claim of retaliatory discharge in violation of whistleblower provision of False Claims Act (FCA), employee was required to present evidence from which jury could reasonably find that employer was on notice that employee was either taking action in furtherance of a private qui tam action or assisting in FCA action brought by the government. U.S. ex rel. Yesudian v. Howard University, D.D.C.1996, 946 F.Supp. 31, affirmed in part , reversed in part 153 F.3d 731, 332 U.S.App.D.C. 56. Labor And Employment 778

Even assuming that county housing director engaged in protected activity under whistle-blower provision of the False Claims Act (FCA) in reporting alleged irregularities in re-bid process on county construction project to the Department of Housing and Urban Development (HUD), he could not establish that he was terminated in retaliation for such conduct, so that county was not liable under whistle-blower provision of the FCA, where there was no evidence that county commissioners, unlike housing director's immediate supervisor, were aware of this allegedly protected activity, and where

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commissioners had ultimate authority to terminate, which they did based on housing director's alleged lack of management skills and inability to make decisions without outside assistance. Mack v. Augusta-Richmond County, Ga., C.A.11 (Ga.) 2005, 148 Fed.Appx. 894, 2005 WL 2270518, Unreported. Counties 67

An employer who engages in retaliation for an employee's investigative activities does not violate the anti-retaliation provision of the False Claims Act (FCA), where the employee has not given any indication to the employer that he was conducting an investigation of the employer for defrauding the federal government. U.S. ex rel. Karvelas v. Melrose-Wakefield Hosp., D.Mass.2003, 2003 WL 21228801, Unreported, affirmed 360 F.3d 220, certiorari denied 125 S.Ct. 59, 543 U.S. 820, 160 L.Ed.2d 28. Labor And Employment 778

28. ---- Protected activity, retaliation

American National Red Cross (ARC) employee's investigation of and reporting on alleged mishandling of blood supplies in violation of consent decree between ARC and government was not “in furtherance of” viable False Claims Act (FCA) suit against ARC, and thus was not protected activity under FCA's whistleblower provision; matters investigated could not reasonably have led to viable FCA reverse false claim, since consent decree imposed no obligation on ARC to tender money or property to government, but rather merely prescribed blood handling and reporting requirements, with possibility of fines for noncompliance. Hoyte v. American Nat. Red Cross, C.A.D.C.2008, 518 F.3d 61, 380 U.S.App.D.C. 185. Labor And Employment 778

Employee had no reason to believe there were false or fraudulent claims presented to government, as required for protection from whistleblower retaliation under False Claims Act (FCA), since none of employee's memoranda sent to various municipal officials described any actual fraudulent claim being presented to government, and employee disavowed in deposition testimony that he had knowledge of any document that was submitted to government with false information or that there was any fraudulent information on grant applications. Green v. City of St. Louis, Mo., C.A.8 (Mo.) 2007, 507 F.3d 662. Labor And Employment 778

Anti-retaliation section of False Claims Act (FCA) did not protect employee who was discharged after she reported to FBI her good faith, but objectively unreasonable suspicion that her employer was attempting to defraud the Federal Reserve. Lang v. Northwestern University, C.A.7 (Ill.) 2006, 472 F.3d 493. Labor And Employment 777

Employee of government contractor did not engage in protected activity in furtherance of viable False Claims Act (FCA) action, as required for his prima facie case of retaliation under FCA's whistleblowing provision against employer, when he made internal complaints to his supervisors about numerous transgressions at government project, including misuse of project property and government funds; employee admitted he did not think there was corruption, but that he thought there some issues that needed to be addressed, and thus employee did nothing more than to inform supervisor of a problem. Shekoyan v. Sibley Intern., C.A.D.C.2005, 409 F.3d 414, 366 U.S.App.D.C. 144, certiorari denied 126 S.Ct. 1337, 546 U.S. 1173, 164 L.Ed.2d 53. Labor And Employment 778

Genuine issues of material fact as to whether employee of state university hospital, who was assigned to review the hospital's patient files and determine the appropriate billing structure, was performing a protected activity outside of her assigned job duties in furtherance of a qui tam action, and whether employer had knowledge that employee was engaged in

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such activity, precluded summary judgment in favor of employer, in employee's retaliation action, pursuant to the whistleblower provision of the False Claims Act (FCA). Schuhardt v. Washington University, C.A.8 (Mo.) 2004, 390 F.3d 563. Federal Civil Procedure 2498.4

Congress intended in the whistleblower provision of the False Claims Act (FCA) to protect employees while they are collecting information about a possible fraud, and, thus, for a plaintiff to be engaged in protected activity, it is sufficient that the plaintiff be investigating matters that reasonably could lead to a viable FCA case. U.S. ex rel. Williams v. Martin-Baker Aircraft Co., Ltd., C.A.D.C.2004, 389 F.3d 1251, 363 U.S.App.D.C. 419, rehearing denied. Labor And Employment 778

Employee's internal complaints within the corporation may be considered protected conduct, for purposes of the "whistleblower" provision of the False Claims Act (FCA); employee need not raise his or her concerns directly to the government to qualify for protection. Fanslow v. Chicago Mfg. Center, Inc., C.A.7 (Ill.) 2004, 384 F.3d 469. Labor And Employment 778

Paralegal employed by law firm did not engage in "protected conduct" under the False Claims Act, and firm was not on notice of the distinct possibility of False Claims Act litigation, nor did it retaliate against paralegal because of his protected conduct, where paralegal prepared a memorandum reporting that actual computer research expenses were multiplied by 1.5 in order to arrive at the amount clients were invoiced for, but he never threatened to report his discovery of the firm's billing practices to a government authority, and never informed his supervisors he believed this billing practice was "illegal," nor did he file a False Claims Act suit until after he was terminated. Hutchins v. Wilentz, Goldman & Spitzer, C.A.3 (N.J.) 2001, 253 F.3d 176, certiorari denied 122 S.Ct. 2360, 536 U.S. 906, 153 L.Ed.2d 182. Labor And Employment 778; Labor And Employment 780

Employee engaged in protected activity, as required for prima facie case of retaliation under False Claims Act, when he made clear to employer prior to his termination that he intended to bring a qui tam action under Act and that Act protected him from retaliation. Eberhardt v. Integrated Design & Const., Inc., C.A.4 (Va.) 1999, 167 F.3d 861. Labor And Employment 778

Reasonable juror could conclude that director of university purchasing department was on notice that employee was engaged in protected activity under False Claims Act (FCA), as required for retaliation claim, where employee repeatedly told director's superiors that director had falsified time and attendance records, accepted bribes from vendors, provided inside information to favored vendors, permitted payments to vendors who did not provide services, and taken university property home for personal use, juror could reasonably conclude that director's superiors advised him of these charges, and director confronted employee shortly after employee's meeting with university vice president regarding employee's charges. U.S. ex rel. Yesudian v. Howard University, C.A.D.C.1998, 153 F.3d 731, 332 U.S.App.D.C. 56. Colleges And Universities 8.1(3)

Employee engaged in protected activity, for purposes of retaliation claim under False Claims Act, by bringing alleged fraud to the attention of her supervisors and showing them newspaper article describing qui tam action, brought by third party in another state, involving similar allegations of fraud. U.S. ex rel. McKenzie v. BellSouth Telecommunications, Inc., C.A.6 (Tenn.) 1997, 123 F.3d 935, certiorari denied 118 S.Ct. 855, 522 U.S. 1077, 139 L.Ed.2d 755. Labor And

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Westlaw.

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Internal reporting of concerns about charges to government by contractor employee was not "protected activity" under False Claims Act; employee never used terms illegal, unlawful, or qui tam action in characterizing concerns about charges. Robertson v. Bell Helicopter Textron, Inc., C.A.5 (Tex.) 1994, 32 F.3d 948, certiorari denied 115 S.Ct. 1110, 513 U.S. 1154, 130 L.Ed.2d 1075. United States 120.1

Allegations that employees of ambulatory surgery center spoke to supervisors and managers regarding center's alleged improper waivers of Medicare co-payments, kickbacks, and retention of Medicare overpayments, and that employees were terminated for such activities, supported claim for retaliation in violation of False Claims Act's (FCA) whistleblower provision. U.S. ex rel. Barrett v. Columbia/HCA Healthcare Corp., D.D.C.2003, 251 F.Supp.2d 28. Labor And Employment 858

Employee's alleged concerns about employer's fraudulent and illegal conduct, regarding supervisor's decision to provide aftermarket ambidextrous selector levers to Secret Service officer at night, in a parking lot, after relevant bidding period had concluded, did not create a distinct possibility of litigation, and thus his expression of those concerns did not constitute "protected conduct" under anti-retaliation provision of False Claims Act (FCA); employer did not make any statements to the Secret Service in its bid that employee identified as false or fraudulent at the time, employer's conduct did not involve the presentation of a false or fraudulent claim for payment or approval by the government, there was no evidence that employee believed there were any false statements submitted with the bid, and employer conducted an investigation of employee's allegations and determined that supervisor's actions did not subject it to FCA liability. Mann v. Heckler & Koch Defense, Inc., E.D.Va.2009, 639 F.Supp.2d 619, reconsideration denied. Labor And Employment 778

Allegations that former employee of government subcontractor "tried to complain" to employer about "some of the allegations," including the alleged falsification of timesheets, were insufficient to constitute protected activity or notice to employer of distinct possibility of False Claims Act (FCA) litigation, as required to state a claim of retaliation under whistleblower provision of FCA; employee did not allege that he informed his supervisor that he was concerned that the conduct complained of was causing government funds to be lost, or that he gave any indication that he may ultimately initiate an FCA action or report employer's activities to the government, but rather, employee's alleged complaints to his employer were largely focused on his perceived mistreatment at work. Campion v. Northeast Utilities, M.D.Pa.2009, 598 F.Supp.2d 638. Labor And Employment 778

Employee relator failed to allege facts to support an inference that he engaged in protected activity or that employer, a hospital food service provider, had knowledge of the protected activity, as required to state claim for retaliation under False Claims Act (FCA), arising out of adverse consequences that allegedly resulted from relator's refusal to participate in the recycling of food and the diversion of hospital food to private functions. U.S. ex rel. Brown v. Aramark Corp., D.D.C.2008, 591 F.Supp.2d 68. Labor And Employment 777

Former health center employee's complaint seeking relief, under False Claims Act (FCA), for her retaliatory discharge by employer sufficiently alleged that employee was terminated in retaliation for her protected activity of investigating employer's alleged fraudulent billings submitted to Medicare and Medicaid programs, that employer was aware of employee's conduct as she notified supervisor of false claims and of her intention "to do something about it," that employee con-

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tacted federal authorities, and that only days later employee was fired by supervisor who stated that she "wished the situation could be different." U.S. ex rel. Ellis v. Sheikh, W.D.N.Y.2008, 583 F.Supp.2d 434. Labor And Employment 858

Public employee stated a claim for retaliation under the False Claims Act (FCA) by alleging that she investigated and reported to her employer false and fraudulent claims which were submitted to the federal government for payment, criminal or civil liability was reasonably foreseeable based on this behavior, and she was discharged from her employment as a consequence thereof. Machado v. Sanjurjo, D.Puerto Rico 2008, 559 F.Supp.2d 167. Officers And Public Employees 66

Employee engaged in protected activity under False Claims Act when he reported to his supervisors, and then to government investigators, that employer provided a number of flawed devices to the military, although employee did not know specific details of government contract. Glynn v. EDO Corp., D.Md.2008, 536 F.Supp.2d 595. Labor And Employment 778

Fire department employee did not engage in protected conduct by filing a qui tam action against city and health agency based on publicly-available information, as required to state a claim for illegal retaliation under whistleblower provision of the False Claims Act (FCA), where information contained in employee's complaint was already in the public record. McAllan v. Von Essen, S.D.N.Y.2007, 517 F.Supp.2d 672. Municipal Corporations 198(2)

Physician's request for his compensation data from medical facility where he was employed, made two years before he filed qui tam action under the False Claims Act (FCA) alleging that medical facility submitted fraudulent Medicare claims based on his services for times when he was not present, was not "protected activity" required to establish physician's retaliation claim under the FCA; attorney's documentation that accompanied request for compensation data stated that purpose of request was to determine whether facility was paying physician in accordance with his employment contract, and did not indicate that physician believed facility was committing Medicare fraud. U.S. ex rel. Lockyer v. Hawaii Pacific Health, D.Hawai'i 2007, 490 F.Supp.2d 1062, affirmed in part 2009 WL 2700321. Health 266; Labor And Employment 778

Ability of Food and Drug Administration (FDA) to impose future fines upon employer, a nonprofit organization that collected blood donations, for its failure to comply with prior consent decree between employer and government specifying requirements for handling blood, did not constitute an "obligation" of employer within meaning of False Claims Act (FCA), and thus any actions taken by employee to investigate or report alleged mishandling were not protected activity that would support employee's retaliatory discharge claim under FCA; no monetary sanctions were automatically imposed on employer for violations of consent decree, and therefore no obligation would arise unless FDA chose to exercise its discretionary authority to impose such sanctions, and FDA had not imposed any such sanctions. Hoyte v. American Nat. Red Cross, D.D.C.2006, 439 F.Supp.2d 38, affirmed 518 F.3d 61, 380 U.S.App.D.C. 185. Labor And Employment 778

Doctor who alleged that hospital engaged in fraudulent Medicare and Medicaid billing failed to state claim of retaliation under the False Claims Act (FCA); although doctor properly alleged that he engaged in protected activity of investigating and reporting the fraudulent billing practices, and that hospital was aware of his activity, doctor did not allege sufficient facts showing that hospital retaliated against him because of his protected conduct. U.S. ex rel. Smith v. Yale University, D.Conn.2006, 415 F.Supp.2d 58. Labor And Employment 858

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Executive employee of metropolitan hospital failed to establish pretextual nature of termination, alleged to be in retaliation for her commencement of qui tam action under False Claims Act (FCA); employee did not alert management that she intended to sue under FCA until after decision to terminate her had been made, decision was made by supervisor different from one she claimed was condoning fraudulent claims, and firing supervisor took action in response to employee's undisputed tampering with evidence. U.S. ex rel. Scott v. Metropolitan Health Corp., W.D.Mich.2005, 375 F.Supp.2d 626, affirmed 234 Fed.Appx. 341, 2007 WL 1028853, certiorari denied 128 S.Ct. 1225, 170 L.Ed.2d 139. Health 266

Former employees failed to show that they engaged in protected conduct under the False Claims Act (FCA) regarding any submission of a claim to the government for a worker's alleged double salary and benefits; investigation into the propriety of the worker's remuneration, and the discretion to disallow those costs, was well within one of the employee's employment obligations. Maturi v. McLaughlin Research Corp., D.R.I.2004, 326 F.Supp.2d 313, affirmed 413 F.3d 166. Labor And Employment 778

Employee of government contractor did not engage in “protected activity” in furtherance of viable False Claims Act (FCA) action, as required for his prima facie case of retaliation under FCA's whistleblowing provision against employer, when he made internal complaints to his supervisors about numerous transgressions at government project, including misuse of project property and government funds; all of the employee's complaints to his supervisors constituted suggestions designed to improve or benefit employer. Shekoyan v. Sibley Intern. Corp, D.D.C.2004, 309 F.Supp.2d 9, affirmed 409 F.3d 414, 366 U.S.App.D.C. 144, certiorari denied 126 S.Ct. 1337, 546 U.S. 1173, 164 L.Ed.2d 53. Labor And Employment 778

Relator bringing False Claims Act action against manufacturer of alloys used in aerospace and military aviation applications was engaging in “protected activity” under provision of Act barring retaliation, when he allegedly observed inappropriate controls and procedures being used in certifying alloys as compliant with standards, and reported results of observations to manufacturer. Yuhasz v. Brush Wellman, Inc., N.D.Ohio 2001, 181 F.Supp.2d 785, affirmed 341 F.3d 559. Labor And Employment 778

Employee's alleged actions were reasonably sufficient to put defendants on notice of a possible qui tam action and therefore employee stated a claim for retaliatory discharge under the False Claim Act (FCA); employee's expression of concerns about letter, which indicated that defendants were deriving profits through a practice based on unlawful conduct, could have placed defendants on notice that employee was pursuing an investigation in pursuit of a qui tam action. U.S. ex rel. Wright v. Cleo Wallace Centers, D.Colo.2000, 132 F.Supp.2d 913. Labor And Employment 778

Government contractor's employee's reporting to contractor's management that supervisors had directed misreporting of costs and overtime, in order to inflate reimbursable contract fees, satisfied protected activity and notice requirements of False Claims Act retaliation provision; employee's reports did not have to be based on employee's own internal investigation in order to be in furtherance of qui tam action, and reports sufficiently put management on notice that qui tam action was reasonable possibility. U.S. ex rel. Ackley v. International Business Machines Corp., D.Md.2000, 110 F.Supp.2d 395 . Labor And Employment 778

Employee engaged in conduct protected under False Claims Act (FCA), as required for whistleblower retaliation claim

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against employer, when she investigated and reported co-worker's suspected fraudulent Medicare billing activity and made efforts to stop supervisor from billing Medicare for certain services for a patient; although employee did not tell supervisor that billing was illegal or fraudulent, employee's conduct could have led employer to reasonably believe that employee was contemplating filing a qui-tam action or reporting fraud to the government. Mann v. Olsten Certified Healthcare Corp., M.D.Ala.1999, 49 F.Supp.2d 1307. Labor And Employment 778

Employee's routine efforts to correct mistakes in Medicare billing was not conduct protected under False Claims Act (FCA), as required for whistleblower retaliation claim against employer, since her efforts could not have put employer in fear that she was contemplating legal action or reporting fraud; employee took no further action after notifying the appropriate person of the errors, and she did not refer to errors as illegal or fraudulent, report them to legal department, or call attention to them in any way. Mann v. Olsten Certified Healthcare Corp., M.D.Ala.1999, 49 F.Supp.2d 1307. Labor And Employment 778

Chief executive officer's (CEO) actions in seeking an internal audit and investigating the actions of the various False Claims Act (FCA) defendants, which were inquiries for internal business purposes only, did not constitute protected activity for purposes of establishing retaliation claim under False Claims Act (FCA). U.S. ex rel. Bartlett v. Tyrone Hosp., Inc., W.D.Pa.2006, 234 F.R.D. 113. Labor And Employment 778

29. ---- Furtherance of an action, retaliation

The anti-retaliation provision of the Federal Claims Act (FCA), allowing recovery for retaliation resulting from reporting of false claims against government, did not apply to anesthesiologist who was discharged by employer after he reported to his employer that he suspected other doctors of committing medicare fraud; reporting suspicions to employer did not constitute action in furtherance of FCA enforcement action, and since one of anesthesiologist's jobs was to ensure that billing practices complied with Medicare rules, employer was not put on notice of potential FCA litigation by fact that anesthesiologist alerted supervisors to his suspicions. Brandon v. Anesthesia & Pain Management Associates, Ltd., C.A.7 (Ill.) 2002, 277 F.3d 936. Labor And Employment 778

Employee did not take action in furtherance of a qui tam action under False Claims Act (FCA) when she brought alleged fraud to attention of supervisors and showed them newspaper article describing similar allegations of fraud in another state, and, thus, she failed to establish that she engaged in “protected activity” under FCA retaliation provision, since, even assuming employee believed that employer's customers, which included the federal government, were being defrauded, employee's complaints were directed at stress from and pressure to falsify records, not toward an investigation into fraud on government. McKenzie v. BellSouth Telecommunications, Inc., C.A.6 (Tenn.) 2000, 219 F.3d 508. Labor And Employment 778

Hospital's denial of ophthalmologist's application for reappointment to its staff did not violate False Claims Act's (FCA) anti-retaliation provision, absent allegation that hospital knew that ophthalmologist was acting in furtherance of qui tam action at time of denial. U.S. ex rel. Conner v. Salina Regional Health Center, Inc., D.Kan.2006, 459 F.Supp.2d 1081. Health 275

Jury could find that government contractor constructively discharged employee in retaliation for action taken in further-

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ance of False Claims Act; originally considered outstanding employee and installed as country manager for all Iraq operations, employee was demoted after he expressed unhappiness with contractor's alleged bill padding. U.S. ex rel. DRC, Inc. v. Custer Battles, LLC, E.D.Va.2006, 444 F.Supp.2d 678, reversed 562 F.3d 295. Labor And Employment 777

Assertion that relator reported fraud against government several times was insufficient to allege that relator took acts in furtherance of a qui tam suit under the False Claims Act (FCA), as required to state prima facie case of retaliation under the FCA; relator reported what may have been, at most, the non-performance of a contractual duty by his employer, and he failed to allege the necessary relationship between this non-performance and a false claim or fraudulent activity. U.S. ex rel. Brooks v. Lockheed Martin Corp., D.Md.2006, 423 F.Supp.2d 522, affirmed in part , dismissed in part 237 Fed.Appx. 802, 2007 WL 627372. Labor And Employment 777

University professor was not acting in furtherance of an action under the False Claims Act, where he had neither filed a qui tam action against the state for alleged “grant fraud” by university faculty, nor had he ever had any intention of doing so. Miller v. Bunce, S.D.Tex.1999, 60 F.Supp.2d 620, affirmed 220 F.3d 584. United States 120.1

University employee's complaints to upper level officers at university about his supervisor and about various alleged improprieties in the purchasing department were those of a disgruntled worker and not those of a worker concerned that his employer was defrauding the federal government and as such, employee did not establish claim of retaliatory discharge under whistleblower provision of False Claims Act (FCA); employee had never initiated government investigation or a private qui tam suit. U.S. ex rel. Yesudian v. Howard University, D.D.C.1996, 946 F.Supp. 31, affirmed in part , reversed in part 153 F.3d 731, 332 U.S.App.D.C. 56. Colleges And Universities 8.1(3)

30. ---- Filing, retaliation

Phrase “to be filed” does not require that False Claims Act action ever have been filed as that phrase is used in Act's whistleblower protection provision stating that any employee who is discharged or discriminated against by his employer because of lawful acts done by employee in furtherance of action filed or “to be filed” under this provision shall be entitled to all relief necessary to make the employee whole. Childree v. UAP/GA CHEM, Inc., C.A.11 (Ga.) 1996, 92 F.3d 1140, certiorari denied 117 S.Ct. 1080, 519 U.S. 1148, 137 L.Ed.2d 216. Labor And Employment 778

31. ---- Reinstatement, retaliation

Reinstatement was not appropriate remedy in whistleblower suit brought under False Claims Act (FCA) by psychiatrist who alleged that she had been terminated from her position at counseling center in retaliation for her reports of alleged Medicare fraud by counseling center, in light of level of alleged acrimony between psychiatrist and center, and relatively short anticipated length of period of reinstatement. Hammond v. Northland Counseling Center, Inc., C.A.8 (Minn.) 2000, 218 F.3d 886. Labor And Employment 877

Employee who was unlawfully terminated under False Claims Act was entitled to reinstatement with same seniority status, back pay, and interest on back pay as well as special damages and attorney fees and costs. Godwin v. Visiting Nurse Ass'n Home Health Services, E.D.Pa.1993, 831 F.Supp. 449, affirmed 39 F.3d 1173, appeal dismissed 39 F.3d

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1173. Labor And Employment 866; Labor And Employment 877; Labor And Employment 879

II. PRACTICE AND PROCEDURE GENERALLY

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61. Jurisdiction, practice and procedure generally--Generally

In False Claims Act qui tam action brought against employer by former employee, dismissal under Act's public disclosure bar of three of former employee's multiple fraud claims did not preclude subject matter jurisdiction over remaining claims; federal district court was required to assess jurisdiction on claim-by-claim basis, asking whether public disclosure bar applied to each reasonably discrete fraud claim. U.S. ex rel. Boothe v. Sun Healthcare Group, Inc., C.A.10 (N.M.) 2007, 496 F.3d 1169, on remand 2008 WL 2669266. United States 122

Following dismissal of employee's False Claims Act (FCA) retaliation claim against his employer, a government contractor, district court was entitled to decline to exercise supplemental jurisdiction over employee's remaining claims against employer, under District of Columbia law, where rejection of non-federal claims would not adversely impact employee's ability to pursue those claims in local court system. Shekoyan v. Sibley Intern., C.A.D.C.2005, 409 F.3d 414, 366 U.S.App.D.C. 144, certiorari denied 126 S.Ct. 1337, 546 U.S. 1173, 164 L.Ed.2d 53. Federal Courts 18

Provision of Federal Employee Compensation Act (FECA) stating that benefit determinations by Office of Workers Compensation Programs (OWCP) were “final and conclusive,” and “not subject to review” by a court “by mandamus or otherwise” did not preclude court from exercising jurisdiction over claim by United States, under False Claims Act (FCA), which alleged that claimant and his wife conspired to submit false claims to OWCP in order to receive benefits under FECA; suit was not based upon presupposition that OWCP erred in its determination, since it could have correctly awarded benefits based on fraudulently submitted information. U.S. v. Sforza, C.A.2 (N.Y.) 2003, 326 F.3d 107. Work-

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ers' Compensation 1833

Elements which must be satisfied in order to trigger jurisdictional bar against enforcement action brought qui tam by relator against government contractor under False Claims Act (FCA) include a public disclosure, of allegations or transactions, in criminal, civil or administrative hearing or in Congressional, administrative or Government Accounting Office report, hearing, audit or investigation or from news media, and relator's action is based upon that public disclosure. U.S. ex rel. Lindenthal v. General Dynamics Corp., C.A.9 (Cal.) 1995, 61 F.3d 1402, certiorari denied 116 S.Ct. 1319, 517 U.S. 1104, 134 L.Ed.2d 472. United States 122

Supervisors' contacts with Maryland, including location of employer's office in Maryland, ownership of employer stock, and exchange of telephone calls and emails with employer's stockholders in Maryland, were unrelated to employee's False Claims Act (FCA) retaliation and wrongful termination case against employer and supervisors, and thus federal district court did not have personal jurisdiction over supervisors. Glynn v. EDO Corp., D.Md.2008, 536 F.Supp.2d 595. Federal Courts 76.20

Relator's qui tam action under the False Claims Act (FCA) against hospital and other corporate entities, as well as surgeon, alleging that surgeon regularly performed medically unnecessary therapeutic cardiac catheterizations on patients in non-emergent circumstances even though hospital did not have open heart surgery facilities, and that defendants routinely engaged in fraudulent coding for billing purposes by misrepresenting level of service provided and/or misrepresenting type of service provided, was not based upon public disclosure of information by news media, and, thus, District Court had subject matter jurisdiction over the action, although several allegations in relator's complaint were substantially similar to facts reported by news media, where other allegations in relator's complaint had not been publicly disclosed, and relator contacted United States Attorney regarding his allegations prior to partial public disclosure by news media. U.S. ex rel Lowman v. Hilton Head Health Systems, L.P., D.S.C.2007, 487 F.Supp.2d 682. United States 122

Court's prior holding that relator failed to satisfy the False Claims Act's (FCA) jurisdictional prerequisites deprived the court of jurisdiction to enter a judgment on behalf of the United States where government had not intervened, nor expressed any interest in intervening until after court issued its order dismissing the case for lack of subject matter jurisdiction. U.S. ex rel. Maxwell v. Kerr-McGee Oil & Gas Corp., D.Colo.2007, 486 F.Supp.2d 1233. United States 122

Following dismissal of employee's False Claims Act (FCA) retaliation claim against his employer, a government contractor, district court would decline to exercise supplemental jurisdiction over employee's remaining claims against employer, under District of Columbia law, as well as over employer's counterclaims for conversion and trespass to chattels; the parties' claims could all be pursued in local court system, and claims would not be adversely impacted by applicable limitations periods. Shekoyan v. Sibley Intern. Corp, D.D.C.2004, 309 F.Supp.2d 9, affirmed 409 F.3d 414, 366 U.S.App.D.C. 144, certiorari denied 126 S.Ct. 1337, 546 U.S. 1173, 164 L.Ed.2d 53. Federal Courts 1035.1

Action by members of military research team against anthrax vaccine manufacturer, alleging manufacturers knowingly concealed material facts from government regarding production of anthrax vaccine, was “based upon” public disclosures for purposes of False Claims Act (FCA) provision barring qui tam actions “based upon the public disclosure of allegations or transactions”; regardless of whether allegations in complaint and those gleaned from public disclosures had same

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statutory basis, public statements raising questions regarding vaccine's compliance with Food and Drug Administration (FDA) standards were sufficient to alert government to possibility that vaccine that it had been purchasing was not FDA-approved vaccine that manufacturer claimed to be selling. U.S. ex rel. Dingle v. BioPort Corp., W.D.Mich.2003, 270 F.Supp.2d 968, affirmed 388 F.3d 209, certiorari denied 125 S.Ct. 1708, 544 U.S. 949, 161 L.Ed.2d 526. United States 122

District court lacked subject matter jurisdiction over relator's claim that shipbuilder submitted fraudulent invoices or vouchers to Navy prior to effective date of amendment to False Claims Act (FCA) to permit claims based on information in possession of government if relator provided such information; relator had provided all information on which his claims were based to Navy prior to bringing his qui tam action. U.S. ex rel. Atkinson v. Pennsylvania Shipbuilding Co., E.D.Pa.2002, 255 F.Supp.2d 351, affirmed on other grounds 473 F.3d 506. United States 122

Court had jurisdiction to consider qui tam claim, alleging that city defrauded federal government by falsely certifying in request for block grant funding for sewage lagoon that National Environmental Policy Act (NEPA) requirements were satisfied, even though claimants had not complied with procedural requirements of False Claims Act; procedural defects could be cured following commencement of suit. Castenson v. City of Harcourt, N.D.Iowa 2000, 86 F.Supp.2d 866. United States 122

In order to determine whether jurisdiction exists under section of False Claims Act (FCA) over subject matter of qui tam action, court must determine: whether disclosure occurred by one of the methods listed in statute; whether the information has been “publicly” disclosed within meaning of the statute; whether relator “based” his suit on such public disclosure; and if so, whether relator is an “original source” of the information in question. U.S. ex rel. Fine v. MK-Ferguson Co., D.N.M.1994, 861 F.Supp. 1544, affirmed 99 F.3d 1538. United States 122

Court lacked jurisdiction over qui tam action, raising issues identical to those raised in settled class action, where plaintiffs were not the substantial source of either the information leading to settlement of class action or information upon which they based their own action. U.S. ex rel. Dick v. Long Island Lighting Co., E.D.N.Y.1989, 710 F.Supp. 1485, affirmed 912 F.2d 13. United States 122

Investment bank's suit as relator under False Claims Act to recover for bank's allegedly false statements to Farmer's Home Administration in connection with application for guaranty of bank's loans was not based upon complaint of borrower's trustee in bankruptcy and was not based upon any public disclosure, and, thus, district court had jurisdiction; suit was based upon knowledge developed independently by three original relators prior to appointment of trustee and upon subsequent discovery of key witness not revealed in any public disclosure. U.S. ex rel. LaValley v. First Nat. Bank of Boston, D.Mass.1988, 707 F.Supp. 1351, motion to certify denied. United States 122

Claim to informer's fee, made by individual who had set in motion investigation resulting in twenty-five guilty pleas, an aggregate of $20,000 in fines, and a civil recovery to United States of $225,000, but who was not person who brought qui tam action, was not within jurisdiction of federal district court in which qui tam action had been filed. U.S. ex rel. Bayarsky v. Brooks, D.C.N.J.1953, 110 F.Supp. 175, affirmed 210 F.2d 257. Penalties 16; Penalties 20; United States 122

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District court had no jurisdiction of action under former § 231 [now § 3729] of this title against Committee on Admissions and Grievances, based on their alleged misconduct in distributing among themselves fees collected from applicants for admission to bar, and in destroying bar examination papers and excluding Negroes from membership on the committee. Laughlin v. Clephane, D.C.D.C.1947, 77 F.Supp. 103. United States 122

The Alabama District Court had jurisdiction of parties and causes of action by United States to recover forfeitures and double damages for false claims against the United States in connection with furnishing butane gas to federal housing projects in Alabama. U.S. v. Gardner, N.D.Ala.1947, 73 F.Supp. 644. United States 132; Federal Courts 263

Court of Federal Claims lacked jurisdiction over former city auditor's claim to share of disaster relief payments that city refunded to the federal government, which was asserted under the qui tam provisions of the False Claims Act (FCA), as federal district courts have exclusive jurisdiction over qui tam claims. Giles v. U.S., Fed.Cl.2006, 72 Fed.Cl. 335, appeal filed. Federal Courts 1141

United States Court of Federal Claims had no authority to determine that city auditor had a valid qui tam suit under the False Claims Act, as required for her to prevail on claim against the federal government; qui tam suit could only be heard in district court. Giles v. U.S., C.A.Fed.2007, 233 Fed.Appx. 987, 2007 WL 788350, Unreported, rehearing and rehearing en banc denied. Federal Courts 1139

Court of International Trade (CIT) had exclusive jurisdiction over government's False Claims Act (FCA) “reverse false claims” action against produce importer, who had allegedly engaged in transshipping in order to avoid antidumping duties; action was one to recover customs duties. U.S. v. Universal Fruits and Vegetable Corp., CIT 2005, 2005 WL 3752953, Unreported. Federal Courts 1138

62. ---- Primary jurisdiction, practice and procedure generally

Deferral to the Department of Labor to determine in the first instance how a particular type of work is classified for the purposes of wage determinations was proper under the doctrine of primary jurisdiction in a False Claims Act suit; regulations under the Davis-Bacon Act set forth procedures for the administrative resolution of classification disputes. U.S. v. Dan Caputo Co., C.A.9 (Cal.) 1998, 152 F.3d 1060, on remand 2001 WL 1042168. United States 122

63. ---- Evidence or information possessed by United States determinative of, jurisdiction, practice and procedure generally

Amendment to jurisdictional provision of False Claims Act (FCA) permitting qui tam suits based on information in government's possession under certain circumstances was substantive, not procedural, change in creating jurisdiction where none previously existed. Hughes Aircraft Co. v. U.S. ex rel. Schumer, U.S.Cal.1997, 117 S.Ct. 1871, 520 U.S. 939, 138 L.Ed.2d 135, on remand 119 F.3d 796. United States 122

District court was without jurisdiction of qui tam action brought by the State of Wisconsin under section 3729 of this title, where the suit was based upon evidence or information in possession of the United States at the time the suit was brought, notwithstanding that Wisconsin was the source of the information possessed by the United States and was re-

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quired to provide such information to the federal government as part of its participation in the medicare reimbursement program. U.S. ex rel. State of Wis. (Dept. of Health and Social Services) v. Dean, C.A.7 (Wis.) 1984, 729 F.2d 1100. Federal Courts 192.5

Alleged knowledge of Department of Housing and Urban Development that builder of subsidized housing had inflated construction cost figures upon which interest subsidies were based did not prevent subsidy overpayment from being made "by reason of" builder's fraudulent acts, and thus such knowledge did not preclude imposition of double damages under former § 231 [now § 3729] of this title. U. S. v. Ehrlich, C.A.9 (Cal.) 1981, 643 F.2d 634, certiorari denied 102 S.Ct. 474, 454 U.S. 940, 70 L.Ed.2d 247. United States 120.1

Action brought against United States senator and his administrative assistant which alleged that senator authorized payment of assistant's federal salary during a period when assistant was working "extensively and exclusively" on senator's reelection campaign was not barred under former § 232(C) of this title which prohibited actions based upon evidence or information in possession of the United States on basis that Secretary of the Senate had in his files Senator's written designation of assistant to administer campaign contributions, in that such filing by itself could not have been deemed to have adequately informed government of possible wrongdoing by either senator or his assistant. U. S. ex rel. Joseph v. Cannon, C.A.D.C.1981, 642 F.2d 1373, 206 U.S.App.D.C. 405, certiorari denied 102 S.Ct. 1630, 455 U.S. 999, 71 L.Ed.2d 865. United States 120.1

Jurisdictional bar of former § 232 of this title operated to preclude informer's suit under such section when essential information upon which suit was predicated was in possession of United States prior to filing of suit, and knowledge by government prior to suit barred action even though plaintiff was source of that knowledge. U. S. ex rel. Weinberger v. State of Fla., C.A.5 (Fla.) 1980, 615 F.2d 1370. United States 122

Not only United States, but the defendants, may have asserted defense of former § 232(C) of this title to effect that court had no jurisdiction to proceed with any qui tam suit whenever it was made to appear that such suit was based upon evidence or information in possession of United States, or any agency, officer or employee thereof, at time such suit was brought. Safir v. Blackwell, C.A.2 (N.Y.) 1978, 579 F.2d 742, certiorari denied 99 S.Ct. 2160, 441 U.S. 943, 60 L.Ed.2d 1044, certiorari denied 99 S.Ct. 2161, 441 U.S. 943, 60 L.Ed.2d 1045. United States 122

For purpose of determining extent to which the information on which a qui tam suit under former § 232 of this title was based must have been identical to information in the possession of the United States in order for the jurisdictional bar to have been invoked, it was not necessary that the evidence and information possessed by the United States be a mirror image of that in the hands of the qui tam plaintiff; rather, the jurisdictional bar may have been invoked when the evidence and information in possession of the United States at the time the suit was brought was sufficient to enable the government adequately to investigate the case and to make a decision whether to prosecute. Pettis ex rel. U. S. v. Morrison-Knudsen Co., Inc., C.A.9 (Idaho) 1978, 577 F.2d 668. United States 122

Government's possession of the material information contained in memorandum of lawyer for British concern expressing concern over fact that applications for federal subsidies to build tanker ships were based on a "fiction" was enough under former § 232 of this title to divest court of jurisdiction of qui tam action by plaintiff seeking to recover damages and penalties for the United States and a reward for herself on ground that defendant, by means of fraudulent applications to

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maritime administration, induced government to pay out subsidies and to make construction loan guarantees. U. S. v. Burmah Oil Co. Ltd., C.A.2 (N.Y.) 1977, 558 F.2d 43, certiorari denied 98 S.Ct. 511, 434 U.S. 967, 54 L.Ed.2d 454. United States 122

Where essential information upon which qui tam suit was predicated was in possession of United States prior to filing of action by informer, who had given such information to government, district court did not have jurisdiction. U. S. v. Aster, C.A.3 (Pa.) 1960, 275 F.2d 281, certiorari denied 81 S.Ct. 223, 364 U.S. 894, 5 L.Ed.2d 188. United States 122

Where suit charging defendant with filing false claim for electrical service against United States was based on information and evidence in possession of United States at time suit was prosecuted, and United States, after notice, failed to enter suit, district court was without jurisdiction to proceed with such suit. U.S. ex rel. Leslie v. Potomac Elec. Power Co., C.A.D.C.1953, 208 F.2d 39, 93 U.S.App.D.C. 108. United States 122

Former § 232(C) of this title that court had no jurisdiction to proceed with any suit brought whenever it appeared that such suit was based on evidence or information in the possession of the United States, or any agency, officer or employee thereof at the time such suit was brought, meant not that plaintiff must have negatived in his pleadings or otherwise knowledge on part of government agents, but that court lost jurisdiction whenever that fact was established in case. U.S. v. Rippetoe, C.A.4 (S.C.) 1949, 178 F.2d 735. United States 122

Under former § 232(C) of this title that court had no jurisdiction to proceed with any suit or pending suit brought by informer based on evidence or information in possession of United States or its agency, officer or employee at time suit was brought, but giving United States, 60 days after notice in which to enter an appearance, district court was not deprived of jurisdiction of qui tam action previously brought by an informer on information in possession of United States, where the United States had timely filed an appearance in the action. U.S. ex rel. Bayarsky v. Brooks, C.C.A.3 (N.J.) 1946, 154 F.2d 344, certiorari denied 67 S.Ct. 47, 329 U.S. 716, 91 L.Ed. 621. Penalties 20; United States 122

Former § 232(C) of this title that court had no jurisdiction to proceed with “any such suit” whenever it appeared that suit was based on evidence in possession of United States when suit was brought, applied only to suits carried through by informer and did not deprive court of jurisdiction of such a suit adopted and prosecuted by United States after being instituted by an informer, and it was only when the United States failed to adopt or prosecute informer's suit that defendants could have raised an issue as to merit of informer's activity in bringing suit. U.S. v. Pittman, C.C.A.5 (Ala.) 1945, 151 F.2d 851, certiorari denied 66 S.Ct. 1022, 328 U.S. 843, 90 L.Ed. 1617. United States 122

District court did not have jurisdiction of suit brought by informer under former § 232 of this title unless based on evidence and information not in possession of United States or its agencies or employees at time of filing. U. S. ex rel. Weiss v. Schwartz, N.D.Cal.1982, 546 F.Supp. 422. United States 122

Under former § 232 of this title, until determination was made as to whether informer's suit was based upon evidence or information which was in possession of the United States prior to filing of suit, district court's jurisdiction was merely conditional and district court could have been deprived of jurisdiction at any stage of proceedings. U. S. ex rel. Sacks v. Philadelphia Health Management Corp., E.D.Pa.1981, 519 F.Supp. 818. Federal Courts 243

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District court did not have jurisdiction over plaintiff's qui tam suit brought against computer contractor under former § 232 of this title for alleged provisional overbillings of the government where plaintiff made no allegation that his suit was based on information beyond what he gave the government before he brought the suit. U. S. ex rel. Lapin v. International Business Machines Corp., D.C.Hawai'i 1980, 490 F.Supp. 244. Federal Courts 243

Where federal district court lacked jurisdiction over suit under former § 232 of this title because evidence and information upon which suits were based was in possession of United States prior to institution of suit, plaintiffs' claim of racial discrimination based upon fact that United States moved to dismiss complaint brought by black man against white member of Congress was not sufficient to confer subject-matter jurisdiction upon the court. U. S. ex rel. Thompson v. Hays, D.C.D.C.1976, 432 F.Supp. 253. Federal Courts 182

State of California was not “agency” of United States within meaning of former § 231 et seq. [now § 3729 et seq.] of this title by virtue of its participation in federal medicaid program, and suit under such sections was therefore not barred on ground that information underlying such suit was in possession of California officials. U. S. ex rel. Davis v. Long's Drugs, Inc., S.D.Cal.1976, 411 F.Supp. 1144. United States 120.1

In view of former § 232(C) of this title to effect that court had no jurisdiction to proceed if it appeared that informer's suit was based upon evidence or information in possession of the United States at time suit was brought, issue of lack of jurisdiction could have been raised at any time. U. S. ex rel. Vance v. Westinghouse Elec. Corp., W.D.Pa.1973, 363 F.Supp. 1038. Courts 37(2)

For purposes of former § 232(C) of this title which deprived court of jurisdiction where suit was based upon evidence or information which was in possession of United States, or any agency, officer or employee thereof, at time suit was brought, negative fact that meat packer had not filed application for price adjustment with Office of Price Administration was in possession of government. U.S. ex rel. McCans v. Armour & Co., D.C.D.C.1956, 146 F.Supp. 546, affirmed 254 F.2d 90, 102 U.S.App.D.C. 391, certiorari denied 79 S.Ct. 57, 358 U.S. 834, 3 L.Ed.2d 71, rehearing denied 79 S.Ct. 220, 358 U.S. 901, 3 L.Ed.2d 152. United States 122

Where informer in qui tam suit admitted that suit was based upon information in possession of the United States at the time suit was brought and that informer had not in his possession and had not voluntarily disclosed to Attorney General substantial evidence and information which was not theretofore in possession of Department of Justice, government's motion for an order determining that action was based upon evidence or information in possession of the United States was granted. U.S. ex rel. Sherr v. Anaconda Wire & Cable Co., S.D.N.Y.1944, 57 F.Supp. 106, affirmed 149 F.2d 680, certiorari denied 66 S.Ct. 143, 326 U.S. 762, 90 L.Ed. 458. United States 122

64. ---- Original source of information, jurisdiction, practice and procedure generally

Original-source requirement of the False Claims Act (FCA) provision setting forth the original-source exception to the public-disclosure bar on federal-court jurisdiction is jurisdictional, so that the court must address whether a qui tam relator qualifies as an original source even if the point has been conceded by the other party. Rockwell Intern. Corp. v. U.S., U.S.2007, 127 S.Ct. 1397, 549 U.S. 457, 167 L.Ed.2d 190, rehearing denied 127 S.Ct. 2300, 550 U.S. 954, 167 L.Ed.2d 1128, on remand 492 F.3d 1157. United States 122

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Relator, in qui tam suit alleging that natural gas companies underpaid royalties to the United States, did not provide Government with information demonstrating sufficient direct and independent knowledge of the information underlying the allegations to qualify as an "original source," and thus False Claims Act's (FCA) public disclosure provision barred district court from exercising jurisdiction; relator provided no information regarding any named defendant in several earlier cases, in other cases he provided only secondhand knowledge, his references to a few other defendants were innocuous, irrelevant, or based on speculation, and his direct and independent information about certain defendants was minimal in comparison to the broad scope of his allegations against them. In re Natural Gas Royalties, C.A.10 (Wyo.) 2009, 562 F.3d 1032, certiorari denied 2009 WL 2444790. United States 122

Health care services provider's former employee did not qualify as "original source" in her False Claims Act qui tam suit against provider, which alleged overbilling of government for Medicare-eligible patients via improper recoupment of related-party profits and other methods, and thus federal courts lacked jurisdiction over suit under Act's public disclosure bar by virtue of earlier qui tam suits alleging same violations and methods; there was no evidence that former employee had direct and independent knowledge of information in her complaint, other than her conclusory argument to that effect. U.S. ex rel. Boothe v. Sun Healthcare Group, Inc., C.A.10 (N.M.) 2007, 496 F.3d 1169, on remand 2008 WL 2669266. United States 122

False Claims Act's (FCA) jurisdictional bar precluded qui tam claims based on allegations and transactions of alleged instances of fraud; because basis for relator's knowledge of essential elements of such claims was based on publicly disclosed information, relator was not an "original source" within meaning of FCA's public disclosure provisions. U.S. ex rel. Atkinson v. PA. Shipbuilding Co., C.A.3 (Pa.) 2007, 473 F.3d 506. United States 122

District Court lacked jurisdiction over qui tam action brought under the False Claims Act (FCA) by subject in federally-funded acquired immune deficiency syndrome (AIDS) research study, alleging various acts of negligence and mismanagement by researcher, several of its participating medical professionals, and institutional review board for the study, where relator did not allege that he was an original source of information in warning letter sent by Federal Drug Administration (FDA) to institutional review board suspending its participation in an unrelated study for "violating regulations governing the composition, operation, and responsibilities of an IRB." U.S. ex rel. Gross v. AIDS Research Alliance-Chicago, C.A.7 (Ill.) 2005, 415 F.3d 601. United States 122

Qui tam relators were "original source," and thus their False Claims Act (FCA) suit against oil and gas well operator, alleging underpayment of royalties to Indian tribe, was not jurisdictionally barred despite prior public disclosure, even though they were not insiders with actual knowledge of fraud; relators were entitled to rely on their private dealings with operator, supplemented by their independent investigation of public records, to infer existence of fraud. Kennard v. Comstock Resources, Inc., C.A.10 (Wyo.) 2004, 363 F.3d 1039, certiorari denied 125 S.Ct. 2957, 545 U.S. 1139, 162 L.Ed.2d 887. United States 122

Qui tam plaintiff had direct and independent knowledge of the information on which his False Claims Act (FCA) claim against government contractor was based, for purposes of determining whether he qualified as an original source of information for jurisdictional purposes, even though plaintiff no longer worked at plant when manufacture of pondcrete blocks commenced; plaintiff was a lead principal engineer in nuclear weapons plant operated by contractor, plaintiff's duties included plant-wide "troubleshooting" and reviewing designs and existing operations for safety and cost-

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effectiveness, plaintiff reviewed plans for plant's allegedly faulty process for manufacturing pondcrete and drafted document setting forth the alleged deficiencies, and plaintiff was told by managers not to reveal problems to government. U.S. ex rel Stone v. Rockwell Intern. Corp., C.A.10 2002, 282 F.3d 787, opinion after remand 92 Fed.Appx. 708, 2004 WL 433235, certiorari granted in part 127 S.Ct. 35, 548 U.S. 941, 165 L.Ed.2d 1013, reversed 127 S.Ct. 1397, 549 U.S. 457, 167 L.Ed.2d 190, rehearing denied 127 S.Ct. 2300, 550 U.S. 954, 167 L.Ed.2d 1128, on remand 492 F.3d 1157. United States 122

Former employees of hospital who brought qui tam action against hospital, and medical school did not show that they had direct and independent knowledge of the information on which their Medicare fraud allegations were based, as necessary to qualify as “original source”; although employees alleged that they requested hospital audit based upon their discovery that the school was failing to provide level of services agreed to in contract between school and hospital, they admitted that source of core information underlying the fraud allegations was the audits. U.S. v. New York Medical College, C.A.2 (N.Y.) 2001, 252 F.3d 118. United States 122

Relators in qui tam action against successful bidder for government contract were not original sources of information underlying allegations that bidder engaged in improper “bait and switch” of intended subcontractor, given that, at most, relators verified information divulged by one unsuccessful bidder in their capacity as attorneys for another unsuccessful bidder; relators did not become “original sources” due to their specialized experience as government contract lawyers. Grayson v. Advanced Management Technology, Inc., C.A.4 (Va.) 2000, 221 F.3d 580. United States 122

Union member did not have direct knowledge of alleged scheme under which union officials deducted “job targeting” dues from union members' paychecks and remitted them back to contractors, and member thus was not “original source” of fraud allegations capable of evading FCA's public disclosure bar, where only general union dues were withheld from his paycheck, he did not sign authorization form allowing job targeting dues, he never participated in negotiating collective bargaining agreement (CBA) at issue, he did not allege he played any role in submitting false claims, and almost everyone in his union knew of the program at issue. U.S. v. Alcan Elec. and Engineering, Inc., C.A.9 (Alaska) 1999, 197 F.3d 1014. United States 122

Relators were “original sources” with respect to allegations of improper billing by government contractor arising after 1986 amendment to jurisdictional section of False Claims Act (FCA), and district court thus had subject matter jurisdiction over such claims, where relators directly observed the nonproductive labor and improper billing that formed the heart of their allegations, they voluntarily supplied the information to Defense Contract Audit Agency (DCAA) auditors, and nothing in record suggested that relators “sat quietly in the shadows” until others took up the fight. U.S. ex rel. Newsham v. Lockheed Missiles & Space Co., Inc., C.A.9 (Cal.) 1999, 190 F.3d 963, certiorari denied 120 S.Ct. 2196, 530 U.S. 1203, 147 L.Ed.2d 232. United States 122

General contractor for lead-based paint abatement work at city housing project was not “original source” of allegations supporting contractor's claim, under False Claims Act, that city housing authority and architectural firm that developed specifications for work had made false claims to government, as contractor had no knowledge that authority made the alleged misrepresentations to government agency until such information was discovered pursuant to request for information under Freedom of Information Act. U.S. ex rel Mistick PBT v. Housing Authority of City of Pittsburgh, C.A.3 (Pa.) 1999, 186 F.3d 376, certiorari denied 120 S.Ct. 1418, 529 U.S. 1018, 146 L.Ed.2d 310. United States 122

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Although private guarantor's subpoena in separate state court action caused Farmers' Home Administration (FmHA) official to begin investigation by telephoning bank official, thus ultimately revealing bank's failure to disclose to FmHA the existence of guarantor's personal guaranty of loan on which bank had submitted loss reports to FmHA, guarantor's position in the causal chain did not make her a “source” of the information regarding bank's failure to disclose, as required to escape False Claim Act's (FCA) jurisdictional bar against qui tam suit based upon publicly disclosed information. U.S. v. Bank of Farmington, C.A.7 (Ill.) 1999, 166 F.3d 853. United States 122

Disclosure of university's alleged fraud by resident representative administrative contracting officer (ACO) for the Office of Naval Research at the university was not voluntary, either as to contracts that were negotiated while he was employed as ACO or as to those previously negotiated, despite opposition to disclosure exhibited by his superiors, where pertinent regulations made it clear that his position obligated him to ensure the legitimacy of contracts and to refer possible fraud to the appropriate authorities, and earlier contracts were on-going, and thus he could not be considered the “original source” of publicly disclosed information, so as to provide district court with jurisdiction over his qui tam action under False Claims Act (FCA). U.S. ex rel. Biddle v. Board of Trustees of Leland Stanford, Jr. University, C.A.9 (Cal.) 1998, 161 F.3d 533, certiorari denied 119 S.Ct. 1457, 526 U.S. 1066, 143 L.Ed.2d 543. United States 122

Relator was not an “original source” and thus could not maintain qui tam action under the False Claims Act (FCA) based upon public disclosures, although she did provide information about defendant's allegedly fraudulent conduct to state agencies prior to bringing suit, where she failed to disclose her allegations to the federal government before filing her WPA action and her prior state law action which made public disclosure of the information on which the FCA action was based; “Government” in the FCA refers to the United States government. U.S. ex rel. Jones v. Horizon Healthcare Corp., C.A.6 (Mich.) 1998, 160 F.3d 326, rehearing and suggestion for rehearing en banc denied. United States 122

Relator's knowledge giving rise to allegations of conspiracy to submit false Medicare claims was not “direct” knowledge for purposes of relator's status as “original source” under False Claims Act; relator could not identify any Medicare patient who allegedly was charged for unnecessary medical services, Medicare program administrator's allegedly deficient auditing procedure was not evidence of fraud, and conclusion that administrator participated in conspiracy, based on expert testimony given in relator's prior case with regard to administrator's auditing practices, was pure speculation. U.S. ex rel. Aflatooni v. Kitsap Physicians Services, C.A.9 (Wash.) 1998, 158 F.3d 439, amended opinion, withdrawn from bound volume.

Because government employees' groups' questionable transactions of earning revenue from vending services on federal property were publicly disclosed in manner recognized by False Claims Act (FCA) before relator even became aware of the practices, relator could not qualify as “original source” who was exposing essential elements of fraudulent transaction that had not previously been publicly disposed for purposes of FCA section providing that no court has jurisdiction over action based upon public disclosure of allegations unless person bringing action is “original source” of the information. U.S. ex rel. Findley v. FPC-Boron Employees' Club, C.A.D.C.1997, 105 F.3d 675, 323 U.S.App.D.C. 61, rehearing denied, certiorari denied 118 S.Ct. 172, 522 U.S. 865, 139 L.Ed.2d 114. United States 122

Former employee of Office of Inspector General did not have direct and independent knowledge of information contained in Office's publicly disclosed final report and audit reviewing government contractor's cost reimbursement claims on mine remediation project and, therefore, was not “original source” who could bring qui tam suit against contractor un-

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der False Claims Act based upon such publicly disclosed information; former employee's contribution to final report and audit was limited to taking facts presented by independent auditing firm and writing report in layperson's language. U.S. ex rel. Fine v. MK-Ferguson Co., C.A.10 (N.M.) 1996, 99 F.3d 1538. United States 122

Former employee of Office of Inspector General did not qualify as "original source" of information on which allegations in his qui tam suit brought under False Claims Act were based, and thus employee could not maintain qui tam action against government contractor which allegedly engaged in pattern of submitting claims for reimbursement of unallowable costs since those allegations had been publicly disclosed where employee's knowledge of alleged fraud came from work of auditors under his supervision who actually performed audit on federal contractor. U.S. ex rel. Fine v. Advanced Sciences, Inc., C.A.10 (N.M.) 1996, 99 F.3d 1000. United States 122

Court lacked jurisdiction over False Claims Act qui tam action alleging that county social services department defrauded United States, since relators, who brought action after allegations had been publicly disclosed, did not have direct and independent knowledge of alleged fraud, and thus were not "original source" of allegations; relators derived information underlying allegations secondhand from department employee, verification by relator added nothing significant to information relators obtained from employee, and holding that court lacked jurisdiction was consistent with Act's purpose of ferreting out fraud by encouraging persons with firsthand knowledge of alleged wrongdoing to come forward. U.S. ex rel. Devlin v. State of Cal., C.A.9 (Cal.) 1996, 84 F.3d 358, certiorari denied 117 S.Ct. 361, 519 U.S. 949, 136 L.Ed.2d 252. United States 122

Former Army Corps of Engineers employee was not original source of prior disclosure of alleged illegality of fixed local repayment schedule for dam project under Water Supply Act and, thus, prior public disclosure barred employee's subsequent action under qui tam provision of False Claims Act; although former employee had filed internal complaints about project, those complaints did not mention repayment schedule issue, and employee did not show that prior discloser's knowledge of repayment schedule stemmed in any way from former employee's internal complaints. Hagood v. Sonoma County Water Agency, C.A.9 (Cal.) 1996, 81 F.3d 1465, certiorari denied 117 S.Ct. 175, 519 U.S. 865, 136 L.Ed.2d 116, rehearing denied 117 S.Ct. 501, 519 U.S. 1001, 136 L.Ed.2d 393. United States 122

Fact that former auditor for the Office of Inspector General was employed specifically to disclose fraud was sufficient to render his disclosures nonvoluntary and thus, auditor was not an "original source" for purposes of False Claims Act stating that no court shall have jurisdiction over action based upon public disclosure of allegations unless person bringing the action is "original source" of the information; auditor was not a volunteer, but rather was salaried government employee who was compelled to disclose fraud by the very terms of his employment. U.S. ex rel. Fine v. Chevron, U.S.A., Inc., C.A.9 (Cal.) 1995, 72 F.3d 740, certiorari denied 116 S.Ct. 1877, 517 U.S. 1233, 135 L.Ed.2d 173. United States 122

Corporation that was incorporated with express purpose of pursuing qui tam litigation based on information either minority shareholder or minority shareholder's corporation had already obtained was not "original source" of information necessary for subject matter jurisdiction under False Claims Act, although it allegedly obtained additional information after incorporation that enhanced value of litigation to United States, absent showing that work it performed after incorporation unearthed qualitatively different information than what had already been discovered. Federal Recovery Services, Inc. v. U.S., C.A.5 (La.) 1995, 72 F.3d 447, rehearing denied. United States 122

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Contractor was not an “original source of information” regarding cost overruns on government's housing construction projects, and therefore contractor could not maintain qui tam action under the False Claims Act (FCA) against construction firms responsible for such overruns, where contractor obtained information from media, from administrative reports prepared for the Army Corps of Engineers and from arbitration hearings concerning cost overruns. Gold v. Morrison-Knudsen Co., C.A.2 (N.Y.) 1995, 68 F.3d 1475, certiorari denied 116 S.Ct. 1836, 517 U.S. 1213, 134 L.Ed.2d 939, rehearing denied 117 S.Ct. 9, 518 U.S. 1040, 135 L.Ed.2d 1104. United States 122

Union's business representative did not have direct knowledge of electrical contractor's alleged fraud against the government and, accordingly, union did not have original source standing to bring False Claims Act qui tam action where business representative's information was derived from his visits to project job site and his observations of persons doing electricians' work, copies of publicly filed payroll records indicating the employees were not being paid electricians' wages, and his interviews with employees of electrical contractor. U.S. ex rel. Barth v. Ridgedale Elec., Inc., C.A.8 (Minn.) 1995, 44 F.3d 699. United States 122

Although journeyman/electrician had direct knowledge of alleged fraud of electrical contractor in submitting false certifications of contract compliance and fraudulent payroll reports to the government, journeyman/electrician was not an original source of publicly disclosed allegations or transactions and, accordingly, did not have original source status and could not bring False Claims Act qui tam action where he did not voluntarily provide the information regarding electrical contractor's alleged fraud to the government prior to filing suit. U.S. ex rel. Barth v. Ridgedale Elec., Inc., C.A.8 (Minn.) 1995, 44 F.3d 699. United States 122

Relator suing under qui tam provision of False Claims Act need not be a source to entity that publicly disclosed the allegations on which qui tam action is based in order to be “original source” within Act's exception to jurisdictional bar of actions based upon public disclosure of allegations or transactions in criminal, civil or administrative hearing; rather, relator need only have direct and independent knowledge underlying the allegations of a false claim and voluntarily provide the information to the government before filing his qui tam action. U.S. ex rel. Siller v. Becton Dickinson & Co. By and Through Microbiology Systems Div., C.A.4 (Md.) 1994, 21 F.3d 1339, certiorari denied 115 S.Ct. 316, 513 U.S. 928, 130 L.Ed.2d 278. United States 122

Federal employee acquired his knowledge of alleged Medicare secondary payer (MSP) fraud by administrator of federal employees health benefits program through years of employee's own claims processing, research and correspondence with government officials and, thus, employee was “original source” of information within meaning of jurisdictional prerequisites for qui tam suits under False Claims Act (FCA), notwithstanding public disclosure five weeks before suit was filed. Cooper v. Blue Cross and Blue Shield of Florida, Inc., C.A.11 (Fla.) 1994, 19 F.3d 562. United States 122

Employer, which, in earlier litigation against labor union, alleged fraud on part of arbitrator, was “original source” of fraud allegations under qui tam provisions of False Claims Act, and thus was not barred from bringing suit against arbitrator based on publicly disclosed information; pay vouchers and telephone records which employer received through discovery did not in themselves indicate fraud, and employer thus had to have concluded that fraud occurred based on its own experience and its own efforts which included personal knowledge of arbitration proceedings and interviews with persons identified in telephone records. U.S. ex rel. Springfield Terminal Ry. Co. v. Quinn, C.A.D.C.1994, 14 F.3d 645, 304 U.S.App.D.C. 347, rehearing in banc declined. United States 122

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Plaintiff was not "original source" of information as to alleged fraud by government contractor and thus could not bring qui tam action under False Claims Act, though plaintiff conducted, as counsel, litigation that resulted in public disclosure of the information, conducted some collateral research and investigations regarding the situation, and had background knowledge enabling it to understand significance of the information acquired, where plaintiff had no significant direct knowledge regarding the matter at issue and the source of the information as disclosed in the prior litigation was defendant and its employees. U.S. ex rel. Kreindler & Kreindler v. United Technologies Corp., C.A.2 (N.Y.) 1993, 985 F.2d 1148, certiorari denied 113 S.Ct. 2962, 508 U.S. 973, 125 L.Ed.2d 663. United States 122

Plaintiff in qui tam suit brought under the False Claims Act had not shown that it qualified as original source of information so as to permit it to maintain suit against companies which allegedly stole crude oil and natural gas from federal and Indian lands through deliberate and systematic mismeasurement when substantially similar allegations had been publicly disclosed; plaintiff corporate entity which did not come into existence until June 1988 and made no showing that it had legitimate claim to information previously gathered by its majority shareholder or another could not be considered original source of information gathered by those people. U.S. ex rel. Precision Co. v. Koch Industries, Inc., C.A.10 (Okla.) 1992, 971 F.2d 548, certiorari denied 113 S.Ct. 1364, 507 U.S. 951, 122 L.Ed.2d 742. United States 122

Attorney who learned of insurer's alleged fraudulent claims processing practices in course of representing client in action against other independent insurance carrier, when discovery documents provided by this other carrier indicated that its claims processing practices were identical with those of first insurer, was not "original source" of this information, such as could bring suit against first insurer under qui tam provisions of False Claims Act. U.S. ex rel. Stinson, Lyons, Gerlin & Bustamante, P.A. v. Prudential Ins. Co., C.A.3 (N.J.) 1991, 944 F.2d 1149, 117 A.L.R. Fed. 679, rehearing denied. United States 122

Government employee whose job involved detecting fraud could not bring qui tam action under False Claims Act, as fruits of his effort belonged to Government as his employer; employee was not person with "independent knowledge of the information" within meaning of "original source" exception to Act's jurisdictional bar. U.S. ex rel. LeBlanc v. Raytheon Co., Inc., C.A.1 (Mass.) 1990, 913 F.2d 17, rehearing denied, certiorari denied 111 S.Ct. 1312, 499 U.S. 921, 113 L.Ed.2d 246, rehearing denied 112 S.Ct. 17, 501 U.S. 1270, 115 L.Ed.2d 1101. United States 122

Court lacked jurisdiction over qui tam action brought under the False Claims Act, where plaintiffs failed to show that they were an "original source" of publicly disclosed information on which their suit was based. U.S. ex rel. Dick v. Long Island Lighting Co., C.A.2 (N.Y.) 1990, 912 F.2d 13. United States 122

Trial court lacked subject matter jurisdiction under False Claims Act to hear claim of private citizen relator because information upon which relator's claim was based was publicly disclosed and there was no evidence to indicate he would have learned of claims absent public disclosure, as required to come under "original source" exception. Houck on Behalf of U.S. v. Folding Carton Admin. Committee, C.A.7 (Ill.) 1989, 881 F.2d 494, rehearing denied, certiorari denied 110 S.Ct. 1471, 494 U.S. 1026, 108 L.Ed.2d 609, certiorari denied 110 S.Ct. 1471, 494 U.S. 1027, 108 L.Ed.2d 609, certiorari denied 110 S.Ct. 1514, 494 U.S. 1025, 108 L.Ed.2d 650, on remand. United States 122

Qui tam relator was not original source for information that formed basis of his action under the False Claims Act (FCA) against city and its mayor, alleging that defendants made false statements to the Department of Housing and Urban De-

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velopment (HUD) in connection with the city's application for federal funds, notwithstanding relator's claim that his experience in developing subsidized housing made him uniquely qualified to understand and piece together the relevant bits of information necessary to establish the alleged fraud; no specialized training or background was required to understand whether relator's allegations regarding what the defendants said or did on the occasions referred to in the complaint demonstrated that their statements to HUD were false. U.S. ex rel. Ondis v. City of Woonsocket, R.I., D.R.I.2008, 582 F.Supp.2d 212. United States 122

Relator's allegations that he voluntarily contacted United States Attorney two months prior to filing qui tam action, provided office with same information in complaint, and voluntarily met with FBI agent to discuss information were sufficient to establish that relator voluntarily provided information regarding average wholesale price (AWP)-based rebate fraud to Government before filing action, as required to determine that he was “original source” of AWP-fraud allegation, for purposes of federal district court's subject matter jurisdiction over relator's claims that pharmaceutical company used rebates to market spread between what hospital paid for drug and what it would be reimbursed by Medicare and Medicaid and failed to account for rebates when reporting AWP, in violation of False Claims Act. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2008, 538 F.Supp.2d 367. United States 122

Relator, whose amended False Claims Act (FCA) claims were based upon a public disclosure, was not an original source for purposes of jurisdictional bar of public disclosure provision; relator did not have direct and independent knowledge of the information underlying her amended claims, and did not voluntarily disclose her information to the federal Government before filing her lawsuit. U.S. ex rel. Hockett v. Columbia/HCA Healthcare Corp., D.D.C.2007, 498 F.Supp.2d 25, reconsideration denied 587 F.Supp.2d 757. United States 122

Relator, senior auditor for Department of the Interior's Minerals Management Service (MMS), satisfied “direct and independent knowledge” prong of “original source” definition in False Claims Act's jurisdictional provision, in qui tam suit against federal oil-and-gas lessee alleging underpayment of royalties on offshore oil leases; relator personally participated in audit and in ferreting out alleged fraud, and fact that relator learned of alleged fraud in course of his official responsibilities did not preclude “independent knowledge.” U.S., ex rel. Maxwell v. Kerr-McGee Oil & Gas Corp., D.Colo.2007, 486 F.Supp.2d 1217, stay denied 486 F.Supp.2d 1233, motion to amend denied 2007 WL 1686734, reversed and remanded 540 F.3d 1180. United States 122

District court lacked jurisdiction over qui tam action brought under False Claims Act (FCA) against county, alleging that county misrepresented compliance with environmental laws to obtain federal loan, since relators' claims were based upon public disclosures and relators were not original source of information at issue; reports relied on for evidence of county's environmental violations and related pleadings and discovery were from cases filed in state court, and state Environmental Protection Division (EPD) was source of most such information. U.S. ex rel. McElmurray v. Consolidated Government of Augusta-Richmond County, N.D.Ga.2006, 464 F.Supp.2d 1327, affirmed 501 F.3d 1244, rehearing and rehearing en banc denied 255 Fed.Appx. 504, 2007 WL 4302139. United States 122

For purposes of False Claims Act's (FCA) public disclosure jurisdictional bar, relator was an “original source” of the information in his qui tam action against pharmaceutical companies under the False Claims Act (FCA) alleging that defendants, through illegal, off-label marketing of a human growth hormone drug, knowingly caused the submission of false claims to federal and state health insurance programs; in his position as vice president of pharmaceutical companies'

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endocrine care unit, relator personally uncovered evidence of unlawful conduct, diligently monitored the marketing, distribution, and sales of the drug, and repeatedly brought the issues to the attention of his superiors, and, pharmaceutical companies in fact, began their internal investigations, ultimately producing the voluntary disclosure to the government, only after relator came forward with the results of his personal investigation. U.S. ex rel. Rost v. Pfizer Inc., D.Mass.2006, 446 F.Supp.2d 6, affirmed in part , vacated in part 507 F.3d 720, on remand 253 F.R.D. 11. United States 122

Qui tam plaintiff failed to show that it had direct and independent knowledge of alleged misrepresentations made by government contractors to obtain small business contracts despite their ineligibility, so as to come within original source exception to jurisdictional bar, under False Claims Act (FCA), against qui tam actions based on publicly disclosed information, inasmuch as vague allegations of fraud included in plaintiff's letter to Department of Justice's Office of the Inspector General (OIG) did not demonstrate that plaintiff had any knowledge of alleged wrongdoing by particular contractors, nor did letter show that any independent knowledge that plaintiff had of alleged fraud was direct. U.S. ex rel. J. Cooper & Associates, Inc. v. Bernard Hodes Group, Inc., D.D.C.2006, 422 F.Supp.2d 225. United States 122

Relator who brought qui tam action under the False Claims Act could not, as a matter of law, claim to be the original source of information disclosed during discovery in related state court action brought by relator against defendant, and thus FCA's public disclosure provision precluded jurisdiction over allegations in complaint based on such information. U.S. ex rel. Smith v. Yale University, D.Conn.2006, 415 F.Supp.2d 58. United States 122

Issue of whether relator was original source of information regarding possible bid-rigging in Housing and Urban Development's (HUD) mortgage auctions involved fact question that could not be resolved on motion to dismiss relator's qui tam complaint under False Claims Act on ground that it was based on publicly disclosed information. U.S. ex rel. Ervin and Associates, Inc. v. Hamilton Securities Group, Inc., D.D.C.2003, 332 F.Supp.2d 1. Federal Civil Procedure 1831

In action by chiropractor alleging lessor of medical device induced him to file false Medicare reimbursement claims for treatments using device, chiropractor learned of alleged fraud through information in grand jury subpoena, Freedom of Information Act (FOIA) report, and two state lawsuits, and thus chiropractor was not “original source” of allegations in complaint, which created jurisdictional bar to qui tam action under False Claims Act that was based on public disclosure. U.S. ex rel. Paranich v. Sorgnard, M.D.Pa.2003, 286 F.Supp.2d 445, affirmed 396 F.3d 326. United States 122

Members of military research team were not “original source” of information from which they based their complaint against anthrax vaccine manufacturer, as was required for their qui tam action under False Claims Act (FCA) which was based upon public disclosure of allegations or transaction to proceed, since publicly disclosed statements regarding manufacturer's alleged fraud pre-dated filing of suit, even though plaintiffs lacked subjective awareness of publicly disclosed statements. U.S. ex rel. Dingle v. BioPort Corp., W.D.Mich.2003, 270 F.Supp.2d 968, affirmed 388 F.3d 209, certiorari denied 125 S.Ct. 1708, 544 U.S. 949, 161 L.Ed.2d 526. United States 122

Relator was “original source” of information discovered by former co-relator on which relator based claim in qui tam action that shipbuilder failed to record Navy's security interests as required under contract for construction of fleet oilers, and thus relator could pursue qui tam action under False Claims Act (FCA) despite public disclosure of information; relator and co-relator undertook joint investigation, and functioned as single disquisitive agent, and co-relator's subsequent

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withdrawal could not affect directness and independence of relator's knowledge. U.S. ex rel. Atkinson v. Pennsylvania Shipbuilding Co., E.D.Pa.2002, 255 F.Supp.2d 351, affirmed on other grounds 473 F.3d 506. United States 122

Former city auditor was the original source of disclosures to federal government that city and debris removal contractors engaged in fraud, where former auditor alleged that she had firsthand knowledge of the overbilling and mischarging practices due to her work reviewing invoices and supporting documentation from debris removal contractors and auditor voluntarily disclosed the allegations to the federal government. U.S. ex rel. Giles v. Sardie, C.D.Cal.2000, 191 F.Supp.2d 1117. United States 122

District court lacked subject matter jurisdiction under the False Claims Act (FCA) over allegations that city housing authority made false claims by receiving grant funds for youth apprenticeship program, after falsely promising to rewrite "union only" clause in memorandum of understanding (MOU) to comply with regulation, where allegations were publicly disclosed by prior lawsuit, and plaintiffs offered no evidence that they were the original source of the information. U.S. ex rel. Rosales v. San Francisco Housing Authority, N.D.Cal.2001, 173 F.Supp.2d 987. United States 122

Qui tam relator in action under False Claims Act (FCA) failed to establish that she was original source of information on which allegations of fraud against health care center and related individuals were based, so as to overcome public disclosure of information by state agency and resulting statutory bar on subject matter jurisdiction over action, given relator's admission, in other proceedings, that she had learned of state agency investigation and that she had no reason to believe that she caused its initiation, and given that relator did not show that she voluntarily provided information to government before filing action or was directly or indirectly source of information to state agency concerning alleged misconduct. U.S. ex rel. Phipps v. Comprehensive Community Development Corp., S.D.N.Y.2001, 152 F.Supp.2d 443. United States 122

Medical director of health care provider was "original source" of information relating to alleged scheme involving health insurers and health care providers to submit fraudulent claims under Medicare program, even though director had publicly disclosed information before providing it to government; director obtained information and made first-hand observations during course of his employment. U.S. ex rel. Butler v. Magellan Health Services, Inc., M.D.Fla.1999, 74 F.Supp.2d 1201. United States 122

Information management director did not have direct knowledge of information on which allegations against contractor was based and, thus, was not "original source" within meaning of False Claims Act section barring qui tam action based on public disclosure unless person bringing action is original source of information; although director tested some of contractor's deliverables and reviewed its progress reports, there was no evidence that he learned of contractor's alleged misrepresentations or of true state of facts. U.S. ex rel. Schwedt v. Planning Research Corp., Inc., D.D.C.1999, 39 F.Supp.2d 28. United States 122

Former oil company employees, who were relators of qui tam action under False Claim Act alleging that oil companies fraudulently underpaid royalties owed to United States, were original sources with independent knowledge of publicly disclosed information regarding oil companies' allegedly fraudulent activities, as required to establish district court's subject matter jurisdiction over qui tam action; former employees dealt personally with representatives of each defendant company to develop marketing strategies, and had first hand knowledge of companies' royalty payment prices. U.S. ex

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rel. Johnson v. Shell Oil Co., E.D.Tex.1999, 33 F.Supp.2d 528. United States 122

District court lacked subject matter jurisdiction over suit brought under qui tam provisions of False Claims Act (FCA) which was based upon allegations that were publicly disclosed since relator did not have direct and independent knowledge of the information on which the allegations were based and did not voluntarily provide such information to government prior to filing suit. U.S. ex rel. Eaton v. Kansas Healthcare Investors, II, L.P., D.Kan.1998, 22 F.Supp.2d 1230. United States 122

Director of school board's audit department and auditor were "original sources" of the information regarding alleged fraud against federal government presented at school board meeting, and thus, could bring qui tam suit under False Claims Act (FCA) even if information presented at meeting was a public disclosure; auditor was one of those who actually uncovered the alleged fraud, and director and auditor were the first and only employees to report the fraud to the superintendent, and they developed the information and prepared a final report for the school board. U.S. ex rel. Garibaldi v. Orleans Parish School Bd., E.D.La.1998, 21 F.Supp.2d 607. United States 122

Former medical director of hospital's emergency room services provider did not have direct and independent knowledge of information relating to publicly disclosed allegations that contractor handling hospital's billing submitted false or fraudulent Medicare claims, and thus medical director was not "original source" who could bring qui tam suit against contractor under False Claims Act based upon information that was disclosed in prior medical malpractice case; medical director did not have personal knowledge of billing practices, but rather learned of allegedly fraudulent Medicare claims through conversations with physicians, and director reported concerns to government only at end of his status as director and after being contacted by attorney who handled malpractice action. U.S. ex rel. Hafter v. Spectrum Emergency Care, Inc., D.Kan.1998, 9 F.Supp.2d 1273, affirmed 190 F.3d 1156. United States 122

Even if meeting involving government contractor and government officials, regarding potential fraud in connection with contract, constituted public disclosure of alleged False Claims Act violations asserted by unsuccessful bidder for subcontract, district court had jurisdiction over bidder's action, under Act, because bidder was original source of information on which allegations were based. U.S. ex rel. Durcholz v. FKW Inc., S.D.Ind.1998, 997 F.Supp. 1159, affirmed 189 F.3d 542. United States 122

Qui tam plaintiff was "original source" of information forming basis of his complaint and, thus, court had subject matter jurisdiction in plaintiff's suit under False Claims Act, even though basis of suit had been publicly disclosed in plaintiff's prior civil suit; while complaint was filed upon "information and belief," plaintiff, an employee of electrical subcontractor on federally funded project, had independent knowledge of defendant's allegedly fraudulent conduct as general contractor, obtaining information and making first-hand observations during course of his employment on project. U.S. ex rel. DeCarlo v. Kiewit/AFC Enterprises, Inc., S.D.N.Y.1996, 937 F.Supp. 1039. United States 122

"Original source" exception to provision barring suit under False Claims Act based upon public disclosure of allegations or transactions did not apply to unsuccessful bidder's allegations that successful bidder for contract with Department of Justice (DOJ) submitted false information to DOJ to obtain revised wage determinations; allegation was based on successful bidder's public disclosure of need for a revised determination, information that necessarily required confirmation from DOJ. U.S. ex rel. Alexander v. Dyncorp, Inc., D.D.C.1996, 924 F.Supp. 292. United States 122

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Government employee, whose job as government construction representative required him to report fraud to his supervisors, could not qualify as an "original source" under False Claims Act section providing that no court shall have jurisdiction over Act action based on public disclosure of information regarding false claim unless person bringing action is original source of information. U.S. ex rel. Burns v. A.D. Roe Co., Inc., W.D.Ky.1996, 919 F.Supp. 255, vacated 186 F.3d 717. United States 122

Putative relator's direct and independent knowledge of fraud did not suffice to qualify him as an "original source," within meaning of False Claims Act, where he did not know the "who, what, when, where, and how" of the fraud and his pre-complaint inquiry yielded nothing beyond a suspicion or hunch that fraud was occurring. U.S. ex rel. Detrick v. Daniel F. Young, Inc., E.D.Va.1995, 909 F.Supp. 1010. United States 122

Qui tam plaintiff was "original source" of allegation regarding contractor's fraud involving cruise missiles, even though he did not know the exact reason for problems with the cruise missile and source of problems did not become known until later; plaintiff's disclosure led to government investigation which culminated in criminal indictment of contractor. U.S. ex rel. Barajas v. Northrop Corp., C.D.Cal.1995, 897 F.Supp. 1274, on subsequent appeal 147 F.3d 905. United States 122

Unsuccessful bidder on government contract was not "original source" for publicly disclosed information on which his claim that successful contractors defrauded government with respect to contract was based, so that bidder was barred from bringing qui tam action under False Claims Act; fact that he conducted some collateral research and investigation did not establish direct knowledge, and fact that bidder's background knowledge enabled him to understand significance of publicly disclosed information did not make his knowledge independent of that information. U.S. ex rel. Gold v. Morrison-Knudsen Co., Inc., N.D.N.Y.1994, 870 F.Supp. 457, affirmed 68 F.3d 1475, certiorari denied 116 S.Ct. 1836, 517 U.S. 1213, 134 L.Ed.2d 939, rehearing denied 117 S.Ct. 9, 518 U.S. 1040, 135 L.Ed.2d 1104. United States 122

Under certain circumstances, government employee's qui tam action based upon information obtained during the course of her employment may fall within the subject matter of the jurisdiction of the court, and such a plaintiff may constitute an "original source" under the False Claims Act. U.S. ex rel. McDowell v. McDonnell Douglas Corp., M.D.Ga.1991, 755 F.Supp. 1038, affirmed 999 F.2d 1583. United States 122

Former employee of government Defense Contract Administrative Service could not maintain qui tam action pursuant to the False Claims Act; Act prohibited suit based upon public disclosure of government information which necessarily occurred when government employee used government information he learned on job to file qui tam suit in his private capacity and furthermore, employee did not qualify for "original source" exception to jurisdictional bar as employee was not someone with independent knowledge of information but rather obtained information solely through his employment. U.S. ex rel. LeBlanc v. Raytheon Co., Inc., D.Mass.1990, 729 F.Supp. 170, affirmed 913 F.2d 17, rehearing denied, certiorari denied 111 S.Ct. 1312, 499 U.S. 921, 113 L.Ed.2d 246, rehearing denied 112 S.Ct. 17, 501 U.S. 1270, 115 L.Ed.2d 1101. United States 122

Law firm was "original source" of information that insurer's claims handling practices violated federal law by paying secondary to Medicare instead of primary, even though some of information was obtained during course of discovery in prior state civil lawsuits; thus, law firm was proper qui tam plaintiff under express terms and intent of False Claims Act.

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U.S. ex rel. Stinson, Lyons, Gerlin & Bustamante, P.A. v. Provident Life & Acc. Ins. Co., S.D.Fla.1989, 721 F.Supp. 1247. United States 122

Qui tam relator satisfied statutory requirement of disclosing information underlying his claims to government prior to bringing suit against government contractor, alleging that it violated False Claims Act (FCA) while operating nuclear weapons plant, where relator had produced document on which he had stated his belief that proposed design for making pondcrete was flawed, and document had been produced to government before suit was filed. U.S. ex rel. Stone v. Rockwell Intern. Corp., C.A.10 2004, 92 Fed.Appx. 708, 2004 WL 433235, Unreported, certiorari granted in part 127 S.Ct. 35, 548 U.S. 941, 165 L.Ed.2d 1013, reversed 127 S.Ct. 1397, 549 U.S. 457, 167 L.Ed.2d 190, rehearing denied 127 S.Ct. 2300, 550 U.S. 954, 167 L.Ed.2d 1128, on remand 492 F.3d 1157. United States 122

Vegetable importer was not original source of information regarding fraud allegedly perpetrated by competitor, precluding jurisdiction over qui tam case on behalf of United States, claiming that competitor fraudulently diverted Chilean brined mushrooms to Canada for packing and transshipment, to avoid duty; information was solely derived from complaint filed by competitor against bank, in unrelated case in which claimant was not a party. U.S. ex rel. Huangyan Import & Export Corp. v. Nature's Farm Products, Inc., S.D.N.Y.2004, 2004 WL 74310, Unreported, affirmed 211 Fed.Appx. 43, 2007 WL 32020. United States 122

65. ---- Voluntary disclosure, jurisdiction, practice and procedure generally

Physician did not voluntarily provide information to government prior to filing his qui tam False Claims Act (FCA) claim against health care center, alleging Medicare or Medicaid fraud, precluding exercise of subject matter jurisdiction under False Claims Act's public disclosure bar, although physician's attorney met with United States attorneys prior to filing action, discussed the underlying allegations, and offered to make physician available for an interview, where physician's attorney did not relate the identities of the accuser and the accused to the United States attorneys. U.S. ex rel. King v. Hillcrest Health Center, Inc., C.A.10 (Okla.) 2001, 264 F.3d 1271, certiorari denied 122 S.Ct. 1205, 535 U.S. 905, 152 L.Ed.2d 143. United States 122

Relator, senior auditor for Department of the Interior's Minerals Management Service (MMS), failed to satisfy “voluntarily provided the information” prong of “original source” definition in False Claims Act's jurisdictional provision, in qui tam suit against federal oil-and-gas lessee alleging underpayment of royalties on offshore oil leases; relator, as supervisor for audit of company's royalty payments, had been under employment-related obligation to do very acts he claimed were voluntary, namely detecting fraud and disclosing it to government. U.S., ex rel. Maxwell v. Kerr-McGee Oil & Gas Corp., D.Colo.2007, 486 F.Supp.2d 1217, stay denied 486 F.Supp.2d 1233, motion to amend denied 2007 WL 1686734, reversed and remanded 540 F.3d 1180. United States 122

Relator's disclosures, in return for immunity from criminal investigation, to government during criminal fraud investigation of savings and loan association were not “voluntary,” and, thus, relator was not “original source” for purposes of his False Claim Act qui tam action against savings and loan, which was barred as being based upon public disclosures. U.S. ex rel. Stone v. AmWest Sav. Ass'n, N.D.Tex.1997, 999 F.Supp. 852. United States 122

66. ---- Public disclosure, jurisdiction, practice and procedure generally

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District court, in qui tam actions, under the False Claims Act (FCA), alleging underpayment of natural gas royalties to the United States, correctly based determination, that there was substantial identity between relator's complaints and the publicly disclosed documents, on the overall fraudulent mismeasurement scheme rather than each instance of use of a mismeasurement technique to mismeasure natural gas volume and misanalyze gas heating content; instances of uses of mismeasurement techniques were interrelated parts of a single alleged fraud. In re Natural Gas Royalties, C.A.10 (Wyo.) 2009, 562 F.3d 1032, certiorari denied 2009 WL 2444790. United States 122

Allegedly false statements made by city and mayor to the Department of Housing and Urban Development (HUD) in connection with the city's application for federal funds were "publicly disclosed" in newspaper accounts and in city's response to requests for records under the Freedom of Information Act (FOIA), within meaning of False Claims Act (FCA) section providing that no court shall have jurisdiction over a FCA suit based upon the public disclosure of allegations or transactions. U.S. ex rel. Ondis v. City of Woonsocket, R.I., D.R.I.2008, 582 F.Supp.2d 212. United States 122

Phrase "information on which the allegations are based," as set forth in the section of the False Claims Act (FCA) defining "original source" for purposes of the FCA's original-source exception to the public-disclosure bar on federal-court jurisdiction, refers to the information on which the qui tam relator's allegations are based, and not the information on which the publicly disclosed allegations that triggered the public-disclosure bar are based. Rockwell Intern. Corp. v. U.S., U.S.2007, 127 S.Ct. 1397, 549 U.S. 457, 167 L.Ed.2d 190, rehearing denied 127 S.Ct. 2300, 550 U.S. 954, 167 L.Ed.2d 1128, on remand 492 F.3d 1157. United States 122

Relators' proposed third amended complaint in qui tam action under False Claims Act (FCA) against provider of prescription drug benefits under federal health insurance plans was not actually derived from any publicly disclosed information given by provider to United States Attorney's Office and then passed onto relators, and thus withstood FCA's jurisdictional bar on actions based upon public disclosure of allegations and transactions, even though information that relators received in discovery directly from provider was same information obtained from United States Attorney's Office. U.S. ex rel. Fowler v. Caremark RX, L.L.C., C.A.7 (Ill.) 2007, 496 F.3d 730, rehearing and suggestion for rehearing en banc denied, certiorari denied 128 S.Ct. 1246, 170 L.Ed.2d 66. United States 122

Qui tam relator's suit against federal oil-and-gas lessee, alleging underreporting of sales proceeds and accompanying underpayment of royalties on more than 50 offshore oil leases, was not based upon prior suit against lessee which also alleged fraudulent underpayment of royalties for offshore oil leases, and, thus, relator's suit was not subject to False Claims Act's (FCA) jurisdictional bar for suits based on public disclosures; relator's suit concerned conduct occurring after the period of time covered in the prior litigation and a distinct fraudulent scheme. U.S. ex rel. Maxwell v. Kerr-McGee Oil & Gas Corp., C.A.10 (Colo.) 2008, 540 F.3d 1180. United States 122

Documents and information uncovered by scientist during discovery while serving as an expert in landowners' lawsuits against county, which alleged that the sewage sludge from county wastewater treatment plants used as fertilizer on their land contained hazardous chemical wastes that resulted in the deaths of their dairy cattle, were "public disclosures" under the False Claims Act (FCA), and, thus, could not serve as basis for qui tam action subsequently brought by scientist and landowners against county for allegedly misrepresenting its compliance with environmental laws in order to receive loans from Environmental Protection Agency (EPA). McElmurray v. Consolidated Government of Augusta-Richmond County, C.A.11 (Ga.) 2007, 501 F.3d 1244, rehearing and rehearing en banc denied 255 Fed.Appx. 504, 2007 WL

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Health care services provider's former employee's False Claims Act qui tam suit against provider, alleging overbilling of government for Medicare-eligible patients via improper recoupment of related-party profits and other methods, was within Act's public disclosure bar, given earlier qui tam suits alleging same violations and methods, regardless of fact that former employee's claims related to later conduct than that targeted in earlier suits; public disclosure bar contained no “time, place and manner” exception. U.S. ex rel. Boothe v. Sun Healthcare Group, Inc., C.A.10 (N.M.) 2007, 496 F.3d 1169, on remand 2008 WL 2669266. United States 122

Court uses three-part inquiry to determine jurisdiction over False Claims Act (FCA) claim based on publicly disclosed information: (1) have the allegations made by the plaintiff been publicly disclosed, (2) if so, is the disclosed information the basis of the plaintiff's suit, and (3) if yes, is the plaintiff an original source of that information. Battle v. Board of Regents for Georgia, C.A.11 (Ga.) 2006, 468 F.3d 755. United States 122

Federal research grant application obtained by relator directly from applicant's private employer, which formed basis for False Claims Act (FCA) qui tam action against researcher and employer, was not a “public disclosure” within meaning of FCA's public-disclosure jurisdictional bar against qui tam actions, even though relator had discovered location of sought documents by filing Freedom of Information Act (FOIA) request to grantor agency; application did not constitute administrative “report” or “investigation” within meaning of FCA section detailing criteria for application of jurisdictional bar. U.S. v. Catholic Healthcare West, C.A.9 (Ariz.) 2006, 445 F.3d 1147, certiorari denied 127 S.Ct. 725, 549 U.S. 1077, 166 L.Ed.2d 561, certiorari denied 127 S.Ct. 730, 549 U.S. 1077, 166 L.Ed.2d 561. United States 122

Indian tribe's filing of False Claims Act (FCA) suit against oil and gas well operators, alleging underpayment of royalties, was “public disclosure” for purpose of determining whether relators' subsequent qui tam suit for same alleged misconduct was jurisdictionally barred, even if tribe's attorney acted unethically in using relators' information to draft complaint. Kennard v. Comstock Resources, Inc., C.A.10 (Wyo.) 2004, 363 F.3d 1039, certiorari denied 125 S.Ct. 2957, 545 U.S. 1139, 162 L.Ed.2d 887. United States 122

Relator who brought qui tam action against his former employer, a computer manufacturer that sold government “new” computers although they contained used parts, was a member of the public for purposes of government's investigation into similar activities by manufacturer's competitor, as would prohibit relator from bringing qui tam action against competitor after public disclosure of fraud, where relator signed confidentiality declaration prior to viewing information regarding competitor's fraud obtained during government investigation. Seal 1 v. Seal A, C.A.9 (Cal.) 2001, 255 F.3d 1154, certiorari denied 122 S.Ct. 1605, 535 U.S. 1017, 152 L.Ed.2d 620. United States 122

No “public disclosure” occurred, for purposes of section of False Claims Act denying jurisdiction to any court over retaliation action based on prior disclosure, when employer's officials met with State Department to disclose employer's advance billings; meeting was not recorded or transcribed, and employer failed to demonstrate how meeting fit into one of the three categories of public disclosure listed in section. Eberhardt v. Integrated Design & Const., Inc., C.A.4 (Va.) 1999, 167 F.3d 861. Labor And Employment 777

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Public disclosure of relator's allegations of conspiracy to submit false Medicare claims pertaining to defendants associated with professional services corporation was not public disclosure of allegations pertaining to defendants associated with pathology practice, for purposes of False Claims Act's bar against claims by relators based on public disclosures; although relator referred to one overarching conspiracy in his complaint, allegations with respect to each distinct group of defendants were separate and arose from different sources. U.S. ex rel. Aflatooni v. Kitsap Physicians Services, C.A.9 (Wash.) 1999, 163 F.3d 516. United States 122

Media reports of university's alleged fraud were “public disclosures” within the meaning of the False Claims Act (FCA), where relator himself was responsible for the story reaching the public in that he disclosed the alleged fraud to the media, and thus district court was without jurisdiction of qui tam action if it was based on those disclosures and relator was not the original source of the allegations. U.S. ex rel. Biddle v. Board of Trustees of Leland Stanford, Jr. University, C.A.9 (Cal.) 1998, 161 F.3d 533, certiorari denied 119 S.Ct. 1457, 526 U.S. 1066, 143 L.Ed.2d 543. United States 122

False Claims Act's (FCA) public disclosure bar was applicable because qui tam plaintiff's complaint, alleging that government employees' clubs that earn revenue from vending services on federal property violate FCA by retaining monies owed to the government, merely echoed publicly disclosed, allegedly fraudulent transactions that already enabled government to adequately investigate case and to make decision whether to prosecute. U.S. ex rel. Findley v. FPC-Boron Employees' Club, C.A.D.C.1997, 105 F.3d 675, 323 U.S.App.D.C. 61, rehearing denied, certiorari denied 118 S.Ct. 172, 522 U.S. 865, 139 L.Ed.2d 114. United States 122

In order to be “publicly disclosed,” for purposes of False Claims Act's (FCA) jurisdictional bar againstqui tam suits that are based upon allegations of fraud already made public, allegations or transactions upon whichqui tam suit is based must have been made known to public through some affirmative act of disclosure; mere theoretical or potential accessibility--as opposed to actual disclosure--of allegations or transactions is not sufficient to bar qui tam suit that is based upon such information. U.S. ex rel. Ramseyer v. Century Healthcare Corp., C.A.10 (Okla.) 1996, 90 F.3d 1514. United States 122

Former Army Corps of Engineers employee was original source of challenge to validity of cost allocation for dam project and, thus, prior public disclosure of cost allocation issue was at least partially based on records resulting from employee's complaints and did not trigger jurisdictional bar to employee's subsequent action under qui tam provision of False Claims Act; employee learned of issue because of his position, independent of public disclosure, and he voluntarily provided his superiors with explanation of why he thought new cost allocation for project was legally required. Hagood v. Sonoma County Water Agency, C.A.9 (Cal.) 1996, 81 F.3d 1465, certiorari denied 117 S.Ct. 175, 519 U.S. 865, 136 L.Ed.2d 116, rehearing denied 117 S.Ct. 501, 519 U.S. 1001, 136 L.Ed.2d 393. United States 122

Fact that former auditor's qui tam suit raised alleged violations of False Claims Act and Nuclear Waste Policy Act (NWPA) by Department of Energy (DOE) laboratories, while prior public disclosure addressed diversion of funds only in context of NWPA, did not allow former auditor to avoid jurisdictional bar to qui tam suit based on prior public disclosure. U.S. ex rel. Fine v. Sandia Corp., C.A.10 (N.M.) 1995, 70 F.3d 568. United States 122

District court properly exercised jurisdiction over action brought under the False Claims Act where only communication of alleged false claim was by letter between two private parties, so that “public disclosure” did not occur and provision of the Act precluding jurisdiction did not apply. Hindo v. University of Health Sciences/The Chicago Medical School,

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C.A.7 (Ill.) 1995, 65 F.3d 608, certiorari denied 116 S.Ct. 915, 516 U.S. 1114, 133 L.Ed.2d 846. United States 122

Statement made by attorney for spun-off former subsidiary corporation, that there had been miscalculations by actuary for pension plan of former parent which were not discovered until after spin-off was complete, did not constitute public statement regarding fraudulent understatement of pension liability, so as to preclude private individual's later qui tam suit alleging that such liabilities shifted pension responsibilities to Pension Benefit Guaranty Corporation; attorney had also stated that rise in unfunded pension liability was result of number of additional factors, and that underfunding was general industry problem due to long period allowed for amortization of pension liability. U.S. ex rel. Rabushka v. Crane Co., C.A.8 (Mo.) 1994, 40 F.3d 1509, rehearing and suggestion for rehearing en banc denied, certiorari denied 115 S.Ct. 2579, 515 U.S. 1142, 132 L.Ed.2d 829. United States 122

Under provision of qui tam section of False Claims Act that "no court shall have jurisdiction over an action under the section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing * * * unless * * * the person bringing the action is an original source of the information," action is "based upon" public disclosure only where relator actually "derived from" that disclosure the knowledge of the facts underlying his action. U.S. ex rel. Siller v. Becton Dickinson & Co. By and Through Microbiology Systems Div., C.A.4 (Md.) 1994, 21 F.3d 1339, certiorari denied 115 S.Ct. 316, 513 U.S. 928, 130 L.Ed.2d 278. United States 122

Federal employee filed qui tam suit under False Claims Act (FCA) against administrator of federal employees health benefits program five weeks after public disclosure of investigation into administrator's alleged fraud and, thus, qui tam suit was based, at least partially, on publicly disclosed information for purposes of whether Act's jurisdictional bar to qui tam suit was triggered, even though employee had gathered much evidence on his own. Cooper v. Blue Cross and Blue Shield of Florida, Inc., C.A.11 (Fla.) 1994, 19 F.3d 562. United States 122

Plaintiff's False Claims Act qui tam suit, based upon his former employer's allegedly defective performance on defense contracts, was not precluded by Act's jurisdictional bar, even though allegations upon which suit rested had been publicly disclosed, where plaintiff had personal knowledge of defects in employer's performance of defense contracts; plaintiff's knowledge of defect was direct and independent because it was unmediated by anything but plaintiff's own labor, even though someone else had publicly disclosed defects. Wang v. FMC Corp., C.A.9 (Cal.) 1992, 975 F.2d 1412. United States 122

Public disclosure of allegations divest district courts of jurisdiction over all qui tam suits, regardless of where relator obtained his information, and fact that relator became aware of alleged fraud by government contractor solely through his representation of one of the contractor's employees did not allow him to avoid the prohibition on qui tam actions based on information which has been publicly disclosed. U.S. ex rel. Doe v. John Doe Corp., C.A.2 (N.Y.) 1992, 960 F.2d 318. United States 122

Air Force employee's report on bidding practices that was not issued by Congress, administrative agency, or Government Accounting Office, was not a "public disclosure" of information which would bar qui tam suit under False Claims Act. U.S. ex rel. Williams v. NEC Corp., C.A.11 (Fla.) 1991, 931 F.2d 1493. United States 122

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Exclusion of federal jurisdiction in False Claims Act for action based on public disclosure of allegations or transactions in administrative investigation did not bar qui tam action brought by Army Corps of Engineers assistant district counsel alleging that county water agency presented false or fraudulent contract claim to the United States; "public disclosure" required for exclusion did not occur when counsel, as government employee, "disclosed" to himself, as member of the public, the information on which he based his suit. U.S. ex rel. Hagood v. Sonoma County Water Agency, C.A.9 (Cal.) 1991, 929 F.2d 1416, on remand. United States 122

Under the False Claims Act, if the information on which a qui tam suit is based is in the public domain and the qui tam plaintiff was not a source of that information, then the suit is barred. U.S. ex rel. Dick v. Long Island Lighting Co., C.A.2 (N.Y.) 1990, 912 F.2d 13. United States 122

Information provided in response to Freedom of Information Act (FOIA) requests was "publicly disclosed" for purposes of False Claims Act's (FCA) public disclosure bar; the information, while not widely disseminated, was in the public domain, and was potentially accessible to anyone capable of submitting a FOIA request. U.S. ex rel. Kirk v. Schindler Elevator Corp., S.D.N.Y.2009, 606 F.Supp.2d 448. United States 122

False Claims Act's (FCA) public disclosure provisions barred qui tam suit alleging that surgeons and medical device distributors had defrauded federal government by accepting kickbacks from medical device manufacturer in exchange for promoting "off-label" uses of its products; allegations of improper payments to physicians to use manufacturer's products, albeit not necessarily for off-label uses, had been widely aired in separate actions, including relator's own earlier FCA qui tam suit against manufacturer, and news media also had reported such allegations. U.S. ex rel. Poteet v. Lenke, D.Mass.2009, 604 F.Supp.2d 313. United States 122

Relator's False Claims Act (FCA) action against District of Columbia and the District of Columbia Public School System was not barred by discrimination lawsuit filed by relator arising out of the same relationship between relator and the District, on grounds that lawsuit constituted a public disclosure, where FCA action was filed before the discrimination suit. U.S. ex rel. Davis v. District of Columbia, D.D.C.2008, 591 F.Supp.2d 30. United States 122

Arbitration of False Claims Act (FCA) retaliation claims does not create an insoluble incompatibility with FCA's public disclosure provision. U.S. ex rel. Cassaday v. KBR, Inc., S.D.Tex.2008, 590 F.Supp.2d 850. Alternative Dispute Resolution 121

Although published scientific articles and reference materials supporting an equianalgesic ratio of 1:1 between oxycodone-based medication and rival pain medication containing morphine fell within the "news media" category of the False Claims Act (FCA) and constituted public disclosures, such disclosures did not imply fraud sufficient to raise jurisdictional bar to qui tam action; such disclosures suggested a legitimate scientific debate and disagreement regarding the correct equianalgesic ratio, rather than any fraudulent intent on the part of pharmaceutical manufacturer. U.S. ex rel. Radcliffe v. Purdue Pharma, L.P., W.D.Va.2008, 582 F.Supp.2d 766. United States 122

Medicare fiscal intermediary's focused medical review letters to hospital, other governmental regulators' notices, and certain government subpoenas, did not constitute "public disclosures" of billing fraud described relator's False Claims Act

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(FCA) complaint against hospital management company; FCA's public disclosure bar did not extend to disclosures made by government agents to third parties during the course of an audit or investigation, which were related, or similar, to later False Claims Act averments against a different party. U.S. ex rel. Whitten v. Community Health Systems, Inc., S.D.Ga.2008, 575 F.Supp.2d 1367. United States 122

Relator's allegations in qui tam action against pharmaceutical company under False Claims Act, that company encouraged hospitals to improperly divide single use premix bags of drug, were not publicly disclosed in civil complaints prior to relator's complaint, and thus federal district court had subject matter jurisdiction over relator's dividing single use claim against company. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2008, 538 F.Supp.2d 367. United States 122

E-mail from auditor for Department of the Interior's Minerals Management Service (MMS), to state employee involved in audit of oil company's royalty payments to state, stating that parallel MMS audit of its royalty payments to federal government had found “numerous problems which will result in a significant underpayment,” constituted “public disclosure” within meaning of False Claims Act's jurisdictional provision, regardless of state employee's prior knowledge of allegations of company's fraud with respect to federal leases; state was not party to federal leases at issue in MMS audit. U.S., ex rel. Maxwell v. Kerr-McGee Oil & Gas Corp., D.Colo.2007, 486 F.Supp.2d 1217, stay denied 486 F.Supp.2d 1233, motion to amend denied 2007 WL 1686734, reversed and remanded 540 F.3d 1180. United States 122

Administrative report by state regarding techniques used by oil companies for measuring natural gas streams would likely place federal government on notice of fraudulent activities impacting federal fisc, and thus qualified as administrative report necessary to trigger public disclosure bar under False Claims Act (FCA) in qui tam action alleging that natural gas companies underpaid royalties on gas purchased from federally owned or Indian lands, where report addressed measurement of gas production in area of cooperative federal and state offshore development. In re Natural Gas Royalties Qui Tam Litigation, D.Wyo.2006, 467 F.Supp.2d 1117, affirmed in part 562 F.3d 1032, certiorari denied 2009 WL 2444790. United States 122

Allegations made by relator had been publicly disclosed by news media before qui tam suit was brought under the False Claims Act (FCA), as would deprive District Court of subject matter jurisdiction over relator's qui tam action against hospital and other corporate entities, as well as surgeon, alleging that surgeon regularly performed medically unnecessary therapeutic cardiac catheterizations on patients in non-emergent circumstances even though hospital did not have open heart surgery facilities, and that defendants routinely engaged in fraudulent coding for billing purposes by misrepresenting level of service provided and/or misrepresenting type of service provided. U.S. ex rel Lowman v. Hilton Head Health Systems, L.P., D.S.C.2007, 487 F.Supp.2d 682. United States 122

Pharmaceutical companies' voluntary disclosure of information to Office of Inspector General (OIG), Food and Drug Administration (FDA), and Department of Justice (DOJ) officials regarding the off-label marketing of a human growth hormone did not constitute a “public disclosure” for purposes of the False Claims Act's (FCA) jurisdictional bar; disclosures did not take place before relator filed complaint, the drug companies did not disclose any information during the course of any government investigation, and none of the information that was disclosed to the government was ever exposed to the general public. U.S. ex rel. Rost v. Pfizer Inc., D.Mass.2006, 446 F.Supp.2d 6, affirmed in part , vacated in part 507

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F.3d 720, on remand 253 F.R.D. 11. United States 122

Media reports that documented size and scope of government contractors before qui tam plaintiff commenced action under False Claims Act (FCA) alleging that contractors had misrepresented themselves as small or disadvantaged businesses to obtain orders from Immigration and Naturalization Service (INS) for advertising and public relations services triggered FCA provision depriving district courts of jurisdiction to hear FCA actions based upon publicly disclosed allegations or transactions, inasmuch as plaintiff's assertion that contractors were large businesses not entitled to small business preferences merely repeated what the public already knew, and information in media reports, combined with information in report by Department of Justice's Office of the Inspector General (OIG) about contractors' small business status, was sufficient to alert government to alleged fraud. U.S. ex rel. J. Cooper & Associates, Inc. v. Bernard Hodes Group, Inc., D.D.C.2006, 422 F.Supp.2d 225. United States 122

Allegations of fraudulent Medicare and Medicaid billing by hospital pled on information and belief in qui tam complaint were barred by public disclosure provision of the False Claims Act (FCA), absent proof that relator has direct, independent, firsthand knowledge of the information forming basis of the allegations. U.S. ex rel. Smith v. Yale University, D.Conn.2006, 415 F.Supp.2d 58. United States 122

Public disclosure of allegations divests district courts of jurisdiction over qui tam suits, regardless of where relator obtained his information. U.S. ex rel. Smith v. Yale-New Haven Hosp., Inc., D.Conn.2005, 411 F.Supp.2d 64, on reconsideration 2006 WL 387297. United States 122

Relator's allegation that government contractor structured computerized optimization process to favor large bidders over small bidders in Department of Housing and Urban Development's (HUD) mortgage auctions was based upon information publicly disclosed in newspaper article describing possible bid-rigging in HUD note sales, for purposes of determining relator's entitlement to recovery under False Claims Act, even though relator's qui tam complaint contained additional details not included in public disclosures, where newspaper article had previously described “possible bid-rigging in HUD note sales,” including allegations that contractor was “covering up ‘erroneous instructions’ for computer model.” U.S. ex rel. Ervin and Associates, Inc. v. Hamilton Securities Group, Inc., D.D.C.2003, 332 F.Supp.2d 1. United States 122

Disclosure of alleged fraud, committed by lessor of medical device involving Medicare reimbursement claims, in grand jury subpoena, Freedom of Information Act (FOIA) report, and two state lawsuits, constituted “public disclosure,” as would be jurisdictional bar if qui tam action by chiropractor under False Claims Act was based on such disclosure and chiropractor was not original source of information. U.S. ex rel. Paranich v. Sorgnard, M.D.Pa.2003, 286 F.Supp.2d 445, affirmed 396 F.3d 326. United States 122

False Claims Act (FCA) action against nursing home owner, alleging that owner falsified patient records in order to obtain federal Medicare reimbursement, was based on publicly disclosed information for purposes of FCA's public disclosure bar to federal jurisdiction; nursing home resident had alleged in prior lawsuit that nursing home administrators instructed employees to falsify patient records to falsely indicate that patients were receiving required level of routine care, and specifically disclosed falsification of federally mandated forms. U.S. ex rel. Swan v. Covenant Care, Inc., E.D.Cal.2002, 279 F.Supp.2d 1212. United States 122

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Statements made in congressional testimony, congressional reports, and large-circulation newspaper constituted "public disclosure" of claims raised in complaint by members of military research team against anthrax vaccine manufacturer for purposes of False Claims Act (FCA) provision barring qui tam actions "based upon the public disclosure of allegations or transactions." U.S. ex rel. Dingle v. BioPort Corp., W.D.Mich.2003, 270 F.Supp.2d 968, affirmed 388 F.3d 209, certiorari denied 125 S.Ct. 1708, 544 U.S. 949, 161 L.Ed.2d 526. United States 122

Relator was not "original source" of publicly disclosed information on which relator based his claim in qui tam action that shipbuilder submitted bid to Navy for construction of fleet oilers that was intentionally and deceptively low, and thus relator was barred from pursuing claim under False Claims Act (FCA); newspaper article had explicitly referred to shipbuilder's "low bid" as factor contributing to its failure to complete oilers, Department of Defense audit report had concluded that shipbuilder's target costs and price proposals were unreasonably low compared with other proposals, and relator conceded that he was not original source of information that shipbuilder had omitted cost of architectural drawings from its bid. U.S. ex rel. Atkinson v. Pennsylvania Shipbuilding Co., E.D.Pa.2002, 255 F.Supp.2d 351, affirmed on other grounds 473 F.3d 506. United States 122

Manufacturer of aerospace bearings did not publicly disclose that products made during certain period were unclean, precluding qui tam action, when government representative was told only that products were slightly below manufacturer's expectation. U.S. ex rel. Farrell v. SKF USA, Inc., W.D.N.Y.2002, 204 F.Supp.2d 576. United States 122

Publication of information in scholarly or scientific periodicals was a public disclosure through the "news media" within meaning of the False Claims Act's public disclosure jurisdictional bar, for purposes of relator's qui tam action against businesses involved in making and selling of alcoholic beverages, alleging that defendants have caused misrepresentations and false and/or fraudulent claims to be presented to government for treatment of alcohol-related diseases, where such sources were as generally accessible to any other strangers to the fraud as would be a newspaper article. U.S. ex rel. Alcohol Foundation, Inc. v. Kalmanovitz Charitable Foundation, Inc., S.D.N.Y.2002, 186 F.Supp.2d 458, affirmed 53 Fed.Appx. 153, 2002 WL 31819592, certiorari denied 124 S.Ct. 413, 540 U.S. 949, 157 L.Ed.2d 281. United States 122

Qui tam suit alleging that pharmacy chain submitted false claims regarding sale of prescription drugs to beneficiaries of federal health care programs was not "based upon" news media disclosures of alleged fraud on part of specific pharmacy chains other than defendant chain, so as to deprive federal court of subject matter jurisdiction over suit under False Claims Act; any fraudulent acts that occurred at defendant chain were not of type that were easily discoverable from public disclosures. Friedman v. Rite Aid Corp., E.D.Pa.2001, 152 F.Supp.2d 766. United States 122

Relator's False Claims Act (FCA) suit against medical laboratories, alleging that laboratories performed unnecessary prostrate cancer blood tests and induced doctors to request such unnecessary tests by combining tests on their order forms, was not "based upon" publicly disclosed information about whether laboratories should be allowed to charge for two types of prostrate cancer blood tests and, thus, public disclosure did not preclude relator from bringing qui tam suit. U.S. ex rel. Downy v. Corning, Inc., D.N.M.2000, 118 F.Supp.2d 1160. United States 122

News media stories which covered company's sale of salt marshes to state, reported that company submitted appraisal for marshes which overvalued property, criticized state for not conducting its own appraisal, and alleged that state knowingly paid too much for property amounted to public disclosure of fraud allegations on which qui tam relator's False

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Claims Act (FCA) action was based, for purposes of FCA's public disclosure bar; although stories did not use term fraud and did not disclose certain details of alleged fraud, new stories clearly raised inference of fraud. U.S. ex rel. Hansen v. Cargill, Inc., N.D.Cal.2000, 107 F.Supp.2d 1172. United States 122

Public disclosure bar was raised as to students' maintenance of qui tam complaint against school under False Claims Act (FCA) to extent that information for suit was culled from public documents and investigations and they were not "original sources" of information, requiring that scope of suit be limited those times during which they were in attendance at school. U.S. ex rel. Haskins v. Omega Institute, Inc., D.N.J.1998, 11 F.Supp.2d 555, decision clarified on reconsideration 25 F.Supp.2d 510. United States 122

Former medical director of hospital's emergency room services provider did not qualify as "original source" who could bring qui tam suit against contractor which handled hospital's billing under False Claims Act based upon publicly disclosed allegations that contractor submitted false or fraudulent Medicare claims, where medical director voluntarily assisted in public disclosure of allegations in medical malpractice action long before he attempted to notify government. U.S. ex rel. Hafter v. Spectrum Emergency Care, Inc., D.Kan.1998, 9 F.Supp.2d 1273, affirmed 190 F.3d 1156. United States 122

Former employee's allegations in False Claims Act (FCA) qui tam action, that former employers improperly billed United States for medical procedures, had not been previously publicly disclosed elsewhere prior to qui tam action, so as to bar jurisdiction over suit; prior litigation alleging fraud in connection with magnetic resonance imaging (MRI) referrals did not include allegation that false or fraudulent claims were submitted through Medicare for medically unnecessary MRIs, which was crux of claims in former employee's case. U.S. ex rel. Mikes v. Straus, S.D.N.Y.1996, 931 F.Supp. 248 , motion to certify appeal denied 939 F.Supp. 301. United States 122

For purposes of provision barring suit under False Claims Act based upon public disclosure of allegations or transactions, allegation that bidder for contract with Department of Justice (DOJ) submitted false information to DOJ to obtain revised wage determinations was "publicly disclosed"; DOJ was aware of bidder's initial bid based on existing wage determination and its subsequent request for a revised wage determination. U.S. ex rel. Alexander v. Dyncorp, Inc., D.D.C.1996, 924 F.Supp. 292. United States 122

For purposes of provision barring suit under False Claims Act based upon public disclosure of allegations or transactions, term "hearing" applies to any type of legal proceeding. U.S. ex rel. Alexander v. Dyncorp, Inc., D.D.C.1996, 924 F.Supp. 292. United States 122

Neither notices of government contractor's noncompliance with environmental laws and notice of deficiency nor Wisconsin Department of Natural Resources (DNR) investigation qualified as publicly disclosed information which would have precluded filing of qui tam action, absent any evidence that noncompliance notices sent as a result of routine inspections were received, viewed or disclosed by or to anyone other than government contractor. U.S. ex rel. Fallon v. Accudyne Corp., W.D.Wis.1995, 921 F.Supp. 611. United States 122

It is public disclosure of information on which case is based, rather than government's awareness of that information,

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which will bar qui tam action under False Claims Act. U.S. ex rel. Milam v. Regents of University of California, D.Md.1995, 912 F.Supp. 868. United States 122

Public disclosure bar of False Claims Act precluded qui tam action against defense contractor, alleging that contractor made false and fraudulent claims to government concerning effectiveness of defensive missile system, given that allegations of contractor's false claims had been publicly disclosed before suit was filed and plaintiff admittedly used publicly disclosed allegations about weapon to investigate claims upon which action was based. U.S. ex rel. LeBlanc v. Raytheon Co., D.Mass.1995, 874 F.Supp. 35, affirmed 62 F.3d 1411, certiorari denied 116 S.Ct. 973, 516 U.S. 1140, 133 L.Ed.2d 893. United States 122

Provision of False Claims Act establishing jurisdictional exceptions for qui tam actions brought by government employees did not bar qui tam action brought by government employee against contractor based on contractor's allegedly inflated bids for repairs and improvements to government housing project; although employee raised allegations of fraud at meetings of housing authority board, employee uncovered evidence of fraud herself. U.S. ex rel. Givler v. Smith, E.D.Pa.1991, 760 F.Supp. 72. United States 122

Within provision of the False Claims Act that “No court shall have jurisdiction over any action under this section based upon the public disclosure of allegations and transactions in a criminal, civil, or administrative hearing,” the phrase “public disclosure” is limited by the language following it. U.S. ex rel. Stinson, Lyons, Gerlin & Bustamante, P.A. v. Blue Cross Blue Shield of Georgia, Inc., S.D.Ga.1990, 755 F.Supp. 1040, on reconsideration 755 F.Supp. 1055. United States 122

False Claims Act's jurisdictional exclusion for qui tam suits on behalf of United States when suits are based upon public disclosure of allegations or transactions in criminal, civil, or administrative hearing would be construed to apply to public disclosure generally, with references to criminal, civil, or administrative hearing qualifying as examples, rather than limiting conditions, and thus, to include public disclosures during civil discovery. U.S. ex rel. Stinson, Lyons, Gerlin & Bustamante v. Prudential Ins. Co. of America, D.N.J.1990, 736 F.Supp. 614, affirmed 944 F.2d 1149, 117 A.L.R. Fed. 679, rehearing denied. United States 122

Fraud claims brought by relator, in qui tam action on part of United States against importer or brine mushrooms, had been publicly disclosed, precluding jurisdiction in suit alleging that importer had sent mushrooms to Canada for canning and transshipment to United States, to avoid import duty; general nature of fraudulent scheme was set forth in complaint in another action brought by importer, not involving relator. U.S. ex rel. Huangyan Import & Export Corp. v. Nature's Farm Products, Inc., S.D.N.Y.2004, 2004 WL 74310, Unreported, affirmed 211 Fed.Appx. 43, 2007 WL 32020. United States 122

67. ---- Administrative hearing, jurisdiction, practice and procedure generally

Local agency proceedings regarding competitive bidding process used to award exclusive operating area contracts for ambulance services in county, beginning with public dissemination of requests for proposals (RFPs) and concluding with selection of emergency medical services (EMS) provider by county's board of supervisors, were “administrative hearings” within meaning of False Claims Act's (FCA) public disclosure bar, where agency proceedings were made open to

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public attendance and received public comment, and documents relevant to agency proceedings were openly distributed and made part of official public record. A-1 Ambulance Service, Inc. v. California, C.A.9 (Cal.) 2000, 202 F.3d 1238, certiorari denied 120 S.Ct. 1833, 529 U.S. 1099, 146 L.Ed.2d 777, rehearing denied 120 S.Ct. 2711, 530 U.S. 1270, 147 L.Ed.2d 998. United States 122

Information disclosed in local agency proceedings, regarding competitive bidding process used to award exclusive operating area contracts for ambulance services in two counties and financial information relevant to the contracts, contained material facts underlying unsuccessful bidder's fraud claim alleging that counties and successful bidders conspired to shift some costs of emergency ambulance services from counties to Medicare in violation of Medicare Act's anti-kickback provisions, and, thus, False Claims Act's (FCA) public disclosure bar precluded federal jurisdiction over unsuccessful bidder's qui tam claim. A-1 Ambulance Service, Inc. v. California, C.A.9 (Cal.) 2000, 202 F.3d 1238, certiorari denied 120 S.Ct. 1833, 529 U.S. 1099, 146 L.Ed.2d 777, rehearing denied 120 S.Ct. 2711, 530 U.S. 1270, 147 L.Ed.2d 998. United States 122

Allegations during prior administrative proceedings that fixed local repayment schedule for dam project violated Water Supply Act were sufficient public disclosure to preclude subsequent claim brought by former Army Corps of Engineers employee under qui tam provision of False Claims Act, even absent explicit allegation of fraud in prior administrative proceedings. Hagood v. Sonoma County Water Agency, C.A.9 (Cal.) 1996, 81 F.3d 1465, certiorari denied 117 S.Ct. 175, 519 U.S. 865, 136 L.Ed.2d 116, rehearing denied 117 S.Ct. 501, 519 U.S. 1001, 136 L.Ed.2d 393. United States 122

School board meeting, at which the allegations brought by qui tam plaintiffs under False Claims Act (FCA) were disclosed, was not an “administrative hearing” within the meaning of the FCA section providing that material disclosed at administrative hearing was a “public disclosure” for purposes of the section barring qui tam actions based upon publicly disclosed material unless the relator is the original source of the allegations; purpose of the meeting was to tell school board that an FCA violation had been alleged but that board had been assured that the allegations were false, a one-sided presentation of the allegations which did not begin to disclose their true nature and breadth. U.S. ex rel. Garibaldi v. Orleans Parish School Bd., E.D.La.1998, 21 F.Supp.2d 607. United States 122

68. ---- Administrative documents, jurisdiction, practice and procedure generally

Allegations in administrative complaint filed by unsuccessful bidder for government contract with Federal Aviation Administration (FAA) were publicly disclosed, for purposes of statute generally barring qui tam claims under False Claims Act based upon publicly disclosed information, given that filing was not made under seal and complaint was available upon request to FAA. Grayson v. Advanced Management Technology, Inc., C.A.4 (Va.) 2000, 221 F.3d 580. United States 122

Qui tam action brought by employees of Veterans Administration clinic under False Claims Act was not based on publicly disclosed information, absent indication that report discussing allegations similar to those asserted by employees was actually included in inspector general's publicly disclosed semiannual statement, so district court had jurisdiction over action. U.S. ex rel. Hochman v. Nackman, C.A.9 (Cal.) 1998, 145 F.3d 1069. United States 122

Final report and audit of Office of Inspector General regarding contractor's requested cost reimbursements on mine re-

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mediation project was publicly disclosed when final report and audit was sent to state which was signatory to cooperative remediation agreement, for purposes of determining whether qui tam suit against contractor under False Claims Act was barred on ground it was based upon publicly disclosed allegations; state was not party to questioned contracts and projects, and final report and audit was sent to state without restrictions on its public availability. U.S. ex rel. Fine v. MK-Ferguson Co., C.A.10 (N.M.) 1996, 99 F.3d 1538. United States 122

Complaint in qui tam action under False Claims Act filed by former employee of Office of Inspector General was based upon allegations contained in administrative report or investigation that had been publicly disclosed by employee, and thus employee was required to qualify as original source of information in order to proceed with qui tam suit; memorandum sent by employee to his age discrimination case representative contained allegations and transactions set out in audit performed by Office of Inspector General as to whether claimed indirect costs of government contractor were "allowable," and there was substantial identity between "unallowable costs" in memorandum and "false claims" alleged in qui tam complaint. U.S. ex rel. Fine v. Advanced Sciences, Inc., C.A.10 (N.M.) 1996, 99 F.3d 1000. United States 122

Although allegations in plaintiff's complaint were similar to information contained in state agency's report, mere placement of that report in state agency's files was not "public disclosure," and thus plaintiff's qui tam False Claims Act (FCA) suit was not barred as being based upon allegations or transactions already disclosed to public; plaintiff possessed first-hand knowledge of defendant-employer's allegedly fraudulent Medicaid billing practices, and agency did not affirmatively "disclose" either existence or contents of report but instead simply placed report in its investigative file and restricted access to those persons clairvoyant enough to specifically ask for it. U.S. ex rel. Ramseyer v. Century Healthcare Corp., C.A.10 (Okla.) 1996, 90 F.3d 1514. United States 122

Prior public disclosure of alleged fraud concerning Department of Energy (DOE) laboratories' diversion of nuclear waste funds for discretionary research and development (R&D) projects contrary to Nuclear Waste Policy Act (NWPA) precluded former auditor's qui tam suit under False Claims Act for particular laboratory's diversions in particular years; auditor's claims were substantially identical to allegations in prior report from General Accounting Office (GAO), indicating that laboratories were "taxing" nuclear waste funds in favor of R&D and that DOE had done nothing to discourage practice, and to allegations in subsequent congressional hearing on practice. U.S. ex rel. Fine v. Sandia Corp., C.A.10 (N.M.) 1995, 70 F.3d 568. United States 122

Government audit report disclosed "allegations or transactions," as required for director's qui tam action to be barred under False Claims Act as being based on publicly disclosed information; report revealed that contractor submitted deliverables that were rejected by government, that were substantially incomplete and contained numerous errors, and that contractor submitted deliverable with knowledge that it was incomplete. U.S. ex rel. Schwedt v. Planning Research Corp., Inc., D.D.C.1999, 39 F.Supp.2d 28. United States 122

Relators' qui tam action under False Claims Act (FCA) was "based upon" information that was already publicly disclosed, for purposes of FCA's public disclosure bar; although relators claimed they discovered government contractor's alleged wrongdoing while acting as auditors for the Defense Contract Audit Agency (DCAA), allegation that contractor had billed government for leasing space in office building it owned was specifically mentioned during Congressional hearing and disclosed in report prepared by DCAA. Wercinski v. International Business Machines Corp., S.D.Tex.1997, 982 F.Supp. 449. United States 122

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Relator's qui tam claims which were based in part on allegations contained in audit report of Inspector General's office of the Department of Energy (DOE) were barred by section of the False Claims Act (FCA); audit was publicly disclosed when report was released to the state of Oregon, and relator was not original source of the information; however, claim that government contractor unreasonably and impermissibly used estimates that were higher than actual costs in overhead, when it knew that actual figures were required, had not been addressed in any publicly disclosed document, and thus jurisdictional bar did not apply to that claim. U.S. ex rel. Fine v. MK-Ferguson Co., D.N.M.1994, 861 F.Supp. 1544, affirmed 99 F.3d 1538. United States 122

69. ---- Administrative investigation, jurisdiction, practice and procedure generally

Public disclosure of bank's misrepresentations to Farmers' Home Administration (FmHA), with respect to bank's failure to disclose private guarantor's personal guaranty of loan on which bank had submitted loss reports to the FmHA, was made in an “administrative investigation,” for purposes of guarantor's qui tam False Claims Act (FCA) suit, where responsible FmHA official received subpoena in connection with bank's lawsuit against guarantor, which led official to inquire regarding possible existence of the guaranty. U.S. v. Bank of Farmington, C.A.7 (Ill.) 1999, 166 F.3d 853. United States 122

Medicare program administrator's internal investigation of alleged fraudulent Medicare billing practices did not qualify as an “administrative investigation” triggering provision of False Claims Act barring claims by relators based on public disclosures, as administrator's investigation amounted to a self-inquiry into alleged fraud of its own board member, not an institutional inquiry of the kind contemplated by the statute. U.S. ex rel. Aflatooni v. Kitsap Physicians Services, C.A.9 (Wash.) 1999, 163 F.3d 516. United States 122

Disclosure of relator, who worked at facility manufacturing gun powder for United States military, that, at the instruction of his supervisors, he systematically failed to perform certain required quality control tests mandated by governing contracts, was not part of an “administrative investigation,” and therefore relator's qui tam action brought under the False Claims Act (FCA) against corporations owning the manufacturing facility and various corporate affiliates was not barred by the public disclosure provision of FCA; while the government established Voluntary Disclosure Program to provide a forum for self reports of fraud, absent some undertaking by the government to investigate the relator's report, merely establishing the program gave no more indication of the government's interest in the matters than having a telephone or mailbox. U.S. ex rel. Lockhart v. General Dynamics Corp., N.D.Fla.2007, 529 F.Supp.2d 1335. United States 122

Stay pending referral to Federal Communications Commission (FCC) of issue of whether bidders for wireless telecommunications licenses and their direct or indirect owners violated FCC bidding rules related to de facto control was not warranted, pursuant to primary jurisdiction doctrine, in action under False Claims Act (FCA) for alleged conspiracy to defraud United States through abuse of bidding procedure, inasmuch as question of whether minority investors exercised de facto control over bidders was within conventional expertise of judges and did not require FCC's technical expertise or implicate policy considerations, question involved narrow factual dispute that presented little danger of inconsistent rulings or resulting chill on participation in future FCC auctions, and referral to FCC would likely result in delay, given absence of petition already pending before FCC. U.S. ex rel. Taylor v. Gabelli, S.D.N.Y.2004, 345 F.Supp.2d 340. Telecommunications 1055

Relator's qui tam claims under False Claims Act (FCA) against health care center and its officers, directors, and employ-

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ee for alleged fraudulent misuse of government funds were based, at least in part, on allegations or transactions that were disclosed to relator in the course of administrative investigation, as demonstrated by relator's admission in separate proceedings as to her awareness of state's investigation, triggering FCA's public disclosure restrictions on qui tam actions, which precluded subject matter jurisdiction over action unless relator was original source of information. U.S. ex rel. Phipps v. Comprehensive Community Development Corp., S.D.N.Y.2001, 152 F.Supp.2d 443. United States 122

Department of Education's program review of paralegal program at private school did not negate students' right to proceed with qui tam action under False Claims Act (FCA) where government had not exercised its right to intervene. U.S. ex rel. Haskins v. Omega Institute, Inc., D.N.J.1998, 11 F.Supp.2d 555, decision clarified on reconsideration 25 F.Supp.2d 510. United States 122

70. ---- Civil hearing, jurisdiction, practice and procedure generally

Disclosure of allegations in a complaint constitutes disclosure in a “civil hearing,” within meaning of provision of False Claims Act generally barring qui tam action based upon previous disclosure in civil hearing. U.S. ex rel. Siller v. Becton Dickinson & Co. By and Through Microbiology Systems Div., C.A.4 (Md.) 1994, 21 F.3d 1339, certiorari denied 115 S.Ct. 316, 513 U.S. 928, 130 L.Ed.2d 278. United States 122

71. ---- Legislative documents, jurisdiction, practice and procedure generally

Report issued by city public works committee was not a public disclosure under the False Claims Act (FCA), and thus district court had subject matter jurisdiction of qui tam action brought by former city auditor against city and debris removal contractors; public works committee was legislative body, rather than administrative body under executive office of city, and allegations in complaint were not disclosed to public in the report. U.S. ex rel. Giles v. Sardie, C.D.Cal.2000, 191 F.Supp.2d 1117. United States 122

72. ---- Legislative hearing, jurisdiction, practice and procedure generally

For purposes of jurisdictional bar to qui tam action under the False Claims Act (FCA), there had been “public disclosure” of facts on which relator based action alleging that District of Columbia had improperly spent funds appropriated by Congress to hire additional police officers, where District officials had disclosed in public Congressional hearings that they were using the funds for purposes beyond those listed in the statute; the fact that relator was able to provide more specific details about what happened to the allegedly misspent funds did not matter, nor was it of any concern that the District had not accessed all of the funds when the public disclosures where made, where the publicly disclosed information showed how the District intended to spend the monies appropriated under the same statute. U.S. ex rel. Settlemire v. District of Columbia, C.A.D.C.1999, 198 F.3d 913, 339 U.S.App.D.C. 166. United States 122

Court did not have subject matter jurisdiction over False Claims Act suit due to relator's failure to timely produce evidence that he voluntarily disclosed relevant information to government before filing suit, where relator derived substantial portion of his complaint from allegations and transactions publicly disclosed in congressional hearings and news media. U.S. ex rel. Ackley v. International Business Machines Corp., D.Md.1999, 76 F.Supp.2d 654. United States 122

73. ---- Litigation, jurisdiction, practice and procedure generally

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Allegations and transactions underlying claims of fraud on part of health care providers, who allegedly received payments from Medicare and Medicaid for care that was not given, had not been subject of prior public disclosure, as would bar qui tam suit under False Claims Act (FCA) based on claims of fraud; allegations of fraud in separate lawsuit only remotely supported claims at issue and did not disclose anything remotely similar, and surveys performed at skilled nursing facilities participating in Medicare and Medicaid programs did not show both a misrepresented state of facts, and the true facts. U.S. ex rel. Foundation Aiding The Elderly v. Horizon West, C.A.9 (Cal.) 2001, 265 F.3d 1011, opinion amended on denial of rehearing 275 F.3d 1189, on remand 214 F.Supp.2d 1074, certiorari denied 122 S.Ct. 2292, 535 U.S. 1096, 152 L.Ed.2d 1050. United States 122

Corporation's False Claims Act action was based upon publicly disclosed information, precluding exercise of subject matter jurisdiction, where action was based upon alleged fraudulent reimbursement claims that were disclosed in prior state court litigation; corporation could not avoid jurisdictional bar simply by adding other claims that were substantially identical to those previously disclosed in state court litigation. Federal Recovery Services, Inc. v. U.S., C.A.5 (La.) 1995, 72 F.3d 447, rehearing denied. United States 122

Information disclosed during discovery in earlier suit between employer and union did not rise to level of “allegations or transactions,” so as to bar employer's qui tam action against arbitrator under False Claims Act as being based upon allegations or transactions which were publicly disclosed in civil hearing; government's possession of facially valid pay vouchers issued to arbitrator and of publicly disclosed phone records could not be expected to set government on trail of fraud, and phone records at most provided vehicle by which already suspicious employer could begin independent investigation. U.S. ex rel. Springfield Terminal Ry. Co. v. Quinn, C.A.D.C.1994, 14 F.3d 645, 304 U.S.App.D.C. 347, rehearing in banc declined. United States 122

Wrongs alleged in complaint alleging that deliberate and systematic mismeasurement was used to steal crude oil and natural gas from federal and Indian lands were publicly disclosed prior to filing of qui tam action under the False Claims Act to recover on behalf of United States, thus requiring plaintiff to qualify as original source of information to proceed with qui tam suit; corporate plaintiff's majority shareholder raised allegations of crude oil theft in three prior civil suits, allegations of crude oil and natural gas theft were disclosed during public hearing of Senate Select Committee on Indian Affairs, and the allegations were disclosed in numerous news releases. U.S. ex rel. Precision Co. v. Koch Industries, Inc., C.A.10 (Okla.) 1992, 971 F.2d 548, certiorari denied 113 S.Ct. 1364, 507 U.S. 951, 122 L.Ed.2d 742. United States 122

Relator's False Claims Act qui tam action against savings and loan association (S&L), alleging that S&L presented false claims under assistance agreement whereby Federal Savings and Loan Insurance Corporation (FSLIC) agreed to pay S&L for certain losses and expenses related to covered assets that S&L purchased, was barred as being “based upon” prior claims court action brought by S&L against United States concerning “coverage” designation of assets. U.S. ex rel. Stone v. AmWest Sav. Ass'n, N.D.Tex.1997, 999 F.Supp. 852. United States 122

Allegations and transactions in relator's False Claims Act qui tam action against savings and loan association (S&L), which alleged that S&L made false claims pursuant to assistance agreement whereby Federal Deposit Insurance Corporation (FDIC) guaranteed payment of losses and expenses related to certain assets acquired by S&L were based upon public disclosures, barring qui tam action, where S&L brought prior claims court action related to same assistance agreement and FDIC had investigated certain questionable business dealings of S&L. U.S. ex rel. Stone v. AmWest Sav. Ass'n,

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N.D.Tex.1997, 999 F.Supp. 852. United States 122

74. ---- Criminal proceedings, jurisdiction, practice and procedure generally

Remand of qui tam False Claims Act suit by former employee of defense contractor was required for fact-findings as to whether information regarding contractor's fraud involving cruise missiles was not "publicly disclosed" despite its appearance in criminal indictment against contractor, or, if information was publicly disclosed, whether employee was "an original source" of that information. U.S. v. Northrop Corp., C.A.9 (Cal.) 1993, 5 F.3d 407, certiorari denied 114 S.Ct. 1543, 511 U.S. 1033, 128 L.Ed.2d 195, on remand 897 F.Supp. 1274. Federal Courts 941

75. ---- Nonsealed documents, jurisdiction, practice and procedure generally

Fact that union member's prior proposed but not sealed complaint against union officials, alleging that they violated federal law by deducting "job targeting" dues from union members' paychecks and remitting them back to contractors, did not identify by name the contractors subsequently sued by union member in False Claims Act (FCA) action, did not preclude application of FCA's public disclosure bar, where government could easily identify contractors at issue due to statutory requirement that they file certified payrolls with government. U.S. v. Alcan Elec. and Engineering, Inc., C.A.9 (Alaska) 1999, 197 F.3d 1014. United States 122

76. ---- Freedom of Information documents, jurisdiction, practice and procedure generally

Government employee's qui tam action alleging fraud by government contractor, its officers, and subcontractors was not necessarily barred under False Claims Act provision barring qui tam action based upon public disclosure, in view of evidence that Freedom of Information Act (FOIA) materials on which action was allegedly based were received by employee after he filed action. U.S. v. A.D. Roe Co., Inc., C.A.6 (Ky.) 1999, 186 F.3d 717. United States 122

Response provided by United States Department of Housing and Urban Development (HUD) to request for information under Freedom of Information Act was public disclosure in an administrative report, and response thus triggered False Claims Act's jurisdictional bar against actions based on certain public disclosures. U.S. ex rel Mistick PBT v. Housing Authority of City of Pittsburgh, C.A.3 (Pa.) 1999, 186 F.3d 376, certiorari denied 120 S.Ct. 1418, 529 U.S. 1018, 146 L.Ed.2d 310. United States 122

Documents acquired under Freedom of Information Act (FOIA) were "publicly disclosed" within meaning of False Claim Act section providing that no court shall have jurisdiction over False Claims Act action based upon public disclosure of information regarding false claim unless person bringing action is original source of the information. U.S. ex rel. Burns v. A.D. Roe Co., Inc., W.D.Ky.1996, 919 F.Supp. 255, vacated 186 F.3d 717. United States 122

76a. ---- Removal, jurisdiction, practice and procedure generally

State of Wisconsin's suit brought in state court against pharmaceutical manufacturer for allegedly fraudulent pricing was not removable upon third notice of removal filed more than two years after suit was filed, on grounds of subsequent filing of qui tam suit against manufacturer in remote district court, under False Claims Act (FCA), since Wisconsin's suit alleged violation of state law, not federal law, parties lacked diversity, Wisconsin's suit was not related to qui tam suit,

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within meaning of FCA, qui tam complaint was not amended pleading, motion, order, or other paper from which removability could first be ascertained in suit sought to be removed, and judicial economies did not warrant removal as there would be no joint trial. Wisconsin v. Amgen, Inc., C.A.7 (Wis.) 2008, 516 F.3d 530. Removal Of Cases 19(1); Removal Of Cases 29; Removal Of Cases 79(1)

77. Justiciability, practice and procedure generally

Cause of action, which was brought by United States under former § 231 [now § 3729] of this title against former congressman for allegedly misrepresenting as official an undetermined number of telephone toll calls which were paid for out of House of Representatives' contingent fund, was justiciable, where norm which gave life to United States' claim did not derive only from word “unofficial” contained in House rule, and enforcement through litigation of norm of § 46g of Title 2 that only “strictly official” calls could have been charged to United States did not involve delegation of House authority to judiciary which was incompatible with separation of powers. U. S. v. Eilberg, E.D.Pa.1980, 507 F.Supp. 267. Federal Courts 13.20

78. Case or controversy, practice and procedure generally

Former federal prisoner's purported qui tam action, under False Claims Act (FCA), on behalf of the United States against the United States, arising out of civil rights violations at federal correctional complex, presented no case or controversy over which the district court had jurisdiction. Banks v. Lappin, D.D.C.2009, 601 F.Supp.2d 281. Federal Courts 13

Qui tam plaintiff's action on behalf of the United States against federal government agency and members of its board of directors acting in their official capacity did not present any “case or controversy” over which court could exercise jurisdiction under the False Claims Act; any money judgment recovered by plaintiff would merely redistribute government funds from one agency to another. Juliano v. Federal Asset Disposition Ass'n (FADA), D.D.C.1990, 736 F.Supp. 348, affirmed 959 F.2d 1101, 295 U.S.App.D.C. 97. Federal Courts 13

Congressional grant of standing under qui tam provisions of False Claims Act to private persons to bring false claims action on behalf of United States government do not abrogate “case or controversy” limitation because the latter cannot allege constitutionally minimum injury-in-fact. U.S. ex rel. Stillwell v. Hughes Helicopters, Inc., C.D.Cal.1989, 714 F.Supp. 1084. Federal Courts 13; United States 120.1

79. Ripeness, practice and procedure generally

Issues presented in hospital association's complaint for declaratory judgment that its member hospitals had not violated False Claims Act (FCA) or other federal laws were not ripe for adjudication; whether Department of Justice (DOJ), which provided settlement letters to association's member hospitals to resolve disputes regarding overpayment of benefits, would file FCA actions against association's member hospitals remained to be determined, intervention by court at present juncture of the proceedings would inappropriately interfere with any further administrative action that might be taken by government, and, absent any showing of harm, complaint sought in effect to have court issue an advisory opinion as to constitutionality of the DOJ's actions. New Jersey Hosp. Ass'n v. U.S., D.N.J.1998, 23 F.Supp.2d 497. Declaratory Judgment 81

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To extent that counterclaim filed by defendant in action under former § 232 of this title instituted by private individual asserted counterclaim for malicious prosecution, and favorable termination of underlying action had not been obtained, claim was not ripe. U. S. ex rel. Sacks v. Philadelphia Health Management Corp., E.D.Pa.1981, 519 F.Supp. 818. Malicious Prosecution 34

80. Exhaustion of remedies, practice and procedure generally

Because relator was not per se attacking issuance of certificate of need (CON) to health care provider, in his False Claims Act suit alleging that provider defrauded United States by submitting Medicare and Medicaid reimbursement claims after improperly obtaining CON, relator was not required to exhaust administrative remedies regarding validity of CON prior to filing suit under Act. U.S. ex rel. Sanders v. East Alabama Healthcare Authority, M.D.Ala.1996, 953 F.Supp. 1404. United States 122

81. Arbitration, practice and procedure generally--Generally

Arbitration provision in agreement governing insurer's participation in National Flood Insurance Program's (NFIP) “write-your-own” program was not unenforceable because one of government's claims against insurer arose under False Claims Act (FCA), notwithstanding contentions that Attorney General, who had exclusive statutory authority to enforce FCA, was not party to agreement and that directing Attorney General to arbitrate FCA claim would dilute his statutory authority; Attorney General possessed no unique right to ignore arbitration clause, governing contract principles did not permit government to enforce other provisions of agreement while attempting to avoid arbitration provision, and arbitration, which was not binding on government, would not dilute Attorney General's authority under FCA. U.S. v. Bankers Ins. Co., C.A.4 (Md.) 2001, 245 F.3d 315. Insurance 3273

Relator's arbitration agreement with his former employer was valid and enforceable under the Federal Arbitration Act, warranting stay of relator's action under the False Claims Act (FCA) alleging that he was terminated in retaliation for having asserted qui tam claims, where the agreement provided for a neutral arbitrator and more than minimal discovery, required arbitrator to issue a written award, allowed arbitrator to order full range of remedies, and did not require relator to pay unreasonable costs or arbitrator's fees or expenses as a condition of access to arbitral forum. Morgan v. Science Applications Intern. Corp., D.D.C.2009, 612 F.Supp.2d 81. Alternative Dispute Resolution 124

Provision in government contractor's dispute resolution program that arbitrator would maintain privacy of proceedings to extent permitted by law was not substantively unconscionable; False Claims Act (FCA) did not guarantee public hearing/trial of employee's retaliation claim, any such right would be derivative of right to federal forum which employee waived as part of employment agreement, and provision regarding arbitration applied to both parties equally, protected employee's substantive legal and statutory rights, and did not curtail available remedies. U.S. ex rel. Cassaday v. KBR, Inc., S.D.Tex.2008, 590 F.Supp.2d 850. Alternative Dispute Resolution 134(6)

Former employee's retaliation claim under False Claims Act (FCA) was not exempt from arbitration under Federal Arbitration Act (FAA). Orcutt v. Kettering Radiologists, Inc., S.D.Ohio 2002, 199 F.Supp.2d 746. Alternative Dispute Resolution 124

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81a. ---- Sealed claims, arbitration, practice and procedure generally

Arbitration of False Claims Act (FCA) retaliation claims does not create insoluble practical difficulties in relation to sealed qui tam claims. U.S. ex rel. Cassaday v. KBR, Inc., S.D.Tex.2008, 590 F.Supp.2d 850. Alternative Dispute Resolution 121

82. Pending actions, practice and procedure generally

First-to-file provision of False Claims Act (FCA) did not bar four of seven qui tam actions alleging that natural gas pipeline companies underpaid royalties on carbon dioxide produced from federal and Indian lands, even though complaint in prior action might have put government on notice of the four companies' involvement in the alleged fraud, where prior complaint did not name any of the four companies as defendants. In re Natural Gas Royalties Qui Tam Litigation (CO2 Appeals), C.A.10 (Wyo.) 2009, 566 F.3d 956. United States 122

First-to-file provision of False Claims Act (FCA) did not bar five of seven qui tam actions alleging that natural gas companies underpaid royalties on carbon dioxide produced from federal and Indian lands, even though complaint in prior action might have put government on notice of the five companies' involvement in the alleged fraud, where prior complaint did not name any of the five companies as defendants. In re Natural Gas Royalties, C.A.10 (Wyo.) 2009, 562 F.3d 1023, withdrawn from bound volume , amended and superseded 566 F.3d 956. United States 122

False Claims Act's (FCA) first-to-file jurisdictional bar precluded qui tam suit alleging that flood insurers had defrauded National Flood Insurance Program (NFIP) by misattributing to flood policies wind damage and other non-flood losses caused by hurricane, since same insurers had been named in previously filed action asserting same material or essential elements of fraud; later relator's addition of details and geographic locations could not overcome jurisdictional bar. U.S. ex rel. Branch Consultants v. Allstate Ins. Co., C.A.5 (La.) 2009, 560 F.3d 371, on remand 2009 WL 3353314. United States 122

Prior action against operator of government-owned uranium enrichment plant did not encompass employee's allegations that operator falsified dosage readings obtained from dosimeters worn by employees, resulting in operator's receipt of payments and accreditation to operate the plant from the United States by false means, and thus False Claims Act's first to file rule did not bar employee's qui tam action; broad and conclusory allegations in prior action were legally insufficient to state a claim of fraud, since prior action failed to provide time, place, or content of allegedly fraudulent claims submitted to government. Walburn v. Lockheed Martin Corp., C.A.6 (Ohio) 2005, 431 F.3d 966, rehearing and rehearing en banc denied. United States 122

Qui tam action against gas producer that had allegedly defrauded United States by fraudulently measuring natural gas it produced on federal and Indian land and underpaying royalties to United States as a result was barred by False Claims Act's first-to-file bar, where action raised same essential claim as that raised in prior suit, although relator alleged additional facts relating to how producer mismeasured the natural gas that were not mentioned in the prior complaint and named some entities affiliated with the producer that were not listed as defendants in the prior suit. Grynberg v. Koch Gateway Pipeline Co., C.A.10 (Wyo.) 2004, 390 F.3d 1276. United States 122

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First-to-file rule of the False Claims Act (FCA) barred relator's qui tam action alleging that health-care provider, its subsidiary, and individual employees fraudulently billed the government under the Medicare program for home health services, where prior qui tam suit made similar fraud allegations against provider; fact that relator named additional defendants and alleged fraud in a state not mentioned in prior complain did not establish differences in the material elements of the fraud. U.S. ex rel. Hampton v. Columbia/HCA Healthcare Corp., C.A.D.C.2003, 318 F.3d 214, 355 U.S.App.D.C. 23. United States 122

Dismissed prior action filed by another employee was a “pending action” for purposes of False Claims Act's (FCA) first-to-file bar, precluding other employee's qui tam claims against defense contractor for alleged fraud; dismissed or not, prior filed action based on similar facts promptly alerted government to alleged fraudulent scheme by defense contractor, thereby fulfilling a goal behind the first-to-file rule. U.S. ex rel. Lujan v. Hughes Aircraft Co., C.A.9 (Cal.) 2001, 243 F.3d 1181, certiorari denied 122 S.Ct. 615, 534 U.S. 1040, 151 L.Ed.2d 538. United States 122

Plain language of “same material facts” subsection of False Claims Act (FCA) unambiguously established first-to-file bar, preventing successive plaintiffs from bringing related actions based on the same underlying facts. U.S. ex rel. Lujan v. Hughes Aircraft Co., C.A.9 (Cal.) 2001, 243 F.3d 1181, certiorari denied 122 S.Ct. 615, 534 U.S. 1040, 151 L.Ed.2d 538. United States 122

First-to-file bar of False Claims Act (FCA) precluded relators' claims for off-label marketing of drug since a prior complaint was the first complaint to allege claims based upon manufacturer's alleged off-label marketing of drug. U.S. ex rel. Duxbury v. Ortho Biotech Products, L.P., D.Mass.2008, 551 F.Supp.2d 100, affirmed in part , reversed in part 579 F.3d 13. United States 122

False Claims Act's first to file rule barred employee's qui tam action alleging that operator of government-owned uranium enrichment plant falsified dosage readings obtained from dosimeters worn by employees, resulting in operator's receipt of payments and accreditation to operate the plant from the United States by false means; in prior action, another employee at the plant had raised the same material elements of fraud with regard to alleged falsification of records. U.S. ex rel. Walburn v. Lockheed Martin Corp., S.D.Ohio 2004, 312 F.Supp.2d 936, affirmed 431 F.3d 966, rehearing and rehearing en banc denied. United States 122

Relator's claim that hospital provided various benefits to doctors in exchange for referrals was barred by False Claims Act's (FCA) first-to-file rule; while the list of benefits varied slightly between relator's complaint and other prior complaints, the scheme was the same. U.S. ex rel. Ortega v. Columbia Healthcare, Inc., D.D.C.2003, 240 F.Supp.2d 8. United States 122

Under the False Claims Act's first-to-file rule, earlier filed cases asserting identical claims against same corporation under the Act barred private party's qui tam action against the corporation under the Act, even if the private party arrived at his allegations independently, rather than because of the public disclosure of the earlier litigation, and even if he qualified as an independent source of the information. U.S. ex rel. Friedman v. Eckerd Corp., E.D.Pa.2001, 183 F.Supp.2d 724. United States 122

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Under “first to file” rule, relators in second-filed qui tam action were barred from sharing in proceeds following government's settlement of False Claims Act suit against medical laboratory, absent showing that second action was based on different underlying facts. U.S. ex rel. Merena v. Smithkline Beecham Corp., E.D.Pa.2000, 114 F.Supp.2d 352. United States 122

83. Notice requirements, practice and procedure generally

Relator's qui tam claims under False Claims Act would be dismissed with prejudice, as opposed to without prejudice, since relator's failure to file complaint under seal and serve United States frustrated statutory purpose underlying those requirements; government could not determine whether complaint might interfere with ongoing investigation or whether government should intervene, any settlement value that might have arisen from complaint's sealed status was eliminated, any possibility of ameliorating predisclosure government decision not to pursue claim was aborted by relator's premature publication of allegations through communication with reporter, and relator's counsel did not act in good faith in attempting to comply with requirements. U.S. ex rel. Pilon v. Martin Marietta Corp., C.A.2 (N.Y.) 1995, 60 F.3d 995. Federal Civil Procedure 1741; Federal Civil Procedure 1837.1

Notification requirements of the False Claims Act were fully complied with by the state of Colorado so as to allow it to bring an action in the name of the United States as a qui tam plaintiff to recover against a care center and its shareholders for allegedly filing false cost reports with the Colorado Department of Social Services in connection with claims for reimbursement under the medicaid program as long as United States was provided with ample information concerning the program which was being defrauded, the suspected party, the nature and operation of the fraud, and the nature of the physical evidence establishing the fraud and was able thereby to make an informed decision on its possible participation. U.S. ex rel. Woodard v. Country View Care Center, Inc., C.A.10 (Colo.) 1986, 797 F.2d 888. United States 122

The written notice by registered mail required to have been given to Attorney General of pendency of qui tam suit by informer for prosecuting false claims against United States was the only notice necessary of a suit pending on Dec. 23, 1943, the effective date of 1943 amendment of former § 232 of this title which authorized such suits. U.S. v. Pittman, C.C.A.5 (Ala.) 1945, 151 F.2d 851, certiorari denied 66 S.Ct. 1022, 328 U.S. 843, 90 L.Ed. 1617. United States 122

The general appearance of United States within 60-day period of former § 232(C) of this title in a qui tam suit brought by informer because of prosecution of false claims against United States waived any defect in required notice to Attorney General as to pendency of such action. U.S. v. Pittman, C.C.A.5 (Ala.) 1945, 151 F.2d 851, certiorari denied 66 S.Ct. 1022, 328 U.S. 843, 90 L.Ed. 1617. United States 122

False Claims Act (FCA) plaintiff must provide more than mere recitation of facts available to government to comply with FCA's requirement that plaintiff provide government with disclosure statement. U.S. ex rel. Made in the USA Foundation v. Billington, D.Md.1997, 985 F.Supp. 604. United States 122

Defendant in qui tam action under the False Claims Act did not have standing to make argument that plaintiff had not provided required notice to the government of substantially all material evidence and information plaintiff possessed relating to the action at the time it filed the complaint. U.S. ex rel. Stinson, Lyons, Gerlin & Bustamante, P.A. v. Blue Cross Blue Shield of Georgia, Inc., S.D.Ga.1990, 755 F.Supp. 1040, on reconsideration 755 F.Supp. 1055. United States

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Since notices and disclosure contemplated by former § 232(C) of this title should have been simultaneous, or nearly simultaneous with filing of complaint, qui tam plaintiff should not have been allowed a longer time for compliance than 60 day period given the United States in which to intervene. U.S. ex rel. Shinn v. State of Tenn., E.D.Tenn.1947, 74 F.Supp. 635. United States 122

Former § 232(C) of this title did not require that informer must personally have possessed all information and evidence on which suit was based and conveyed such evidence and information to Justice Department before suit was filed, but informer brought himself within exception to such former subsection by furnishing substantial evidence and information on which suit was based, not then in possession of Justice Department, provided such substantial evidence and information was disclosed to Attorney General prior to filing of suit. U.S. ex rel. Coates v. St. Louis Clay Products Co., E.D.Mo.1946, 65 F.Supp. 645. United States 122

The words “substantial evidence and information”, as used in former § 232(C) of this title, meant evidence and information that was real, not imaginary, and which on trial, if accepted by jury as true, might have had an actual and material bearing on charges made in complaint. U.S. ex rel. Coates v. St. Louis Clay Products Co., E.D.Mo.1946, 65 F.Supp. 645. United States 122

84. Service of process, practice and procedure generally

In informers' action to recover for alleged fraud in connection with termination claims against the government where plaintiffs were enjoined from further intermeddling during the time reserved to the government to proceed with its prosecution and the record showed the plaintiffs had actual knowledge of contempt proceedings for violation of the injunction and in addition both plaintiffs personally appeared without objection, they were not entitled to complain subsequently that they were not duly served with process. U. S. v. Onan, C.A.8 (Minn.) 1951, 190 F.2d 1, certiorari denied 72 S.Ct. 112, 342 U.S. 869, 96 L.Ed. 654. Injunction 221

In informers' action to recover for alleged fraud in connection with termination claims against the United States where large sums of money belonging to the defendants were garnisheed motions of defendants challenging the right of plaintiffs to prosecute the action or serve the summons raised jurisdictional questions and was inconsistent within alleged acts on their part recognizing the validity of the summons. U. S. v. Onan, C.A.8 (Minn.) 1951, 190 F.2d 1, certiorari denied 72 S.Ct. 112, 342 U.S. 869, 96 L.Ed. 654. United States 137

Relator's premature service of her qui tam False Claims Act complaint against defendants without obtaining prior permission from district court and prior to unsealing of case did not warrant dismissal of qui tam suit; although defendants temporarily had difficulty in formulating proper response without access to case file, case thereafter had been unsealed, remedying any prejudice to defendants, and government had decided not to intervene and allowed relator to continue case alone. U.S. ex rel. Downy v. Corning, Inc., D.N.M.2000, 118 F.Supp.2d 1160. United States 122

A foreign corporation, maintaining an office in Philadelphia, Pennsylvania, for purpose of soliciting sales, most of which were subject to approval by New York office, was “doing business” within Eastern District of Pennsylvania, so as to au-

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thorize service of summons in an informer's action against the corporation upon district manager who was in charge of its office. U. S. v. Anaconda Wire & Cable Co., E.D.Pa.1943, 52 F.Supp. 824. Federal Courts 79

85. Service of amended complaint, practice and procedure generally

In False Claims Act (FCA) qui tam action, former employee's failure to serve amended complaint, in which certain claims were asserted for the first time, on government, and her failure to file complaint in camera, did not bar her from proceeding with action, in light of fact that requirements of service on government and filing in camera were intended to enable government to investigate claims and decide in secret whether or not to take over prosecution of action; government had already been afforded opportunity to undertake such investigation and decision when former employee's original complaint was filed, and government could, upon showing of good cause, still intervene at later date. U.S. ex rel. Mikes v. Straus, S.D.N.Y.1996, 931 F.Supp. 248, motion to certify appeal denied 939 F.Supp. 301. United States 122

86. Survival or abatement of action, practice and procedure generally

Cause of action founded on former § 231 [now § 3729] of this title did not abate upon the death of claimant. U. S. v. Woodbury, C.A.9 (Or.) 1966, 359 F.2d 370.

Qui tam relator's recovery of portion of damages award under False Claims Act (FCA) was remedial, rather than penal, in nature, and thus relator's claim survived his death. U.S. ex rel. Estate of Botnick v. Cathedral Healthcare System, Inc., D.N.J.2005, 352 F.Supp.2d 530. Abatement And Revival 57

Forfeiture provided for under former § 231 [now § 3729] of this title was not “penal” in nature and cause of action for forfeiture thereunder survived death of alleged wrongdoer. U. S. v. Templeton, E.D.Tenn.1961, 199 F.Supp. 179. See, also, U.S. v. Gable, D.C.Conn.1963, 217 F.Supp. 82. Penalties 31

The right of Attorney General to appear in a pending qui tam action does not have effect of conferring jurisdiction on court, if that action should otherwise be abated because it was based on information already in possession of government. U.S. ex rel. Sherr v. Anaconda Wire & Cable Co., S.D.N.Y.1944, 57 F.Supp. 106, affirmed 149 F.2d 680, certiorari denied 66 S.Ct. 143, 326 U.S. 762, 90 L.Ed. 458. United States 122

Where admissions of relator in qui tam suit to recover penalties and damages for which defendant was allegedly liable for making false claim against the government established that action was based upon evidence or information in possession of government at time suit was brought, court had no jurisdiction to proceed with suit notwithstanding that Attorney General had filed a notice of appearance, and hence suit would be abated. U.S. ex rel. Sherr v. Anaconda Wire & Cable Co., S.D.N.Y.1944, 57 F.Supp. 106, affirmed 149 F.2d 680, certiorari denied 66 S.Ct. 143, 326 U.S. 762, 90 L.Ed. 458. United States 122

87. Separate or distinct causes of action, practice and procedure generally

Cause of action under former § 231 of this title for recovery of double damages and forfeiture for conspiring to defraud the United States by obtaining, or aiding to obtain, payment of a knowingly false claim was entirely separate and distinct

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from cause of action based upon either the presenting of a knowingly false claim or the using of false certificates to obtain payment of a false claim. U. S. v. Ben Grunstein & Sons Co., D.C.N.J.1955, 127 F.Supp. 907. Action 38(4)

88. Consolidation of actions, practice and procedure generally

Recipients would be permitted to consolidate their qui tam False Claims Act action against state and organization providing mental health services with their §§ 1983 action against state and organization alleging violation of their rights under Medicaid Act; cases involved common questions of law and fact as well as common parties. U.S. ex rel. Lindsey v. Trend Community Mental Health S ervices, W.D.N.C.1999, 88 F.Supp.2d 475. Federal Civil Procedure 8.1

An action under former § 231 [now § 3729] of this title was not a "derivative action" in the same sense as one brought by a stockholder for the benefit of a corporation, since recovery was solely for the benefit of the United States and the informer, and hence there could have been but one action and one division of money collected, and subsequent attempts by other persons could have had no standing and could not have been consolidated with the original action. U.S. v. B.F. Goodrich Co., S.D.N.Y.1941, 41 F.Supp. 574. Abatement And Revival 7; United States 122

89. Identical causes of action, practice and procedure generally

Public disclosure bar was correctly applied in qui tam actions, under the False Claims Act (FCA), alleging underpayment of natural gas royalties to the United States, on basis that the fraudulent scheme alleged in relator's previous complaints shared substantial identity with allegations publicly disclosed in Senate Committee documents and a prior lawsuit; the prior public disclosures named a significant percentage of industry participants as wrongdoers and indicated that others in the industry were very likely engaged in the same practices. In re Natural Gas Royalties, C.A.10 (Wyo.) 2009, 562 F.3d 1032, certiorari denied 2009 WL 2444790. United States 122

False Claims Act's (FCA) first-to-file jurisdictional bar did not apply to qui tam suit alleging that flood insurers had defrauded National Flood Insurance Program (NFIP) by misattributing to flood policies wind damage and other non-flood losses caused by hurricane, to extent that suit named insurers not named in earlier-filed action asserting same material or essential elements of fraud; earlier-filed suit did not allege industry-wide fraud, or concerted action among narrow group of participants, and told government nothing about insurers not named in later-filed suit. U.S. ex rel. Branch Consultants v. Allstate Ins. Co., C.A.5 (La.) 2009, 560 F.3d 371, on remand 2009 WL 3353314. United States 122

The "same material facts" subsection of the False Claims Act (FCA) precludes a subsequent relator's claim that alleges that a defendant engaged in the same type of wrongdoing as that claimed in a prior action regardless of whether the allegations incorporate somewhat different details. U.S. ex rel. Lujan v. Hughes Aircraft Co., C.A.9 (Cal.) 2001, 243 F.3d 1181, certiorari denied 122 S.Ct. 615, 534 U.S. 1040, 151 L.Ed.2d 538. United States 122

Qui tam plaintiffs' False Claims Act (FCA) action, alleging that contractors engaged in pattern of knowingly submitting false claims for payment under their contracts to perform hazardous waste treatment and disposal services at site of chemical plant, was not precluded by FCA's jurisdictional bar against suits based on the same underlying facts as previous FCA action by the government; in prior litigation involving cleanup activity at site, Environmental Protection Agency (EPA) was a defendant, and these plaintiffs' allegations had never before been subject of FCA suit or any other

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suit or proceeding brought by the government or anyone else. Costner v. URS Consultants, Inc., C.A.8 (Ark.) 1998, 153 F.3d 667, rehearing and suggestion for rehearing en banc denied. United States 122

Assertion by qui tam plaintiff that after learning that Florida's Medicare system planned to stop paying for certain test, operator of clinical laboratories had improperly shifted its billings for tests performed on Medicare patients to Pennsylvania's Medicare system, and submitted most of its nationwide billings through centralized billing in Pennsylvania, thus defrauding federal government, had same material elements as earlier qui tam suit alleging that operator had engaged in prohibited practice of "carrier shopping," and thus, claim based on assertions was barred by False Claims Act; only difference between claims was that initial claim had alleged fraud more generally, and later claim specifically listed names of tests which had been improperly added. U.S. ex rel. LaCorte v. SmithKline Beecham Clinical Laboratories, Inc., C.A.3 (Pa.) 1998, 149 F.3d 227. United States 122

If qui tam case is receiving support, advantage, or the like from host case without giving any useful or proper return to the government, there is identity between basis of qui tam action and subject of the other suit or proceeding, and qui tam action is barred; but if there is no host/parasite relationship, such an identity is lacking. U.S. ex rel. S. Prawer and Co. v. Fleet Bank of Maine, C.A.1 (Me.) 1994, 24 F.3d 320, on remand 1995 WL 626376. United States 122

Assertion by qui tam plaintiff that home health agency had submitted fraudulent claims for reimbursement under Medicare and Medicaid in its New Jersey office, thus defrauding federal government, had same material elements as earlier qui tam suit alleging that agency had submitted similar claims in its Pennsylvania office, and thus was barred by False Claims Act (FCA), even though facts were wholly separate, where earlier suit alleged that fraud was not limited to agency's Pennsylvania office. Palladino ex rel. U.S. v. VNA of Southern New Jersey, Inc., D.N.J.1999, 68 F.Supp.2d 455 . United States 122

The government having first commenced an action under former § 231 [now § 3729] of this title, another action at instance of informer would not have been appropriate if actions were identical. U.S. ex rel. Benjamin v. Hendrick, S.D.N.Y.1943, 52 F.Supp. 60. Abatement And Revival 8(2)

Where only difference between complaint of the United States under former § 231 [now § 3729] of this title, and complaint by alleged informer was that informer spoke of projects not only in named counties but throughout the United States and that informer demanded a larger sum of money, the actions were identical and informer's action was not maintainable. U.S. ex rel. Benjamin v. Hendrick, S.D.N.Y.1943, 52 F.Supp. 60. Abatement And Revival 8(2)

90. Pendent claims, practice and procedure generally

State of Colorado, suing in the name of the United States as a qui tam plaintiff under the False Claims Act to recover against a care center and its shareholders for allegedly filing false cost reports with the Colorado Department of Social Services to obtain medicaid reimbursement, was not limited to 25% of the award to the federal government, but could include a pendent claim of state common-law fraud for its portion of the overpayment without having to file a separate proceeding considering that its injury occurred simultaneously with the federal government's injury. U.S. ex rel. Woodard v. Country View Care Center, Inc., C.A.10 (Colo.) 1986, 797 F.2d 888. United States 122

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91. Persons entitled to maintain action, practice and procedure generally--Generally

Although the United States is a real party in interest in a case brought under the False Claims Act (FCA), an FCA action does not need to be brought by the United States. U.S. ex rel. Eisenstein v. City of New York, New York, U.S.2009, 129 S.Ct. 2230, 173 L.Ed.2d 1255. United States 122

A private person could maintain informer's action against persons submitting fraudulent and collusive bids on hospital constructed with Public Works Administration assistance, though they had previously been indicted for presenting fraudulent claims and had paid fines. U.S. ex rel. Ostrager v. New Orleans Chapter, Associated General Contractors of America, U.S.La.1943, 63 S.Ct. 393, 317 U.S. 562, 87 L.Ed. 458. United States 122

Under former § 232(B) of this title which authorized “any person” to bring informer's action against one presenting fraudulent claim against United States, one who allegedly contributed nothing to discovery of the crime could have brought such action, even after same defendants had been indicted and fined on plea of nolo contendere. U. S. ex rel. Marcus v. Hess, U.S.Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. United States 122

Former law firm for relators had standing to appeal district court's denial of full fee award requested on the firm's behalf by the relators at conclusion of False Claims Act (FCA) suit; law firm suffered putative injury-in-fact when it was awarded fees lower than amount sought in petition, and only firm was adversely affected by award. Gonter v. Hunt Valve Co., Inc., C.A.6 (Ohio) 2007, 510 F.3d 610. United States 122

Pro se relator cannot prosecute qui tam action, since he would be acting as attorney for the government. U.S. ex rel. Lu v. Ou, C.A.7 (Ill.) 2004, 368 F.3d 773. United States 122

Owner of private bus company that had lost contract to transport school children could bring qui tam action against city, seeking recovery on behalf of federal government of public bus transport subsidies paid to city in reliance upon fraudulent representations that city complied with federal statutes and regulations, made while city was allegedly providing exclusive school bus service in competition with private operator; owner had necessary knowledge of noncompliance independent of government's knowledge, through his observations of city bus operations. U.S. ex rel. Lamers v. City of Green Bay, C.A.7 (Wis.) 1999, 168 F.3d 1013. United States 122

In accordance with its goal of encouraging private individuals who are aware of fraud being perpetrated against the government to report such information, the False Claims Act permits only that insider or “whistleblower” to maintain qui tam action. Hindo v. University of Health Sciences/The Chicago Medical School, C.A.7 (Ill.) 1995, 65 F.3d 608, certiorari denied 116 S.Ct. 915, 516 U.S. 1114, 133 L.Ed.2d 846. United States 122

Employee could maintain claim under whistleblower protection provision of False Claims Act, even though she had not filed suit under Act; fact that Act stated that employee was protected in assisting in suit “filed or to be filed” indicated that protection was linked to events as they were understood at time of employee's disclosures or investigation, and thus fact that litigation was not ultimately brought did not compel finding that employee was not entitled to protection, since litigation was distinct possibility when employee made disclosures. Neal v. Honeywell Inc., C.A.7 (Ill.) 1994, 33 F.3d

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860. Labor And Employment 778

Plaintiff had standing to bring informer's suit alleging that credit reporting company employed by government to provide information on prospective government employees violated former § 231 [now § 3729] of this title by misrepresenting its qualification for government employment. U. S. ex rel. Weinberger v. Equifax, Inc., C.A.5 (Fla.) 1977, 557 F.2d 456, rehearing denied 561 F.2d 831, certiorari denied 98 S.Ct. 768, 434 U.S. 1035, 54 L.Ed.2d 782, rehearing denied 98 S.Ct. 1477, 435 U.S. 918, 55 L.Ed.2d 511. United States 120.1

A relator in a qui tamFalse Claims Act (FCA) action does not have standing to assert common law claims based upon injury sustained by the United States. U.S. ex rel. Rockefeller v. Westinghouse Elec. Co., D.D.C.2003, 274 F.Supp.2d 10, affirmed 2004 WL 180264, rehearing and rehearing en banc denied , certiorari denied 125 S.Ct. 60, 543 U.S. 820, 160 L.Ed.2d 29. United States 122

While private persons acting on behalf of the government may sue those who defraud the government under the False Claims Act, and may share in any proceeds ultimately recovered, *pro se* plaintiffs are not qualified to represent the interests of the United States in such an action. Zernik v. U.S. Dept. of Justice, D.D.C.2009, 630 F.Supp.2d 24. United States 122

Pediatric cardiologist and professor at state university medical school did not suffer antitrust injury when peer review resulted in revocation of his privileges at children's hospital, and, thus, he lacked standing to assert antitrust claims under Sherman Act sections which prohibited conspiracies in restraint of trade and monopolies, and under Kentucky law, in qui tam action under the False Claims Act (FCA) against his supervisors, their practice group, a neonatologist employed at medical school, neonatologist's practice group, children's hospital, university's research fund, and research foundation, where revocation did not harm market for pediatric cardiac services by increasing price or reducing quality of service. U.S. v. Solinger, W.D.Ky.2006, 457 F.Supp.2d 743, issued 2006 WL 3085610, subsequent determination. Antitrust And Trade Regulation 963(3)

Mere existence of wrongful actions by defendants in qui tam action brought under False Claims Act was insufficient to create private right of action under Act for litigation misconduct. Pentagen Technologies Intern. Ltd. v. U.S., S.D.N.Y.2001, 172 F.Supp.2d 464, affirmed 63 Fed.Appx. 548, 2003 WL 1977386, certiorari denied 124 S.Ct. 278, 540 U.S. 940, 157 L.Ed.2d 253. United States 122

False Claims Act provides no private right of action for litigation misconduct during pendency of qui tam action. Pentagen Technologies Intern. Ltd. v. U.S., S.D.N.Y.2000, 103 F.Supp.2d 232. United States 122

Laboratory employee's investigation into laboratory's allegedly inadequate testing procedures for determining whether plasma that it used in producing derivatives for sale to federally funded hospitals had been improperly diluted was not related to exposing any fraud on federal government, and thus employee was not engaged in conduct protected by whistleblower provision of False Claims Act (FCA), where employee's actions were merely directed at attempting to secure regulatory compliance by laboratory, and were not undertaken in pursuit of belief that laboratory was defrauding government. Luckey v. Baxter Healthcare Corp., N.D.Ill.1998, 2 F.Supp.2d 1034, affirmed 183 F.3d 730, certiorari denied 120

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S.Ct. 562, 528 U.S. 1038, 145 L.Ed.2d 439. Labor And Employment 778

Unsuccessful bidder for Resolution Trust Corporation (RTC) property had standing under the False Claims Act (FCA) to bring a qui tam action against the successful bidder and the listing real estate broker to allege that the broker failed to disclose a conflict of interest. U.S. v. Bald Eagle Realty, D.Utah 1998, 1 F.Supp.2d 1311. United States 122

Employee responsible for receiving, paying out, and balancing Medicare funds received by her employer, had standing under the False Claims Act (FCA) to bring a qui tam action based on allegations that her supervisor ordered her to use Medicare funds to pay employer's payroll and bills, and that several other employees had been instructed by management to forge physician and nurse names on various documents submitted to Medicare for reimbursement. Hopkins v. Actions, Inc. of Brazoria County, S.D.Tex.1997, 985 F.Supp. 706. United States 122

Defendants in False Claims Act (FCA) qui tam action had no standing to assert counterclaim seeking to limit relator's share of recovery out of total proceeds recovered from defendants. U.S. ex rel. Mikes v. Straus, S.D.N.Y.1996, 931 F.Supp. 248, motion to certify appeal denied 939 F.Supp. 301. United States 122

Qui Tam statute permits a party discovering fraud against the United States to bring matter to attention of Attorney General, who may pursue a suit for benefit of the United States, and alternatively, if Attorney General declines, private party may proceed. U.S. ex rel. Mikes v. Straus, S.D.N.Y.1994, 853 F.Supp. 115. United States 122

Whistleblower protection provision of False Claims Act prohibited discrimination against employee who made intracorporate complaint about fraud against the government, even when no lawsuit was ever filed either by whistleblower, by another informer as qui tam relator, or by government. Neal v. Honeywell, Inc., N.D.Ill.1993, 826 F.Supp. 266, affirmed 33 F.3d 860. Labor And Employment 778

State and former State Attorney General had standing to bring qui tam action, under the provisions of amended False Claims Act, against contractor on federally funded highway construction project; state had conducted extensive investigation of contractor's alleged fraudulent practices and thus had a direct relationship, or interest in, the claims. U.S. ex rel. Hartigan v. Palumbo Bros., Inc., N.D.Ill.1992, 797 F.Supp. 624. United States 122

Qui tam provisions of False Claims Act did not abrogate Article III standing requirements; relator brought suit in the name of and on behalf of the Government and thus had standing by suing in the place of the Government, statutory bounty gave relator sufficient personal stake in outcome of litigation to ensure the genuine adverseness of the litigation, federal court was not forced to perform an executive or legislative function by recognizing a qui tam plaintiff, and, historically, there had been no constitutional challenges to qui tam relator's standing. U.S. Dept. of Housing and Urban Development ex rel. Givler v. Smith, E.D.Pa.1991, 775 F.Supp. 172. United States 122

Plaintiff was not entitled to relief under “whistleblower” provision of False Claims Amendments Act, despite her claim that she lost commissions because of her refusal to participate in defendant's alleged scheme to evade income taxes; that provision is expressly limited to “employees,” and complaint did not allege that plaintiff was employee of any of defendants, but rather, that plaintiff was, if anything, independent contractor or partner of one or more of defendants. Hardin v.

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DuPont Scandinavia (ARA-JET), S.D.N.Y.1990, 731 F.Supp. 1202. United States 122

Nonprofit corporation that learned about alleged wrongful activities at nuclear weapons plant from employee of government contractor was not proper party to bring qui tam action challenging such activities under False Claims Act. U.S. v. Rockwell Intern. Corp., D.Colo.1990, 730 F.Supp. 1031. United States 122

The False Claims Act confers upon *quitam* relators standing to bring suit, satisfying the case or controversy of requirement under Article III of the Constitution. U.S. ex rel. Newsham v. Lockheed Missiles and Space Co., Inc., N.D.Cal.1989, 722 F.Supp. 607. Malicious Prosecution 41

The government was unable to sue defendant under this chapter in its own right; thus, a United States-African cultural council was unable to sue under this chapter. U.S. ex rel. U.S.-Namibia (Southwest Africa) Trade & Cultural Council, Inc. v. Africa Fund, S.D.N.Y.1984, 588 F.Supp. 1350. United States 120.1

Under former § 232 of this title, qui tam plaintiff became “person aggrieved” by defendants' purported behavior who had suffered “injury” of constitutional magnitude required to confer upon him a claim against the defendants; qui tam plaintiff therefore stood in position of “private attorneys general” whom Congress had “deputized” to enforce federal law. Public Interest Bounty Hunters v. Board of Governors of Federal Reserve System, N.D.Ga.1982, 548 F.Supp. 157. Forfeitures 5

Congress intended that, assuming inapplicability of jurisdictional bar, informer could have pursued his claims under former § 231 et seq. of this title should government have declined to prosecute. U. S. ex rel. Weiss v. Schwartz, N.D.Cal.1982, 546 F.Supp. 422. United States 122

Tennessee Valley Authority, which was corporation wholly owned by United States, was for purposes of suit for damages under § 15 of Title 15 and former § 231 [now § 3729] of this title, entity distinct from United States, and Authority was not precluded from bringing suit for civil damages on ground that it was integral part of United States government. U.S. v. General Elec. Co., E.D.Pa.1962, 209 F.Supp. 197. United States 53(14)

Private citizen, in his own behalf and in behalf of United States, was not authorized to maintain suit against government officials charged with enforcement of revenue laws to recover penalties for alleged connivance and scheming with taxpayer to circumvent revenue laws and relieve taxpayer from payment of taxes. U.S. ex rel. Boyd v. McMurtry, W.D.Ky.1933, 5 F.Supp. 515. Internal Revenue 5229

No cause of action existed under False Claims Act (FCA) for a private employee to bring action against a private employer; FCA only addressed fraud against federal government. Hayes v. Danarb Food Group, C.A.6 (Ky.) 2002, 43 Fed.Appx. 843, 2002 WL 1822897, Unreported. United States 120.1

Former Medicare hearing officer was independent contractor, not employee, of Medicare insurer, and thus officer did not have standing to maintain retaliation claim under the False Claims Act (FCA) against insurer; officer required no training

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from insurer, provided bulk of his own supplies, largely controlled location of his work, enjoyed discretion to decline additional projects from insurer, and enjoyed significant discretion in setting his own hours and vacation. U.S. ex rel. Watson v. Connecticut General Life Ins. Co., C.A.3 (Pa.) 2004, 87 Fed.Appx. 257, 2004 WL 234970, Unreported. Labor And Employment 857

92. ---- Government employees, persons entitled to maintain action, practice and procedure generally

Senior auditor for Department of the Interior's Minerals Management Service (MMS) was not prevented from serving as a relator in qui tam False Claims Act suit against federal oil-and-gas lessee on the basis that he was a federal auditor who discovered the information underlying his suit in his official governmental role. U.S. ex rel. Maxwell v. Kerr-McGee Oil & Gas Corp., C.A.10 (Colo.) 2008, 540 F.3d 1180. United States 122

Federal employee who participated in a government investigation pursuant to her job duties was not, at least while the investigation was ongoing, a “person” entitled to bring a civil action under False Claims Act; allowing a qui tam action to proceed where the relator was a government employee acting as part of an ongoing investigation would destroy the statute's distinction between the government and relator, would contravene the purpose of the Act, and would create impermissible conflicts of interest for federal employees pursuing such suits. U.S. ex rel. Holmes v. Consumer Ins. Group, C.A.10 (Colo.) 2002, 279 F.3d 1245, opinion vacated on rehearing en banc 318 F.3d 1199. United States 122

False Claims Act does not prevent government employees from bringing qui tam actions based on information acquired during course of their employment but not as result of government hearing, investigation, or audit or through news media. U.S. ex rel. LeBlanc v. Raytheon Co., Inc., C.A.1 (Mass.) 1990, 913 F.2d 17, rehearing denied, certiorari denied 111 S.Ct. 1312, 499 U.S. 921, 113 L.Ed.2d 246, rehearing denied 112 S.Ct. 17, 501 U.S. 1270, 115 L.Ed.2d 1101. United States 122

Senior auditor for Department of the Interior's Minerals Management Service (MMS) qualified as “person” within meaning of False Claims Act, that is, he was not categorically barred from acting as relator in suit alleging federal oil lessee's fraudulent underpayment of royalties to government; auditor's status as federal employee, fact that his suit stemmed from results of MMS audit that he had supervised, and fact that reporting of fraud was one of his main job duties, did not preclude relator status. U.S., ex rel. Maxwell v. Kerr-McGee Oil & Gas Corp., D.Colo.2007, 486 F.Supp.2d 1217, stay denied 486 F.Supp.2d 1233, motion to amend denied 2007 WL 1686734, reversed and remanded 540 F.3d 1180. United States 122

Inspector General (IG) employees are not per se barred from bringing qui tam actions under the False Claims Act (FCA) based on information obtained during the course of their employment as IG employees. U.S. ex rel. Fine v. MK-Ferguson Co., D.N.M.1994, 861 F.Supp. 1544, affirmed 99 F.3d 1538. United States 122

93. ---- Injury, persons entitled to maintain action, practice and procedure generally

United States' injury in fact conferred standing on relator to bring qui tam civil action under False Claims Act (FCA). Vermont Agency of Natural Resources v. U.S. ex rel. Stevens, U.S.Vt.2000, 120 S.Ct. 1858, 529 U.S. 765, 146 L.Ed.2d 836. United States 122

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Office of Inspector General (OIG) report recommending that no action be taken against university under False Claims Act was not admission by United States that it had suffered no injury in fact so as to bar subsequent qui tam action on grounds of lack of standing; report merely indicated that cost to government of proceeding on realtor's claims outweighed potential benefits. U.S. ex rel. Berge v. Board of Trustees of the University of Alabama, C.A.4 (Md.) 1997, 104 F.3d 1453, 41 U.S.P.Q.2d 1481, certiorari denied 118 S.Ct. 301, 522 U.S. 916, 139 L.Ed.2d 232. United States 122

False Claims Act does not violate Article III of the Constitution by granting standing to private individuals to bring qui tam suit on the government's behalf when such individuals have not personally suffered actual or threatened injury; private party is invoking standing of the government and has requisite personal stake in outcome by reason of funding prosecution of suit, potential receipt of share in government's recovery, and potential liability for costs. U.S. ex rel. Kreindler & Kreindler v. United Technologies Corp., C.A.2 (N.Y.) 1993, 985 F.2d 1148, certiorari denied 113 S.Ct. 2962, 508 U.S. 973, 125 L.Ed.2d 663. Federal Courts 13; United States 122

In qui tam action under False Claims Act, the government and not the relator must have suffered “injury in fact” required for Article III standing. U.S. ex rel. Milam v. University of Texas M.D. Anderson Cancer Center, C.A.4 (Md.) 1992, 961 F.2d 46. United States 122

Absent presentation of facts showing that member of Congress had sustained or was eminently in danger of sustaining actual personal injury, member of Congress had no standing to sue seeking to enjoin the National Commission on the Observance of International Women's Year from spending federal funds for allegedly prohibited lobbying activities. Hansen v. National Commission on Observance of Intern. Women's Year, C.A.9 (Idaho) 1980, 628 F.2d 533. Federal Civil Procedure 103.6

Private plaintiff who sought to bring qui tam action under False Claims Act against health care providers, who had allegedly filed false claims for Medicare and Medicaid reimbursement, did not suffer injury-in-fact, and thus lacked standing under Article III to bring action; no injury to a cognizable interest that was concrete and particularized had been alleged, and even if there was injury, there was no causal connection between injury and conduct complained of. U.S. ex rel. Riley v. St. Luke's Episcopal Hosp., S.D.Tex.1997, 982 F.Supp. 1261, affirmed 196 F.3d 514, rehearing granted , opinion vacated 196 F.3d 561, on rehearing 252 F.3d 749. United States 122

Government's alleged injury as result of helicopter manufacturer's allegedly fraudulent concealment of unilateral design change in blade fold system was sufficient to confer standing on law firm bringing qui tam proceeding under False Claims Act after firm had represented wife of helicopter crash victim in wrongful death action. U.S., ex rel. Kreindler & Kreindler v. United Technologies Corp., N.D.N.Y.1991, 777 F.Supp. 195, affirmed 985 F.2d 1148, certiorari denied 113 S.Ct. 2962, 508 U.S. 973, 125 L.Ed.2d 663. United States 122

Where presence of injury to Government was not disputed, private citizen bringing qui tam action under False Claims Act was not required to establish that he, too, was injured in fact. U.S. ex rel. Truong v. Northrop Corp., C.D.Cal.1989, 728 F.Supp. 615. United States 122

94. ---- Original source, persons entitled to maintain action, practice and procedure generally

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Qui tam relator's knowledge with respect to insolid "pondcrete" created by government contractor that operated nuclear weapons plant fell short of the "direct and independent knowledge of the information on which the allegations are based" required for him to qualify as "original source" under False Claims Act (FCA) provision setting forth exception to public-disclosure bar on federal-court jurisdiction; only false claims found by jury involved insolid pondcrete discovered after relator left his employment, relator thus did not know that pondcrete had failed but, rather, he predicted it, and relator's prediction that pondcrete would be insolid due to flaw in piping system was a failed one, as contractor had been able to produce "concrete hard" pondcrete using machinery that relator said was defective and the insolidarity problem apparently was caused instead by new foreman's reduction of cement-to-sludge ratio long after relator had left the plant. Rockwell Intern. Corp. v. U.S., U.S.2007, 127 S.Ct. 1397, 549 U.S. 457, 167 L.Ed.2d 190, rehearing denied 127 S.Ct. 2300, 550 U.S. 954, 167 L.Ed.2d 1128, on remand 492 F.3d 1157. United States 122

While False Claims Act (FCA) does not impose a strict tracing rule that would require relator to trace allegations from disclosing agency back through government bureaucracy to relator, to qualify as an "original source," plaintiff must have direct and independent knowledge of information on which allegations are based; i.e., plaintiff need not establish herself as the original source of publicly disclosed information but must establish that she is an original source in that she had direct and independent knowledge of the information on which she is basing her FCA claim. Battle v. Board of Regents for Georgia, C.A.11 (Ga.) 2006, 468 F.3d 755. United States 122

Original source exception did not apply to save relator's qui tam suit under False Claims Act (FCA) from public disclosure bar arising from news reports and audits of teaching hospitals for Medicare double billing, notwithstanding his claim of direct and independent knowledge of improper billing practices at teaching hospital by virtue of his service in hospital, where relator had not provided information to government before filing suit. U.S. v. Emergency Medical Associates of Illinois, Inc., C.A.7 (Ill.) 2006, 436 F.3d 726, rehearing and rehearing en banc denied. United States 122

Relator in False Claims Act qui tam action concerning Medicare reimbursement fraud did not become "original source" of several publicly disclosed documents upon which action was based, including Healthcare Financing Administration (HCFA) statistical reports, criminal indictments, and court filings from relator's own previous qui tam actions, simply by obtaining and reviewing documents together in order to reach conclusion about corporation under contract with HCFA to approve reimbursement claims. U.S. ex rel. Feingold v. AdminaStar Federal, Inc., C.A.7 (Ill.) 2003, 324 F.3d 492, rehearing and suggestion for rehearing en banc denied. United States 122

For purposes of determining who may bring False Claims Act qui tam suit, all those who either directly or indirectly disclose allegations of fraud on government might qualify as "original source" of allegations for purposes of False Claims Act, and anyone who helped to report allegation to either government or media would have indirectly helped to publicly disclose it; however, someone who republishes allegation that already has been publicly disclosed cannot bring qui tam suit, even if he had direct and independent knowledge of fraud. Wang v. FMC Corp., C.A.9 (Cal.) 1992, 975 F.2d 1412. United States 122

Relator was not an "original source" of publicly disclosed information upon which his False Claims Act (FCA) claims were based because he could not establish direct and independent knowledge of the information on which his allegations were based prior to the Department of Labor's (DOL) response to his Freedom of Information Act (FOIA). request. U.S. ex rel. Kirk v. Schindler Elevator Corp., S.D.N.Y.2009, 606 F.Supp.2d 448. United States 122

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Administrator of estate of deceased qui tam relator was not barred from being substituted as relator in False Claims Act (FCA) action on grounds that administrator was not the original source of the allegations underlying the claim, which had already been disclosed to the public through the filing and unsealing of the action, since relator had alleged personal knowledge of the events alleged in his complaint, there was no indication that the action was based on publicly disclosed allegations, and, as substitute, administrator was not litigating on her own behalf but instead stood in the shoes of the decedent relator. U.S. ex rel. Colucci v. Beth Israel Medical Center, S.D.N.Y.2009, 603 F.Supp.2d 677. United States 122

Although District of Columbia audit publicly disclosed that $15 million of costs incurred for services rendered to special education students were disallowed for Medicaid reimbursement due to the absence or unavailability of supporting documentation, relator was “original source” of his claim that District of Columbia and the District of Columbia Public School System violated the False Claims Act (FCA) by submitting a claim for Medicaid reimbursement without maintaining documentation adequate to support that cost claim, and thus, relator's FCA action against the District was not barred by the public disclosure; relator had direct and independent knowledge of an essential element of his claim, namely that District lacked documentation for the cost claim, and relator had voluntarily disclosed that information to the government. U.S. ex rel. Davis v. District of Columbia, D.D.C.2008, 591 F.Supp.2d 30.

Relator's allegations that complaint was based solely upon information he learned and saw with his own eyes during time he was employed by pharmaceutical company were sufficient to establish that relator had direct and independent knowledge of average wholesale price (AWP)-based rebate fraud allegation, as required to determine that he was original source of AWP-fraud allegation, for purposes of federal district court's subject matter jurisdiction over relator's claims that pharmaceutical company used rebates to market spread between what hospital paid for drug and what it would be reimbursed by Medicare and Medicaid and failed to account for rebates when reporting AWP, in violation of False Claims Act. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2008, 538 F.Supp.2d 367. United States 122

Although qui tam relator that had brought False Claims Act (FCA) action alleging that contractors had engaged in a conspiracy to rig multiple United States Agency for International development (USAID) contracts in Egypt had only set forth claims in his original complaint arising out of one contract, relator was “original source” for claims subsequently brought by the United States regarding two additional contracts, as required for relator to bring claims regarding those contracts; relator was the first to allege that a conspiracy to rig multiple contracts existed, relator indicated that further discovery would uncover evidence that other contracts were similarly fraudulent, thereby giving rise to additional claims on those contracts, and relator named in his original complaint all of the defendants still present before the court. U.S. ex rel. Miller v. Bill Harbert Intern. Const., Inc., D.D.C.2007, 519 F.Supp.2d 7. United States 122

Relator did not qualify as original source of information that natural gas companies had underpaid royalties on gas purchased from federally owned or Indian lands, and thus relator's qui tam claims against companies were precluded by False Claims Act's (FCA) public disclosure bar, even though relator had conducted independent investigation and research about industry measurement practices, where relator did not disclose his well inspections or laboratory interviews to government before filing suit, relator had no knowledge as to what defendants reported to federal government for royalty purposes, nearly all of relator's discussion of gas measurement practices reiterated information already in public domain, relator's conclusions regarding widespread use of mismeasurement practices were based almost entirely on inform-

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ation from third parties, and relator did not specify in his pre-filing disclosures to government what knowledge he derived from his relationships with defendants. In re Natural Gas Royalties Qui Tam Litigation, D.Wyo.2006, 467 F.Supp.2d 1117, affirmed in part 562 F.3d 1032, certiorari denied 2009 WL 2444790. United States 122

In order to be "original source" for purposes of False Claims Act (FCA), qui tam plaintiff must have direct and independent knowledge of circumstances constituting alleged fraud; third party cannot be source of core information underlying allegations. U.S. ex rel. Smith v. Yale-New Haven Hosp., Inc., D.Conn.2005, 411 F.Supp.2d 64, on reconsideration 2006 WL 387297. United States 122

Allegations of the later filed action need not be identical to those of the earlier filed action in order to be barred by False Claims Act's first to file rule. U.S. ex rel. Walburn v. Lockheed Martin Corp., S.D.Ohio 2004, 312 F.Supp.2d 936, affirmed 431 F.3d 966, rehearing and rehearing en banc denied. United States 122

Qui tam plaintiff who brought action alleging that nursing home owner falsified patient records in order to obtain federal Medicare reimbursement, could not qualify for original source exemption under False Claims Act's public disclosure bar; plaintiff was not involved in prior lawsuit, in which nursing home patient alleged that nursing home employees had falsified federally mandated forms. U.S. ex rel. Swan v. Covenant Care, Inc., E.D.Cal.2002, 279 F.Supp.2d 1212. United States 122

Investigator for the state was an original source of information regarding activities allegedly undertaken by a state agency in furtherance of a scheme to make false claims to the United States, as required to maintain a qui tam action, even though the state claimed that he received information from other people, in his capacity as coordinator of a state investigation into a proprietary school allegedly making false claims, and did not know the information directly, and that the information was not supplied voluntary because he had a duty to disclose it; the investigator acquired the information through his own efforts, and it was the obligation of the state attorney general to inform federal authorities. U.S. ex rel. Long v. SCS Business & Technical Institute, D.D.C.1998, 999 F.Supp. 78, reversed 173 F.3d 870, 335 U.S.App.D.C. 331 , supplemented 173 F.3d 890, 335 U.S.App.D.C. 351, certiorari denied 120 S.Ct. 2194, 530 U.S. 1202, 147 L.Ed.2d 231. United States 122

Corporate officer of bus line was an "original source," for purposes of qui tam action under False Claims Act (FCA) against city that owned and operated transit system; officer had knowledge of extent of city's compliance with federal transit regulations, officer's knowledge of city's offending bus service did not derive from prior public disclosure, and officer provided information resulting from his own investigation to Federal Transit Administration (FTA) on several occasions prior to filing of action. U.S. ex rel. Lamers v. City of Green Bay, E.D.Wis.1998, 998 F.Supp. 971, affirmed 168 F.3d 1013. United States 122

Original source requirement for private person to bring qui tam action under False Claims Act based upon public disclosure of allegations or transactions goes to standing of private person to maintain the action. U.S. ex rel. Stone v. Rockwell Intern. Corp., D.Colo.1992, 144 F.R.D. 396. United States 122

95. ---- Public disclosure, persons entitled to maintain action, practice and procedure generally

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Term “allegations,” as used in the section of the False Claims Act (FCA) defining “original source” as requiring, inter alia, that the relator have direct and independent knowledge of the information on which the allegations are based, for purposes of the FCA's original-source exception to the public-disclosure bar on federal-court jurisdiction, is not limited to the allegations in the relator's original complaint, but includes, at a minimum, the allegations in the original complaint as amended. Rockwell Intern. Corp. v. U.S., U.S.2007, 127 S.Ct. 1397, 549 U.S. 457, 167 L.Ed.2d 190, rehearing denied 127 S.Ct. 2300, 550 U.S. 954, 167 L.Ed.2d 1128, on remand 492 F.3d 1157. United States 122

Transfer of information between a federal employee and a state government auditor who is under a duty of confidentiality is not a “public disclosure” under the False Claims Act (FCA) and therefore does not deprive the courts of jurisdiction, insofar as the communication does not release the information into the public domain such that it is accessible to the general population. U.S. ex rel. Maxwell v. Kerr-McGee Oil & Gas Corp., C.A.10 (Colo.) 2008, 540 F.3d 1180. United States 122

State university employee's False Claims Act (FCA) claims were barred; employee's allegations were based chiefly on audits performed by the State of Georgia Department of Audits and Accounts and thus relied on “public disclosure” of allegations, and employee did not provide district court with specific facts showing that she had direct and independent knowledge of audit findings on which she based her FCA claims, so as to establish herself as an “original source” of the publicly disclosed information. Battle v. Board of Regents for Georgia, C.A.11 (Ga.) 2006, 468 F.3d 755. United States 122

Document received in response to Freedom of Information Act (FOIA) request is not necessarily administrative report or investigation, and thus not automatically a “public disclosure” within meaning of False Claims Act's (FCA) public-disclosure jurisdictional bar against qui tam actions; instead, whether document constitutes public disclosure for purposes of jurisdictional bar depends on whether it is from source enumerated in FCA section that details criteria for application of bar. U.S. v. Catholic Healthcare West, C.A.9 (Ariz.) 2006, 445 F.3d 1147, certiorari denied 127 S.Ct. 725, 549 U.S. 1077, 166 L.Ed.2d 561, certiorari denied 127 S.Ct. 730, 549 U.S. 1077, 166 L.Ed.2d 561. United States 122

Public disclosure bar applied to emergency room resident's qui tam action under False Claims Act (FCA) claiming that hospital double billed Medicare for work of residents, given prior nationwide news reports, investigation, and audits of how teaching hospitals billed Medicare for services provided by residents, notwithstanding resident's claim that basis for suit was his personal observations. U.S. v. Emergency Medical Associates of Illinois, Inc., C.A.7 (Ill.) 2006, 436 F.3d 726, rehearing and rehearing en banc denied. United States 122

False Claims Act's prior public disclosure rule barred employee's qui tam action alleging that operator of government-owned uranium enrichment plant falsified dosage readings obtained from dosimeters worn by employees, resulting in operator's receipt of payments and accreditation to operate the plant from the United States by false means, since qui tam action was based upon information previously disclosed to government in employee's prior civil action against operator and employee was not an original source; in employee's civil action he alleged that operator altered or destroyed dosimeter records, and employee did not report alleged fraud to government before filing civil suit so he was not an original source. Walburn v. Lockheed Martin Corp., C.A.6 (Ohio) 2005, 431 F.3d 966, rehearing and rehearing en banc denied. United States 122

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Information on volume of carbon dioxide reported on monthly basis to Colorado Oil and Gas Conservation Commission (COGC), information on wellhead and tailgate volumes provided by private service that collected, organized, and reported information submitted by oil and gas producers to government, and copy of letter, as administrative report, from Department of Interior Minerals Management Service (MMS) in response to relator's request under Freedom of Information Act (FOIA), were publicly disclosed allegations and transactions, for purpose of relator's complaint under False Claims Act (FCA). U.S. ex rel. Grynberg v. Praxair, Inc., C.A.10 (Colo.) 2004, 389 F.3d 1038, certiorari denied 125 S.Ct. 2964, 545 U.S. 1139, 162 L.Ed.2d 888, on subsequent appeal 183 Fed.Appx. 724, 2006 WL 1531413. United States 122

Healthcare Financing Administration (HCFA) statistical reports, showing number of allegedly fraudulent Medicare reimbursement claims approved by corporations that contracted with HCFA to approve or disapprove such claims, were placed in public domain and thus constituted "public disclosure" for purposes of False Claims Act provision barring qui tam actions "based upon the public disclosure of allegations or transactions," regardless of whether particular government attorney was aware of information in reports. U.S. ex rel. Feingold v. AdminaStar Federal, Inc., C.A.7 (Ill.) 2003, 324 F.3d 492, rehearing and suggestion for rehearing en banc denied. United States 122

Public disclosure exception to qui tam action under the False Claims Act does not prohibit all government employees from bringing qui tam actions simply because those actions are based upon information acquired by government employees in course of employment. U.S. ex rel. Williams v. NEC Corp., C.A.11 (Fla.) 1991, 931 F.2d 1493. United States 122

Although city's issuance of zoning variance to developer authorizing construction of apartment building was not publicly disclosed within the meaning of the False Claims Act (FCA), that fact did not preclude application of the public disclosure bar to deprive the court of jurisdiction over qui tam relator's action against city and its mayor, alleging that defendants made false statements to the Department of Housing and Urban Development (HUD) in connection with the city's application for federal funds; even if relator were able to prove that the variance was granted after the developer stated that the proposed residential units would be "affordable" but not "subsidized," that fact would not support an inference that the defendants were opposed to "affordable" housing but misrepresented this opposition in their HUD applications for funds. U.S. ex rel. Ondis v. City of Woonsocket, R.I., D.R.I.2008, 582 F.Supp.2d 212. United States 122

Relator's qui tam action against hospital under False Claims Act (FCA), alleging, as a predicate violation, a Medicare fraud scheme in violation of Stark Act concerning hospital's entry of below-market leases with doctors and physicians groups who would, in turn, refer more patients to hospital facilities, was not based upon public disclosures made in prior litigation against hospital, as would bar qui tam action under FCA; prior litigation had made no mention of the FCA and did not mention Medicare. U.S. ex rel. Smart v. Christus Health, S.D.Tex.2009, 626 F.Supp.2d 647. United States 122

False Claims Act (FCA) causes of action added by amendment were "based upon" a prior public disclosure for purposes of FCA's public disclosure provision; relator's amended claims revealed specific instances of Medicare fraud at certain District of Columbia facilities after the general fraudulent practices had already been publicly disclosed in newspaper article alleging fraud across the District of Columbia system. U.S. ex rel. Hockett v. Columbia/HCA Healthcare Corp., D.D.C.2007, 498 F.Supp.2d 25, reconsideration denied 587 F.Supp.2d 757. United States 122

Relator's initial qui tam complaints alleging that natural gas companies underpaid royalties on gas purchased from federally owned or Indian lands triggered False Claims Act's (FCA) public disclosure bar as to all companies that purchased

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gas from federal and Indian lands, not just companies specifically named in complaints and their affiliates, even though documents filed in first action did not allege industry-wide fraud or link companies named in second action with particular mismeasurement technique, where alleged mismeasurements occurred at government controlled and approved facilities, legislative branch and executive branch inspectors had actually inspected measurement equipment at meters that were subject of relator's allegations, and second complaint identified nearly all gas measurers in industry not named in first complaint. In re Natural Gas Royalties Qui Tam Litigation, D.Wyo.2006, 467 F.Supp.2d 1117, affirmed in part 562 F.3d 1032, certiorari denied 2009 WL 2444790. United States 122

Public disclosure bar did not entirely prohibit False Claims Act (FCA) claim alleging a scheme to give kickbacks in the form of free samples, off-invoice discounts, rebates, consulting fees, educational grants, payments to participate in studies or trials and advisory board honoraria to providers and hospitals to induce them to prescribe manufacturer's drug; although kickback allegations were the same as those alleged in prior litigation, relator, whose knowledge of the alleged fraud was both independent and direct, qualified as an original source, but only with regard to allegations as to the time he was employed by manufacturer. U.S. ex rel. Duxbury v. Ortho Biotech Products, L.P., D.Mass.2008, 551 F.Supp.2d 100, affirmed in part , reversed in part 579 F.3d 13. United States 122

Exception from False Claims Act (FCA) allowance of qui tam actions, when claims were based on information obtained from “administrative report,” applied only to reports generated by federal government, and did not preclude action by advocacy group, alleging insufficient effort by county to identify and address barriers to fair housing as required by Fair Housing Act, when suit was based on information received from county under New York Freedom of Information Law. U.S. ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York, S.D.N.Y.2007, 495 F.Supp.2d 375, motion to certify appeal denied 2007 WL 2402997. United States 122

Relator's qui tam action was not precluded on ground that information that formed basis of his complaint had been disclosed in response to relator's Kentucky Open Records Act (ORA) request, absent evidence that information received in Kentucky ORA requests qualified as a source enumerated in the FCA that triggered the public disclosure bar. U.S. v. Solinger, W.D.Ky.2006, 457 F.Supp.2d 743, issued 2006 WL 3085610, subsequent determination. United States 122

Relator's qui tam action was not “derived from” pharmaceutical companies' disclosures to Office of Inspector General (OIG), Food and Drug Administration (FDA), and Department of Justice (DOJ) officials regarding the off-label marketing of a human growth hormone, and consequently relator's claims were not jurisdictionally barred by the False Claims Act's (FCA) public disclosure bar; relator's complaint derived from his own independent investigation of the companies' off-label marketing scheme, and from his personal knowledge of their activities, and, furthermore, relator had no knowledge of companies' disclosures to the various government officials. U.S. ex rel. Rost v. Pfizer Inc., D.Mass.2006, 446 F.Supp.2d 6, affirmed in part , vacated in part 507 F.3d 720, on remand 253 F.R.D. 11. United States 122

Documents/allegations in the United States' possession at the time relator filed its qui tam suit, whether or not characterized as “evidence,” were sufficient to enable United States adequately to investigate the case and to make a decision whether to prosecute, and therefore qui tam action was barred by former statute barring qui tam suits based upon information in the government's possession. Makro Capital of America, Inc. v. UBS AG, S.D.Fla.2006, 436 F.Supp.2d 1342, reconsideration denied 2006 WL 4448860, affirmed 543 F.3d 1254. United States 122

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Relator who brought qui tam action under the False Claims Act (FCA) alleging that hospital engaged in fraudulent billing could not, as a matter of law, claim to be the original source of information obtained from third parties, and thus FCA's public disclosure provision precluded jurisdiction over allegations in complaint based on such information. U.S. ex rel. Smith v. Yale University, D.Conn.2006, 415 F.Supp.2d 58. United States 122

News articles published before former employee filed complaint under False Claims Act (FCA) based on government contractor's hiring of influence peddlers to secure foreign contracts detailed substantially similar allegations outlined in employee's complaint, and thus there was "public disclosure" of employee's allegations triggering FCA's jurisdictional bar, even though employee identified specific regulations that were allegedly violated and government was not actually pursuing litigation against contractor, where articles made same allegations of bribery and other misconduct regarding specific foreign sales agents as employee, articles suggested that scope of misconduct was widespread, government had sufficient information to enable it to pursue investigation into employee's allegations, and employee was not original source of information contained in reports. U.S. ex rel. Longstaffe v. Litton Industries, Inc., C.D.Cal.2003, 296 F.Supp.2d 1187. United States 122

Complaint by chiropractor alleging lessor of medical device induced him to file false Medicare reimbursement claims for treatments using device was "based on" public disclosure, in prior lawsuit, as well as in grand jury subpoena and Freedom of Information Act (FOIA) report, as would be jurisdictional bar to qui tam action under False Claims Act if chiropractor was not original source of information; suit prior to action by chiropractor had alleged that lessor induced class members to acquire device by misrepresenting that Medicare would pay for treatments given patients with device. U.S. ex rel. Paranich v. Sorgnard, M.D.Pa.2003, 286 F.Supp.2d 445, affirmed 396 F.3d 326. United States 122

Existence of earlier United States Agency for International Development (USAID) investigation of contractor that supplied support services to USAID center, for allegedly performing work outside scope of contract, did not invoke public disclosure bar of False Claims Act so as to preclude qui tam action brought by former employee of contractor's successor; contractor and successor were separate companies that filed separate claims, and even if successor's alleged fraudulent charges were similar to contractor's earlier-disclosed conduct, fraud perpetrated on center was not so widespread and notorious that successor was easily identifiable as perpetrator of fraud. U.S. ex rel. Mossey v. Pal-Tech, Inc., D.D.C.2002, 231 F.Supp.2d 94. United States 122

State environmental agency's investigation of government contractor did not result in public disclosure of information which would have precluded private individuals from bringing False Claims Act (FCA) action against contractor; investigation was not completed at time FCA action was filed, there was no evidence to suggest that documents would have disclosed allegations of complaint or even created part of filing of complaint, and agency's conclusion was that allegations were groundless. U.S. ex rel. Fallon v. Accudyne Corp., W.D.Wis.1995, 921 F.Supp. 611. United States 122

Qui tam relator was not barred from bringing action under False Claims Act with respect to allegedly false statements on grant applications, even though information had been disclosed to government before action was brought, where disclosure was made to government after 1986 amendment to Act, under which public disclosure of information rather than government's awareness of information will bar qui tam relator's suit; no basis existed for applying pre-1986 law to post-1986 disclosures. U.S. ex rel. Milam v. Regents of University of California, D.Md.1995, 912 F.Supp. 868. United States 122

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To maintain qui tam action under False Claims Act, relator must have directly or indirectly reported allegations to either government or media before information became public knowledge. U.S. ex rel. Eitel v. Evergreen Intern. Airlines, Inc., W.D.Wash.1995, 886 F.Supp. 750. United States 122

96. ---- Retaliation claims, persons entitled to maintain action, practice and procedure generally

Employee of real estate corporation satisfied requirement for bringing retaliation claim under False Claims Act, that she was engaging in conduct protected by Act; she instructed independent auditor approved by Department of Housing and Urban Development (HUD), which was providing funding to corporation, to review family members' time cards because she knew them to be inaccurate, which could be considered initiation of government investigation into fraud. Robinson v. Jewish Center Towers, Inc., M.D.Fla.1998, 993 F.Supp. 1475. Labor And Employment 778

Medicare hearing officer was independent contractor, not employee, of Medicare insurer, and thus officer did not have standing to maintain retaliation claim, under the False Claims Act (FCA), against insurer; other than requesting that officer hold hearings in insurer's facilities whenever possible, insurer did not exercise any control over the manner in which officer performed his work, officer was not provided any employee benefits, the parties' employment agreements specifically stated that officer was independent contractor, and officer filed taxes as self-employed individual. U.S. ex rel. Watson v. Connecticut General Life Ins. Co., E.D.Pa.2003, 2003 WL 303142, Unreported, affirmed 87 Fed.Appx. 257, 2004 WL 234970. Labor And Employment 857

97. Real party in interest, practice and procedure generally

United States, rather than relator, was real party in interest in qui tam action brought under False Claims Act, and thus non-lawyer relator could not bring qui tam action pro se. U.S. ex rel. Mergent Services v. Flaherty, C.A.2 (N.Y.) 2008, 540 F.3d 89. United States 122

In an action by a private person under the False Claims Act, the United States is the real party in interest because of its significant control over the course of the litigation and its dominant share of the proceeds thereof. U.S. ex rel. Zissler v. Regents of University of Minnesota, C.A.8 (Minn.) 1998, 154 F.3d 870. United States 122

United States is the real party in interest in any False Claims Act suit even where it permits qui tam relator to pursue action on its behalf, and thus a defendant state entity is not entitled to Eleventh Amendment immunity. U.S. ex rel. Milam v. University of Texas M.D. Anderson Cancer Center, C.A.4 (Md.) 1992, 961 F.2d 46. Federal Courts 265

The United States was a real “party in interest” in civil action by the United States on the relation of an informer to recover penalties and damages for making false claim against the United States and as such was entitled to appear and be heard in protection of its interests. U.S. v. Baker-Lockwood Mfg. Co., C.C.A.8 (Mo.) 1943, 138 F.2d 48. United States 135

Lay relator in a qui tam False Claims Act (FCA) lawsuit may not proceed pro se; lay relator needs qualified legal counsel to ensure that real party in interest, United States, is adequately represented. U.S. ex rel. Rockefeller v. Westinghouse Elec. Co., D.D.C.2003, 274 F.Supp.2d 10, affirmed 2004 WL 180264, rehearing and rehearing en banc denied , certiorari

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denied 125 S.Ct. 60, 543 U.S. 820, 160 L.Ed.2d 29. United States 122

Former employee of medical research institute had standing to bring qui tam action on behalf of United States, alleging that institute engaged in misconduct in implementing federal research grant in violation of False Claims Act (FCA); United States was real party in interest in qui tam action. U.S. ex rel. Chandler v. Hektoen Institute for Medical Research, N.D.Ill.1999, 35 F.Supp.2d 1078, on reconsideration in part 118 F.Supp.2d 902, reversed 277 F.3d 969, mandate stayed 282 F.3d 448, certiorari granted 122 S.Ct. 2657, 536 U.S. 956, 153 L.Ed.2d 833, affirmed 123 S.Ct. 1239, 538 U.S. 119, 155 L.Ed.2d 247, on remand 2003 WL 22284199. United States 122

98. Indispensable parties, practice and procedure generally

Defaulting borrowers were not indispensable defendants in action against defendants who had allegedly procured Federal Housing Administration [now Department of Housing and Urban Development] insurance by means of false statements. U. S. v. Globe Remodeling Co., D.C.Vt.1960, 196 F.Supp. 652. United States 120.1

99. Joinder of parties, practice and procedure generally

Provision of False Claims Act, prohibiting persons other than United States from intervening or bringing related action based on facts underlying pending action, does not automatically bar addition of new parties; intervening party may avoid such provision's bar either by being related to original plaintiff or sharing common question of law or fact with original plaintiff. U.S. ex rel. Sanders v. East Alabama Healthcare Authority, M.D.Ala.1996, 953 F.Supp. 1404. United States 122

Qui tam provisions of False Claims Act do not require federal government to either prosecute qui tam plaintiff's action as whole or to decline to prosecute; government may elect to proceed in “hybrid” fashion by declining to proceed against certain defendants and moving to dismiss others. Juliano v. Federal Asset Disposition Ass'n (FADA), D.D.C.1990, 736 F.Supp. 348, affirmed 959 F.2d 1101, 295 U.S.App.D.C. 97. United States 122

In civil action brought under former § 231 [now § 3729] of this title, to recover losses suffered by United States as a result of having been defrauded by defendant in his dealings with Department of Housing and Urban Development by making false statements, court denied defendant's motion for an order allowing joinder as defendants of “One Hundred John Does,” without whose assistance, knowing or otherwise, defendant allegedly could not have accomplished objectives of his fraudulent scheme; since complete relief could have been accorded against the existing defendants because their liability under such section, as well under common law count for fraud and deceit, was joint and several, the “One Hundred John Does” were not indispensable parties. U. S. v. Brumfield, S.D.Ohio 1982, 94 F.R.D. 204. Federal Civil Procedure 203

100. Substitution of parties, practice and procedure generally

Corporation that did not qualify as “original source” qualified to bring qui tam action could not cure jurisdictional defect by including or substituting its minority shareholder as additional relator. Federal Recovery Services, Inc. v. U.S., C.A.5 (La.) 1995, 72 F.3d 447, rehearing denied. United States 122

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Administrator of estate of deceased qui tam relator was a proper substitute for relator in False Claims Act (FCA) action. U.S. ex rel. Colucci v. Beth Israel Medical Center, S.D.N.Y.2009, 603 F.Supp.2d 677. United States 122

101. Third-party defendants, practice and procedure generally

Government could appeal order approving settlement in qui tam action under False Claims Act, despite its failure to intervene, where it investigated and monitored case and argued against settlement, it relied on good-faith argument that Act precluded settlement without government's consent, and it had legitimate concern about scope of settlement's preclusive effect. Searcy v. Philips Electronics North America Corp., C.A.5 (Tex.) 1997, 117 F.3d 154. Federal Courts 544

Where defendants were sued by the United States under former § 231 [now § 3729] of this title, defendants' cause of action against third-party defendant for malicious prosecution was premature, since it could not have been brought unless and until the action between the United States and the defendants was favorably determined in the latter's favor. U. S. v. Kennedy, C.D.Cal.1977, 431 F.Supp. 877. Malicious Prosecution 34

102. Appearance by Attorney General, practice and procedure generally

Upon a bill of review to correct a decree given in favor of the United States, the subpoena to appear and answer may be served on the United States Attorney. Bush v. U.S., C.C.Or.1882, 13 F. 625, 8 Sawy. 322. United States 135

Attorney General's failure to comply with False Claims Act, by either intervening in action or notifying court of its decision not to intervene, divested government of standing under statute to object to voluntary dismissal of action; having failed to comply with statute, Attorney General would not be heard to object to settlement and dismissal of case. U.S. ex rel. Pedicone v. Mazak Corp., S.D.Ohio 1992, 807 F.Supp. 1350. United States 122

In qui tam action under former § 232 of this title, Attorney General may not have entered appearance and, upon subsequently determining case to have been without merit, may not have dismissed case; rather, case became that of private citizen. U. S. ex rel. Weiss v. Schwartz, N.D.Cal.1982, 546 F.Supp. 422. Attorney General 6; United States 122

Where plaintiff filed action under former § 232 of this title on June 18, 1976, but did not serve Attorney General with copy of complaint and written disclosure of evidence and information material to effective prosecution of case until June 22, 1976, United States' special appearance on Aug. 19, 1976, was within 60 days after service had been effected in the prescribed manner, and such appearance was timely. U. S. ex rel. Thompson v. Hays, D.C.D.C.1976, 432 F.Supp. 253. United States 137

United States' special appearance in suit under former § 232 of this title for purpose of moving for dismissal was not inconsistent with purposes of such former section, in view of fact that by making a special appearance, United States could have raised issue of jurisdiction without committing itself to prosecution of the case at that time while criminal investigation of defendants was still underway. U. S. ex rel. Thompson v. Hays, D.C.D.C.1976, 432 F.Supp. 253. United States 137

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103. Intervention by government, practice and procedure generally

Where qui tam relator failed to qualify as an "original source" within the meaning of the False Claims Act (FCA) provision setting forth the original-source exception to the public-disclosure bar on federal-court jurisdiction, the government's intervention in his case did not provide an independent basis of jurisdiction with respect to relator. Rockwell Intern. Corp. v. U.S., U.S.2007, 127 S.Ct. 1397, 549 U.S. 457, 167 L.Ed.2d 190, rehearing denied 127 S.Ct. 2300, 550 U.S. 954, 167 L.Ed.2d 1128, on remand 492 F.3d 1157. United States 122

False Claims Act (FCA) did not require government to intervene in qui tam action before moving to dismiss. Ridenour v. Kaiser-Hill Co., L.L.C., C.A.10 (Colo.) 2005, 397 F.3d 925, certiorari denied 126 S.Ct. 341, 546 U.S. 816, 163 L.Ed.2d 52. United States 122

Government was not required to intervene in former Justice Department employee's qui tam action, alleging False Claims Act violations by Department employees, in order to move to dismiss action. Swift v. U.S., C.A.D.C.2003, 318 F.3d 250, 355 U.S.App.D.C. 59, certiorari denied 123 S.Ct. 2622, 539 U.S. 944, 156 L.Ed.2d 630. United States 122

False Claims Act section, providing that when a person brings an action under the Act, no person other than government may intervene or bring related action based on facts underlying pending action, only prohibits parties unrelated to original plaintiff from joining suit to assert a claim based on same facts relied upon by original plaintiff. U.S. ex rel. Precision Co. v. Koch Industries, Inc., C.A.10 (Okla.) 1994, 31 F.3d 1015, on remand 1995 WL 812134. United States 122

Government had right to intervene for purposes of appeal in action under qui tam provisions of False Claims Act, though it declined to intervene earlier. U.S. v. Texas Instruments Corp., C.A.9 (Cal.) 1994, 25 F.3d 725. United States 122

District court abused its discretion in finding untimely government's motion to intervene in qui tam action against contractor claiming that contractor defrauded government by inflating cost estimate to support MX missile contract proposals; government was denied proper hearing before district court and moved to intervene for purpose of appeal as soon as possible. U.S. ex rel. Killingsworth v. Northrop Corp., C.A.9 (Cal.) 1994, 25 F.3d 715. United States 122

Provision of qui tam section of False Claims Act requiring government to elect whether to intervene within 60 days of receiving relator's complaint is not jurisdictional, since less drastic remedies than dismissal are available for government's failure to meet the deadline, and nothing in statute's history and purpose suggest that Congress intended statute to be jurisdictional in character. U.S. ex rel. Siller v. Becton Dickinson & Co. By and Through Microbiology Systems Div., C.A.4 (Md.) 1994, 21 F.3d 1339, certiorari denied 115 S.Ct. 316, 513 U.S. 928, 130 L.Ed.2d 278. United States 122

Government was entitled to intervene in qui tam action under False Claims Act in order to appeal dismissal of bidder's surety pursuant to stipulation, where application was timely, government had interest in recovery of damages and penalties, government's interest might have been impaired or impeded if intervention was not granted and government's interest was not adequately represented by qui tam plaintiffs. U.S. ex rel. McGough v. Covington Technologies Co., C.A.9 (Cal.) 1992, 967 F.2d 1391. Federal Civil Procedure 338

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United States did not act improperly in submitting a statement of interest in qui tam False Claims Act (FCA) suit brought by former medical director of rehabilitation unit against hospital and management company, although government declined to intervene; statement was carefully crafted to avoid involvement in factual issues in case, which United States had declined, and statement was designed solely to protect the government's interest. U.S. ex rel. McCready v. Columbia/HCA Healthcare Corp., D.D.C.2003, 251 F.Supp.2d 114. United States 122

There is nothing in the False Claims Act (FCA) which prohibits the government, once it has notified court of intention not to intervene in qui tam action, from communicating with defendants or submitting amicus curiae brief on their behalf, despite relator's contention that it was acting as government's attorney and thus that communications between defendants and the government violated rules of ethical conduct; while qui tam relator is empowered to act as private prosecutor, it is not empowered to replace the government, and the government, when it decides not to intervene, is not relegated to position of relator's client. U.S. by Dept. of Defense v. CACI Intern. Inc., S.D.N.Y.1995, 953 F.Supp. 74. United States 122

United States demonstrated “good cause” for intervening in qui tam suit against contractor operating Department of Energy (DOE) defense facility more than three years after filing its notice declining to intervene, even if “good cause” required showing of new evidence; Department of Justice (DOJ)-Civil Division was not privy to information developed during related criminal investigation which had resulted in plea agreement, and information obtained during discovery in contractor's breach of contract suit against United States in Court of Federal Claims, made available to attorney for DOJ-Civil Division by counsel for relator, was important to decision to intervene; moreover, relator was fully supportive of government's motion to intervene, and public interest, which was of paramount importance, favored intervention. U.S. ex rel. Stone v. Rockwell Intern. Corp., D.Colo.1996, 950 F.Supp. 1046. United States 122

In False Claims Act (FCA) suit initiated as qui tam action and in which government had intervened as to some claims, relator could pursue claims government had not adopted. U.S. ex rel. O'Keefe v. McDonnell Douglas Corp., E.D.Mo.1996, 918 F.Supp. 1338. United States 122

When deciding whether to intervene in or to dismiss False Claims Act case, government may properly consider factors bearing upon relators' suitability or incentive to prosecute case; such factors may involve status as it relates to motivation and competence to sue under False Claims Act. U.S. ex rel. Sequoia Orange Co. v. Sunland Packing House Co., E.D.Cal.1995, 912 F.Supp. 1325, affirmed 151 F.3d 1139, certiorari denied 119 S.Ct. 794, 525 U.S. 1067, 142 L.Ed.2d 657. United States 122

If government fails to intervene in timely manner or fails to show good cause for intervention in action brought under False Claims Act, court may unseal file and allow relator to prosecute action; however, government in that case may still seek to intervene at later date. U.S. ex rel. O'Keefe v. McDonnell Douglas Corp., E.D.Mo.1995, 902 F.Supp. 189. United States 122

Good cause existed for allowing government to intervene in qui tam suit brought under False Claims Act even though government had declined to intervene as of right within 60-day period during which complaint remained under seal; government's initial decision was based on its conclusion that suit involved fraud on relatively small scale, while subsequent investigation revealed additional claimants and possibility of fraud on much larger scale. U.S. ex rel. Hall v. Schwartzman, E.D.N.Y.1995, 887 F.Supp. 60. United States 122

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104. Intervention by parties, practice and procedure generally

The first-to-file rule of the False Claims Act (FCA), pursuant to which no person other than the government may intervene or bring a related qui tam action based on the facts underlying a pending action, bars qui tam actions incorporating the same material elements of fraud as an earlier qui tam suit. U.S. ex rel. Hampton v. Columbia/HCA Healthcare Corp., C.A.D.C.2003, 318 F.3d 214, 355 U.S.App.D.C. 23. United States 122

Provision of False Claims Act (FCA) preserving rights of relator in qui tam action if government elected to pursue claim against defendant through alternate remedy did not create exception to categorical bar against private party intervention in qui tam actions, so as to permit intervention in action against medical laboratory based on would-be intervenors' claims that they were “but for” cause of portion of settlement in that action by virtue of their role in another qui tam action against entity that merged with laboratory during course of action at issue; statute merely preserved rights of original qui tam plaintiffs. U.S. ex rel. LaCorte v. Wagner, C.A.4 (N.C.) 1999, 185 F.3d 188. United States 122

False Claims Act subsection, barring intervention in False Claims Act case, did not prohibit two sole shareholders in False Claims Act plaintiff from joining in corporate plaintiff's existing Act case. U.S. ex rel. Precision Co. v. Koch Industries, Inc., C.A.10 (Okla.) 1994, 31 F.3d 1015, on remand 1995 WL 812134. United States 122

Non-lawyer proceeding in *propria persona* could not represent United State in qui tam action under False Claims Act, even though government had failed to intervene. U.S. ex rel. Schwartz v. TRW Inc., C.D.Cal.2000, 118 F.Supp.2d 991. United States 137

Proposed False Claims Act relator's claim, that health care provider violated series of laws so as to invalidate its subsequent efforts to receive reimbursement under Medicare or Medicaid programs, centered on the allegedly fraudulently obtained federal payments which were also the basis for original relator's claim, and intervention by proposed relator thus was not barred by provision of Act prohibiting persons other than United States from intervening or bringing related action based on facts underlying pending action. U.S. ex rel. Sanders v. East Alabama Healthcare Authority, M.D.Ala.1996, 953 F.Supp. 1404. United States 122

False Claim Act (FCA) did not bar relators, whose qui tam action in Ohio had been taken over by the Government, from intervening in North Carolina qui tam action involving defendant in Ohio action which resulted in settlement of claims which grew out of disclosures made pursuant to settlement of Ohio case; relators had the right to enter case to determine if some portion of the settlement constituted an “alternate remedy” under portion of FCA which described rights of relators whose qui tam actions have been taken over by the Government. U.S. ex rel. Lacorte v. Roche Biomedical Laboratories, Inc., M.D.N.C.1998, 182 F.R.D. 480, reversed 185 F.3d 188. Federal Civil Procedure 331

105. Stay of action, practice and procedure generally

District court's stay order in False Claims Act (FCA) qui tam action against air tanker contractor with the Forest Service not only enjoined government from bringing future administrative proceedings against contractor, it also tolled running of limitations period in which contractor had to file Contract Dispute Act (CDA) suit challenging decision of contracting officer (CO) with respect to contractor's agreement with government. International Air Response v. U.S., C.A.Fed.2002,

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302 F.3d 1363, rehearing denied 324 F.3d 1376, rehearing and rehearing in banc denied 324 F.3d 1380. Limitation Of Actions 107

The district court should have stayed, rather than dismiss, a False Claims Act suit pending the Department of Labor's findings, pursuant to the doctrine of primary jurisdiction, as to how a particular type of work was classified for the purposes of wage determinations. U.S. v. Dan Caputo Co., C.A.9 (Cal.) 1998, 152 F.3d 1060, on remand 2001 WL 1042168. Action 69(7); Federal Civil Procedure 1742(2)

Subparagraph excepting from stay action by governmental unit to enforce unit's police or regulatory power would not be found inapplicable to Government's proposed False Claims Act action against corporate debtors on theory FCA claim could be asserted in bankruptcy court and defending FCA action elsewhere would result in dissipation of estate assets due to increased litigation expenses. In re Commonwealth Companies, Inc., C.A.8 (Neb.) 1990, 913 F.2d 518. Bankruptcy 2402(1)

To the extent that issue of lack of candor was relevant to qui tam action alleging conspiracy to defraud government through abuse of public bidding procedure for wireless telecommunications licenses, it did not warrant stay pending referral of issue to Federal Communications Commission (FCC) under primary jurisdiction doctrine, inasmuch as question of whether alleged conspirators acted with lack of candor was within conventional expertise of judges, and did not require technical, agency-specific expertise. U.S. ex rel. Taylor v. Gabelli, S.D.N.Y.2004, 345 F.Supp.2d 340. Telecommunications 1055

Statement filed by Government on motion for reconsideration of denial of its motion to extend time in which qui tam complaint would remain under seal justified grant of additional time within which Government could decide whether to proceed with action or notify court that it declined to take over action new; information contained in Government's motion for reconsideration indicated that Government did not receive written disclosure of substantially all material evidence and information possessed by complainant until almost month after complaint was filed, with result that 60-day period during which Government had to act did not begin to run until that later date. U.S. ex rel. Kalish v. Desnick, N.D.Ill.1991, 765 F.Supp. 1352. United States 122

Once United States entered civil False Claims Act case filed by qui tam plaintiffs, it could no longer petition court to extend time that case remained under seal or call complete halt to discovery, but rather was entitled only to seek narrowly tailored relief upon showing that certain discovery actions would interfere with Government's actions in related civil or criminal proceedings. U.S. ex rel. McCoy v. California Medical Review, Inc., N.D.Cal.1989, 715 F.Supp. 967. United States 122

Where a prior action under former § 231 [now § 3729] of this title by another person for himself and for the United States to recovery for same alleged fraudulent claims was pending in federal District Court for District of Rhode Island, present action was stayed until final determination on the merits of the prior action. U. S. v. Anaconda Wire & Cable Co., E.D.Pa.1943, 52 F.Supp. 824. Action 69(5)

Where an action under former § 231 [now § 3729] of this title had been commenced by one person for himself and for

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the United States, a second action by another person for the same relief was required to be stayed, since the only plaintiff in such an action must have been the United States, no matter who brought it on its behalf, and under the requirement that the proceeds should have been divided between the United States and the person who brought the action, there could have been no other division, and the first plaintiff had sole control of the action. U.S. v. B.F. Goodrich Co., S.D.N.Y.1941, 41 F.Supp. 574. Abatement And Revival 6

106. Extension of time, practice and procedure generally

Further extension of time, during which complaint would remain sealed in qui tam action on behalf of government against book sellers allegedly overcharging institutional customers, would not be granted; legislative history indicated that 60 days under seal would normally be sufficient time for government to review matter, and in present case seal had been in place for 18 months, claim that lifting of seal would interfere with government's criminal investigation was not compelling, as government had been conducting extensive criminal discovery, and claim that lifting of seal would interfere with settlement negotiations was outweighed by undesirability of having qui tam claims unnecessarily delayed. U.S. ex rel. Costa v. Baker & Taylor, Inc., N.D.Cal.1997, 955 F.Supp. 1188. Records 32

District court declined to lift seal on motions for extensions of time and accompanying memoranda and affidavits which were submitted by government prior to intervening in action under False Claims Act, as materials provided some substantive details regarding government's methods of investigation and there would be some harm associated with disclosure; however, seal was lifted as to other documents filed prior to intervention, which did not contain any information which could harm government. U.S. ex rel. O'Keefe v. McDonnell Douglas Corp., E.D.Mo.1995, 902 F.Supp. 189. United States 122

107. Calendar preferences, practice and procedure generally

Where the United States proceeded with due diligence to institute action under former § 231 [now § 3729] of this title, it was entitled to precedence in the trial of such action over an informer's action against the same defendants and based on same cause of action, though informer's action was filed two days earlier. U.S. v. Baker-Lockwood Mfg. Co., C.C.A.8 (Mo.) 1943, 138 F.2d 48. Federal Civil Procedure 1994

108. Summary judgment, practice and procedure generally

Material issues of fact existed as to whether relator in qui tam action under False Claims Act was original source of information providing basis for portion of his reverse false claims action addressing exporter's alleged alteration of export certificates for meat products issued by United States Department of Agriculture (USDA) to avoid fees for replacement certificates, precluding summary judgment for exporter on such claims on grounds that information underlying claims had been publicly disclosed. U.S. ex rel. Bahrani v. Conagra, Inc., C.A.10 (Colo.) 2006, 465 F.3d 1189, certiorari denied 128 S.Ct. 388, 169 L.Ed.2d 264, on remand 2009 WL 751169. Federal Civil Procedure 2498.4

Record was insufficient to determine whether employee of nonprofit corporation was engaged in protected conduct under the “whistleblowing” provision of the False Claims Act (FCA), and so district court's grant of summary judgment in favor of employer was premature; it was unclear on the record whether employee in good faith believed, and whether a reasonable employee in similar circumstances would have believed, that employer's executives were defrauding the fed-

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eral government by diverting nonprofit funds to a for-profit entity in which they had a personal stake. Fanslow v. Chicago Mfg. Center, Inc., C.A.7 (Ill.) 2004, 384 F.3d 469. Federal Civil Procedure 2498.4

Genuine issues of material fact as to whether invoices issued by supplier of aluminum extrusions to defense contractor were false, and whether supplier knew that contractor would use the pro forma invoices to defraud the government, precluded summary judgment for government in its civil action against supplier alleging violations of the False Claims Act. U.S. v. Taber Extrusions, LP, C.A.8 (Ark.) 2003, 341 F.3d 843. Federal Civil Procedure 2498.4

District court, in qui tam suit against government contractor under False Claims Act, should have treated contractor's attack on court's subject matter jurisdiction as motion for summary judgment, rather than as motion to dismiss for lack of subject matter jurisdiction; contractor contended that suit was barred in that it was based upon publicly disclosed allegations, and jurisdictional question of whether public disclosure had occurred arose out of same statute that created cause of action. U.S. ex rel. Fine v. MK-Ferguson Co., C.A.10 (N.M.) 1996, 99 F.3d 1538. Federal Civil Procedure 1825; Federal Civil Procedure 2533.1

Material issue of fact as to whether government's filing a false claims action was a distinct possibility at time that former employee rendered her assistance precluded summary judgment for employer on whistleblower protection claim brought under False Claims Act by employee who testified in administrative hearing before Department of Agriculture (DOA) about suspected fraudulent building scheme allegedly used by employer's customer to bilk money out of the federal government. Childree v. UAP/GA CHEM, Inc., C.A.11 (Ga.) 1996, 92 F.3d 1140, certiorari denied 117 S.Ct. 1080, 519 U.S. 1148, 137 L.Ed.2d 216. Federal Civil Procedure 2497.1

In government's action to recover penalties under former § 231 [now § 3729] of this title on ground that defendant in business with another had misbranded eggs which defendant and the other had supplied to prime contractor to be used by the government, case presented a genuine issue of fact which could not properly have been determined on government's motion for summary judgment based merely on defendant's plea of guilty to indictment which merely charged that defendant concealed and covered up by trick or scheme a material fact and made a false representation knowing it to have been false. Hyslop v. U. S., C.A.8 (Neb.) 1958, 261 F.2d 786. Federal Civil Procedure 2515

Genuine issue of material fact existed as to whether former employer was aware of any protected disclosures by former employee, precluding summary judgment for employer on employee's claims for violations of the District of Columbia Whistleblower Protection Act (WPA), and anti-retaliation provisions of the False Claims Act (FCA) and the District of Columbia False Claims Act. Kakeh v. United Planning Organization, Inc., D.D.C.2008, 537 F.Supp.2d 65. Federal Civil Procedure 2497.1

Evidence that lender's employees forged signatures on loan documents submitted to Department of Housing and Urban Development (HUD) and that lender then falsely certified to HUD that all loan documents were properly executed raised a genuine dispute of fact regarding whether lender's certifications, which lender claimed were true to the best of its knowledge and belief, were knowingly false, precluding summary judgment in favor of lender on False Claims Act (FCA) claims. U.S. ex rel. Fago v. M & T Mortg. Corp., D.D.C.2007, 518 F.Supp.2d 108. Federal Civil Procedure 2498.4

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Genuine issue of material fact existed as to whether mental health management company could be held liable for alleged False Claims Act (FCA) violations at affiliated mental health treatment facility, precluding summary judgment in favor of management company. U.S. ex rel. Hockett v. Columbia/HCA Healthcare Corp., D.D.C.2007, 498 F.Supp.2d 25, reconsideration denied 587 F.Supp.2d 757. Federal Civil Procedure 2498.4

Genuine issue of material fact existed regarding whether employees of tribal business knew that claims submitted for brushing and road grading work performed under contract with Bureau of Indian Affairs (BIA) were false, precluding summary judgment on government's False Claims Act (FCA) claims against employees. U.S. v. Menominee Tribal Enterprises, E.D.Wis.2009, 601 F.Supp.2d 1061, reconsideration denied 2009 WL 1373952, entered 2009 WL 2877083. Federal Civil Procedure 2498.4

Genuine issues of material fact as to whether independent diagnostic testing facility (IDTF) presented false Medicare claims for diagnostic tests that were not authorized by physicians precluded summary judgment in qui tam action alleging IDTF violated False Claims Act. U.S. ex rel. Bane v. Breathe Easy Pulmonary Services, Inc., M.D.Fla.2009, 597 F.Supp.2d 1280. Federal Civil Procedure 2498.4

Genuine issue of material fact as to whether hospitals that established diabetes treatment centers presented Medicare claims to United States after operator of centers knowingly and willingly made excessive payments to physicians in return for patient referrals precluded summary judgment in action against operator under False Claims Act (FCA) based on violations of Anti-Kickback Statute (AKS). U.S. ex rel. Pogue v. Diabetes Treatment Centers of America, D.D.C.2008, 565 F.Supp.2d 153, reconsideration denied 576 F.Supp.2d 128. Federal Civil Procedure 2498.4

Genuine issues of material fact as to whether landlord accepted side-rent from renters whose rent was subsidized by Department of Housing and Urban Development (HUD) precluded summary judgment in renters' action under False Claims Act. U.S. ex rel Sutton v. Reynolds, D.Or.2007, 564 F.Supp.2d 1183. Federal Civil Procedure 2498.4

Genuine issues of material fact existed as to whether government contractor's relationships with certain companies, some of which were regulated by federal agency with which contractor contracted, created organizational conflicts of interest (OCIs), precluding summary judgment in favor of contractor on False Claims Act (FCA) claims based on contractor's failure to disclose OCIs. U.S. v. Science Applications Intern. Corp., D.D.C.2008, 555 F.Supp.2d 40. Federal Civil Procedure 2498.4

Genuine issue of material fact, as to whether disposition of criminal cases against farmers and civil settlement with landowner fully compensated government for damages and penalties to which it was entitled for payment of false crop insurance claim, precluded summary judgment in favor of insurance agent on False Claims Act (FCA) claim on basis that he did not cause damages to government in submitting claims. U.S. v. Hawley, N.D.Iowa 2008, 544 F.Supp.2d 787, subsequent determination 566 F.Supp.2d 918. Federal Civil Procedure 2498.4

Genuine issue of material fact existed regarding whether county employee engaged in any acts in furtherance of an action under anti-retaliation provision of False Claims Act, precluding summary judgment on employee's False Claims Act retaliation claims against county. Haka v. Lincoln County, W.D.Wis.2008, 533 F.Supp.2d 895. Federal Civil Procedure

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Genuine issue of material fact as to whether hospital submitted false claims to Medicare for anesthesia services precluded summary judgment for hospital in relators' qui tam action, under False Claims Act (FCA). U.S. ex rel. El-Amin v. George Washington University, D.D.C.2007, 522 F.Supp.2d 135. Federal Civil Procedure 2498.4

Genuine issue of material fact existed as to whether government contractors presented a false claim to the government and obtained payment on a false claim, precluding summary judgment for contractors in qui tam action brought by an employee, alleging claims under the False Claims Act (FCA) for presenting false claims to government employees and obtaining payment for false claims from the government. U.S. ex rel. Vargas v. Lackmann Food Service, Inc., M.D.Fla.2007, 510 F.Supp.2d 957. Federal Civil Procedure 2498.4

Genuine issues of material fact existed as to whether Defense Contract Audit Agency (DCAA) approved government contractor's accounting practices, whether contractor was entitled to the amounts of overhead it claimed, and whether contractor's failure to list in its certified disclosure statements that affiliated subcontractor was among the companies with whom it engaged in inter-organizational transfers was a material omission, precluding summary judgment in favor of contractor of False Claims Act (FCA) claims. U.S. ex rel. Oliver v. The Parsons Corp., C.D.Cal.2006, 498 F.Supp.2d 1260. Federal Civil Procedure 2498.4

Genuine issue of material fact existed as to whether relationship between children's hospital and state university medical school met requirements for the Academic Medical Center (AMC) exception to the Stark law, precluding summary judgment for children's hospital, medical school, various school faculty members, and their practice groups, in qui tam action under the False Claims Act (FCA), brought by pediatric cardiologist and professor employed by medical school. U.S. v. Solinger, W.D.Ky.2006, 457 F.Supp.2d 743, issued 2006 WL 3085610, subsequent determination. Federal Civil Procedure 2498.4

Genuine issues of material fact as to whether physicians who oversaw obstetric and gynecological OB/GYN care at hospital medical center were hospital employees and hospital had agreement with university about billing for midwife services precluded summary judgment for hospital in suit against it under False Claims Act. U.S. ex rel. Romano v. New York Presbyterian, S.D.N.Y.2006, 426 F.Supp.2d 174. Federal Civil Procedure 2498.4

Genuine issues of material fact existed as to whether university employee, who was in charge of project undertaken by a university division which received government grants, under Cooperative Agreements, to undertake project to assist Russia in developing capital markets and foreign investments, knew of the falsity of statements submitted to the government, precluding summary judgment for government in action under the False Claims Act (FCA). U.S. v. President and Fellows of Harvard College, D.Mass.2004, 323 F.Supp.2d 151. Federal Civil Procedure 2498.4

Genuine issue of material fact as to amount of actual damages sustained by United States as result of contractor's alleged fraudulent inflation of costs in contract for sale of defense equipment to United States on behalf of foreign government under Arms Export Control Act precluded summary judgment limiting government to statutory penalty in its action against contractor under False Claims Act (FCA). U.S. ex rel Hayes v. CMC Electronics, Inc., D.N.J.2003, 297

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F.Supp.2d 734. Federal Civil Procedure 2498.4

Fact issue of whether company was liable under False Claims Act (FCA) for filing implicit or explicit false certification of compliance with federal environmental, safety, or health laws, pursuant to contract with federal government that specifically stated that company was required to comply with series of laws and regulations and conditioned company's receipt of funding on proper certification of compliance, precluded summary judgment for company in action that former employee of company brought on behalf of federal government. U.S. ex rel. Holder v. Special Devices, Inc., C.D.Cal.2003, 296 F.Supp.2d 1167. Federal Civil Procedure 2498.4

Material issues of fact, as to whether research and development efforts involving development of commercial transport vessel constituted Independent Research and Development (IR&D) properly allocable to government military vessel contracts as indirect expense, precluded summary judgment that shipbuilder knowingly submitted false claims to government, in violation of False Claims Act (FCA), by charging efforts to develop commercial transport vessel to military transport vessels contracts, as IR&D. U.S. v. Newport News Shipbuilding, Inc., E.D.Va.2003, 276 F.Supp.2d 539. Federal Civil Procedure 2498.4

Material issues of fact as to whether contracting officer's approval of delivery order for project that involved clearing of two sedimentation ponds at naval facility evidenced purposeful scheme to defraud government precluded summary judgment for officer on claim under False Claims Act that was brought by unsuccessful bidder for subcontract on project. U.S. ex rel. Durcholz v. FKW Inc., S.D.Ind.1998, 997 F.Supp. 1159, affirmed 189 F.3d 542. Federal Civil Procedure 2498.4

Summary judgment for disappointed bidder on subcontract for dredging job at military base, on claim that contractor submitted false invoices with attached conventional line items that were not performed, or with no line items attached, was precluded by government's knowledge of invoice being based on conventional line items, and, with respect to later invoices, by government's instructions to contractor to submit invoices without line items. U.S. ex rel. Durcholz v. FKW Inc., S.D.Ind.1998, 997 F.Supp. 1143. United States 122

Material issue of fact as to whether employer took adequate and appropriate remedial measures as to co-worker who allegedly threatened employee that internally reported submission of falsified test data relating to employer's contract with federal government precluded summary judgment for employer on employee's claim of retaliation under False Claims Act based on co-worker's threat. Neal v. Honeywell, Inc., N.D.Ill.1996, 942 F.Supp. 388, on reconsideration 958 F.Supp. 345. Federal Civil Procedure 2497.1

Fact question as to physician's recklessness toward, actual knowledge of, or deliberate ignorance of truth or falsity of information in her Medicare claims precluded summary judgment in action brought against her under False Claims Act. U.S. v. Jointer, S.D.Miss.1995, 910 F.Supp. 279. Federal Civil Procedure 2498.4

Genuine issues of material fact regarding whether former employee of government contractor actually disclosed contents of qui tam complaint to third parties prior to lifting of seal, identity of those to whom disclosures may have been made, and substance of alleged disclosures precluded summary judgment on False Claims Act (FCA) claim. U.S. ex rel. Wind-

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sor v. DynCorp, Inc., E.D.Va.1995, 895 F.Supp. 844. Federal Civil Procedure 2498.4

Former employee's summary judgment affidavit outlining former employers' overuse and misuse of spirometry and magnetic resonance imaging (MRI) tests, in asserting that many patients on which procedures were performed participated in Medicare, and that either patients or former employers, through businesses that they owned, presented claims to Medicare based on unwarranted tests, that former employers overbilled the government, ignored former employee's criticisms, and ultimately decided to fire her for her whistleblowing was sufficient to demonstrate the existence of genuine issues of material fact as to whether former employers made false or fraudulent claims for payment to the government and whether former employers conspired in their efforts to defraud the government, precluding summary judgment in False Claims Act (FCA) action. Mikes v. Strauss, S.D.N.Y.1995, 889 F.Supp. 746. Federal Civil Procedure 2498.4

Issue of fact precluding summary judgment existed as to whether former officer and director of acquired corporation who was retained in consulting position after acquisition was “employee” of purchasing corporation for purposes of whistleblower provisions of False Claims Act under which former officer claimed retaliatory termination. Shapiro v. Sutherland, E.D.Pa.1993, 835 F.Supp. 836. Federal Civil Procedure 2497.1

Genuine issue of material fact existed as to whether accountant was innocent of any knowledge of false statements contained in Farmers Home Administration loan application or supporting documents, precluding summary judgment on issue of accountant's liability under False Claims Act. U.S. v. Ettrick Wood Products, Inc., W.D.Wis.1988, 774 F.Supp. 544, adopted in part 683 F.Supp. 1262. Federal Civil Procedure 2498.4

Genuine issue of material fact as to whether Government agency relied on false statements in federal loan guarantee complication, regarding applicant's criminal record, where misrepresentation was discovered before agency entered into secondary participatory agreement, precluded summary judgment in favor of Government in civil proceeding for damages under False Claims Act. U.S. v. Hill, N.D.Fla.1987, 676 F.Supp. 1158. Federal Civil Procedure 2498.4

Former § 231 [now § 3729] of this title did not proscribe negotiations, contracting, or creation of general surpluses or reserves per se, but rather, proscribed false claims submitted to the United States for payment; thus, matter concerning propriety of former service of Secretary of Department of Public Welfare as member of health management corporation, propriety of continued series of negotiated contracts between Deputy Secretary and health management corporation as opposed to public bidding, and general propriety of health care corporation's overall corporate surplus did not constitute disputed issues of material fact which precluded granting of summary judgment in action brought under such section. U. S. ex rel. Sacks v. Philadelphia Health Management Corp., E.D.Pa.1981, 519 F.Supp. 818. United States 120.1; Federal Civil Procedure 2498.4

In civil action brought under former § 232 of this title by government against defendant, who had been convicted of causing a false loan application to be made to a federally insured bank, material issue of fact existed concerning whether government incurred damage “by reason of” defendant's causing false information to be stated on a Small Business Administration loan application, and thus whether government was entitled to double the damages allegedly sustained “by reason of” the false claim, which precluded summary judgment for government. U. S. v. Rapoport, S.D.N.Y.1981, 514 F.Supp. 519. Judgment 181(17)

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Although prior criminal conviction estopped defendants from denying they violated former § 231 [now § 3729] of this title, there could have been factual circumstances surrounding events in question which would have influenced court in exercise of its discretion to award punitive damages, precluding partial summary judgment as to punitive damages. U. S. v. Krietemeyer, S.D.Ill.1980, 506 F.Supp. 289. Federal Civil Procedure 2557

Even if plaintiff, who brought qui tam or informer action against nine medical doctors under former § 231 [now § 3729] of this title uncovered some unintentional, nonfraudulent technicality with regard to any of defendant physicians' licenses, summary judgment was mandated in favor of physicians, since such provision had no application to unintentional technicalities. U. S. ex rel. Hughes v. Cook, S.D.Miss.1980, 498 F.Supp. 784. Federal Civil Procedure 2515

Contractor's conclusionary affidavit that Department of Housing and Urban Development was aware of his scheme concerning renovation of property acquired by the Department by reason of foreclosure on insured mortgages, without identifying any individual who had such knowledge, did not meet summary judgment standard of showing a specific fact and was an adequate response to government's particularized affidavits in suit under former § 231 [now § 3729] of this title. U.S. v. Cripps, E.D.Mich.1978, 460 F.Supp. 969. Federal Civil Procedure 2539

Evidentiary conflicts whose resolution depended on credibility of witnesses precluded grant of government's motion for partial summary judgment as to liability in action under former § 231 [now § 3729] of this title. U. S. v. Canada, S.D.Ind.1977, 425 F.Supp. 91. Federal Civil Procedure 2557

General denial of liability which contained no specifications of facts alleged to be in dispute was insufficient to preclude summary judgment, in civil fraud action under former § 231 [now § 3729] of this title. U. S. v. Kates, E.D.Pa.1976, 419 F.Supp. 846. Federal Civil Procedure 2515

In action by the government for recovery under former § 231 [now § 3729] of this title based on an alleged illegal charge for idle time of cranes operated and controlled by defendant in connection with a certain contract, pleadings and affidavits presented an issue of fact as to whether charges upon which the government's claim was based were embraced in a supplemental agreement, precluding summary judgment. U S v. Dade Bros Co, E.D.N.Y.1960, 181 F.Supp. 537. Federal Civil Procedure 2515

In action by United States under former § 231 [now § 3729] of this title to recover damages on account of salary payments made to Air Force physician whose application contained a misrepresentation that physician had not been convicted of a criminal violation, papers raised substantial fact issue as to whether physician was qualified to do work and whether he would have been paid irrespective of his concealed conviction for illegal practice of medicine, precluding summary judgment. U.S. v. Johnston, W.D.Okla.1956, 138 F.Supp. 525. Federal Civil Procedure 2515

In action for forfeitures and double damages under former § 231 [now § 3729] of this title for allegedly making false claims against government for meat products sold, although defendants, in prior criminal action, had pleaded guilty to conspiracy to defraud government by presenting such claims, government was not entitled to summary judgment on issue of liability. U.S. v. American Packing Corp., D.C.N.J.1953, 113 F.Supp. 223. Federal Civil Procedure 2515

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Where government had no cause of action under former § 231 [now § 3729] of this title, defendants were entitled to summary judgment. U.S. ex rel. Weinstein v. Bressler, S.D.N.Y.1945, 60 F.Supp. 676, affirmed 160 F.2d 403. Federal Civil Procedure 2498.4

In qui tam action arising out of defendants' alleged fraudulent claims against government under cost-plus fixed fee contracts for compensation for wages of an employee after his services had terminated, affidavit of paymaster that claim for reimbursement had only been made for amount paid employee as represented by photostatic copies of pay checks attached to affidavit authorized summary judgment for defendants. U. S. ex rel. Ryan v. Broderick, D.C.Kan.1945, 59 F.Supp. 189, appeal dismissed 150 F.2d 1023. Federal Civil Procedure 2492

In qui tam action arising out of defendants' alleged fraudulent claims against government under cost-plus fixed fee contract for allegedly over-stating number of yards of dirt that had been hauled and moved, affidavits of civil engineer and others, who had a knowledge of the facts and who were not defendants, negativing such allegations, authorized summary judgment for defendants. U. S. ex rel. Ryan v. Broderick, D.C.Kan.1945, 59 F.Supp. 189, appeal dismissed 150 F.2d 1023. Federal Civil Procedure 2492

Genuine issue of material fact remained as to whether contractor knowingly falsified invoices with purpose of receiving payment from Department of State (DOS), Overseas Building Operations (OBO), by certifying that contractor had paid subcontractor on contract to construct embassy in Tajikistan, thus precluding summary judgment on government's claim, under False Claims Act (FCA), against contractor following termination of contract for alleged default. Liquidating Trustee Ester DuVal of KI Liquidation, Inc. v. U.S., Fed.Cl.2009, 2009 WL 2523961. Federal Courts 1120

Genuine issues of material fact regarding the accuracy of claim presented by contractor to contracting officer, and as to whether contractor had knowledge that its claim was false, precluded summary judgment in contractor's suit against the United States on counterclaims asserted by the government under the False Claims Act, the anti-fraud provision of the Contract Disputes Act (CDA), and the Forfeiture of Fraudulent Claims Act. M.A. DeAtley Const., Inc. v. U.S., Fed.Cl.2007, 75 Fed.Cl. 812. Federal Courts 1120

Genuine issue of material fact as to whether government contractor acted with deliberate ignorance or reckless disregard in making equitable adjustment claim for additional fees for architectural firm it employed, even though firm had not billed contractor for the additional fees, precluded summary judgment on government's counterclaim under the False Claims Act. Riley Const. Co. v. U.S., Fed.Cl.2005, 65 Fed.Cl. 264. Federal Courts 1120

Genuine issues of material fact as to whether the government suffered actual damages from contractor's submission of false certifications of payment to subcontractors precluded summary judgment on government's claim for treble damages under the False Claims Act (FCA). Lamb Engineering & Const. Co. v. U.S., Fed.Cl.2003, 58 Fed.Cl. 106. Federal Courts 1120

Determination, at summary judgment phase, that claims against gas company were not clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment, made in denying company's request for attorney fees and expenses in qui tam action, was not abuse of district court's discretion; documents arguably showed company or its prede-

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cessor assisted carbon dioxide (CO_2) producer in obtaining governmental approval for producer to pay royalties based on tailgate volume information, that is the volume of processed CO_2 produced by company or its predecessor by affirmatively representing that all CO_2 losses which occurred during dry ice processing would be recycled, when that turned out not to be the case, and understating overall processing losses during four-year period. Grynberg v. Praxair, Inc., C.A.10 (Colo.) 2006, 183 Fed.Appx. 724, 2006 WL 1531413, Unreported. United States 122

109. Hearings, practice and procedure generally

Government showed good cause to obtain hearing on its objections to settlement of action under qui tam provision of the False Claims Act based on genuine concern whether amount labelled attorney fees actually represented partial payment to qui tam plaintiff, subject to allocation provision of the Act. U.S. v. Texas Instruments Corp., C.A.9 (Cal.) 1994, 25 F.3d 725. United States 122

Fact that qui tam plaintiff in False Claims Act suit would receive $2.7 million in settlement of personal claim and attorney fees in face of possible statute of limitations defense presented issue of whether total proceeds of settlement were fairly allocated so as to give government its due raised good cause objection to settlement which entitled government to hearing, even though government had earlier declined to intervene in action. U.S. ex rel. Killingsworth v. Northrop Corp., C.A.9 (Cal.) 1994, 25 F.3d 715. United States 122

Where Bureau of Health Insurance employee met with physician and informed him that his medicare payments were being withheld pending investigation of possible fraudulent claims which had already been paid, where Bureau wrote physician a letter outlining the allegations of fraud and gave physician opportunity to write a letter of reply and since the holding of any additional hearings on the suspension and withholding of payments would necessitate a determination on the merits of the fraud charge, a determination properly reserved for the courts, physician was not denied procedural due process in connection with the suspension of payments. Peterson v. Richardson, N.D.Tex.1973, 370 F.Supp. 1259, affirmed 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96 S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. Constitutional Law 4127

“Good cause” did not exist to hold a settlement hearing in camera in a civil action under the False Claims Amendments Act arising from a peer review organization's allegedly fraudulent certification that review of hospital discharge payments under Medicare had been completed; it was insufficient that publicity surrounding the hearing might affect potential witnesses and jurors and that the defendants' reputation might be damaged. U.S. ex rel. McCoy v. California Medical Review, Inc., N.D.Cal.1990, 133 F.R.D. 143. Compromise And Settlement 69

110. Jury trial, practice and procedure generally

Jury trial was waived where neither United States nor defendants requested it. U. S. v. Globe Remodeling Co., D.C.Vt.1960, 196 F.Supp. 652. Jury 25(2)

One suing on behalf of United States to recover penalty, provided for by former § 231 [now § 3729] of this title, and double damages for presentation of false, fictitious or fraudulent claim against government is entitled to jury trial, but after making demand therefor, he could not have dispensed with such trial, except with his adversary's consent. United

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States ex rel. Rodriguez v. Weekly Publications, S.D.N.Y.1949, 9 F.R.D. 179. Jury 19(15); Jury 28(3)

An action on behalf of United States to recover penalty and double damages for presentation of false, fictitious, or fraudulent claim against government for allowance of second class pound postage rates for mailing copies of magazine to subscribers is not a case wherein convenience would be furthered or prejudice avoided by separate jury trials of issues of defendant's liability and damages. United States ex rel. Rodriguez v. Weekly Publications, S.D.N.Y.1949, 9 F.R.D. 179. Federal Civil Procedure 1961

Claims Court had jurisdiction over Government's counterclaim alleging fraud under the False Claims Act, which involved matters of "public right," and therefore did not require a trial by jury. Capital Engineering & Mfg. Co., Inc. v. U.S., Cl.Ct.1990, 19 Cl.Ct. 774. Federal Courts 1087; Jury 11(3)

111. Withdrawal of juror, practice and procedure generally

In informer's action respecting a conspiracy by defendants and defendants' acts in presenting false claims against United States, refusal of defendants' motion to withdraw a juror because of remarks of plaintiff's counsel concerning a plea of nolo contendere entered by defendants in previous criminal proceedings respecting conspiracy was proper where defendants' counsel, in their opening to jury, mentioned that defendants had pleaded nolo contendere in criminal proceedings and, in final argument, urged that no admission of liability was to be implied from the fact that defendants had pleaded nolo contendere in criminal action. U. S. ex rel. Marcus v. Hess, W.D.Pa.1941, 41 F.Supp. 197, reversed 127 F.2d 233, certiorari granted 63 S.Ct. 40, 317 U.S. 613, 87 L.Ed. 498, reversed 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. Trial 129

112. Questions of fact, practice and procedure generally

Issue of whether subcontractors on Navy destroyer project used false record or statement to get false or fraudulent claim approved by government, or conspired to defraud government was for jury in False Claims Act (FCA) suit. U.S. ex rel. Sanders v. Allison Engine Co., Inc., C.A.6 (Ohio) 2006, 471 F.3d 610, rehearing and rehearing en banc denied , certiorari granted 128 S.Ct. 491, 169 L.Ed.2d 337, vacated and remanded 128 S.Ct. 2123, 170 L.Ed.2d 1030. United States 122

Issue of whether hacksaw blades sold to the General Services Administration were domestic end products as certified by supplier under the Buy American Act, so that Government could not recover penalties under the False Claims Act, was for the jury in view of dispute over whether component manufacture had taken place, even though underlying facts were not in dispute. U.S. v. Rule Industries, Inc., C.A.1 (Mass.) 1989, 878 F.2d 535. United States 122

In suit for damages under the False Claims Act based on theory that at time of SBA loan closing, borrower was already planning to apply SBA loan proceeds to uses other than those specified in loan authorization, testimony of borrower that he did not have adequate time to scrutinize documents at closing because of rushed and confused atmosphere, and that when he tried to correct false statement, government official assured him that such would not be necessary, was sufficient to create jury question on issue whether borrower specifically intended to work deceit upon the Government. U.S. v. Davis, C.A.11 (Ga.) 1987, 809 F.2d 1509. United States 122

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In action by government against realty dealer to recover civil penalties and damages under former § 231 [now § 3729] of this title which arose out of action of dealer in having veteran complete closing of transaction for a purchase of a house guaranteed by a veteran's loan after veteran had decided not to occupy the house as his home, with dealer purchasing the house from veteran and then selling it to a third party, evidence presented questions of fact as to whether any of the dealer's salesmen had actual knowledge that a certificate of loan disbursement was required to be made which had to be signed and filed by the lender, and as to what realty dealers and salesmen knew about the veterans housing program, precluding summary judgment in their favor. U.S. v. De Witt, C.A.5 (Tex.) 1959, 265 F.2d 393, certiorari denied 80 S.Ct. 121, 361 U.S. 866, 4 L.Ed.2d 105. United States 122

In action by government for alleged overpayment to school which had filed false statements of costs with Veterans' Administration, credibility of testimony of Federal Bureau of Investigation agent with respect to invoices turned over to him was for jury. U. S. v. Sytch, C.A.3 (N.J.) 1958, 257 F.2d 475. Armed Services 127

In informer's action to recover penalty under former § 231 [now § 3729] of this title and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work upon public work projects and defendants' acts in presenting false claims against United States for such work, whether any damage was suffered by United States on projects as result of defendants' acts was for jury. U. S. ex rel. Marcus v. Hess, W.D.Pa.1941, 41 F.Supp. 197, reversed 127 F.2d 233, certiorari granted 63 S.Ct. 40, 317 U.S. 613, 87 L.Ed. 498, reversed 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. United States 122

In informer's action to recover penalty under former § 231 [now § 3729] of this title and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for work, the connection of individual defendants, who were officers of certain companies, with conspiracy was for jury. U. S. ex rel. Marcus v. Hess, W.D.Pa.1941, 41 F.Supp. 197, reversed 127 F.2d 233, certiorari granted 63 S.Ct. 40, 317 U.S. 613, 87 L.Ed. 498, reversed 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. United States 122

In informer's action to recover penalty under former § 231 [now § 3729] of this title and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for work, whether bids submitted by defendants were reasonable was for jury under the evidence. U. S. ex rel. Marcus v. Hess, W.D.Pa.1941, 41 F.Supp. 197, reversed 127 F.2d 233, certiorari granted 63 S.Ct. 40, 317 U.S. 613, 87 L.Ed. 498, reversed 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. United States 122

113. Instructions, practice and procedure generally

Dual motive instruction, that employer would be entitled to verdict in its favor if it could prove that employee would have been fired regardless of engaging in protected activity, was appropriate in False Claims Act (FCA) retaliation action. Norbeck v. Basin Elec. Power Co-op., C.A.8 (N.D.) 2000, 215 F.3d 848. Labor And Employment 874

District court did not commit plain error in instructing jury that Federal Crop Insurance Corporation needed to prove its

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case against farmer under False Claims Act [31 U.S.C.A. §§ 3729-3731] for understating his crop yield and receiving crop insurance indemnity payments to which he was not entitled by "preponderance of the evidence", where district court used one of two prevailing standards used in False Claims Act cases, and both FCIC and farmer consented in that choice. Federal Crop Ins. Corp. v. Hester, C.A.8 (Mo.) 1985, 765 F.2d 723. Federal Courts 630.1

In action by United States for double damages and forfeiture arising out of alleged false claims against the United States, evidence would have justified an instruction that failure to testify by business men charged with defrauding government at a time of national emergency, where facts were peculiarly within their knowledge, might fairly give rise to inference that defendants believed that if they appeared upon stand and subjected themselves to cross-examination their testimony would be damaging to their case. U. S. v. Grannis, C.A.4 (N.C.) 1949, 172 F.2d 507, certiorari denied 69 S.Ct. 1160, 337 U.S. 918, 93 L.Ed. 1727. Trial 211

In action for forfeiture and double damages under former § 231 [now § 3729] of this title error in permitting that part of defendants' answer which set out special defense that action was barred because defendants had previously been acquitted on a charge of conspiracy to defraud United States was not cured by statement in charge to jury that special defense was not evidence and that jury was obliged to reach its verdict entirely upon the evidence. U. S. v. Grannis, C.A.4 (N.C.) 1949, 172 F.2d 507, certiorari denied 69 S.Ct. 1160, 337 U.S. 918, 93 L.Ed. 1727. Federal Courts 894

In an action by the United States, where the simple question was whether the defendant had presented and received payment of claims for any services that had never in fact been rendered by any one, an instruction was correct and sufficiently favorable to the plaintiffs that "a fictitious claim against the government (for the purposes of this suit) may be defined to be a claim preferred against it for services said to have been rendered to it, or for supplies said to have been furnished to the government, no part of which services or supplies were in fact rendered or supplied". U.S. v. Shapleigh, C.C.A.8 (Mo.) 1893, 54 F. 126, 4 C.C.A. 237.

Jury charge, in suit alleging that contractors violated False Claims Act (FCA) by bid-rigging conspiracy for Egyptian construction projects funded by United States, instructing that contractors acted "knowingly" if they "had information which would lead a reasonably prudent person to make an inquiry through which he would have surely learned certain facts," fell within FCA's definition of knowledge for scienter requirement. Miller v. Holzmann, D.D.C.2008, 563 F.Supp.2d 54. Conspiracy 9

In informer's action to recover penalty under former § 231 [now § 3729] of this title and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for such work, refusal of defendants' point for charge that, where United States government had since Feb. 5, 1940, paid any sponsor an amount in excess of amount of percentage of alleged damages to which the government would have been entitled, there could have been no recovery on that project, was not error. U. S. ex rel. Marcus v. Hess, W.D.Pa.1941, 41 F.Supp. 197, reversed 127 F.2d 233, certiorari granted 63 S.Ct. 40, 317 U.S. 613, 87 L.Ed. 498, reversed 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. United States 122

In informer's action to recover penalty under former § 231 [now § 3729] of this title and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects

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and defendants' acts in presenting false claims against United States for such work, refusal of defendants' point for charge that there could have been no recovery of any penalty or forfeiture on account of any project in which no actual damages had been shown was proper. U. S. ex rel. Marcus v. Hess, W.D.Pa.1941, 41 F.Supp. 197, reversed 127 F.2d 233 , certiorari granted 63 S.Ct. 40, 317 U.S. 613, 87 L.Ed. 498, reversed 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. United States 122

In informer's action to recover penalty under former § 231 [now § 3729] of this title and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for such work, refusal of defendants' point for charge that there could have been no recovery of damages because of payments made upon periodic estimates for partial and final payment known as certain forms, which were submitted by contractors after a designated date, was not error. U. S. ex rel. Marcus v. Hess, W.D.Pa.1941, 41 F.Supp. 197, reversed 127 F.2d 233, certiorari granted 63 S.Ct. 40, 317 U.S. 613, 87 L.Ed. 498, reversed 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. United States 122

114. Verdict, practice and procedure generally--Generally

In informer's action to recover penalty under former § 231 [now § 3729] of this title and double the amount of damages sustained by United States as result of a conspiracy by defendants and defendants' acts in presenting false claims against United States, a verdict, as submitted by jury, was defective in form where such verdict was in the form of a verdict in a criminal case. U. S. ex rel. Marcus v. Hess, W.D.Pa.1941, 41 F.Supp. 197, reversed 127 F.2d 233, certiorari granted 63 S.Ct. 40, 317 U.S. 613, 87 L.Ed. 498, reversed 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. Federal Civil Procedure 2192.1

115. ---- Directed verdict, practice and procedure generally

In an action brought under former § 231 [now § 3729] of this title, it was the duty of the trial court to withdraw the case from the jury, and to direct them to return a verdict for the defendant on every alleged cause of action upon which the evidence was of such a character that the court in the exercise of a sound judicial discretion would have been compelled to set aside a verdict returned in favor of the plaintiff. U.S. v. Shapleigh, C.C.A.8 (Mo.) 1893, 54 F. 126, 4 C.C.A. 237.

116. ---- Merger, verdict, practice and procedure generally

Where it had been found that overcharging scheme unjustly enriched all defendants in action by government seeking to recover for overbilling on United States Air Force ground equipment contracts, and verdicts for unjust enrichment and restitution, for monies paid by mistake, for breach of repair contracts and for tortious inducement to breach contracts were smaller than verdict on count alleging violation of former § 231 [now § 3729] of this title, all verdicts were merged into count under such former section. U. S. v. G & H Machinery, S.D.Ill.1981, 92 F.R.D. 465. Federal Civil Procedure 2197

117. Judgments, practice and procedure generally

Where neither partnership nor its individual members were on record as party defendants in action by United States un-

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der former § 231 of this title, there could have been no judgment against partnership or individual members as such. U. S. v. Klein, W.D.Pa.1964, 230 F.Supp. 426, affirmed 356 F.2d 983. Federal Civil Procedure 2577

118. Contempt, practice and procedure generally

Where plaintiffs filed informers' actions to recover for alleged fraud in connection with termination claims against the government and plaintiffs were enjoined from further intermeddling during the time reserved to the government to proceed with the prosecution of the action, commencement of a second action by plaintiffs without notice to the government and the issuance of a garnishee summons was punishable as for contempt on the ground that the plaintiffs attempted to accomplish substantially that which they were enjoined from doing. U. S. v. Onan, C.A.8 (Minn.) 1951, 190 F.2d 1, certiorari denied 72 S.Ct. 112, 342 U.S. 869, 96 L.Ed. 654. Injunction 223

Where plaintiffs instituted an informers' action and garnisheed large bank deposits of defendants and in violation of injunction order commenced another action, again garnisheeing large deposits of defendants and subjecting defendants to substantial expense, and the court adjudged the plaintiffs in contempt imposing a fine of $2,500 upon the plaintiffs was proper. U. S. v. Onan, C.A.8 (Minn.) 1951, 190 F.2d 1, certiorari denied 72 S.Ct. 112, 342 U.S. 869, 96 L.Ed. 654. Injunction 232

Where district court enjoined plaintiffs from further intermeddling in an informers' action during the time reserved to the government to proceed with its prosecution and they violated the injunction by instituting another action without notice to the government and the district court adjudged the plaintiffs in contempt, the plaintiffs were not entitled to a jury since the proceeding was civil in nature and the punishment meted out was wholly remedial. U. S. v. Onan, C.A.8 (Minn.) 1951, 190 F.2d 1, certiorari denied 72 S.Ct. 112, 342 U.S. 869, 96 L.Ed. 654. Jury 24.5

In informers' action to recover for alleged fraud in connection with termination claims against the government, where the court enjoined plaintiffs from intermeddling in the case during the time reserved to the government to proceed with its prosecution, filing of notice of appeal from the order did not oust the trial court of jurisdiction to adjudge the plaintiffs in contempt of court for violation of the order by instituting another action without notice to the government. U. S. v. Onan, C.A.8 (Minn.) 1951, 190 F.2d 1, certiorari denied 72 S.Ct. 112, 342 U.S. 869, 96 L.Ed. 654. Injunction 229

119. New trial, practice and procedure generally

District court in action brought against farmer under False Claims Act [31 U.S.C.A. §§ 3729-3731] for underestimating his crop yield and receiving crop indemnity payments to which he was not entitled did not abuse its discretion in denying new trial motion based upon alleged misconduct of juror in failing to respond positively that he had farming background, where three individuals ultimately chosen for jury had answered affirmatively to at least one of farm related questions, and trial court's finding that juror's failure to respond positively was inadvertent was not contradicted in the record. Federal Crop Ins. Corp. v. Hester, C.A.8 (Mo.) 1985, 765 F.2d 723. Federal Civil Procedure 2337

Trial court's comments, questions, and evidentiary rulings did not create appearance of judicial bias as would compel new trial, in suit alleging that contractors violated False Claims Act (FCA) by bid-rigging conspiracy for Egyptian construction projects funded by United States, since contractors had ample opportunity to cross-examine auditor whom court

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queried as to whether he found something amiss in contractor's cancellation of audit, court's questioning of revised engineer's estimate on contract helped jury put discrepancies among bids and estimates in proper context, and court's interaction with expert provided helpful clarification to jury. Miller v. Holzmann, D.D.C.2008, 563 F.Supp.2d 54. Federal Civil Procedure 2331

120. Disclosure of files, practice and procedure generally

In order to meet required strong showing of particularized need, government attorney seeking disclosure of materials produced during grand jury investigation of corporation's alleged False Claims Act (FCA) violations was required to submit petition addressing factors, including but not limited to, whether grand jury investigation of corporation was ongoing, whether grand jury investigation was undertaken in good faith, and not as pretext to collect information for use in civil investigation, which civil division attorneys would receive any disclosed materials, whether disclosed materials would be shared with private parties, including private plaintiffs in qui tam actions, and whether government sought to disclose all materials produced to grand jury or more limited subset of them. In re Grand Jury Matter, D.Mass.2008, 553 F.Supp.2d 11, ordered unsealed 553 F.Supp.2d 14. Grand Jury 41.50(5)

Limitations periods applicable to relator's retaliation claim under the False Claims Act (FCA) and defamation claim against his employer and its parent corporation were not tolled for period in which relator's original complaint, alleging Medicare and Medicaid fraud, remained sealed; FCA's sealing provision did not provide for tolling of statute of limitations for new claims, unrelated to the original one and obviously known to relator from the outset, and the seal did not prevent relator from developing his claims. U.S. ex rel. Deering v. Physiotherapy Associates, Inc., D.Mass.2009, 601 F.Supp.2d 368. Limitation Of Actions 58(1)

Need for public access factor favored lifting seal at pleading stage in response to motion to unseal records despite lack of public interest in qui tam action against contractor alleging violation of False Claims Act (FCA), since taxpaying public was, in effect, real party in interest, public access to judicial records was fundamental to democratic state, and unsealing was required to allow contractor to evaluate potential defense and to craft meaningful answer to relators' complaint. U.S. ex rel. Schweizer v. Oce, N.V., D.D.C.2008, 577 F.Supp.2d 169. Records 32

Resealing of former employee's qui tam complaint against government contractor under False Claims Act was not warranted, even though government declined to proceed with action and relator voluntarily dismissed complaint, employee feared that contractor might somehow interfere with his career prospects, and information in complaint might harm contractor's reputation. U.S. ex rel. Permison v. Superlative Technologies, Inc., E.D.Va.2007, 492 F.Supp.2d 561. Records 32

Relator failed to comply with the requirements of False Claims Act, in bringing qui tam action against company and two of its subsidiaries alleging that they overcharged the government in connection with a contract for security guard services at United States military bases in Bosnia, notwithstanding relator's expectation that employee in court clerk's office would recognize the significance of relator's statutory citation to False Claims Act, where relator neglected to file a notice of motion to seal, neglected to specify on the civil cover sheet or the complaint and cover letter that he sought to file the complaint under seal, and failed to even mention his intent to the employee of the clerk's office with whom he spoke.

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U.S. ex rel. Le Blanc v. ITT Industries, Inc., S.D.N.Y.2007, 492 F.Supp.2d 303. United States 122

Motions describing the government's agreements in principle to settle with non-Massachusetts hospitals or why the government needed more time to determine whether or not to intervene in False Claims Act action against those hospitals could be unsealed in False Claims Act suit against three Massachusetts hospitals, which allegedly engaged in conduct to defraud the Medicare program. U.S. ex rel. Health Outcomes Technologies v. Hallmark Health System, Inc., D.Mass.2004, 349 F.Supp.2d 170. Records 32

Lifting of seal on court file was warranted following court-approved settlement of qui tam action filed under False Claims Act (FCA) against state university hospital and affiliated physicians' groups, alleging various Medicare and Medicaid fraud schemes; court documents contained no information that could compromise future government investigations, such as explanations of specific techniques employed or specific references to ongoing investigations, media interest in the case was ardent and unflagging, reflecting the interest of the public in a case involving allegations of serious misconduct concerning a vitally important state institution. U.S. ex rel. Erickson v. University of Wash. Physicians, W.D.Wash.2004, 339 F.Supp.2d 1124. United States 122

In relators' action against government contractors under False Claims Act alleging that contractors failed to test or inspect computer components manufactured for military aircraft, unsealing of relators' document opposing proposed settlement between contractors and United States was warranted, despite contractor's contention that seal protected its reputation; document did not contain substantive details regarding government's methods of investigation, and government did not oppose its disclosure. U.S. ex rel. Coughlin v. International Business Machines Corp., N.D.N.Y.1998, 992 F.Supp. 137. United States 122

Court found no ground for retaining court's files under seal in qui tam relator's action under False Claims Act (FCA), in which government had chosen not to intervene; contents of files did not disclose any confidential investigative techniques, information which could jeopardize ongoing investigation, or matters which could injure nonparties but, rather, except for complaint, documents described routine, general investigative procedures and did not implicate specific people or provide any substantive details. U.S. by Dept. of Defense v. CACI Intern. Inc., S.D.N.Y.1995, 885 F.Supp. 80. United States 122

In qui tam action, status report submitted in camera to district court by United States Attorney would not be retained under seal; report described routine investigative procedures which anyone with rudimentary knowledge of investigatory processes would assume would be utilized in regular course of business. U.S. ex rel. Mikes v. Straus, S.D.N.Y.1994, 846 F.Supp. 21. United States 122

121. Venue, practice and procedure generally

It would not be in the interest of justice for Court of Federal Claims to transfer former federal employee's case against the United States alleging wrongful termination and interference in his qui tam action under the False Claims Act to federal district court to cure want of jurisdiction; employee's wrongful termination claim was barred by Civil Service Reform Act (CSRA), employee had ample opportunity to pursue his qui tam suit seeking to recover damages for fraudulent mishandling of government contracts, district court had dismissed his qui tam suit on ground that government employees

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could not file suit under the False Claims Act, and employee was bound by its ruling. LeBlanc v. U.S., C.A.Fed.1995, 50 F.3d 1025. Federal Courts 1158

Transfer from Massachusetts to Rhode Island was warranted in qui tam action under False Claims Act (FCA) alleging that Rhode Island city, its mayor, and other city officials made misrepresentations to United States Department of Housing and Urban Development (HUD) in order to obtain HUD funds, even though allegedly false claims were mailed to HUD officials in Massachusetts, where all other relevant events occurred in Rhode Island, relator did not identify any witnesses from Massachusetts he definitely intended to call at trial, relator and all individual defendant resided in Rhode Island, United States did not intervene in case and expressed no preference as to where case was litigated, and judges of District of Rhode Island were fully capable of deciding issues presented by case. U.S. ex rel. Ondis v. City of Woonsocket, Rhode Island, D.Mass.2007, 480 F.Supp.2d 434. Federal Courts 106.5

Venue was appropriate in qui tam action, where defendants' attorney conceded at oral argument that at least one defendant transacted business in judicial district with New York company, and plaintiff alleged that both defendants committed acts proscribed by False Claims Act (FCA) at airport in district, although defendants denied that they made any false statements at that airport. U.S. ex rel. Vallejo v. Investronica, Inc., W.D.N.Y.1998, 2 F.Supp.2d 330. Federal Courts 74

Venue for employee's False Claims Act suit against employer was proper in judicial district in which Air Force base with which employer conceded transacting business was located. U.S. ex rel. Grand v. Northrop Corp., S.D.Ohio 1992, 811 F.Supp. 330. Federal Courts 74

Venue was proper in District Court for Northern Division of Middle District of Alabama; complaint alleged that conspiracy violations and substantive violations with regard to alleged kick-back scheme in connection with disaster relief efforts took place in city in that division and district. U.S. v. Killough, M.D.Ala.1986, 625 F.Supp. 1399. Federal Courts 74

Action filed on behalf of United States Government under qui tam provisions of False Claims Act [31 U.S.C.A. § 3730] to recover from Massachusetts bank sums paid by Farmer's Home Administration under terms of a loan guarantee by Massachusetts bank to New Hampshire corporation would be transferred to United States district court for the district of Massachusetts for the convenience of parties and witnesses and in the interest of justice, even though venue was also proper in New Hampshire, where there was a similar companion action filed by relator and potential witness in instant litigation pending in district court of Massachusetts, two of the three plaintiffs in the instant case also resided in Massachusetts, and many, if not all, of witnesses needed in instant case would be required to travel to Massachusetts. U.S. ex rel. LaValley v. First Nat. Bank of Boston, D.N.H.1985, 625 F.Supp. 591. Federal Courts 106.5

122. Attorneys fees, practice and procedure generally--Generally

Attorney fees award to relator, under common fund doctrine assessing fees from fund created on behalf of others by efforts of attorney, from proceeds of settlement between pharmaceutical companies and states without qui tam statutes, was not warranted, pursuant to whistleblower suit alleging Medicare fraud under False Claims Act (FCA), since district Court did not have jurisdiction over proceeds or over non-qui tam states; companies' obligation to pay proceeds arose only under settlement agreement, not from district court's approval of settlement, and non-qui tam states were not parties to relator's suit and were not subject to court's jurisdiction by virtue of its jurisdiction over relator. U.S. ex rel. Bogart v. King

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Pharmaceuticals, C.A.3 (Pa.) 2007, 493 F.3d 323. United States 122

District court did not abuse its discretion in finding that qui tam relator's False Claims Act (FCA) claim was not frivolous and in denying defendant attorney fees; although claim was not pleaded with sufficient particularity, relator tendered good-faith argument that presentment was not required. U.S. ex rel. Rafizadeh v. Continental Common, Inc., C.A.5 (La.) 2008, 553 F.3d 869. United States 122

District court did not abuse its discretion in using law firm's 2004 rates in awarding fees for representation that commenced in 2001 and ended in 2005 in False Claims Act (FCA) suit, where court explained how its selection provided some adjustment for delay in compensation, while avoiding windfall that would have resulted from use of current rates. Gonter v. Hunt Valve Co., Inc., C.A.6 (Ohio) 2007, 510 F.3d 610. United States 122

District court did not abuse its discretion in determining that employee physician's claims, that partner physicians improperly received Medicare reimbursement for referrals to magnetic resonance imaging (MRI) facilities in which they held financial interest, were objectively vexatious, such that attorney fees were warranted under False Claims Act (FCA); partner physicians' remuneration would not vary with number of patients they referred, and there was no evidence any Medicare patient inappropriately received MRI services. Mikes v. Straus, C.A.2 (N.Y.) 2001, 274 F.3d 687. United States 122

Employee was not entitled to attorney fees in dual motive False Claims Act (FCA) case in which jury found retaliation but found that employer would have terminated employee even if he had not engaged in protected activity, notwithstanding section of Civil Rights Act of 1991 providing that unlawful employment practice was established when complaining party demonstrated that protected status was motivating factor for employment practice, even though other factors also motivated practice. Norbeck v. Basin Elec. Power Co-op., C.A.8 (N.D.) 2000, 215 F.3d 848. Labor And Employment 880

Both the general attorney fees provision of the False Claims Act (FCA) and the attorney fees provision applicable to wrongful termination actions under the FCA allow the award of attorney fees for time spent in post-judgment collection activities. Shaw v. AAA Engineering & Drafting, Inc., C.A.10 (Okla.) 2000, 213 F.3d 538. United States 122

District court acted within its discretion, in former government employee's qui tam suit against government contractor and subcontractor under False Claims Act, in denying contractor's and subcontractor's motions for attorney fees after dismissing complaint on ground suit was impermissibly based on publicly disclosed information; that district court lacked subject matter jurisdiction over action was not clearly apparent under precedent at time. U.S. ex rel. Fine v. MK-Ferguson Co., C.A.10 (N.M.) 1996, 99 F.3d 1538. United States 122

Any impropriety in fee arrangement between attorney and client did not affect amount of attorney fee award under False Claims Act, absent conflict of interest between attorney and client. U.S. ex rel. Virani v. Jerry M. Lewis Truck Parts & Equipment, Inc., C.A.9 (Cal.) 1996, 89 F.3d 574, certiorari denied 117 S.Ct. 945, 519 U.S. 1109, 136 L.Ed.2d 834. United States 122

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In False Claims Act qui tam action, defendant was not liable for attorney fees, legal expenses and costs that relator incurred during collateral litigation with government to determine relator's share of civil damages settlement; defendant had no legal standing or right to participate in proceeding, nothing in record suggested that government initiated its contest against relator because of defendant or that defendant prolonged litigation process or could have hastened its conclusion, and defendant chose to minimize its losses by settling case before trial. U.S. ex rel. Taxpayers Against Fraud v. General Elec. Co., C.A.6 (Ohio) 1994, 41 F.3d 1032, rehearing and suggestion for rehearing en banc denied. United States 122

In qui tam False Claims Act (FCA) suit alleging submission of erroneous bills to Medicaid, prevailing plaintiffs' counsel's time spent contacting attorneys general and local counsel of states that ultimately did not join, or did not remain in, litigation, and thus were not parties to ultimate settlement, was not compensable. U.S. ex rel. Thompson v. Walgreen Co., D.Minn.2009, 621 F.Supp.2d 710. United States 122

Reduction of lodestar amount by 10% was warranted, upon relator's application for award of attorney fees in qui tam action under the False Claims Act (FCA), based upon vague and ambiguous entries in time records of relator's attorneys; with such generic descriptions, the District Court could not determine which trial brief was being worked on, whether the research was excessive or duplicative, or whether the time was spent on issues upon which relator did not prevail. U.S. ex rel. Miller v. Bill Harbert Intern. Const. Inc., D.D.C.2009, 601 F.Supp.2d 45. United States 122

Qui tam relator that sued federal contractors, alleging violations of False Claims Act (FCA), was not “prevailing party” as to time-barred claims against contractor, for purposes of award of attorney fees and costs, since claims had been dismissed in their entirety and relator's legal relationship to contractor did not change as result of litigation. Miller v. Holzmann, D.D.C.2008, 575 F.Supp.2d 2. United States 122

Hourly rates requested for compensation of defense counsel were excessive, with respect to fee award sought by mortgage company unsuccessfully sued by qui tam relator under False Claims Act; although sought rates may have been within range for comparable awards in similar cases, central issue in instant case was neither novel nor complex, and case did not involve discovery or court appearances. Pugach v. M & T Mortg. Corp., E.D.N.Y.2008, 564 F.Supp.2d 153, stay denied 2008 WL 2640465. United States 122

Relator's conspiracy claim in qui tam action was not clearly frivolous, clearly vexatious, or brought primarily for the purposes of harassment, precluding award of attorney fees and expenses under the False Claims Act (FCA) to defendants who prevailed when claim was dismissed for lack of subject matter jurisdiction, considering that claim was not clearly barred by jurisdictional statute when action was initiated, claim was sufficiently supported by facts alleging a conspiracy, actions of independent agents evidenced potential meritoriousness of the claim, and relator spent considerable sums pursuing his claim. U.S. ex rel. Atkinson v. Pennsylvania Shipbuilding Co., E.D.Pa.2007, 528 F.Supp.2d 533. United States 122

Qui tam plaintiff filed “frivolous” and “vexatious” lawsuit when it brought action against government contractors under False Claims Act (FCA) based on allegations that they obtained government contracts by misrepresenting themselves as small or disadvantaged businesses, despite knowing that government agency was aware of contractors' true business status at the time contracts were issued, and therefore contractors were entitled, as prevailing defendants, to award of at-

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torney fees and expenses under FCA. U.S. ex rel. J. Cooper & Associates, Inc. v. Bernard Hodes Group, Inc., D.D.C.2006, 422 F.Supp.2d 225. United States 122

Qui tam relator's recovery of attorney fee award under False Claims Act (FCA) was remedial, rather than penal, in nature, and thus relator's claim for reimbursement of attorney fees survived his death. U.S. ex rel. Estate of Botnick v. Cathedral Healthcare System, Inc., D.N.J.2005, 352 F.Supp.2d 530. Abatement And Revival 57

Government's position that materiality of false statement was not required element for claim under False Claims Act (FCA) was substantially justified, so that defendants who successfully defended against government's FCA claims were not entitled to attorney fees and costs under Equal Access to Justice Act (EAJA). U.S. v. Intervest Corp., S.D.Miss.2000, 104 F.Supp.2d 691. United States 147(11.1)

Qui tam relator made frivolous claim, that physicians group violated False Claims Act (FCA) by filing claim against government for needlessly performed magnetic resonance imaging (MRI), for purposes of awarding defendant attorney fees under FCA; only one patient was alleged to have undergone fraudulent testing. U.S. ex rel. Mikes v. Straus, S.D.N.Y.2000, 98 F.Supp.2d 517, affirmed 274 F.3d 687. United States 122

Health care entity would be held liable for 90% of successful relator's attorney fees in False Claims Act (FCA) action, where entity paid 90% of total settlement to government and other two defendants in action were without assets or held assets which were effectively judgment proof. U.S. ex rel. Poulton v. Anesthesia Associates of Burlington, Inc., D.Vt.2000, 87 F.Supp.2d 351. United States 122

Only relator, and not relator's attorney, has standing to request attorney fees under False Claims Act. U.S. ex rel. Thornton v. Science Applications Intern. Corp., N.D.Tex.1998, 79 F.Supp.2d 655, vacated 207 F.3d 769. United States 122

It was unreasonable for relators' counsel to expend over 62 hours in qui tam action under False Claims Act (FCA) working on conflict of interest of attorney who left firm employed by relators and joined firm representing defendant and, thus, all but one hour would be excluded from calculation of lodestar amount of attorney fees; issue was not complicated and merely required relators' counsel to provide departing attorney with notice that court order barred disclosure of information concerning qui tam action and such disclosure would violate ethical rules. U.S. ex rel. John Doe I v. Pennsylvania Blue Shield, M.D.Pa.1999, 54 F.Supp.2d 410. United States 122

Court could not exercise its equitable powers to require government to pay relator's attorney fees for settling qui tam action without providing notice to relator or her attorney, as required under the False Claims Act (FCA), since Act forbade the taxing of attorney fees against the government. U.S. ex rel. Smith v. Gilbert Realty Co., E.D.Mich.1998, 34 F.Supp.2d 527. United States 122

Defendant in false claims suit was not obligated to pay attorney fees incurred by qui tam plaintiff for time expended on matters not directly related to litigation against defendant, including obtaining immunity, providing testimony before Congress, and addressing members of the media. U.S. v. General Elec., S.D.Ohio 1992, 808 F.Supp. 584, reversed in part

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, vacated in part 41 F.3d 1032, rehearing and suggestion for rehearing en banc denied. United States 122

District court's award of attorney fees to manufacturer of chemical polyvinyl chloride (PVC), pursuant to False Claims Act (FCA), as a prevailing defendant in a qui tam action, was not abuse of discretion, where district court determined that the record "clearly established" that employee's first amended complaint was filed in a frivolous or vexatious manner, as employee had added an entirely new claim in his amended complaint and had failed to comply with FCA's filing requirements, establish that he was an "original source" for information alleged as required by law, and plead his allegations of fraud with particularity. U.S. ex rel Bain v. Georgia Gulf Corp., C.A.5 (La.) 2006, 208 Fed.Appx. 280, 2006 WL 3093637, Unreported. United States 122

At the time he filed qui tam action, relator had sufficient facts in his possession to state a claim against gas company that was neither groundless or without foundation, such that company was not entitled to recover its attorney fees and expenses; relator based his belief that gas company was providing inaccurate price information on his knowledge of carbon dioxide (CO_2) market rates, his Freedom of Information Act (FOIA) request, which stated that the government required that all excess CO_2 be recycled and not vented, as well as information that company was paying CO_2 producer "roughly 10% of the price quote" relator received from company. Grynberg v. Praxair, Inc., C.A.10 (Colo.) 2006, 183 Fed.Appx. 724, 2006 WL 1531413, Unreported. United States 122

123. ---- Amount, attorneys fees, practice and procedure generally

District court did not abuse its discretion when, in calculating lodestar amount in False Claims Act (FCA) suit for representation between 2001 and 2005 based on historical rates charged in 2004, it determined the attorneys' billing rates in 2004 based on firm's own fee application for attorneys' services in another case. Gonter v. Hunt Valve Co., Inc., C.A.6 (Ohio) 2007, 510 F.3d 610. United States 122

Relator in qui tam action brought pursuant to the False Claims Act (FCA) was not entitled to all of his claimed attorney fees, in the amount of $300,000; in the first phase of the litigation, eight of relator's 10 claims were dismissed, resulting in a reduction of fee request, in the second phase of the litigation, contractor prevailed on one of two claims, resulting in further reduction of fee request, and in the final phase, relator prevailed on final claim, and no reduction in fees for that phase was taken. U.S. ex rel. Harrison v. Westinghouse Savannah River Co., C.A.4 (S.C.) 2003, 352 F.3d 908. United States 122

Reduction in prevailing plaintiffs' attorney fee request in qui tam False Claims Act (FCA) suit was warranted based on duplication of effort; although case featured novel issues and frequent contacts with government agencies, and involved complicated Medicare billings, one or two attorneys could have attended to some tasks that three attorneys worked on, e.g. conference call regarding plaintiffs' potential confrontation by defendant. U.S. ex rel. Thompson v. Walgreen Co., D.Minn.2009, 621 F.Supp.2d 710. United States 122

Reduction of lodestar amount by 10% was warranted, upon relator's application for award of attorney fees in qui tam action under the False Claims Act (FCA), to account for relator's attorneys' practice of block-billing; District Court could not, with any degree of exactitude, determine the amount of time billed for a discrete activity, and it would not undertake the futile task of separating block entries into their constituent tasks and apportioning a random amount of time to each.

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U.S. ex rel. Miller v. Bill Harbert Intern. Const. Inc., D.D.C.2009, 601 F.Supp.2d 45. United States 122

Attorney fees award of $7.25 million would properly issue in action brought by qui tam relator on behalf of United States against federal contractors, alleging violations of False Claims Act (FCA); attorneys' billed hourly rates were reasonable, claimed work hours were reasonably expended on litigation, subject to ten percent reduction for ambiguous time entries, and current rather than historical lodestar rate was applicable due to delay in payment. Miller v. Holzmann, D.D.C.2008, 575 F.Supp.2d 2. United States 122

Qui tam relator that unsuccessfully sued mortgage company under False Claims Act failed to demonstrate any financial hardship that would justify reduction in computation of reasonable fee award; relator proffered only unsupported assertions about ages, race, and wealth of certain of four named plaintiffs, without any specific evidence of relevant assets, liabilities, or income of each of them. Pugach v. M & T Mortg. Corp., E.D.N.Y.2008, 564 F.Supp.2d 153, stay denied 2008 WL 2640465. United States 122

Hourly rate of $225 per hour for attorneys and $160 for associates was suitable for purposes of calculating successful relator's attorney fees in complex health care fraud and qui tam action against health care entities. U.S. ex rel. Poulton v. Anesthesia Associates of Burlington, Inc., D.Vt.2000, 87 F.Supp.2d 351. United States 122

Hours expended at meetings attended by both relator's counsel and local counsel in pursuing qui tam action under False Claims Act (FCA) did not constitute duplication of effort and, thus, would not be excluded from calculating lodestar amount of attorney fees, given complicated nature of FCA case involving fraud by entities in health care industry. U.S. ex rel. John Doe I v. Pennsylvania Blue Shield, M.D.Pa.1999, 54 F.Supp.2d 410. United States 122

Upward adjustment to lodestar calculation of attorney fees awarded to relators in False Claims Act (FCA) action was warranted; action involved novel and difficult legal questions, attorneys obtained multi-million dollar verdict for government, and major element of verdict was injunctive relief. U.S. ex rel. Garibaldi v. Orleans Parish School Bd., E.D.La.1999, 46 F.Supp.2d 546, vacated 244 F.3d 486, rehearing and rehearing en banc denied 264 F.3d 1143, certiorari denied 122 S.Ct. 808, 534 U.S. 1078, 151 L.Ed.2d 693, rehearing denied 122 S.Ct. 1198, 534 U.S. 1172, 152 L.Ed.2d 137, reentered 2003 WL 22174241. United States 122

Counsel for relator in qui tam action was not entitled to order requiring government, as sanction for violating False Claims Act, to pay difference between amount awarded to relator for legal fees, and total amount of fees owed to counsel; government entered postjudgment settlement for amount significantly less than amount of judgment, and was required to transfer full settlement amount to relator, who was entitled, pursuant to court order, to retain full amount she had been award under initial judgment, and was required to pay only fraction of legal fees. U.S. ex rel. Smith v. Gilbert Realty Co., E.D.Mich.1998, 9 F.Supp.2d 800. United States 122

Employee wrongfully discharged for engaging in whistleblower activities was entitled to receive reasonable attorney fees, and was not limited to one third of her recovery, as agreed upon by employee and her counsel prior to suit. Neal v. Honeywell, Inc., N.D.Ill.1998, 995 F.Supp. 889, affirmed 191 F.3d 827. Labor And Employment 880

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For purposes of determining attorney fees under lodestar method for relators' attorneys in qui tam action against government contractors under False Claims Act, which alleged that contractors failed to test or inspect computer components manufactured for military aircraft, relators' attorneys were not entitled to higher hourly rate than that provided to local practitioners, despite their contention that there were few plaintiff's qui tam lawyers with sufficient defense procurement specialization; attorneys failed to present evidentiary basis on which to fix rates they sought. U.S. ex rel. Coughlin v. International Business Machines Corp., N.D.N.Y.1998, 992 F.Supp. 137. United States 122

In determining attorney fee award for relator in qui tam action under False Claims Act, $200 was reasonable hourly rate, and "lodestar" fee would be multiplied by 1.5, where novel arguments were presented and found persuasive. U.S. v. Stern, M.D.Fla.1993, 818 F.Supp. 1521, opinion vacated in part on reconsideration 932 F.Supp. 277. United States 122

Attorney fee award to qui tam plaintiff in false claims suit would not be reduced on ground that total of statutory fee and fee percent in contingent contract was extraordinarily high; award of reasonable attorney fees was mandated. U.S. v. General Elec., S.D.Ohio 1992, 808 F.Supp. 584, reversed in part , vacated in part 41 F.3d 1032, rehearing and suggestion for rehearing en banc denied. United States 122

123a. ---- Reasonable hours, attorney fees, practice and procedure generally

Reduction in fee-related hours by 25% was warranted, upon relator's application for award of attorney fees in qui tam action under the False Claims Act (FCA), although relator's fee petition was extensive and included a 42 page brief, and the case required a substantial amount of time to prepare the fee petition, where relator's request of over $600,000 just to prepare the fee petition was per se unreasonable, relator's attorneys used senior attorneys disproportionately, and relator's attorneys failed to fully account for issues on which relator did not prevail. U.S. ex rel. Miller v. Bill Harbert Intern. Const. Inc., D.D.C.2009, 601 F.Supp.2d 45. United States 122

Reasonable hours expended for defense counsel's legal work were subject to 30 percent deduction, with respect to fee award sought by mortgage company unsuccessfully sued by qui tam relator under False Claims Act; work performed in relation to disciplinary committee proceedings, press release, threatened disqualification of counsel and recusal motion was not reasonable and necessary to company's defense. Pugach v. M & T Mortg. Corp., E.D.N.Y.2008, 564 F.Supp.2d 153, stay denied 2008 WL 2640465. United States 122

124. Costs, practice and procedure generally

Award of costs to prevailing defendant in False Claims Act (FCA) suit was governed by civil procedure rule's "unless a statute provides otherwise" standard, not by FCA's frivolousness standard for awards of attorney fees and expenses; both civil procedure rule and FCA distinguished between "expenses" and "costs." U.S. ex rel. Ritchie v. Lockheed Martin Corp., C.A.10 (Colo.) 2009, 558 F.3d 1161. United States 122

Award of $2,065.65 in costs for copying documents was abuse of discretion in False Claims Act (FCA) suit, and would be reduced to $676.20, in absence of any explanation as to why award of 15 cents per copy was justified when copying firm in same building as prevailing party's law firm charged only 6 to 7 cents per copy. U.S. v. Emergency Medical Associates of Illinois, Inc., C.A.7 (Ill.) 2006, 436 F.3d 726, rehearing and rehearing en banc denied. United States 122

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Within provision of the False Claims Act (FCA) that "the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails" and the court finds that the claim was clearly frivolous or vexatious, or brought primarily for purposes of harassment, the term "expenses" does not include costs, and thus the provision is not an express provision regarding costs and does not displace the district court's authority to award costs under Rule of Civil Procedure. U.S. ex rel. Costner v. U.S., C.A.8 (Ark.) 2003, 317 F.3d 889, rehearing and rehearing en banc denied. United States 122

Reductions to fees-related costs and expenses was warranted, in qui tam action under the False Claims Act (FCA), based upon vague, generic, and ambiguous billing descriptions; most of the non-expert expenses were for electronic research that was only identified by name of researcher and date that the research was conducted, and expert expenses were partly incurred on issues on which relator did not prevail. U.S. ex rel. Miller v. Bill Harbert Intern. Const. Inc., D.D.C.2009, 601 F.Supp.2d 45. United States 122

Bills of costs provided by qui tam relator and United States were reasonable, notwithstanding allegedly duplicative transcript charges, for purposes of cost award in action brought against federal contractors under False Claims Act (FCA); contractors presented no evidence to overcome presumption of reasonableness, plaintiffs' conduct was not vexatious, and contractors were capable of paying costs. Miller v. Holzmann, D.D.C.2008, 575 F.Supp.2d 2. United States 122

124a. ---- Particular amounts, costs practice and procedure generally

Reduction of relator's merits-based costs and expenses by 40% was warranted, in qui tam action under the False Claims Act (FCA), based upon vague, generic, and ambiguous billing descriptions, where the District Court could not meaningfully assess whether the expenses were necessarily incurred in pursuing this litigation. U.S. ex rel. Miller v. Bill Harbert Intern. Const. Inc., D.D.C.2009, 601 F.Supp.2d 45. United States 122

Attorneys' expense award of $287,000 would properly issue in action brought by qui tam relator on behalf of United States against federal contractors, alleging violations of False Claims Act (FCA); award amount represented 40 percent reduction due to excessive vague entries in attorneys' records. Miller v. Holzmann, D.D.C.2008, 575 F.Supp.2d 2. United States 122

125. Injunction, practice and procedure generally

A showing of irreparable harm is required for preliminary injunctive relief under the False Claims Act; statutory language supported position that customary equitable considerations should be made. Bedrossian v. Northwestern Memorial Hosp., C.A.7 (Ill.) 2005, 409 F.3d 840. Injunction 138.48

126. Sanctions, practice and procedure generally

Pharmaceutical manufacturer's third notice of removal filed more than two years after suit was filed by State of Wisconsin, alleging fraudulent pricing under state law, did not warrant sanctions upon third remand, since paucity of appellate authority provided manufacturer objectively reasonable basis for seeking removal of suit arguably brought within federal jurisdiction due to later filing of suit under False Claims Act (FCA). Wisconsin v. Amgen, Inc., C.A.7 (Wis.) 2008, 516 F.3d 530. Removal Of Cases 107(11)

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Hospital's motion for an order to show cause against relators, who were former nurse anesthetists at university hospital alleging false claims to Medicare, was filed in direct violation of district court's prior scheduling order, which had instructed hospital to provide relators, rather than court, with their objections to claims identified and exhibits relied upon, so as to warrant striking hospital's motion. El-Amin v. George Washington University, D.D.C.2009, 626 F.Supp.2d 1. Federal Civil Procedure 1935.1

127. Abatement or survival of action, practice and procedure generally

Qui tam actions brought under the False Claims Act (FCA) survive the death of the relator; although FCA provides for civil penalties and treble damages, damages for FCA claims, while both punitive and remedial in nature, serve a primarily remedial purpose, primary purpose of damages under the FCA is to permit the government to obtain compensation for fraud inflicted upon it, extinguishing FCA claims upon the relator's death would not further the purpose of the statute of encouraging private persons to pursue fraud claims on behalf of the Government, and the government's injury does not vanish with the death of the relator. U.S. ex rel. Colucci v. Beth Israel Medical Center, S.D.N.Y.2009, 603 F.Supp.2d 677. Abatement And Revival 57

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151. Necessary and requisite allegations, complaint

When seeking legal redress for retaliatory discharge under False Claims Act (FCA), plaintiff has burden of pleading facts which would demonstrate that defendants had been put on notice that plaintiff was either taking action in furtherance of private qui tam action or assisting in FCA action brought by government; if defendants were not afforded such notice, then, afortiori, their actions could not constitute retaliation. U.S. ex rel. Ramseyer v. Century Healthcare Corp., C.A.10 (Okla.) 1996, 90 F.3d 1514. Labor And Employment 858

Failure of government to allege fraud in action to recover hospitalization benefits received for nonservice connected disabilities by veteran who was allegedly financially able to defray necessary expenses of hospitalization although he had signed sworn statement that he could not do so was no impediment to recovery since restitution could be had for services rendered because of an innocent but material misstatement by the veteran. U. S. v. Shanks, C.A.10 (Colo.) 1967, 384 F.2d 721. United States 140

United States' allegations that current procedural terminology (CPT) codes used in health care provider's claims for reimbursement from Medicare for evaluation and management (E & M) services were fraudulently higher than medically warranted, that services that were claimed were not actually provided, that documentation submitted in support of claims was false or altered, and that provider knew that claims were false or altered were sufficient to state claim under False Claims Act (FCA) section prohibiting false or fraudulent claims against United States. U.S. v. Aguillon, D.Del.2009, 628 F.Supp.2d 542. United States 122

Allegations that service corporation and two individual defendants billed for computer, software and remote telephone switch purchase, installation and upgrade projects that were performed by or primarily by another entity, that contract modification was made, contrary to industry standard, to allow defendants to separately bill government for testing after work was completed, and that defendants submitted false charges to government for labor expenses relating to switching cable operations to new plant when in fact charges were to purchase a mobile communications trailer, building material, laptop computer, monitor and docking station, were sufficient for employee terminated by service corporation to state claim that corporation and two individual defendants presented or caused to be presented to United States government false or fraudulent claims for payment, or used false record or statement to get false or fraudulent claim paid or approved

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by government, in violation of False Claims Act (FCA). U.S. ex rel. Poisson v. Red River Service Corp., W.D.Okla.2008, 621 F.Supp.2d 1153. Labor And Employment 778

Relators fell short of particularity requirement for fraud pleadings, in their qui tam False Claims Act suit alleging that pharmaceutical company had conducted marketing campaign for physicians to prescribe company's drug for off-label uses, contrary to Food and Drug Administration (FDA) regulations, resulting in issuance of prescriptions for off-label uses to government healthcare beneficiaries and in turn submission of ineligible, fraudulent reimbursement claims to government; relators failed to identify any specific false claims actually submitted to government, or any information about contents or processing of false claims. Hopper v. Solvay Pharmaceuticals, Inc., M.D.Fla.2008, 590 F.Supp.2d 1352 . Federal Civil Procedure 636

Former compliance officer for health care provider failed to plead fraud with particularity, as required under federal rules of civil procedure, for his False Claims Act (FCA) false-certification allegations regarding annual cost reports submitted for hospitals owned by provider, certifying compliance with the Stark Law and the Medicare and Medicaid Anti-Kickback Statute; while some of complaint's allegations were specific regarding how hospitals had violated the Stark Law and the Medicare and Medicaid Anti-Kickback Statute through patient referrals from physicians who had improper financial relationships with the hospitals, complaint did not specifically allege that referred patients were Medicare-eligible, nor did it provide anything more than scant detail regarding hospitals' submission of claims to the government for payment for services provided to referred patients. U.S. ex rel. Frazier v. IASIS Healthcare Corp., D.Ariz.2008, 554 F.Supp.2d 966. Federal Civil Procedure 636

Allegations that subcontractor caused the submission of false claims and did so knowingly were not subject to the particularity requirement for pleading fraud in False Claims Act (FCA) suit against contractor and subcontractor; the rule only required specificity of the circumstances constituting fraud or mistake and allowed general averments of knowledge and other states of mind. U.S. ex rel Smith v. Boeing Co., D.Kan.2007, 505 F.Supp.2d 974. Federal Civil Procedure 636

Relator adequately pled the elements necessary to state a claims under False Claims Act (FCA) against successful bidders awarded wireless telecommunications licenses in Federal Communication Commission (FCC) auctions: relator averred that bidders and their owners (1) made or caused others to make statements in their applications claiming eligibility for federal bidding credits, (2) that such statements were false or fraudulent in contravention of the FCC's certification and disclosure requirements, (3) knew of their falsity, and (4) sought payment from the federal treasury through bidding credits. U.S. ex rel. Taylor v. Gabelli, S.D.N.Y.2004, 345 F.Supp.2d 313, stay denied 345 F.Supp.2d 340. United States 122

United States, which brought actions under False Claims Act [31 U.S.C.A. §§ 3729-3731] was not required to allege direct link between United States and fraudulent claims, but merely needed to allege organization which depended upon federal government for funding had been defrauded. U.S. v. Killough, M.D.Ala.1986, 625 F.Supp. 1399. United States 120.1

In action by United States for forfeiture of $2,000 plus double damages for conspiring to defraud the United States by obtaining approval of false applications for loans insured by the Federal Housing Administration [now Department of Housing and Urban Development], complaint, which failed to allege presentation of any claim to any United States de-

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partment or officer, existence of any claim against the United States or any department or officer thereof, or allowance, approval or payment of any such claim by United States or any department or officer thereof, failed to state a claim for which relief could be granted. U.S. v. McNinch, E.D.S.C.1956, 138 F.Supp. 711, affirmed 242 F.2d 359, certiorari granted 78 S.Ct. 16, 355 U.S. 808, 2 L.Ed.2d 28, affirmed in part, reversed in part on other grounds 78 S.Ct. 950, 356 U.S. 595, 2 L.Ed.2d 1001. United States 122

In determining sufficiency of complaint in qui tam action charging conspiracy to defraud government by a number of contractors operating under cost-plus fixed fee contracts, failure to charge that conspiracy contemplated that contractors would pool unlawful gains and apportion them among themselves, while not determinative, was an element to be considered. U. S. ex rel. Ryan v. Broderick, D.C.Kan.1945, 59 F.Supp. 189, appeal dismissed 150 F.2d 1023. Federal Civil Procedure 698

Even though an overt act is properly alleged, complaint failed to properly allege an agreement, and therefore did not state a conspiracy claim against defendant health care providers and various stockholders and directors under False Claims Act (FCA); while complaint alleged kickbacks, illegal financial relationships, and submission of claims to the Government, none of the paragraphs indicated which defendants entered into an agreement and did not specify which defendants made illegal kickback payments to referring physicians. U.S. ex rel. Bartlett v. Tyrone Hosp., Inc., W.D.Pa.2006, 234 F.R.D. 113. Conspiracy 18

Government's allegations that hospitals knowingly submitted claims for Medicare payment of non-covered services provided in connection with investigational cardiac devices that were not “reasonable and necessary” within meaning of Medicare manual provision were sufficient to state false or fraudulent element of claim under the False Claims Act (FCA); as pled, hospitals' claims were legally false under express or implied certification theory, as they expressly or impliedly certified compliance with Medicare provision. In re Cardiac Devices Qui Tam Litigation, D.Conn.2004, 221 F.R.D. 318. United States 122

United States need not plead intent to commit fraud in False Claims Act action as a necessary element of the claim, although the intent to commit fraud must be proven by clear and convincing evidence in the special plea in fraud. SGW, Inc. v. U.S., Cl.Ct.1990, 20 Cl.Ct. 174. United States 122

152. Specificity of allegations, complaint

Relators in qui tam action under False Claims Act (FCA) against provider of prescription drug benefits under federal health insurance plans did not allege fraud with requisite particularity in asserting claim based upon provider's alleged fraudulent billing in connection with returned prescriptions, given absence of information on individual transactional level demonstrating that provider failed to give appropriate refund or replacement product for returned prescription, and as to whether provider knowingly took any improper actions. U.S. ex rel. Fowler v. Caremark RX, L.L.C., C.A.7 (Ill.) 2007, 496 F.3d 730, rehearing and suggestion for rehearing en banc denied, certiorari denied 128 S.Ct. 1246, 170 L.Ed.2d 66. Federal Civil Procedure 636

False Claims Act (FCA) complaint, alleging that landlords overcharged two Louisiana agencies, largely funded by United States, on lease agreements, did not satisfy particularity requirement; complaint did not describe what statements

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were contained in agencies' budget, who prepared it, or what role it played in securing funding from federal government. U.S. ex rel. Rafizadeh v. Continental Common, Inc., C.A.5 (La.) 2008, 553 F.3d 869. Federal Civil Procedure 636

Qui tam relator who sued laboratory owned by state university, alleging that laboratory obtained payment from Medicare provider for inadequately documented tests, sufficiently alleged "causing to be presented" claim under False Claims Act (FCA); complaint averred that provider agreed to circumvent contractual and statutory requirements, assuring laboratory that it would continue to accept claims with disputed code. U.S. ex rel. Sikkenga v. Regence Bluecross Blueshield of Utah, C.A.10 (Utah) 2006, 472 F.3d 702, on remand 2007 WL 2713913. United States 122

Qui tam relator failed to plead with sufficient particularity claim that defendants defrauded medicaid program, in violation of False Claims Act (FCA); although relator cited particular patients, dates, and corresponding medical records for services he contended were not eligible for government reimbursement, the complaint failed to allege any discrete incident of fraudulent submission of reimbursement claim by any defendant, and it did not state that relator had firsthand knowledge of the submission of any false claims. U.S. ex rel. Atkins v. McInteer, C.A.11 (Ala.) 2006, 470 F.3d 1350. Federal Civil Procedure 636

Anesthesiologist's qui tam action against hospital and chief of anesthesiology pursuant to the False Claims Act (FCA), alleging that "all the nurse anesthetists' work was illegal," and that "every invoice for nurse anesthetist work was fraudulent because no nurse anesthetist was medically supervised or directed" failed to satisfy heightened particularity requirement for fraud claims, in action asserting defendants submitted and conspired to submit false claims to the government seeking payment for anesthesia services, medical supplies, and prescriptions; the anesthesiologist failed to provide any representative examples of the alleged fraudulent conduct, specifying the time, place, and content of their acts and the identity of the actors. U.S. ex rel. Joshi v. St. Luke's Hosp., Inc., C.A.8 (Mo.) 2006, 441 F.3d 552, rehearing and rehearing en banc denied , certiorari denied 127 S.Ct. 189, 549 U.S. 881, 166 L.Ed.2d 142. Federal Civil Procedure 636

Qui tam relator's False Claims Act (FCA) complaint failed to comply with rule requiring that fraud claims be pled with particularity, where complaint nebulously alleged that period in question was "at least through 2002," it failed to allege start date, it referred generally to "management" and listed individuals without explaining role they played in alleged fraud, it set forth no facts exemplifying alleged fraudulent scheme, and, although relator contended that defendants had critical documents, his offer to replead with particularity and his participation in government's five-year examination of reams of documents suggested that lack of access was not real barrier. U.S. ex rel. Williams v. Martin-Baker Aircraft Co., Ltd., C.A.D.C.2004, 389 F.3d 1251, 363 U.S.App.D.C. 419, rehearing denied. Federal Civil Procedure 636

Contractor had sufficient notice of particular facts and circumstances of misconduct relating to relator's qui tam claim brought under the False Claims Act (FCA), and thus such claims relating to fraud would not be dismissed for failure to allege with particularity; relator alleged that subcontractor received insider information from contractor that was not provided to other bidding subcontractors, that contractor misrepresented to the Department of Energy (DOE) that its requisition process had been duly followed when contractor knew that such representation was false, that contractor knowingly permitted bidding subcontractor to engage in undisclosed organizational conflicts of interest that gave subcontractor a competitive advantage, and that contractor failed to disclose the conflicts to DOE. U.S. ex rel. Harrison v. Westinghouse Savannah River Co., C.A.4 (S.C.) 2003, 352 F.3d 908. Federal Civil Procedure 636

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Employee's complaint against his employer, which operated a hazardous waste incinerator, alleging violation of the reverse false claim provision of the False Claims Act (FCA), failed to meet requirements of federal civil rule which requires pleading with particularity in cases alleging fraud; complaint averred that over period of several months a series of discharges took place which were illegal, but did not explicitly state that any alleged false representations were made during that time, stated that information was logged into a database, but did not specify whether the information was false or that it was true and that employer subsequently reported false information to the government, and complaint failed to state who was making the allegedly false representations. U.S. ex rel. Doe v. Dow Chemical Co., C.A.5 (La.) 2003, 343 F.3d 325. Federal Civil Procedure 636

Allegations that government contractor promised to do a task for specific amount, but eventually billed more than twice that amount without meeting contract requirements, did not satisfy requirement that allegations of fraud underlying relator's claim under False Claims Act (FCA) be pleaded with particularity; relator had to allege that contractor made statement knowing that it was false, or that it had no intention to perform. U.S. ex rel. Garst v. Lockheed-Martin Corp., C.A.7 (Ill.) 2003, 328 F.3d 374, rehearing and rehearing en banc denied , certiorari denied 124 S.Ct. 450, 540 U.S. 968, 157 L.Ed.2d 313, rehearing denied 124 S.Ct. 975, 540 U.S. 1097, 157 L.Ed.2d 809. Federal Civil Procedure 636

Allegations that contractors that performed hazardous waste treatment and disposal services under contract with Environmental Protection Agency (EPA) intentionally tampered with measuring device on waste incinerator on unspecified occasions, and that such tampering would have been material to EPA's decision to pay them did not plead False Claims Act (FCA) violation with sufficient particularity, absent information regarding the identity of those who allegedly tampered with the monitors or when such tampering occurred. U.S. ex rel. Costner v. U.S., C.A.8 (Ark.) 2003, 317 F.3d 883, rehearing and rehearing en banc denied , certiorari denied 124 S.Ct. 225, 540 U.S. 875, 157 L.Ed.2d 137. Federal Civil Procedure 636

Competitor of medical testing corporation failed to allege with specificity in complaint if or when corporation submitted any actual improper claims to Government, and competitor thus failed to state cause of action under False Claims Act (FCA), where he described corporation's alleged schemes to increase its testing and testing revenues but failed to provide any factual basis for his conclusory statement tacked on to each allegation that bills were submitted to Government as result of alleged schemes. U.S. ex rel. Clausen v. Laboratory Corp. of America, Inc., C.A.11 (Ga.) 2002, 290 F.3d 1301, certiorari denied 123 S.Ct. 870, 537 U.S. 1105, 154 L.Ed.2d 774. United States 122

Complaint setting forth cause of action under the False Claims Act (FCA) must state with particularity specific statements or conduct giving rise to fraud claim. Gold v. Morrison-Knudsen Co., C.A.2 (N.Y.) 1995, 68 F.3d 1475, certiorari denied 116 S.Ct. 1836, 517 U.S. 1213, 134 L.Ed.2d 939, rehearing denied 117 S.Ct. 9, 518 U.S. 1040, 135 L.Ed.2d 1104. Federal Civil Procedure 636

Allegation in complaint brought against United States senator that at unspecified time unnamed members of senator's staff rendered personal services for senator and his family while collecting their governmental salaries did not state a claim upon which relief could be granted, in that complaint did not specify which members of senator's staff were involved, what personal services they performed and when such activities occurred, and while plaintiff had more than 11 months to remedy deficiencies of the original pleading, he made no effort to do so. U. S. ex rel. Joseph v. Cannon, C.A.D.C.1981, 642 F.2d 1373, 206 U.S.App.D.C. 405, certiorari denied 102 S.Ct. 1630, 455 U.S. 999, 71 L.Ed.2d 865.

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Westlaw.

United States 120.1

Former medical director of rehabilitation unit pleaded with sufficient particularity claims under False Claims Act (FCA) that hospital and management company for rehabilitation center engaged in Medicare fraud; director alleged that hospital and management company failed or refused to transfer a patient until patient had reached geometric mean average length of stay, regardless of patient's ability to be transferred, so as to receive more Medicare reimbursement than it was actually entitled to receive, and former medical director named specific patients to whom alleged scheme was applied. U.S. ex rel. McCready v. Columbia/HCA Healthcare Corp., D.D.C.2003, 251 F.Supp.2d 114. Federal Civil Procedure 636

Complaint failed to satisfy requirement that circumstances of fraud be pleaded with particularity when, in asserting claim under provision of False Claims Act (FCA) permitting cause of action for delivery to government of less than all property for which receipt was given, complaint alluded to purported dishonest stewardship of government and insurance overpayments, but did not implicate delivery of property to United States and giving of receipt in return. U.S. ex rel. Barrett v. Columbia/HCA Healthcare Corp., D.D.C.2003, 251 F.Supp.2d 28. Federal Civil Procedure 636

Relator's general allegations that “illegal claims” were submitted by hospital for which he worked for payment under Medicare were insufficient to allege the existence of a claim for payment with particularity, as required under False Claims Act (FCA). U.S. ex rel. Smart v. Christus Health, S.D.Tex.2009, 626 F.Supp.2d 647. Federal Civil Procedure 636

Allegations that two individual defendants agreed with service corporation to get false or fraudulent claims related to computer, software and remote telephone switch purchase, installation and upgrade projects paid by the United States, or to make a false record or statement to get such claims, and that each defendant performed some act to effect object of conspiracy, were sufficient for employee terminated by service corporation to state claim that individuals and corporation conspired to violate False Claims Act (FCA). U.S. ex rel. Poisson v. Red River Service Corp., W.D.Okla.2008, 621 F.Supp.2d 1153. Labor And Employment 778

False Claims Act (FCA) qui tam suit alleging that medical device distributors had participated in medical device manufacturer's scheme of paying kickbacks to physicians for promoting “off-label” uses of its products failed to allege fraud with sufficient particularity; relator made showing that distributors had purchased gifts, but did not identify physicians' resulting purchases of manufacturer's products or resulting fraudulent Medicare claims, and stated generally that distributors paid costs of “lavish meetings” for physicians, without providing details as to meetings or identities of distributors. U.S. ex rel. Poteet v. Lenke, D.Mass.2009, 604 F.Supp.2d 313. Federal Civil Procedure 636

Relator's qui tam complaint against hospital food service provider, which alleged that provider defrauded the government by recycling and using food for personal use within hospital and billing the Medicare and Medicaid programs for that food, failed to allege specific instances when provider, or one of its agents or employees, submitted cost reports, or any other type of claim or invoice, to hospital, an intermediary, or any government agency, seeking payment for such improper expenses, as required to plead fraud under the False Claims Act (FCA) with requisite particularity. U.S. ex rel. Brown v. Aramark Corp., D.D.C.2008, 591 F.Supp.2d 68. Federal Civil Procedure 636

Although relator used the phrase “upon information and belief” several times in his complaint alleging that the District of

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Columbia and the District of Columbia Public School System violated the False Claims Act (FCA) by submitting a claim for Medicaid reimbursement without maintaining documentation adequate to support that claim, relator pleaded fraud with sufficient particularity; relator alleged that false claim was submitted "in or about the Spring" of particular year, relator incorporated by reference a personal disclosure statement specifically alleging that the false claim was submitted in March of that year, relator also alleged that the cost claim was false because defendants lacked adequate supporting documentation, that defendants gained $60 million because of the false claim, and that two named individuals knew that the claim was made without supporting documentation but took no steps to correct it. U.S. ex rel. Davis v. District of Columbia, D.D.C.2008, 591 F.Supp.2d 30. Federal Civil Procedure 636

Former health center employee's complaint alleged with sufficient particularity to give notice as to nature of claim that her employer defrauded federal government by filing false claims for payment under Medicare and Medicaid programs, in violation of FCA, including allegations that employee was responsible for submitting inaccurate billings to government on behalf of employer, that current procedural terminology (CPT) codes were improperly used to describe what occurred between patients and physician, that false and fraudulent reimbursement claims were submitted for office visits not medically necessary and where no actual medical examination, treatment history, or diagnosis were performed, that employee informed supervisor about fraud, that daily pattern of fraudulent billing occurred over two-year period, and that due to her abrupt termination, employee lacked access to other fraudulent records. U.S. ex rel. Ellis v. Sheikh, W.D.N.Y.2008, 583 F.Supp.2d 434. Federal Civil Procedure 636

Relator was not entitled to exception to heightened pleading requirements for fraud claims in qui tam action against drug manufacturer for violations of Federal False Claims Act (FCA) related to false best price submissions, despite argument that relator was unable to obtain relevant information due to statutory mandate that centers for Medicare and Medicaid services and state Medicaid programs protect the confidentiality of manufacturer's best price and average manufacturer price information. U.S. ex rel. Foster v. Bristol-Myers Squibb Co., E.D.Tex.2008, 587 F.Supp.2d 805. Federal Civil Procedure 636

Relator's complaint alleging that pharmaceutical company encouraged physicians to write prescriptions that were paid by Medicaid and other government programs for oxycodone-based pain medication that was materially less potent and as a result, generally more expensive than the drug that was described in manufacturer's marketing pitch to the same physicians, did not meet pleading requirements for fraud claims, given that relator did not describe even a single instance in which a physician was influenced to prescribe the disputed drug based on manufacturer's misrepresentations, and where a claim for payment was made by pharmacist to the government. U.S. ex rel. Radcliffe v. Purdue Pharma, L.P., W.D.Va.2008, 582 F.Supp.2d 766. Federal Civil Procedure 636

Allegations that 1393 claims submitted by Medicare provider over four-year period were fraudulent pled fraud with insufficient particularity; although complaint identified claims through incorporation of chart listing each claim by date, internal control number, referring physician, amount billed, and amount paid, complaint did not identify date of service, give example of tests performed, identify single patient, or explain why tests were medically unnecessary. U.S. ex rel. Serrano v. Oaks Diagnostics, Inc., C.D.Cal.2008, 568 F.Supp.2d 1136. Federal Civil Procedure 636

Claims under the False Claims Act (FCA) for making or using false records or statements to make false or fraudulent claims and conspiring to get false or fraudulent claims paid or approved by the federal government were subject to rule

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requiring that, in all averments of fraud or mistake, the circumstances constituting fraud or mistake be stated with particularity. U.S. ex rel. Gagne v. City of Worcester, D.Mass.2008, 564 F.Supp.2d 81. Federal Civil Procedure 636

Relator pled with sufficient particularity claim that medical clinic and hospital submitted false and fraudulent claims for payment to federal government, in violation of False Claims Act, even though relator did not provide evidence of any particular false claim that was presented to federal government, where relator alleged that clinic referred patients covered by federal health care programs to hospital in exchange for favorable financial agreements, and that, as result, all of hospital's claims violated federal kickback statutes, and relator discussed in great detail why each referral was illegal. U.S. ex rel. Repko v. Guthrie Clinic, P.C., M.D.Pa.2008, 557 F.Supp.2d 522. Federal Civil Procedure 636

Paragraph of False Claims Act (FCA) complaint would not be dismissed due to government failure to plead fraud with sufficient particularity where government's interrogatory answers and subsequent opposition briefs adequately supplemented the paragraph; allowing the government to supplement its allegations in paragraph would further judicial economy. U.S. v. Science Applications Intern. Corp., D.D.C.2008, 555 F.Supp.2d 40. Federal Civil Procedure 636

Former compliance officer for health care provider failed to plead fraud with particularity, as required under federal rules of civil procedure, for his False Claims Act (FCA) allegations that provider received millions of dollars from Medicare and other federal health programs for medically unnecessary procedures performed by physicians with whom provider had improper financial relationships; while officer's complaint named six physicians, named the hospitals at which five of the physicians practiced, and specified the types of medical procedures they performed, the complaint did not allege any specific surgeries or any specific dates for the medical procedures, and did not state why the procedures were medically unnecessary. U.S. ex rel. Frazier v. IASIS Healthcare Corp., D.Ariz.2008, 554 F.Supp.2d 966. Federal Civil Procedure 636

Although complaint alleged particularized details about drug manufacturer's underlying scheme to induce doctors to prescribe drug by granting them a variety of kickbacks, including rebates and other off-invoice discounts, educational grants, and the like, complaint failed to allege False Claims Act (FCA) claim with sufficient particularity where there were no particularized allegations regarding the false claims that were actually submitted to the federal government. U.S. ex rel. Duxbury v. Ortho Biotech Products, L.P., D.Mass.2008, 551 F.Supp.2d 100, affirmed in part , reversed in part 579 F.3d 13. Federal Civil Procedure 636

Employee's claim under False Claims Act (FCA), which was based on her employer's failure to utilize government funds in the manner prescribed or anticipated in its contracts with the government, was not pled with sufficient particularity; nowhere in the complaint did employee allege that a fraudulent claim was submitted to the government for payment, nor did she allege who submitted such a claim or the time frame for when the fraudulent submissions were made. Martin v. Arc of Dist. of Columbia, D.D.C.2008, 541 F.Supp.2d 77. Federal Civil Procedure 636

Relator's allegations in qui tam action against pharmaceutical company under False Claims Act of discount, cash bribe, premix bag, and improper fees, grants, and gifts were sufficiently particular to state claim under False Claims Act for pharmaceutical company's regional office and for years in which relator worked; relator identified particular time when a particular sales representative allegedly discounted drug price for a specific hospital on condition that hospital no longer stock competing drug for physicians requesting the drug. In re Pharmaceutical Industry Average Wholesale Price Litiga-

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tion, D.Mass.2008, 538 F.Supp.2d 367. Federal Civil Procedure 636

Relator, who worked at facility manufacturing gun powder for United States military, pled fraud with requisite particularity in bringing qui tam action under Federal Tort Claims Act (FCA), alleging that, at the instruction of his supervisors, he systematically failed to perform certain required quality control tests mandated by governing contracts; complaint set forth in detail the requirement for testing and what was not done and alleged with specificity how relator knew all of this. U.S. ex rel. Lockhart v. General Dynamics Corp., N.D.Fla.2007, 529 F.Supp.2d 1335. Federal Civil Procedure 636

Private investigator asserting a qui tam claim that a Medicare Part B carrier recklessly approved false claims for durable medical equipment in violation of the False Claims Act (FCA) failed to plead fraud with the requisite particularity; the investigator had no firsthand knowledge of any fraudulent conduct on the part of the carrier, and it was insufficient that he had reason to believe fraudulent practices were industry wide. U.S. ex rel. Feingold v. Palmetto Government Benefits Administrators, S.D.Fla.2007, 477 F.Supp.2d 1187, affirmed 278 Fed.Appx. 923, 2008 WL 2097615, rehearing and rehearing en banc denied 285 Fed.Appx. 743, 2008 WL 2977960, certiorari denied 129 S.Ct. 1001, 173 L.Ed.2d 293. Federal Civil Procedure 636

Relator failed to plead fraud with requisite particularity in asserting claims, under False Claims Act (FCA), that Federal National Mortgage Association (Fannie Mae) sought insurance reimbursement from Department of Housing and Urban Development (HUD) on loans that it knew did not qualify for government insurance, given that complaint alleged only vague scheme to submit false claims to HUD to obtain insurance reimbursement for non-qualifying loans, without identifying loans or types of loans involved, relevant time period, employees involved, and similar information. U.S. ex rel. Cericola v. Federal Nat. Mortg. Assoc., C.D.Cal.2007, 529 F.Supp.2d 1139. Federal Civil Procedure 636

Qui tam relator, who was formerly employed by defendant hospital as an executive director in hospital's billing department, stated fraud claim, under both federal and Florida False Claims Act, with requisite particularity; even though relator had not supported all allegations in her complaint with specificity, relator had worked in hospital's billing department for one month and had personal experience with the billing process that provided the indicia of reliability to claim that fraudulent bills were submitted to Medicare and Medicaid, relator raised allegations regarding hospital's billing process, and relator submitted documentary exhibits to support contention that false claims were submitted. U.S. ex rel. Heater v. Holy Cross Hosp., Inc., S.D.Fla.2007, 510 F.Supp.2d 1027. Federal Civil Procedure 636

Complaint against defense contractor and subcontractor under False Claims Act (FCA) satisfied particularity requirement for pleading fraud in connection with airplanes manufactured by contractor with defective parts supplied by subcontractor; even though the complaint did not allege process by which allegedly defective parts were knowingly installed, it specified the particular aircraft, identified the numerous allegedly nonconforming or defective parts supplied by subcontractor, spelled out how the parts and the processes used to manufacture them allegedly failed to conform to contract requirements, military specifications, and other requirements, identified in detail contractual, regulatory, and procedural standards as to which contractor allegedly made false representations of compliance, and made sufficient allegations about quality control system and decision to use parts. U.S. ex rel Smith v. Boeing Co., D.Kan.2007, 505 F.Supp.2d 974. Federal Civil Procedure 636

Relators pled with sufficient particularity claim that contractor and subcontractors violated False Claims Act (FCA) by

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improperly charging United States for nonconforming and substandard tooling used to manufacture and assemble airplanes for United States, even though they did not plead with particularity actual presentment of false claims to United States, where relators stated that their allegations made upon "information and belief" were based on their extensive experience with contractor, provided specific contract numbers for contracts, gave numerous examples of specific tools for which United States was improperly charged or overcharged, explained basis for concluding billing was improper, identified management level employees and tool engineers who were aware of or participated in fraudulent schemes alleged, and identified specific difficulties particular to case that hindered their ability to identify specific false claims submitted. U.S. ex rel. Howard v. Lockheed Martin Corp., S.D.Ohio 2007, 499 F.Supp.2d 972. Federal Civil Procedure 636

Qui tam relator satisfied federal procedure rule requirements for stating claim of fraud with particularity, when relator alleged that county fraudulently certified to United States, in connection with receipt of block grants for housing programs, that county had considered race as impediment to fair housing and taken steps to address problem, with knowledge that it had considered income rather than race. U.S. ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York, S.D.N.Y.2007, 495 F.Supp.2d 375, motion to certify appeal denied 2007 WL 2402997. Federal Civil Procedure 636

Relator, a pediatric cardiologist and professor at medical school, alleged violations of the Stark law and Anti-kickback statute with sufficient particularity, as would support his claim for violation of the False Claims Act (FCA), where relator identified entities which allegedly committed fraudulent activity, described how fraudulent activity was committed, described why certifications were fraudulent, described time period when fraudulent activities took place, and identified years the named physicians made improper referrals. U.S. v. Solinger, W.D.Ky.2006, 457 F.Supp.2d 743, issued 2006 WL 3085610, subsequent determination. Federal Civil Procedure 636

Relator failed to plead fraud with sufficient particularity for purposes of his qui tam action against pharmaceutical companies alleging companies used illegal, off-label marketing for human growth hormone; although relator's complaint alleged, in great detail, the framework of companies' illegal marketing, promotion, and distribution of the drug and discussed bribes, kickbacks, and other financial incentives given from companies to various drug distributors and physicians, as well as very serious violations of federal regulations regarding the marketing, distribution, and sale of pharmaceuticals, the relator's complaint failed to identify one actual false claim that was submitted to the government for the reimbursement of an off-label prescription of the human growth hormone. U.S. ex rel. Rost v. Pfizer Inc., D.Mass.2006, 446 F.Supp.2d 6, affirmed in part , vacated in part 507 F.3d 720, on remand 253 F.R.D. 11. Federal Civil Procedure 636

Relator failed to allege that government contractor and its wholly-owned subsidiaries presented false claims to the government with sufficient particularity to state a claim for violation of the False Claims Act (FCA), where relator failed to identify specific false claims that specific individuals had allegedly submitted to the government. U.S. ex rel. Brooks v. Lockheed Martin Corp., D.Md.2006, 423 F.Supp.2d 522, affirmed in part , dismissed in part 237 Fed.Appx. 802, 2007 WL 627372. Federal Civil Procedure 636

Relator who brought qui tam action alleging that hospital violated the False Claims Act (FCA) by falsely billing and retaining Medicare and Medicaid payments for certain radiological services failed to satisfy requirement that fraud be pled with particularity, where complaint did not identify any particular false or fraudulent claim allegedly submitted or provide the source of information or factual basis for relator's conclusory allegations that hospital submitted false or

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fraudulent bills. U.S. ex rel. Smith v. Yale University, D.Conn.2006, 415 F.Supp.2d 58. Federal Civil Procedure 636

Allegations that contractor hired by county to manage construction projects at airport and a paving subcontractor knowingly prepared job orders and payment requests that falsely inflated value of work subcontractor performed, that contractor and subcontractor falsely represented that information in job orders was accurate in order to induce county to approve them, that county paid inflated amount, that county submitted a request to the Federal Aviation Administration (FAA) for reimbursement, and that the FAA reimbursed county supported claims that contractor and subcontractor presented a false claim to the FAA, knowingly made false records to get a false claim paid by the FAA, and conspired to defraud the FAA by getting a false or fraudulent claim allowed or paid, in violation of the False Claims Act (FCA). U.S. v. Sequel Contractors, Inc., C.D.Cal.2005, 402 F.Supp.2d 1142. United States 122

Relator failed to state claim under False Claims Act (FCA) against auditor for natural gas company who allegedly made false reports that reduced proper royalties payable to United States, on allegations that auditor had affirmative duty to audit its client's financial records in proper way and auditor certified accuracy of financial statements filed with Securities and Exchange Commission (SEC); auditor did not “cause” the making or use of allegedly false reports, since relator did not specifically identify which accounting standards created affirmative duty that was allegedly violated and reports filed with SEC were not actionable under FCA. U.S. ex rel. Grynberg v. Ernst & Young LLP, D.Wyo.2004, 323 F.Supp.2d 1152. United States 122

Former human resources director adequately pleaded time, place, and contents of allegedly false representations and claims made by former employers in connection with commercial roofing contracts formed with United States government, as required to state claims under False Claims Act (FCA); director specifically averred that employers falsely certified that they were paying workers wages required by law, that employers directed employees to ignore requirement that asbestos roofing material be disposed of in accordance with federal regulations, and that employers fraudulently claimed to have hired minority subcontractor. Allen v. Beta Const., D.D.C.2004, 309 F.Supp.2d 42. Federal Civil Procedure 636

Government's allegations that private insurer improperly paid Medicare Secondary Payer (MSP) claims as the secondary payer when it should have paid them as primary payer, resulting in Medicare paying claims that insurer should have paid, were sufficient to allege “false or fraudulent” claim element of claim under False Claims Act (FCA). U.S. ex rel. Drescher v. Highmark, Inc., E.D.Pa.2004, 305 F.Supp.2d 451. United States 122

Federal government sufficiently pled minimum requirements to satisfy rule of civil procedure requiring that circumstances constituting fraud or mistake be stated with particularity, in qui tam action against neurologist and clinic under False Claims Act (FCA); government alleged that neurologist and clinic engaged in complex fraud scheme of upcoding claims by misrepresenting level of care provided to patients in order to receive higher levels of reimbursement for medical services under Medicare for previous six years to present, government identified office locations and offered 12 patient files indicating discrepancy between treatment reported to government and treatment provided to patients, and government used statistical sample to set forth damages of fraudulently gained benefits. U.S. ex rel. Harris v. Bernad, D.D.C.2003, 275 F.Supp.2d 1. Federal Civil Procedure 636

United States pled with sufficient particularity its allegations that individual employees of corporate contractor had violated False Claims Act (FCA), where complaint named individual defendants, stated time period during which alleged

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fraud took place, stated where fraud took place, and specifically highlighted alleged unallowable costs. U.S. v. Intrados/Intern. Management Group, D.D.C.2002, 265 F.Supp.2d 1. Federal Civil Procedure 636

Qui tam relator's allegations that shipbuilder and its bank agreed to defeat Navy's security interests under trust indenture required under shipbuilder's contract to build fleet oilers by convincing Navy not to insist on inclusion of delivery provision, not signing financing statements, and failing to record Navy's security instruments, or to ensure recording thereof, respectively, in furtherance of agreement to defraud government out of monies and property to which it was entitled pursuant to terms of oiler contract were sufficient to state claim for conspiracy to violate False Claims Act (FCA) with specificity required for fraud claims under rules of civil procedure. U.S. ex rel. Atkinson v. Pennsylvania Shipbuilding Co., E.D.Pa.2002, 255 F.Supp.2d 351, affirmed on other grounds 473 F.3d 506. Conspiracy 18

Relator failed to plead with sufficient particularity his allegation under False Claims Act (FCA) that government contractors engaged in sale and installation of draperies and related items to United States government engaged in fraudulent practices, even though relator claimed to have personal knowledge of how contractors conducted their operations, and provided particulars concerning how government contracts in industry were bid and how contracts were written; relator failed to indicate which contractors were engaged in alleged industry-wide conspiracy or which particular contracts were fraudulent. U.S. ex rel. Goldstein v. Leonard's Draperies, Inc., D.Md.2002, 238 F.Supp.2d 711. Federal Civil Procedure 636

Relator's allegations that diabetes treatment center ran centers in various hospitals, appointed physicians to serve as medical directors, and that physicians were paid not for nominal service as directors, but on a per-patient basis for referring their patients to the centers, in violation of False Claims Act, satisfied heightened pleading requirements for fraud claims; allegations allowed center to prepare its defense, although the scheme allegedly occurred in a 12 year range and only one specific location of allegedly nationwide scheme was mentioned. U.S. ex rel. Pogue v. Diabetes Treatment Centers of America, Inc., D.D.C.2002, 238 F.Supp.2d 258. Federal Civil Procedure 636

District Court lacked subject matter jurisdiction over qui tam action against producers and marketers of alcoholic beverages, alleging that defendants caused false and fraudulent claims to be presented to government for treatment of alcohol-related diseases, in violation of the False Claims Act, where relator failed to allege what or whose misrepresentations deriving from defendants were submitted to government for payment, or to link allegations of “fraud” to specific federal statute or a particular state's common law. U.S. ex rel. Alcohol Foundation, Inc. v. Kalmanovitz Charitable Foundation, Inc., S.D.N.Y.2002, 186 F.Supp.2d 458, affirmed 53 Fed.Appx. 153, 2002 WL 31819592, certiorari denied 124 S.Ct. 413, 540 U.S. 949, 157 L.Ed.2d 281. United States 122

Complaint of qui tam relator, when read in conjunction with disclosures submitted to the government, did not satisfy heightened pleading requirements for False Claims Action (FCA) against drug manufacturer relating to manufacturer's alleged actions of promoting off-label uses of drug in direct sales to the Veterans Administration (VA); relator did not specify which of manufacturer's personnel allegedly engaged in conduct, where alleged conduct took place, which VA personnel were allegedly involved, or any specific fraudulent statements made to personnel at VA. U.S. ex rel. Franklin v. Parke-Davis, Div. of Warner- Lambert Co., D.Mass.2001, 147 F.Supp.2d 39, motion to amend denied 2002 WL 32128635. Federal Civil Procedure 636

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Complaint, which specifically alleges that defendants submitted claims to be paid from Medicaid funds based on services rendered to children in facilities that were not licensed for those services and that defendants knew that they were submitting claims for services they were not licensed to provide, stated claim under False Claim Act (FCA); relator alleged that defendants requested payment in exchange for statutory compliance and therefore impliedly certified that such requests were properly made in accordance with state and federal laws, rules and regulations. U.S. ex rel. Wright v. Cleo Wallace Centers, D.Colo.2000, 132 F.Supp.2d 913. United States 122

Qui tam plaintiff's allegations that health care providers were filing false claims for Medicare and Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) benefits failed to allege fraud with sufficient particularity; although incidents of practices which allegedly generated false claims were alleged, complaint failed to plead facts relating to content of any particular claims or manner in which they were submitted. U.S. ex rel. Butler v. Magellan Health Services, Inc., M.D.Fla.2000, 101 F.Supp.2d 1365. Federal Civil Procedure 636

Qui tam plaintiff did not plead with requisite particularity fraud claim against corporations that they made or used false statements undervaluing truthful sales price of high technology fabric cutting machines imported into United States from Spain to decrease import duties during period of at least 10 years; plaintiff did not allege dates statements were made, where statements were made, or who made statements, and plaintiff did not provide specific details regarding how statements were submitted and to whom. U.S. ex rel. Vallejo v. Investronica, Inc., W.D.N.Y.1998, 2 F.Supp.2d 330. Federal Civil Procedure 636

Allegations in qui tam action under False Claims Act based on allegedly fraudulent referrals of Medicare patients for services which were not medically necessary failed to meet specificity requirements for pleading fraud under Federal Rules of Civil Procedure; complaint did not allege that any specific physicians referred patients for services which were not medically necessary or that any specific claims were filed for such services. U.S. ex rel. James M. Thompson v. Columbia/HCA Healthcare Corp., S.D.Tex.1996, 938 F.Supp. 399, affirmed in part , vacated in part 125 F.3d 899, rehearing denied, on remand 20 F.Supp.2d 1017. Federal Civil Procedure 636

Qui tam plaintiff bringing suit under False Claims Act against general contractor on project receiving federal funding failed to state fraud-based allegations with requisite particularity; despite substantial period of discovery, none of plaintiff's operative averments under Act were made on direct knowledge, complaint failed to refer to specific employees who may have been involved in submitting false claims, and complaint lacked specificity in describing fraud related to payroll issues, as well as respective dates of various instances of fraud. U.S. ex rel. DeCarlo v. Kiewit/AFC Enterprises, Inc., S.D.N.Y.1996, 937 F.Supp. 1039. Federal Civil Procedure 636

Unsuccessful bidder's claim under False Claims Act that successful bidder for contract with Department of Justice (DOJ) submitted false invoices to DOJ requesting payment for legal technician and supervisor positions, but that those positions were not filled by employees performing such duties, failed to plead fraud with sufficient particularity; unsuccessful bidder failed to state date or dates on which allegedly false invoices were submitted, to give invoice number, to identify employees responsible for submission, and to state facts from which court could infer a knowing violation on part of successful bidders. U.S. ex rel. Alexander v. Dyncorp, Inc., D.D.C.1996, 924 F.Supp. 292. Federal Civil Procedure 636

Complaint asserting qui tam action brought under False Claims Act (FCA), based on subcontractors' alleged violation of

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Clean Water Act (CWA), pleaded fraud with sufficient particularity by describing parties involved, exact government contract at issue, provision of contract that pertained to alleged misconduct, and approximate time of alleged misconduct. Pickens v. Kanawha River Towing, S.D.Ohio 1996, 916 F.Supp. 702. Federal Civil Procedure 636

Former state employee bringing False Claims Act suit on behalf of United States, alleging that state agencies had obtained money from federal government with false claim that recipients had been and would be monitored, satisfied exception to requirement that fraud claims be pleaded with particularity applicable to cases in which relevant facts were within knowledge and control of opposing party; former employee had not worked for state for almost two years and could not be expected to remember specifics, such as dates of grants, without access to documents held by state. Wilkins ex rel. U.S. v. State of Ohio, S.D.Ohio 1995, 885 F.Supp. 1055. Federal Civil Procedure 636

Complaint under Qui Tam statute against defendant physicians by whom plaintiff had been employed alleging that diagnostic tests paid for by Medicare were improperly conducted failed to meet requirement that fraud be pleaded with particularity; core of complaint referred to incomplete and inaccurate lung function tests without indicating in what respects tests were incomplete or inaccurate or nature of any indications to that effect observed by plaintiff. U.S. ex rel. Mikes v. Straus, S.D.N.Y.1994, 853 F.Supp. 115. Federal Civil Procedure 636

Qui tam claim, alleging that defendants knowingly made use of false records to present Farmers Home Administration (FmHA) with various false claims and deposited proceeds of these claims in their private bank accounts for their own benefit, and that plaintiff was the original source of the information which she uncovered during course of her employment by defendants, stated circumstances constituting fraud with sufficient particularity. U.S. ex rel. Kent v. Aiello, E.D.Cal.1993, 836 F.Supp. 720. Federal Civil Procedure 636

Government used sufficient particularity to allege claims under False Claims Act against seller of ordnance and spare military parts that allegedly misstated countries of origin and price paid for American-manufactured material procured for resale to Turkey under foreign military sale (FMS) program to help friendly foreign countries and international organizations to purchase United States defense articles and services. U.S. v. Napco Intern., Inc., D.Minn.1993, 835 F.Supp. 493. Federal Civil Procedure 636

Qui tam False Claims Act plaintiff alleged fraud against the defendants with sufficient particularity; complaint identified fraudulent statements or acts and the violations of government contract law, it identified the party allegedly defrauded as Department of Housing and Urban Development, and it alleged that defendant acted in collusion with the other defendants, thereby adequately pleading conspiracy. U.S. Dept. of Housing and Urban Development ex rel. Givler v. Smith, E.D.Pa.1991, 775 F.Supp. 172. Federal Civil Procedure 636

Former federal prisoner's allegations that current or former wardens conspired to defraud Government by submitting fraudulent claims for payment and by falsifying records and that one warden authorized purchases of services and materials for his personal benefit did not satisfy particularity requirement for pleading fraud and did not show how prisoner was entitled to relief; attached computer printout listing purchases apparently made by federal prison provided no indication that items purchased were for warden's personal use. Tripati v. Williams, D.D.C.1990, 759 F.Supp. 3. Federal Civil Procedure 636

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Amendments to False Claims Act defining “knowingly” to include those claims made “in reckless disregard” of their truth or falsity did not dispense with specific pleading requirements applicable to fraud claims. Juliano v. Federal Asset Disposition Ass'n (FADA), D.D.C.1990, 736 F.Supp. 348, affirmed 959 F.2d 1101, 295 U.S.App.D.C. 97. United States 122

Relator's allegations of more than 200 false claims for off-label uses of human growth hormone not approved by Food and Drug Administration (FDA), which were submitted to both Medicaid and other federal programs from citizens in Indiana, met heightened pleading standards for fraud claim against pharmaceutical companies, where claims included drug for which reimbursement was sought, medical diagnosis accompanying claim, diagnosis and reimbursement dates, and prescription dosage. U.S. ex rel. Rost v. Pfizer, Inc., D.Mass.2008, 253 F.R.D. 11. Federal Civil Procedure 636

Relators' False Claims Act (FCA) claims against health care providers, which were based on their participation over several years in schemes to submit false claims and statements under the Medicare, Medicaid, and TRICARE/CHAMPUS health insurance programs, were not pleaded with the required specificity to satisfy heightened pleading requirements for fraud claims; relators, who did not provide information that identified the specific claims at issue, their amounts or claim numbers, patients' names or claim identification numbers, failed to produce even one specific claim by the providers that was submitted to the Government as an evidentiary example of the claims submitted. U.S. ex rel. Bartlett v. Tyrone Hosp., Inc., W.D.Pa.2006, 234 F.R.D. 113. Federal Civil Procedure 636

Relator's complaint alleging that hospitals and anesthesiologists submitted false and fraudulent claims for payment to Medicare for the provision of anesthesia services which they did not perform failed to plead allegations of fraud with sufficient particularity to state claim under the False Claims Act (FCA), where relator did not inform each individual defendant of the nature of his alleged participation in the fraud. U.S. ex rel. Branigan v. Bassett Healthcare Network, N.D.N.Y.2005, 234 F.R.D. 41. Federal Civil Procedure 636

Government's allegations that hospitals violated the False Claims Act (FCA) by submitting false Medicare claims for procedures involving cardiac devices that had not been approved for marketing by the Food and Drug Administration (FDA), and thus were not “reasonable and necessary” in violation of Medicare manual provision, met requirements of fraud pleading rule, notwithstanding hospitals' contention that government merely alleged a “per se” fraud theory, equating fraud with violation of manual provision, and did not allege any particular fraudulent misconduct; government asserted more than a mere regulatory violation, because claims allegedly violated underlying condition for payment, that the services were reasonable and necessary. In re Cardiac Devices Qui Tam Litigation, D.Conn.2004, 221 F.R.D. 318. Federal Civil Procedure 636

Employee was not required to plead claim of retaliatory discharge against employer, under whistleblower provision of False Claims Act (FCA), with particularity; fraud was not alleged as basis for relief, such as in FCA qui tam claim, nor did retaliation claim depend upon full maturation of qui tam claim. Marion v. Rehabworks, Inc., E.D.Mo.2001, 206 F.R.D. 643. Federal Civil Procedure 636

Complaint under the False Claims Act which alleged that lessees under government oil leases made false statements on monthly oil sales and royalty reports to the government satisfied particularity standard of fraud pleading rule; plaintiffs alleged that the lessees made a “false claim” on each and every monthly report form since 1988 by stating on the form at

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item 16 and item 18 an amount which was less than the actual gross proceeds. U.S. ex rel. Johnson v. Shell Oil Co., E.D.Tex.1998, 183 F.R.D. 204. Federal Civil Procedure 636

Complaint under False Claims Act which listed 501 claims that were paid on behalf of 18 named Medicare patients by the United States and the total dollar amount of the claims paid did not plead fraud with sufficient particularity where it did not allege the exact dates on which the false claims were made by the ambulance provider, the identity of the person making the representation, or the place where the alleged fraud took place. U.S. v. Crescent City, E.M.S., Inc., E.D.La.1993, 151 F.R.D. 288. Federal Civil Procedure 636

It was not enough for plaintiffs alleging fraud under the False Claims Act to allege that "superiors," "employees," or "engineer" of employer committed fraudulent acts, as the identity of the employees, or at least a more specific description of the persons, was within their knowledge and had to be provided in the complaint. U.S. ex rel. Robinson v. Northrop Corp., N.D.Ill.1993, 149 F.R.D. 142. Federal Civil Procedure 636

In informer's action under former § 231 [now § 3729] of this title, complaint which alleged that lower bids were made on title to be furnished in construction of government arms plant than bid of successful bidder should have been more specific in stating upon what title such lower prices were bid. U.S. ex rel. Coates v. St. Louis Clay Products Co., E.D.Mo.1943, 3 F.R.D. 289. United States 122

In informer's action under former § 231 [now § 3729] of this title, complaint which alleged that defendant contractors asked for bids on certain type of title for use in construction of a government small arms plant, knowing that major portion to have been used would have been of another type, should have been made more specific in stating how the government was thereby defrauded. U.S. ex rel. Coates v. St. Louis Clay Products Co., E.D.Mo.1943, 3 F.R.D. 289. United States 122

In informer's action under former § 232 of this title, complaint which alleged that the government was defrauded by corporate defendants should have been made more specific in stating the representatives of the corporate defendants which took part in the alleged unlawful enterprise. U.S. ex rel. Coates v. St. Louis Clay Products Co., E.D.Mo.1943, 3 F.R.D. 289. United States 122

Former biller for medical services provider stated fraud claim against provider, under False Claims Act, with requisite particularity, even though she was unable to provide patient names or exact dates that allegedly false claims were submitted to Medicare; biller, who worked in provider's billing department for seven months, had firsthand knowledge of provider's internal billing practices, she identified specific billers, coders, and physicians whom she observed making false claims, and she identified confidential documents in provider's possession that contained additional evidence of fraud. Hill v. Morehouse Medical Associates, Inc., C.A.11 (Ga.) 2003, 2003 WL 22019936, Unreported. Federal Civil Procedure 636

Qui tam relator failed to state, with required degree of particularity, details of fraudulent scheme by which government overpaid for continuous passive motion exercisers (CPMs). U.S. ex rel. Barmak v. Sutter Corp., S.D.N.Y.2003, 2003 WL 21436213, Unreported. Federal Civil Procedure 636

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Relator's lengthy False Claims Act (FCA) complaint did not satisfy requirements of pleading special matters rule for failure to allege fraud with sufficient particularity and for failure to provide reference to actual documentation, although relator alleged several “schemes” in which defendant participated. U.S. ex rel. Karvelas v. Melrose-Wakefield Hosp., D.Mass.2003, 2003 WL 21228801, Unreported, affirmed 360 F.3d 220, certiorari denied 125 S.Ct. 59, 543 U.S. 820, 160 L.Ed.2d 28. Federal Civil Procedure 636; United States 122

153. Conclusory allegations, complaint

Qui tam relator who sued laboratory owned by state university under False Claims Act (FCA), alleging that laboratory obtained payment from Medicare provider for inadequately documented tests, failed to identify particular claims that were allegedly false, as required under federal rules; averments that provider fraudulently avoided Contractor Performance Evaluation Program (CPEP) score reductions were impermissibly speculative and conclusory. U.S. ex rel. Sikkenga v. Regence Bluecross Blueshield of Utah, C.A.10 (Utah) 2006, 472 F.3d 702, on remand 2007 WL 2713913. Federal Civil Procedure 636

Employee's complaint under Qui Tam statute against employer physicians alleging she was terminated because of investigation or other steps in connection with pursuit of litigation under False Claims Act was inadequate as it failed to contain facts as opposed to conclusions to support allegations of harassment or termination. U.S. ex rel. Mikes v. Straus, S.D.N.Y.1994, 853 F.Supp. 115. United States 122

In informer's action under former § 231 [now § 3729] of this title, general allegations of fraud were conclusions, and court was required to look to specific facts alleged to determine whether fraud was actually charged. Cahill v. Curtiss-Wright Corp., W.D.Ky.1944, 57 F.Supp. 614. United States 122

Conclusory allegation that doctor at Indian Medical Center violated the False Claims Act when he “submitted fraudulent leave slips or failed to submit leave slips for hours he was absent from his duty station and still received a pay check” failed to satisfy requirement that fraud be pled with particularity. U.S. v. Cheng, D.N.M.1998, 184 F.R.D. 399. Federal Civil Procedure 636

154. Affidavit of arrest, complaint

Where the complaint alleges all the facts necessary to authorize an arrest, and it is verified by the oath of the prosecutor, such complaint is an affidavit, and may be used in the case whenever an affidavit as to such facts is required. U.S. v. Griswold, D.C.Or.1877, 26 F.Cas. 42, 5 Sawy. 25, 10 Chi.Leg.N. 50, No. 15266.

The verified complaint in an action to recover a penalty and damages for making a false claim against the United States is a sufficient affidavit for the arrest of defendant. U.S. v. Griswold, D.C.Or.1877, 26 F.Cas. 42, 5 Sawy. 25, 10 Chi.Leg.N. 50, No. 15266. Arrest 22

155. Alternative counts, complaint

Government could plead False Claims Act (FCA) violations, unjust enrichment, and payment by mistake, as alternate

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forms of relief in qui tam action against manufacturer of industrial pumps and its former president. U.S. ex rel. Purcell v. MWI Corp., D.D.C.2003, 254 F.Supp.2d 69. Federal Civil Procedure 675.1

Damages prayed for in count of government's complaint under former § 231 [now § 3729] of this title were not only damages available to plaintiff, since, under rule 8, Federal Rules of Civil Procedure, Title 28, government was at liberty to plead alternative counts on theories. U. S. v. Krietemeyer, S.D.Ill.1980, 506 F.Supp. 289. Federal Civil Procedure 82.1

Government asserting claim under Federal Claims Act (FCA) was permitted to plead, in the alternative, common-law claims for fraud, payment by mistake, unjust enrichment, and breach of contract in accordance with rule permitting party to state as many separate claims as party had regardless of consistency. U.S. ex rel. Roby v. Boeing Co., S.D.Ohio 1998, 184 F.R.D. 107. Federal Civil Procedure 675.1

156. Bill of particulars, complaint

In action for alleged frauds in sale of dried eggs to Federal Surplus Commodities Corporation, demand for bill of particulars under 48 subdivisions, covering 3 1/2 pages of single-spaced typewriting, showed by its prolixity that its purpose was not to enable defendants to prepare a responsive pleading, and would be denied where complaint was so drawn the defendants could easily answer. U.S. v. Samuel Dunkel & Co., S.D.N.Y.1945, 61 F.Supp. 697. Federal Civil Procedure 1018.1

A complaint covering three-year period but only alleging one false claim against the United States, alleging presentation of claim to “the government,” that credit was not given the government for salvage materials under contract to repair vessels for military service, and that accounts and bills were false and submitted to defraud the government, although lacking in particularity, was not dismissible, but bill of particulars would be required. U.S. ex rel. Schiff v. Atlantic Basin Iron Works, E.D.N.Y.1943, 53 F.Supp. 268. Federal Civil Procedure 1018.1

157. Surplusage, complaint

Allegations in government's complaint predicated upon submission of contractor's payroll report that defendant “paid or caused to be paid” wages at rates lower than those stated in reports were surplusage and failure to prove them was immaterial. U. S. v. Greenberg, S.D.N.Y.1965, 237 F.Supp. 439. Federal Civil Procedure 884.1

158. Variance of complaint with proof

Time was not of essence of offense of presenting false claim to induce Veterans' Administration to grant loan guaranty and pay cash gratuity in connection with purchase of home by veteran, and allegation that home builder's application of May 27 for guaranty and amended application of June 26, were false in that veteran did not intend to occupy premises was not fatally at variance with proof that builder knew before May 25, when loan was closed, that veteran abandoned intention to occupy property. Beckwith v. U. S., C.A.5 (Tex.) 1961, 293 F.2d 471. United States 120.1

159. Counterclaims, complaint

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Action of the government in attempting to add five more items to its counterclaim through a footnote in its postargument brief to Court of Claims [now United States Claims Court] was highly irregular and such items would not be recognized as part of counterclaim; proper procedure was to move trial court for leave to amend. Brown v. U. S., Ct.Cl.1975, 524 F.2d 693, 207 Ct.Cl. 768. Federal Courts 1087

In action in Court of Claims [now United States Claims Court] by partnership, which operated school attended by veterans under G. I. Bills, against United States to recover additional tuition, evidence was insufficient to establish that United States was entitled to recover under first counterclaim based on former § 231 [now § 3729] of this title but was sufficient to establish that partnership was liable under second counterclaim for two forfeitures of $2,000 each under such section. Eastern School v. U. S., Ct.Cl.1967, 381 F.2d 421, 180 Ct.Cl. 676. United States 122

Claim asserted by a defendant in a False Claims Act (FCA) suit, that the relator should have informed the defendant of his suspicions of fraudulent activity, was essentially a claim that the relator should have become a relator sooner, or that he should have informed the defendant before informing the government, and the claim was therefore barred under the FCA; allowing such a claim would have placed affirmative duties on the relator that the FCA did not envision, and would also have created the perverse result of making a truthful relator pay to offset the liability of a wrongdoing FCA defendant, which would have been the equivalent of contribution or indemnification. U.S. ex rel. Miller v. Bill Harbert Intern. Const., Inc., D.D.C.2007, 505 F.Supp.2d 20. United States 122

In False Claims Act (FCA) action brought by United States against owner and manager of subsidized housing project, doctrine of recoupment did not provide basis for federal court jurisdiction over counterclaim asserted by defendants seeking damages of over $10,000 and declaration that the Department of Housing and Urban Development (HUD) had breached certain contracts; government was not attempting to recover from defendants for their substantive failure to maintain the property in good condition but, instead, sought recovery for their false certification as to the property's condition, and so recoupment was inapplicable. U.S. v. Intervest Corp., S.D.Miss.1999, 67 F.Supp.2d 637. Federal Courts 976

Following district court's dismissal of employees' claims against employer's law firm under the Federal False Claims Act, firm could not bring counterclaim for attorney fees and costs under the New Jersey Frivolous Claims Act (NJFCA); district court's subject matter jurisdiction was grounded upon federal question rather than diversity, and therefore, firm was limited to federal remedies for litigation abuse. Mruz v. Caring, Inc., D.N.J.1999, 39 F.Supp.2d 495. Federal Courts 18

Former employers would be permitted to assert extortion counterclaim against employee in False Claims Act (FCA) qui tam action, where counterclaim sought independent damages rather than indemnification and contribution, but counterclaim would be tried separately from qui tam action, in effort to balance interest in encouraging qui tam actions against interest in protecting defendant's constitutional right to assert compulsory counterclaims. U.S. ex rel. Mikes v. Straus, S.D.N.Y.1996, 931 F.Supp. 248, motion to certify appeal denied 939 F.Supp. 301. United States 122

Defense contractor that was subject of qui tam suit under False Claims Act could not, as matter of law, assert against qui tam plaintiffs counterclaims for breach of loyalty, breach of fiduciary duty, breach of express contractual duties, breach of statutory duties under California Labor Code, or breach of implied covenant of good faith and fair dealing. U.S. ex rel., Newsham v. Lockheed Missiles and Space, Co., Inc., N.D.Cal.1991, 779 F.Supp. 1252. United States 122

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Where counterclaim for abuse of process, which accrued prior to Feb. 17, 1981, failed to allege seizure of person or property, counterclaim filed by defendant in action under former § 232 of this title failed to state claim upon which relief could be granted. U. S. ex rel. Sacks v. Philadelphia Health Management Corp., E.D.Pa.1981, 519 F.Supp. 818. Process 204

Where although it was clear that plaintiff who had a contract for conducting a school for veterans had practiced fraud, the condition of plaintiff's records and conflicting testimony made it impossible to determine with any degree of accuracy the specific instances of fraud or the amount overpaid the plaintiff, the government's counterclaims for alleged overpayments were dismissed and provisions of former § 231 [now § 3729] of this title did not apply. Little v. U.S., Ct.Cl.1957, 152 F.Supp. 84, 138 Ct.Cl. 773. United States 75(4); United States 120.1

Where, in a former suit by school for tuition and other fees of a certain group of veterans, the United States counterclaimed for alleged overcharges, including overcharges to another group of veterans for which the school did not then seek tuition, the United States, in a later suit brought by the school to recover fees for latter group of veterans, could not counterclaim for the same alleged overcharges to the latter group, even though no proof on the counterclaim had been introduced in the former suit. Southwestern College of Indus. Arts v. U.S., Ct.Cl.1952, 105 F.Supp. 835, 123 Ct.Cl. 172. Judgment 731

Counterclaim alleging that two of the prime sponsors, specifically named cities, still owed monies to a government-subsidized employment training program was insufficient, when cities were not impleaded as parties, to support a claim against the United States in its action to recover monies allegedly obtained from program by fraud. U.S. v. Isenberg, D.Conn.1986, 110 F.R.D. 387. United States 130(10)

160. Amendment of complaint

Facts that offshore drilling unit worker wished to add to False Claims Act (FCA) complaint regarding government's pursuit of charges against individual defendants would not have assisted him in stating a claim; facts that Department of Justice (DOJ) would seek indictments against at least one of defendants after investigating allegations, that contract provider of oil drilling services had agreed to enter into felony plea agreement, and that worker had been asked to testify before grand jury in future occurred well after false certifications alleged in complaint. U.S. ex rel. Marcy v. Rowan Companies, Inc., C.A.5 (La.) 2008, 520 F.3d 384. United States 122

District court did not abuse its discretion in qui tam False Claims Act suit by denying relator's motion to amend complaint to add co-relator or substitute new relator; motion was filed after close of long discovery period and after defendant had filed summary judgment motion premised on defense personal to relator, thus defendant would have been prejudiced by grant of motion due to need to reopen discovery, and individual sought to be added as co-relator could have filed his own suit under Act. U.S. ex rel. Ritchie v. Lockheed Martin Corp., C.A.10 (Colo.) 2009, 558 F.3d 1161. United States 122

Qui tam relator was not entitled to leave to amend his claim under the False Claims Act (FCA), asserting that defendants defrauded medicaid program, where relator's request for leave to amend was included in memorandum in opposition to defendants' motion to dismiss, and relator failed to attach the proposed amendment or set forth the substance of the pro-

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posed amendment. U.S. ex rel. Atkins v. McInteer, C.A.11 (Ala.) 2006, 470 F.3d 1350. Federal Civil Procedure 851

Anesthesiologist's proposed amendments to complaint against hospital and chief of anesthesiology in qui tam action pursuant to the False Claims Act (FCA) claiming that defendants submitted and conspired to submit false claims to the government would have been futile to cure complaint's failure to plead with particularity; the proposed amendments did not indicate a basis for knowledge concerning the alleged submission of fraudulent claims and were vague. U.S. ex rel. Joshi v. St. Luke's Hosp., Inc., C.A.8 (Mo.) 2006, 441 F.3d 552, rehearing and rehearing en banc denied , certiorari denied 127 S.Ct. 189, 549 U.S. 881, 166 L.Ed.2d 142. Federal Civil Procedure 851

District court did not abuse its discretion in dismissing False Claims Act (FCA) fraud claim for lack or particularity with prejudice, rather than allowing plaintiff to amend complaint, where plaintiff offered to write “a massive complaint with the particularity that perhaps might satisfy all concerned,” but he failed to file motion to amend or sufficiently proffer contents of potential fourth version of complaint. U.S. ex rel. Williams v. Martin-Baker Aircraft Co., Ltd., C.A.D.C.2004, 389 F.3d 1251, 363 U.S.App.D.C. 419, rehearing denied. Federal Civil Procedure 1838

District court did not abuse its discretion when it refused to allow relator to amend his complaint in qui tam action under False Claims Act (FCA) to plead fraud with requisite particularity, where relator had already had opportunity to amend his complaint to plead fraud with particularity, relator's amended pleadings were insufficient, and relator did not indicate additional fact that he could plead that would correct deficiencies in his previous complaints. U.S. ex rel. Adrian v. Regents of University of California, C.A.5 (La.) 2004, 363 F.3d 398. Federal Civil Procedure 851

District court's implicit denial of plaintiff's motion to amend his complaint in qui tam action under the False Claims Act (FCA) was justified by the absence of any proposed amendments and the lack of grounds for such an amendment, where plaintiff filed a separate motion to amend, unsupported by affidavits, a brief, or a proposed amended complaint, and where the motion stated only that in the event that the dismissal was denied, plaintiff requested leave of Court to file amended pleadings adding plaintiffs and facts as allowed by law. U.S. ex rel. Doe v. Dow Chemical Co., C.A.5 (La.) 2003, 343 F.3d 325. Federal Civil Procedure 851

Former employee would be permitted to amend his False Claims Act (FCA) complaint against National Railroad Passenger Corporation (Amtrak), following Court of Appeals' reversal of district court's decision to dismiss complaint based on conclusion that Amtrak could not be sued under FCA, notwithstanding fact that former employee failed to seek leave to amend complaint but only indicated in opposition to motion to dismiss that he stood ready to amend complaint, where district court made clear that request to amend would have been futile, and that district court would have allowed former employee to amend had it not concluded that Amtrak could not be sued under FCA. U.S. ex rel. Totten v. Bombardier Corp., C.A.D.C.2002, 286 F.3d 542, 351 U.S.App.D.C. 30, on remand 2003 WL 22769033. Federal Courts 952

Amendment of complaint which alleged that laboratory owner and operator violated False Claims Act (FCA) by seeking and receiving Medicare payments for medically worthless tests was not necessarily futile, in that knowingly billing federal government for worthless services or recklessly doing so with deliberate ignorance could be actionable under FCA in appropriate case, and therefore relator was entitled to leave to amend complaint to attempt to satisfy requirement that averments of fraud be pleaded with particularity as to worthless services claim, even if his false certification claims were foreclosed by absence of underlying certification requirement. U.S. ex rel. Lee v. SmithKline Beecham, Inc., C.A.9

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(Cal.) 2001, 245 F.3d 1048. Federal Civil Procedure 851

Relators in qui tam action under False Claims Act (FCA) were not entitled to amend complaint to allege non-FCA claims, after government obtained dismissal of FCA claims, due to extremely late date at which relators first requested leave to amend. U.S. ex rel., Sequoia Orange Co. v. Baird-Neece Packing Corp., C.A.9 (Cal.) 1998, 151 F.3d 1139, certiorari denied 119 S.Ct. 794, 525 U.S. 1067, 142 L.Ed.2d 657. Federal Civil Procedure 834

Leave to amend complaint to correct deficiencies in pleading of qui tam claims under False Claims Act (FCA) was warranted, even though defendant contended that relators' failure to submit adequate complaint in three years established undue delay, given that discovery had been stayed pending decision on motion to dismiss, such that case had been almost completely inactive during pendency of motion, and that defendant was not prejudiced or harmed by having to act on inadequate complaint. U.S. ex rel. Barrett v. Columbia/HCA Healthcare Corp., D.D.C.2003, 251 F.Supp.2d 28. Federal Civil Procedure 840

Private investigator would be denied leave, on grounds of futility, to amend his complaint in a qui tam suit claiming that a Medicare Part B carrier recklessly approved false claims for durable medical equipment in violation of the False Claims Act (FCA); investigator was a repeat filer who was not an insider of the carrier, and because he had no personal knowledge of the carrier's claims procedures, there were no circumstances under which he could amend his complaint to cure the deficiencies therein. U.S. ex rel. Feingold v. Palmetto Government Benefits Administrators, S.D.Fla.2007, 477 F.Supp.2d 1187, affirmed 278 Fed.Appx. 923, 2008 WL 2097615, rehearing and rehearing en banc denied 285 Fed.Appx. 743, 2008 WL 2977960, certiorari denied 129 S.Ct. 1001, 173 L.Ed.2d 293. Federal Civil Procedure 851

Relators bringing False Claims Act (FCA) action against contractor made impermissible constructive amendment of complaint, when they initially alleged that contractor made false statements in its proposal to provide security for Baghdad airport, and then, in brief in opposition to summary judgment, changed to claim that false statements were made in connection with letter agreement between parties in force for two-month period before definitive agreement was signed. U.S. ex rel. DRC, Inc. v. Custer Battles, LLC, E.D.Va.2007, 472 F.Supp.2d 787, affirmed 562 F.3d 295. Federal Civil Procedure 851

Even if relation back doctrine applied to sealed qui tam actions under the False Claims Act (FCA), relator's proposed retaliation and defamation claims did not arise out of same occurrences as those underlying the fraud alleged, even though relator claimed to have been terminated for reporting his employer and its parent corporation's Medicare and Medicaid fraud, where fraud allegations pleaded in original complaint did not suggest that employer took any adverse action against relator for engaging in protected conduct, and did not mention any defamatory statements. U.S. ex rel. Deering v. Physiotherapy Associates, Inc., D.Mass.2009, 601 F.Supp.2d 368. Limitation Of Actions 127(12)

Relator's third amended complaint under False Claims Act (FCA) related back to date his initial complaint was filed, where relator filed original complaint, amended complaint clearly arose out of same occurrences as were set forth in original complaint, defendants had been on notice of those claims since original complaint was unsealed, and defendants gave their permission for relator to file third amended complaint. U.S. ex rel. Repko v. Guthrie Clinic, P.C., M.D.Pa.2008, 557 F.Supp.2d 522. Limitation Of Actions 127(3)

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District court would deny leave to amend the complaint for a third time, when dismissing, based on failure to plead fraud with particularity, the second amended complaint filed by former compliance officer for health care provider, asserting causes of action under False Claims Act (FCA), based on allegations that provider had defrauded the government of Medicare funds and other federal health program funds; initial complaint had been filed more than three years previously and plaintiff had filed the two amended complaints, plaintiff, given his former position with provider and given the government's extensive investigation of his allegations, should have had ample information when he filed the second amended complaint, and plaintiff's opposition to provider's motion to dismiss the second amended complaint indicated that he did not have the type of information regarding patient referrals and claim submissions that he would be required to allege in order to survive a motion to dismiss. U.S. ex rel. Frazier v. IASIS Healthcare Corp., D.Ariz.2008, 554 F.Supp.2d 966. Federal Civil Procedure 1838

Although it would have been more efficient if employee had filed all amendments, in his wrongful discharge and False Claims Act retaliation action, in single amended complaint, his motions for leave to file second and third amended complaints would be allowed; proposed amendments were largely technical and were not prejudicial, dilatory, in bad faith, or futile. Glynn v. EDO Corp., D.Md.2008, 536 F.Supp.2d 595. Federal Civil Procedure 839.1

Possibility existed that relator could assert additional facts to allege with requisite particularity, under fraud pleading rule, her claims under False Claims Act (FCA) that Federal National Mortgage Association (Fannie Mae) sought insurance reimbursement from Department of Housing and Urban Development (HUD) on loans that it knew did not qualify for government insurance, warranting granting of leave to amend complaint to satisfy rule. U.S. ex rel. Cericola v. Federal Nat. Mortg. Assoc., C.D.Cal.2007, 529 F.Supp.2d 1139. Federal Civil Procedure 839.1

United States could amend its complaint in action brought under the False Claims Act in connection with alleged fraudulent representations of performance of contract to monitor and review hospital discharge payments under the Medicare program; no opposition was filed to the motion to amend. U.S. ex rel. McCoy v. California Medical Review, Inc., N.D.Cal.1989, 723 F.Supp. 1363. Federal Civil Procedure 839.1

Plaintiff should have named federal government as coplaintiff to claim under False Claims Act [31 U.S.C.A. § 3730], but inasmuch as plaintiff correctly identified United States as real party in interest and arguably provided adequate notice to government of its claim against it, claim would not be dismissed provided plaintiff amended complaint to name United States as coplaintiff. Minotti v. Wheaton, D.Conn.1986, 630 F.Supp. 280. United States 140

United States government was entitled to amend last three counts of complaint against Postmaster under former § 231 et seq. of this title, despite fact that first three counts of complaint, the allegations of which the last three counts adopted by reference, had been dismissed, in order to clarify actions under each count. U. S. v. Lawson, D.C.N.J.1981, 522 F.Supp. 746. Federal Civil Procedure 839.1

United States, which had moved to amend complaint seeking forfeiture under former § 231 [now § 3729] of this title by substituting in lieu thereof amended complaint seeking to recover losses under Commodity Credit Corporation Charter Act, § 714 et seq. of Title 15, and which at time of hearing moved for permission to further amend amended complaint in order to specifically incorporate and adopt therein the original complaint was allowed to do so. U. S. v. Templeton, E.D.Tenn.1961, 199 F.Supp. 179. Federal Civil Procedure 839.1

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United States did not abandon claim for forfeiture under former § 231 [now § 3729] of this title by filing of amended complaint where motion to amend requested that complaint be amended by amended complaint which referred to allegations of original complaint, and in which United States demanded judgment for forfeitures applicable under such section. U. S. v. Templeton, E.D.Tenn.1961, 199 F.Supp. 179. Federal Civil Procedure 852.1

Where complaint by United States to recover under former § 231 [now § 3729] of this title sought both statutory damages and double damages which United States might have sustained, although complaint failed to disclose that there had been false claims within meaning of such section, United States was allowed to correct deficiency by appropriate amendment. U. S. v. Tieger, D.C.N.J.1954, 138 F.Supp. 709, affirmed 234 F.2d 589, certiorari denied 77 S.Ct. 262, 352 U.S. 941, 1 L.Ed.2d 237. United States 122

Although employee failed to support motion to amend complaint against employer, to add claim under whistleblower provision of False Claims Act (FCA), with memorandum of law as required by local rule, employer was not prejudiced by such failure, as would support denying motion to amend, because employee filed reply brief setting forth her arguments for entitlement to amend complaint. Marion v. Rehabworks, Inc., E.D.Mo.2001, 206 F.R.D. 643. Federal Civil Procedure 849

Contractor's alleged additional litigation expenses and investment of time, due to fading memories of witnesses, absent documents, and burden of undertaking additional discovery, did not substantiate level of prejudice needed to deny government leave to amend complaint to include additional fraud claims, under False Claims Act, CDA, and false claims forfeiture statute, even though contractor was small business under set-aside contract with Department of Transportation, Maritime Administration (MARAD) for services related to logistics programs, where discovery had not yet closed. Veridyne Corp. v. U.S., Fed.Cl.2009, 86 Fed.Cl. 668. United States 122

161. Dismissal of complaint--Generally

Relators failed to meet their burden to show the Government's motion to dismiss their qui tam action challenging claims for payment made under contracts to provide security measures at former nuclear weapons manufacturing facility was fraudulent, arbitrary and capricious, or illegal, so as to preclude dismissal under False Claims Act (FCA); while evidence suggested vigorous disagreement over security at the facility, there was no evidence that the Government's decision to dismiss was in aid of a cover-up of security lapses. Ridenour v. Kaiser-Hill Co., L.L.C., C.A.10 (Colo.) 2005, 397 F.3d 925, certiorari denied 126 S.Ct. 341, 546 U.S. 816, 163 L.Ed.2d 52. United States 122

District court abused its discretion in dismissing, for failure to prosecute, those False Claims Act claims that relator had already adequately pleaded, even though relator and/or his counsel caused 17-month delay, where relator did not receive notice case would be dismissed if there was further delay, degree of prejudice was not the same with respect to all of relator's claims, delay did not impact court's work, case had already been delayed 3 years while government contemplated intervention, and relator was not deliberately dilatory. U.S. ex rel. Drake v. Norden Systems, Inc., C.A.2 (Conn.) 2004, 375 F.3d 248. Federal Civil Procedure 1760

Denial of employee's motion for voluntary dismissal of his qui tam False Claims Act (FCA) action against his employer was within district court's discretion where he filed his motion to dismiss nine months after filing suit, both sides had

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filed responsive pleadings in addition to motions to compel, motions for expedited hearing, motions to dismiss, motions for oral arguments, and a motion for rehearing, the parties had attended several conferences for purposes of scheduling discovery, the United States had declined to intervene, and employee's counsel had been sanctioned by the district court for failure to participate in the discovery process. U.S. ex rel. Doe v. Dow Chemical Co., C.A.5 (La.) 2003, 343 F.3d 325 . Federal Civil Procedure 1701.1

Dismissal of government's alternative claim for unjust enrichment against sole director of corporation that employed pain management clinic's billing manager was premature when government's claim against director under False Claims Act (FCA) had not been fully litigated, notwithstanding director's contention that dismissal was warranted on grounds that government had adequate remedy at law. U.S. v. Stevens, W.D.Ky.2008, 605 F.Supp.2d 863. Federal Civil Procedure 1828

Government's dismissal of False Claims Act cases against agricultural cooperative corporation and packinghouses, in which defendants were alleged to have consistently violated prorate restrictions and reporting requirements in citrus marketing orders, was not improperly or unduly influenced by defendants or members of Congress; defendants exercised their right to petition government, but there was no evidence that they engaged in bribery, fraud, coercion, or conspiracy with government officials to violate law, and contacts between agency and members of Congress concerned subject matter that could properly be discussed. U.S. ex rel. Sequoia Orange Co. v. Sunland Packing House Co., E.D.Cal.1995, 912 F.Supp. 1325, affirmed 151 F.3d 1139, certiorari denied 119 S.Ct. 794, 525 U.S. 1067, 142 L.Ed.2d 657. United States 122

Not every technical or minor remedial violation of seal on qui tam complaint requires automatic dismissal of qui tam action. U.S. ex rel. Windsor v. DynCorp, Inc., E.D.Va.1995, 895 F.Supp. 844. United States 122

Where there was no case law directly on point as guide on issue of whether government could have dismissed qui tam action under former § 231 et seq. [now § 3729 et seq.] of this title had taken over, district court had to examine relevant legislative history in search of intent of Congress. U. S. ex rel. Weiss v. Schwartz, N.D.Cal.1982, 546 F.Supp. 422. Statutes 217.4

162. ---- Admissions, dismissal of complaint

On motion to dismiss action brought under former § 231 [now § 3729] of this title to collect civil penalties, government's allegations must have been taken as true and it must have been assumed that defendant corporation and defendants working for it or running it had been part of cause which resulted in false claim. U. S. v. Cherokee Implement Co., N.D.Iowa 1963, 216 F.Supp. 374. Federal Civil Procedure 1835

163. ---- Hearings, dismissal of complaint

Under provision of False Claims Act permitting government to dismiss qui tam action over relator's objection upon notice to relator and after hearing, function of hearing is simply to give relator formal opportunity to convince government not to end case; provision does not imply judicial review of government's decision, at least absent fraud. Swift v. U.S., C.A.D.C.2003, 318 F.3d 250, 355 U.S.App.D.C. 59, certiorari denied 123 S.Ct. 2622, 539 U.S. 944, 156 L.Ed.2d 630.

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While it might have been preferable for federal district judge to have told plaintiff explicitly that he was not going to hold a hearing before deciding that the jurisdictional bar of former § 232(C) of this title was applicable, district court did not abuse discretion in deciding to dismiss for lack of jurisdiction on the basis of defendant's uncontested affidavits and without conducting an evidentiary hearing where plaintiff completely failed to supply anything other than conclusory allegations as to what documents and testimony could have been produced at a hearing. Pettis ex rel. U. S. v. Morrison-Knudsen Co., Inc., C.A.9 (Idaho) 1978, 577 F.2d 668. Federal Civil Procedure 1742(2)

164. ---- Adjudication on merits, dismissal of complaint

Relator's qui tam claims under False Claims Act would be dismissed with prejudice, as opposed to without prejudice, since relator's failure to file complaint under seal and serve United States frustrated statutory purpose underlying those requirements; government could not determine whether complaint might interfere with ongoing investigation or whether government should intervene, any settlement value that might have arisen from complaint's sealed status was eliminated, any possibility of ameliorating predisclosure government decision not to pursue claim was aborted by relator's premature publication of allegations through communication with reporter, and relator's counsel did not act in good faith in attempting to comply with requirements. U.S. ex rel. Pilon v. Martin Marietta Corp., C.A.2 (N.Y.) 1995, 60 F.3d 995. Federal Civil Procedure 1741; Federal Civil Procedure 1837.1

Purported dismissal of informer's action by stipulation of relator and defendant without consent of judge and United States Attorney under former § 232(B) of this title did not constitute a dismissal, and hence was not such a second dismissal as would have operated as an adjudication on merits under rule 41(a), Federal Rules of Civil Procedure, Title 28. U.S. v. Samuel Dunkel & Co., S.D.N.Y.1945, 61 F.Supp. 697. Federal Civil Procedure 1706

165. ---- Consent of court and Attorney General, dismissal of complaint

False Claims Act (FCA) provision stating that suit under Act “may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting” did not apply to prefiling release signed by relator/employee upon mediated settlement of her whistleblowing retaliation claim against employer; i.e., Attorney General did not have to consent to release in order to render it valid, since at time of release there was no pending FCA action. U.S. ex rel. Ritchie v. Lockheed Martin Corp., C.A.10 (Colo.) 2009, 558 F.3d 1161. United States 122

Attorney General's consent was not required prior to dismissal of qui tam action under False Claims Act on ground that relator was not qualified to represent United States' interests. U.S. ex rel. Mergent Services v. Flaherty, C.A.2 (N.Y.) 2008, 540 F.3d 89. United States 122

Under section of the False Claims Act (FCA) stating that an FCA action brought by a qui tam relator “may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting,” Attorney General's consent is required only where the relator seeks a voluntary dismissal, not where the district court grants a motion by the defendant to dismiss for failure to state a claim. U.S. ex rel. Shaver v. Lucas Western Corp., C.A.8 (Ark.) 2001, 237 F.3d 932. United States 122

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Attorney General's consent is required before private plaintiff may settle or otherwise dismiss action under False Claims Act's (FCA) qui tam provisions; such requirement is not limited to 60-day period in which government must make its intervention decision, and even if government declines to intervene, Attorney General's consent to settle must be obtained. U.S. v. Health Possibilities, P.S.C., C.A.6 (Ky.) 2000, 207 F.3d 335. United States 122

Voluntary dismissal could not be granted in False Claims Act suit unless Attorney General consented to dismissal, and thus, Act gave government power to veto settlement even after it declined to intervene. Searcy v. Philips Electronics North America Corp., C.A.5 (Tex.) 1997, 117 F.3d 154. United States 122

Written consent of Attorney General was required for dismissal of qui tam claims against bidder's surety under False Claims Act; government's initial decision not to take over the qui tam action was not the equivalent of its consent to a voluntary dismissal of a defendant with prejudice. U.S. ex rel. McGough v. Covington Technologies Co., C.A.9 (Cal.) 1992, 967 F.2d 1391. United States 122

Consent of the Attorney General of the United States was not required before a court could order dismissal of a qui tam action brought under the False Claims Act, where the United States had formally declined to intervene in the action, and district court had ordered dismissal for plaintiff's failure to comply with discovery orders. Minotti v. Lensink, C.A.2 (Conn.) 1990, 895 F.2d 100. United States 122

In action on behalf of United States to recover penalty and double damages for presentation of false claims against the United States, motion to dismiss for failure to state a cause of action was properly granted notwithstanding former § 232(B) of this title that action once filed may not have been withdrawn or discontinued without written consent of the judge and of the United States Attorney, since such subsec. (B) intended to apply to a different situation. U.S. ex rel. Fletcher v. Fahey, App.D.C.1941, 121 F.2d 28, 73 App.D.C. 257, certiorari denied 62 S.Ct. 84, 314 U.S. 624, 86 L.Ed. 501. United States 122

Government's consent is required for dismissing a qui tam action brought under the False Claims Act (FCA) by a private person; such requirement is not limited to 60-day period in which government must make its intervention decision, and even if government declines to intervene, government's consent to settle must still be obtained. U.S. ex rel. Globe Composite Solutions, Ltd. v. Solar Const., Inc., D.Mass.2007, 528 F.Supp.2d 1. United States 122

Reinstatement of suit against corporation was warranted, and order of dismissal was vacated, although United States previously declined to intervene after relator filed qui tam complaint under False Claims Act (FCA) and court granted relator's motion for voluntary dismissal after receiving payment from corporation; Attorney General did not consent to dismissal, court and government were entitled to know of existence of payment prior to consenting to dismissal, and complaint did not contain any personal claims of relator. U.S. ex rel. Dimartino v. Intelligent Decisions, Inc., M.D.Fla.2004, 308 F.Supp.2d 1318. United States 122

Qui tam plaintiff had the right to conduct the False Claims Act (FCA) action in which United States declined to intervene, and dismiss or settle the case without the consent of the Attorney General; decision by the Attorney General not to intervene in and conduct the lawsuit was tantamount to consent by the Attorney General to have the action dismissed.

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U.S. ex rel. Fender v. Tenet Healthcare Corp., N.D.Ala.2000, 105 F.Supp.2d 1228. United States 122

Attorney General's written consent was not a prerequisite for court to approve proposed settlement of False Claims Act action between relators and defendant and dismiss the action with prejudice where initial 60-day investigatory period and multiple extensions of that period had expired, and United States declined to intervene. U.S. ex rel. Hullinger v. Hercules, Inc., D.Utah 1999, 80 F.Supp.2d 1234. United States 122

False Claims Act provision stating that action may be dismissed only if court and Attorney General give written consent to dismissal and their reasons for consenting does not apply to dismissal of a qui tam action by order of the court; section relates to dismissal of action, once commenced, by parties who commenced it. U.S. ex rel. S. Prawer & Co. v. Fleet Bank of Maine, D.Me.1993, 855 F.Supp. 419. United States 122

Qui tam plaintiff may dismiss action without consent of Attorney General on finding by court that plaintiff has adequately represented government interests. U.S. ex rel. Pedicone v. Mazak Corp., S.D.Ohio 1992, 807 F.Supp. 1350. United States 122

In an informer's suit, former § 232(B) of this title which forbade the discontinuance of such suits without the consent of the judge and United States Attorney was complied with where Acting Attorney General refused to enter the suit, which was tantamount to the United States Attorney's consent to dismiss the suit and the consent of the court being obtained if the motion was sustained. U.S. ex rel. Laughlin v. Eicher, D.C.D.C.1944, 56 F.Supp. 972. United States 122

The prohibition against dismissal of informer's suit without consent in writing of judge and United States Attorney refers to voluntary dismissals and is intended to discourage repeated bringing of suits which are without merit but which might be brought merely to satisfy complainant's desire for revenge and to discourage private compromise settlements. U.S. ex rel. Laughlin v. Eicher, D.C.D.C.1944, 56 F.Supp. 972. United States 122

166. ---- Delay, dismissal of complaint

Charge under former § 231 [now § 3729] of this title to defraud the United States by presentation of false claims should have been prosecuted with dispatch, or dismissed in absence of impressive reason for delay. U.S. ex rel. Shinn v. State of Tenn., E.D.Tenn.1947, 74 F.Supp. 635. Federal Civil Procedure 1758.1

167. ---- Failure to state cause of action, dismissal of complaint

Allegations that hospital received federal funding and that, at various times, pharmaceuticals had been dispensed by hospital employees who were not licensed to do so under New Jersey law did not link hospital's alleged receipt of federal funds to compliance with New Jersey law regulating eligibility to dispense prescription drugs, as would support hospital employees' claim under false certification theory of False Claims Act, in qui tam action against hospital. Rodriguez v. Our Lady of Lourdes Medical Center, C.A.3 (N.J.) 2008, 552 F.3d 297, as amended. United States 122

Insurance agent's qui tam allegations that life insurance company and national bank schemed to sell military personnel

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life insurance in contravention of regulations governing such sales failed to state a claim under False Claims Act (FCA), where alleged fraud could not cause the government, as opposed to defrauded military personnel, to suffer any economic loss. U.S. ex rel. Sanders v. American-Amicable Life Ins. Co. of Texas, C.A.3 (Pa.) 2008, 545 F.3d 256. United States 122

Pro se relator was not entitled to opportunity to find a lawyer to represent him in qui tam action to avoid dismissal with prejudice, since relator's complaint was incoherent. U.S. ex rel. Lu v. Ou, C.A.7 (Ill.) 2004, 368 F.3d 773. United States 122

Fact that United States had not paid money on false claim of officer of bank did not require dismissal on ground that no cause of action was stated against bank and officer of bank under former § 231 [now § 3729] of this title since investigation necessary to detect false claim costs United States money even if no money was paid out on the claim. U. S. v. Ridglea State Bank, C.A.5 (Tex.) 1966, 357 F.2d 495. United States 122

In action against members and executive officers of the Federal Home Loan Bank Board to recover on behalf of the United States double the amount of money paid for stock of the Home Owners' Loan Corporation, on theory that the money had been secured by the false claim that the corporation had been legally incorporated, complaint charging that members of the Board had spread upon the Board's records a paper purporting to be a charter of the Corporation, that they transmitted a copy of the resolution to the Secretary of the Treasury and received money from him in payment for stock of the corporation was properly dismissed for failure to state a cause of action as against contention that Home Owners' Loan Act of 1933, § 1461 et seq. of Title 12, did not authorize Board to issue charter, and that Board could create the Corporation only by obtaining a charter from the District of Columbia or some state. U.S. ex rel. Fletcher v. Fahey, App.D.C.1941, 121 F.2d 28, 73 App.D.C. 257, certiorari denied 62 S.Ct. 84, 314 U.S. 624, 86 L.Ed. 501. United States 122

Allegations that contractor falsely certified compliance with its Vietnam Era Veterans Readjustment Assistance Act (VEVRAA) reporting requirements each time it submitted a bid, rendering the ensuing contracts issued in reliance on those certifications false claims stated claims under False Claims Act (FCA); however, allegations that contractor falsely certified its compliance with VEVRAA by submitting claims for payment on VEVRAA-covered contracts despite knowing that its reports were inaccurate, and that contractor falsely certified its compliance with VEVRAA by submitting claims for payment on VEVRAA-covered contracts while knowing it did not have affirmative action programs for veterans or a procedure to allow veterans to self-identify as required by the statute did not state FCA claims since neither express certification of accuracy of VEVRAA reports nor actually instituting an affirmative action program was a condition of payment. U.S. ex rel. Kirk v. Schindler Elevator Corp., S.D.N.Y.2009, 606 F.Supp.2d 448. United States 122

Relator in qui tam action failed to provide factual basis for allegations that drug manufacturer provided illegal kickbacks to health maintenance organization (HMO), resulting in submission of false claims, as required to satisfy heightened pleading requirements for fraud claims. U.S. ex rel. Foster v. Bristol-Myers Squibb Co., E.D.Tex.2008, 587 F.Supp.2d 805. Federal Civil Procedure 636

Relator's allegations in qui tam action, that durable medical equipment company (DME) knowingly aided independent diagnostic testing facility (IDTF) in getting unnecessary and unauthorized diagnostic tests submitted and paid for by

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Medicare for the sole purpose of getting patients qualified for reimbursement more quickly, were insufficient to establish conspiratorial agreement to defraud the government under the False Claims Act; relator did not identify what the terms of the alleged agreement were or who entered into such agreement, DME and IDTF were separate entities and DME had no control over IDTF's practices, and there was no evidence of any relationship or shared objective regarding submission of false claims between DME and IDTF. U.S. ex rel. Bane v. Breathe Easy Pulmonary Services, Inc., M.D.Fla.2009, 597 F.Supp.2d 1280. Conspiracy 19

Absence of any actionable violation of the federal False Claims Act (FCA) or the California False Claims Act warranted dismissal of qui tam action brought by relator whose company was an unsuccessful bidder for a California Department of Transportation project against successful bidder; successful bidder fully disclosed particulars concerning its bid before it was awarded the project and before it submitted any claim for payment, and governments were fully aware of the facts surrounding the claim when they paid it. U.S. v. Shasta Services, Inc., E.D.Cal.2006, 440 F.Supp.2d 1108. States 188; United States 122

Federal government's allegation in qui tam action that neurologist and clinic submitted false claims to government in violation of False Claims Act (FCA) by fraudulently claiming higher levels of service than were actually provided, in order to obtain higher level of reimbursement for medical services under Medicare, did not constitute an unwarranted difference of scientific opinion that inappropriately high levels of billing codes were used or that they merely failed to comply with administrative regulations, as would warrant dismissal of government's claims. U.S. ex rel. Harris v. Bernad, D.D.C.2003, 275 F.Supp.2d 1. United States 122

Allegation that government contractor did not pay liquidated damages for late deliveries of hardware and software even though it had agreed to do so was insufficient to state False Claims Act (FCA) claim for making false record to avoid obligation to pay, absent any claim that contractor avoided its obligation by lying to government or even that government billed contractor for late shipments. U.S. ex rel. Garst v. Lockheed Integrated Solutions Co., N.D.Ill.2001, 158 F.Supp.2d 816. United States 122

Relators failed to state cause of action in complaint under False Claims Act against individuals, where, although complaint alleged that individuals acted inappropriately during process for procurement of health care provider's certificate of need (CON), complaint did not tie those alleged actions to submission of false Medicare and Medicaid claims or other prohibited activity. U.S. ex rel. Sanders v. East Alabama Healthcare Authority, M.D.Ala.1996, 953 F.Supp. 1404. Federal Civil Procedure 636; United States 122

Private citizen's claim under False Claims Amendments Act seeking to hold defendants liable for making false claims or statements to government with respect to income taxes owed, was actually claim for collection of unpaid taxes; thus, citizen failed to state cause of action under Act. Hardin v. DuPont Scandinavia (ARA-JET), S.D.N.Y.1990, 731 F.Supp. 1202. United States 122

Complaints, which alleged breach of contract, payment under mistake of fact, and unjust enrichment were sufficiently specific to withstand motion to dismiss for failure to state claim, in action arising out of alleged fraud in connection with contract to monitor and review hospital discharge payments under the Medicare program; complaint provided details about allegedly false certifications, identified false documents, and explained precisely what work defendant was oblig-

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ated to perform. U.S. ex rel. McCoy v. California Medical Review, Inc., N.D.Cal.1989, 723 F.Supp. 1363. Federal Civil Procedure 1811

Question whether complaint by United States against purchaser of surplus vessels stated claim for relief under former § 231 [now § 3729] of this title based on ground that allegedly false statements by purchaser that he had scrapped vessels purchased as required by contract were designed to conceal breaches of conditions entitling United States to reconveyance of vessels and thus in effect were made to secure approval of claim against United States was not determined on basis of pleadings, and ruling on purchaser's motion to dismiss complaint for failure to state claim upon which relief could have been granted was reserved until trial. U. S. v. Fong, N.D.Cal.1957, 182 F.Supp. 446, affirmed 300 F.2d 400, certiorari denied 82 S.Ct. 1584, 370 U.S. 938, 8 L.Ed.2d 807. Federal Civil Procedure 1828

Complaints under former § 231 [now § 3729] of this title for frauds in selling dried eggs to former Federal Surplus Commodities Corporation were not subject to dismissal as failing to show that defendants made to a person or officer in government's service a claim upon or against government or department or officer thereof. U.S. v. Samuel Dunkel & Co., S.D.N.Y.1945, 61 F.Supp. 697. United States 122

168. ---- Identical causes of action, dismissal of complaint

Public disclosure bar was correctly applied in qui tam actions, under the False Claims Act (FCA), alleging underpayment of natural gas royalties to the United States, on basis that the fraudulent scheme alleged in relator's previous complaints shared substantial identity with allegations publicly disclosed in Senate Committee documents and a prior lawsuit; the prior public disclosures named a significant percentage of industry participants as wrongdoers and indicated that others in the industry were very likely engaged in the same practices. In re Natural Gas Royalties, C.A.10 (Wyo.) 2009, 562 F.3d 1032, certiorari denied 2009 WL 2444790. United States 122

Where action by United States for alleged fraudulent practices in presentation of claims for airplane engines manufactured for the United States was still pending, an identical action by a private person except for additional allegation that during period subsequent to filing of government's action, defendants had knowingly used defective materials in airplane engines manufactured for the United States, was properly dismissed since the two petitions were in substance the same. Hillgrove v. Wright Aeronautical Corp., C.C.A.6 (Ohio) 1945, 146 F.2d 621. Abatement And Revival 8(2)

Action in Court of Federal Claims involving termination of defense contract did not warrant dismissal, under doctrine of federal comity, of government's False Claims Act (FCA) suit against contractor; although cases involved same contract, issues were not the same. U.S. ex rel. O'Keefe v. McDonnell Douglas Corp., E.D.Mo.1996, 918 F.Supp. 1338. Federal Courts 1143

Where only difference between complaint of the United States under former § 231 [now § 3729], of this title, and complaint by alleged informer was that informer spoke of projects not only in named counties but throughout the United States and that informer demanded a larger sum of money, the actions were identical and informer's action was dismissed. U.S. ex rel. Benjamin v. Hendrick, S.D.N.Y.1943, 52 F.Supp. 60. Abatement And Revival 8(2)

169. ---- Lack of jurisdiction, dismissal of complaint

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Where after nearly two years, informer had not satisfied notice requirements of former § 232(C) of this title and had not responded in any form to argument of Deputy Secretary of Department of Public Welfare that complaint should have been dismissed for lack of subject-matter jurisdiction due to informer's failure to comply with notice requirements, it was appropriate to dismiss informer's suit as to not only Deputy Secretary, but also as to health management corporation and management consulting firm. U. S. ex rel. Sacks v. Philadelphia Health Management Corp., E.D.Pa.1981, 519 F.Supp. 818. Federal Civil Procedure 1750

Where, before qui tam suit was filed, all material information for suit was elicited by government from hearings held by House Naval Affairs Committee, action was dismissed for want of jurisdiction notwithstanding that relator furnished at least some information to Department of Justice which it did not previously possess. U.S. ex rel. McLaughlin v. American Chain & Cable Co., S.D.N.Y.1945, 62 F.Supp. 302. United States 122

170. ---- Lack of prosecution, dismissal of complaint

District court did not abuse its discretion in dismissing, for failure to prosecute, those False Claims Act claims that relator had never pleaded with specificity, where relator and/or his counsel caused 17-month delay, and government contractor was significantly prejudiced by delay because it was not given adequate notice what claims were. U.S. ex rel. Drake v. Norden Systems, Inc., C.A.2 (Conn.) 2004, 375 F.3d 248. Federal Civil Procedure 1760

Where action was brought under former § 231 [now § 3729] of this title charging Tennessee and others with conspiracy to defraud the United States by presentation of false claims, and court ordered qui tam plaintiff to file evidence within 30 days of his compliance with former § 232 of this title, which related to notices and disclosure but more than 200 days later no such evidence had yet been filed and United States had not intervened, action was dismissed by court in its own motion for want of prosecution. U.S. ex rel. Shinn v. State of Tenn., E.D.Tenn.1947, 74 F.Supp. 635. Federal Civil Procedure 1761; Federal Civil Procedure 1824

171. ---- Treatment as summary judgment motion, dismissal of complaint

Motion to dismiss False Claims Act (FCA) suit should have been treated as one for summary judgment, not as motion to dismiss for lack of subject matter jurisdiction, since jurisdictional question was intertwined with merits, district court relied on affidavits and other evidentiary material submitted by parties, and motion did not simply attack facial validity of complaint, but rather raised factual challenge to existence of subject matter jurisdiction under FCA's “public disclosure” jurisdictional bar; defendants argued that plaintiff's allegations of fraud were based upon publicly disclosed information, and they tendered evidence outside pleadings in support of this factual claim. U.S. ex rel. Ramseyer v. Century Healthcare Corp., C.A.10 (Okla.) 1996, 90 F.3d 1514. Federal Civil Procedure 1825; Federal Civil Procedure 2533.1

Defendant hospital's defense that qui tam plaintiff was not hospital employee as alleged but instead was an attending physician, such that it could not be subject to employer liability for retaliation under whistleblower provision of False Claims Act (FCA), was an issue of fact, and thus a proper subject for summary judgment motion, rather than motion to dismiss. U.S. ex rel. Sarafoglou v. Weill Medical College of Cornell University, S.D.N.Y.2006, 451 F.Supp.2d 613. Federal Civil Procedure 1831

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172. ---- Miscellaneous grounds, dismissal of complaint

Dismissal with prejudice of suit alleging debt collection fraud was warranted as sanction for attorney's unauthorized disclosure of document subject to attorneys' eyes only agreement, though no protective order was in place disallowing disclosure, and district court did not find good cause for keeping document confidential before issuing sanction; attorney voluntarily entered agreement, court did not have opportunity to determine whether there was good cause because attorney short-circuited protective-order process by disclosing document, and violation was on heels of continuing pattern of misconduct for which attorney had been given a final warning. Salmeron v. Enterprise Recovery Systems, Inc., C.A.7 (Ill.) 2009, 579 F.3d 787. Federal Civil Procedure 1636.1

Dismissal of qui tam action challenging claims for payment made under contracts to provide security measures at contaminated nuclear weapons manufacturing facility had rational relationship with governmental objectives of protecting classified information from disclosure and timely closing of the facility, as required to support dismissal under False Claims Act (FCA); classified documents required in the litigation presented risk of inadvertent disclosure, implicating national security, and litigation would have diverted resources from the clean-up effort at the facility. Ridenour v. Kaiser-Hill Co., L.L.C., C.A.10 (Colo.) 2005, 397 F.3d 925, certiorari denied 126 S.Ct. 341, 546 U.S. 816, 163 L.Ed.2d 52. United States 122

Dismissal for failure to conform complaint to pleading rules was warranted when length and complexity of amended pleadings filed by relator in qui tam action under False Claims Act (FCA), which contained 400 paragraphs covering 155 pages, followed by 99 attachments, rendered complaint unintelligible. U.S. ex rel. Garst v. Lockheed-Martin Corp., C.A.7 (Ill.) 2003, 328 F.3d 374, rehearing and rehearing en banc denied , certiorari denied 124 S.Ct. 450, 540 U.S. 968, 157 L.Ed.2d 313, rehearing denied 124 S.Ct. 975, 540 U.S. 1097, 157 L.Ed.2d 809. Federal Civil Procedure 1795

Government's dismissal of qui tam action brought, under False Claims Act, by fruit processor and orange grower against other growers and packinghouses, which alleged violations of government marketing orders, was based on valid government purpose of eliminating legal battles in the citrus industry and was not based on improper factors. U.S. ex rel., Sequoia Orange Co. v. Baird-Neece Packing Corp., C.A.9 (Cal.) 1998, 151 F.3d 1139, certiorari denied 119 S.Ct. 794, 525 U.S. 1067, 142 L.Ed.2d 657. United States 122

Characterization as crucial which care center gave to documentary evidence which it was unable to obtain by reason state trial court order suppressing and sealing documents as illegally seized was incredible when care center refrained from any effort to secure their release and, when evidence was not produced, was not a basis for care center to obtain dismissal of action brought by the state of Colorado in the name of the United States as a qui tam plaintiff to recover from care center for allegedly filing false cost reports with the Colorado Department of Social Services to obtain medicaid reimbursement. U.S. ex rel. Woodard v. Country View Care Center, Inc., C.A.10 (Colo.) 1986, 797 F.2d 888. United States 122

Even if contracts between defendants and another unlawfully gave defendants a monopolistic advantage without which they would not have secured their contracts with the United States, where defendants did not represent that they had not secured an unlawful monopoly of the market, there was no “fraud” within former § 231 [now § 3729] of this title which imposed liability on person making false claims against the United States, and therefore action to recover penalty was properly dismissed. U.S. ex rel. Brensilber v. Bausch & Lomb Optical Co., C.C.A.2 (N.Y.) 1942, 131 F.2d 545, certiorari

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granted 63 S.Ct. 1026, 319 U.S. 733, 87 L.Ed. 1695, affirmed 64 S.Ct. 187, 320 U.S. 711, 88 L.Ed. 417, rehearing denied 64 S.Ct. 256, 320 U.S. 814, 88 L.Ed. 492. United States 121

Issue whether company managing rehabilitation center caused to be presented a false claim could not be resolved at motion to dismiss phase due to factual dispute as to whether management company knowingly engaged in fraudulent conduct inducing payment by the government of false Medicare claims. U.S. ex rel. McCready v. Columbia/HCA Healthcare Corp., D.D.C.2003, 251 F.Supp.2d 114. Federal Civil Procedure 1831

Relator's qui tam action against company and two of its subsidiaries, alleging that they overcharged the government in connection with a security, required dismissal with prejudice, as relator failed to comply with statutory requirements of the False Claims Act requiring that complaint be sealed, and thus frustrated the statutory purpose behind in camera filing of such complaints; even though there was no indication that relator acted in bad faith in failing to have complaint filed under seal, relator's failure to file the complaint under seal breached Congress's overarching purpose in enacting the in camera filing requirements, as it removed government's advantage in investigating company without knowledge of the inquiry, and relator's failure also frustrated other interests supporting in camera filing, including protection of the company's reputation and the government's ability to negotiate with the company while the complaint was still under seal. U.S. ex rel. Le Blanc v. ITT Industries, Inc., S.D.N.Y.2007, 492 F.Supp.2d 303. United States 122

Government met its burden of justifying dismissal of qui tam action arising from contract for environmental clean up a former nuclear weapons component manufacturing facility by showing that dismissal was rationally related to protection of national security interests and also to protection against delay in the closing of the facility; relators failed to negate every conceivable basis that could support the government's decision to dismiss, or to show that fraudulent or illegal purposes were the true motivations behind that decision. U.S. ex rel. Ridenour v. Kaiser-Hill Co., L.L.C., D.Colo.2001, 174 F.Supp.2d 1147, affirmed 397 F.3d 925, certiorari denied 126 S.Ct. 341, 546 U.S. 816, 163 L.Ed.2d 52. United States 122

Government articulated legitimate reasons for dismissal of False Claims Act cases against agricultural cooperative corporation and packinghouses, in which defendants were alleged to have consistently violated prorate restrictions and reporting requirements in citrus marketing orders; government's interests were to bring peace to industry, to facilitate new marketing orders, to lessen financial impact on industry participants, to conserve government resources, and to provide equitable treatment of all handlers who cheated. U.S. ex rel. Sequoia Orange Co. v. Sunland Packing House Co., E.D.Cal.1995, 912 F.Supp. 1325, affirmed 151 F.3d 1139, certiorari denied 119 S.Ct. 794, 525 U.S. 1067, 142 L.Ed.2d 657. United States 122

Complaint under this section alleging that defendant applied for and received funds from the United Nations in violation of federal law and therefore defrauded the United States government in violation of this section was not based on any evidence or information which was not known to the Government at the time the action was commenced and, therefore, the complaint was to be dismissed. U.S. ex rel. U.S.-Namibia (South West Africa) Trade & Cultural Council, Inc. v. South West Africa People's Organization, S.D.N.Y.1984, 585 F.Supp. 632. Penalties 34

Citizens' actions against congressman and several persons associated with congressman, which actions were brought under former § 232 of this title to recover funds alleged to have been wrongfully claimed from government by defendants,

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would have been dismissed, in view of fact that evidence and information upon which plaintiffs' suits were based was gleaned from sources in news media and was in possession of United States prior to initiation of suits. U. S. ex rel. Thompson v. Hays, D.C.D.C.1976, 432 F.Supp. 253. United States 122

In qui tam action brought by former employee of subcontractor on government project against the subcontractor to recover under former § 231 [now § 3729] of this title wherein defendant filed motion to dismiss on ground that suit was based upon evidence or information in possession of United States or agency, officer, or employee thereof at time suit was brought, defendant did not establish that the government had possession of all the information upon which the informer's charges were based at the time the suit was brought. U. S. ex rel. Vance v. Westinghouse Elec. Corp., W.D.Pa.1973, 363 F.Supp. 1038. United States 122

Action under former § 231 [now § 3729] of this title to collect civil penalties from corporation and parties who operated or worked for it on ground of preparation and execution of invoices containing false statements causing United States to disburse to others sums under Commodity Credit Loan program was not subject to dismissal on theories that false claim had not been made against United States or that defendants did not come within description of parties that might have been liable when false claim was presented. U. S. v. Cherokee Implement Co., N.D.Iowa 1963, 216 F.Supp. 374. United States 122

Dismissal without prejudice of former Chapter 7 debtors' False Claims Act, Racketeer Influenced and Corrupt Organizations Act (RICO), and civil rights claims against bankruptcy trustee and his attorney was proper, where debtors commenced action against trustee in district court during pendency of bankruptcy case without first obtaining leave from bankruptcy court, and bankruptcy court granted trustee's motion to reopen case and ordered debtors to file motion to dismiss trustee and attorney from district court case. U.S. ex rel. Krikava v. Community Nat. Bank of Seneca, Kansas, D.Kan.1998, 220 B.R. 699. Bankruptcy 2155; Bankruptcy 2162

173. Striking of allegations, complaint

Portion of False Claims Act (FCA) complaint describing how qui tam plaintiff learned of alleged scheme permitting unlicensed contractors to obtain Federal Emergency Management Agency (FEMA) contracts was relevant to issue of whether plaintiff was an original source of information and did not prejudice defendant contractor, and thus would not be stricken from complaint. U.S. ex rel. Chabot v. MLU Services, Inc., M.D.Fla.2008, 544 F.Supp.2d 1326. Federal Civil Procedure 1107; Federal Civil Procedure 1126; United States 122

In action by United States under former § 231 [now § 3729] of this title, truth of allegations that claims presented by defendant to Commodity Credit Corporation for payment were false and were presented for payment with knowledge they were false, fictitious, and fraudulant, were assumed for purpose of motion to strike. U.S. v. Strange Bros. Hide Co., N.D.Iowa 1954, 123 F.Supp. 177. Federal Civil Procedure 1147

In informer suit, plea that United States, with full knowledge of filing of the suit and of matters involved therein, entered into settlement of defendants' claims under contract, by attached instrument which recited settlement of specified claims under contract, was insufficient to allege a settlement and would be stricken out. U.S. ex rel. Coates v. St. Louis Clay Products Co., E.D.Mo.1946, 68 F.Supp. 902. Federal Civil Procedure 1132; United States 122

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In informer's action under former § 231 [now § 3729] of this title which alleged that the government was defrauded by defendant in connection with the furnishing of certain materials for construction of small arms plant, allegations refering to the contracting fee for the plant as a whole were not stricken, but were allowed to remain subject to determination as to admissibility in evidence. U.S. ex rel. Coates v. St. Louis Clay Products Co., E.D.Mo.1943, 3 F.R.D. 289. United States 122

174. Miscellaneous complaints sufficient

Allegations of qui tam relator's complaint, that his suspension and termination occurred just after he disclosed to his superior that he had advised government customer to continue to challenge employer's cost or pricing data, sufficiently alleged causation, as required to state cause of action under whistleblower provision of False Claims Act (FCA). U.S. ex rel. Williams v. Martin-Baker Aircraft Co., Ltd., C.A.D.C.2004, 389 F.3d 1251, 363 U.S.App.D.C. 419, rehearing denied. Labor And Employment 780

Complaint alleging that county water agency played an active part in having presented for signature a contract it knew was based on false information sufficiently pleaded claim under qui tam provision of False Claims Act; despite contention that plaintiff's charge was negated by the rest of his complaint which said that the relevant government officials knew that the information was false, plaintiff had not engaged in an exercise of self-contradiction. U.S. ex rel. Hagood v. Sonoma County Water Agency, C.A.9 (Cal.) 1991, 929 F.2d 1416, on remand. United States 122

Complaint charging that defendants, who held cleaning concessions at military installations under leases providing for payment of a specified percentage of their gross receipts, wrongfully submitted false statements and records of their gross receipts by understating amounts thereof was sufficient to state a cause of action by government for relief under common law contract principles. U. S. v. Howell, C.A.9 (Cal.) 1963, 318 F.2d 162. United States 120.1

Complaint praying for judgment for amounts provided for in former § 231 [now § 3729] of this title sufficiently alleged damage in that the government was seeking the statutorily fixed sum of $2,000 for each of the proscribed acts and by inference double the amount of its damages. U.S. v. Rainwater, C.A.8 (Ark.) 1957, 244 F.2d 27, certiorari granted 78 S.Ct. 43, 355 U.S. 811, 2 L.Ed.2d 29, affirmed 78 S.Ct. 946, 356 U.S. 590, 2 L.Ed.2d 996. United States 122

United States stated claim under False Claims Act (FCA), that drug manufacturer caused false or fraudulent claim to be presented for payment, on allegations that manufacturer knew that government calculated its Medicare and Medicaid payments based upon prices reported to pricing compendia and marketed spread between reimbursement rate and acquisition cost of health care provider, and, consequently, submission of false pharmaceutical claims by doctors and pharmacists to Medicare and Medicaid was not only foreseeable and substantial factor in government's loss but it also was intended consequence of alleged fraudulent pricing scheme. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2007, 491 F.Supp.2d 12. United States 122

United States' claim that health care provider billed Medicare for “nonexistent or worthless goods, or charged exorbitant prices” was sufficient to allege potential economic harm to government, as required to state claim under False Claims Act (FCA) for presenting false claim for payment, even if provider's claims were not actually paid. U.S. v. Aguillon, D.Del.2009, 628 F.Supp.2d 542. United States 122

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Federal government's allegations, that company that had entered into contracts with Nuclear Regulatory Commission (NRC) to provide technical assistance related to the recycling and reuse of radioactive material breached its obligations under the contracts to disclose organizational conflicts of interest (OCI) by engaging in relationships with certain organizations that created an appearance of bias in the technical assistance and support it provided the NRC, stated a claim against company under False Claims Act. U.S. v. Science Applications Intern. Corp., D.D.C.2007, 502 F.Supp.2d 75. United States 122

Claim was stated that county violated False Claims Act (FCA), in connection with application for federal government block grants for housing, when advocacy group alleged that county certified that grant would be conducted and administered in accordance with Civil Rights Act and Fair Housing Act, when in fact county had not identified race as impediment to fair housing, as it was required to do, nor taken any action to overcome effect of race as housing impediment. U.S. ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York, S.D.N.Y.2007, 495 F.Supp.2d 375, motion to certify appeal denied 2007 WL 2402997. United States 122

Qui tam relator's allegations that shipbuilder's bank, as trustee under trust indenture created by contract between shipbuilder and Navy, failed to ensure shipbuilder's recording of Navy's security instruments were sufficient to state claim for conspiracy under False Claims Act (FCA); even to extent that indenture purported to assign obligation for recording instruments to shipbuilder, such provision could not empower trustee to knowingly permit Navy's security interests to be undermined, and indenture contained no provision that modified trustee's fiduciary obligation to use reasonable care to protect trust res under Pennsylvania law. U.S. ex rel. Atkinson v. Pennsylvania Shipbuilding Co., E.D.Pa.2002, 255 F.Supp.2d 351, affirmed on other grounds 473 F.3d 506. Conspiracy 18

Former state investigator stated a claim against his former supervisor under the federal whistleblower statute; the investigator alleged that he was told by the supervisor to limit his investigation into false claims being submitted to the federal government by a proprietary school supervised by the state, had instead reported to the federal government the results of his investigation and the benefits to the state arising from the state's participation in the proceeds of the false claim, that his supervisor knew of his activities, and that he was terminated shortly after the federal government was able to subpoena from state files incriminatory documents implicating the school in fraudulent activities, thanks to assistance from the investigator. U.S. ex rel. Long v. SCS Business & Technical Institute, D.D.C.1998, 999 F.Supp. 78, reversed 173 F.3d 870, 335 U.S.App.D.C. 331, supplemented 173 F.3d 890, 335 U.S.App.D.C. 351, certiorari denied 120 S.Ct. 2194, 530 U.S. 1202, 147 L.Ed.2d 231. Labor And Employment 777

Former employee who alleged that she reported illegal activities involving Medicare funds received by her employer to chairman of company, that she also told chairman that she intended to inform government authorities of the activities, and that she was terminated two days later, stated a claim under whistleblower provision of the False Claims Act (FCA). Hopkins v. Actions, Inc. of Brazoria County, S.D.Tex.1997, 985 F.Supp. 706. Labor And Employment 858

Complaint, which identified allegedly fraudulent documents submitted by peer review organization to the Health Care Financing Administration, provided dates documents were submitted, and described each defendant's part in the fraud, pled fraud with sufficient particularity, in action brought under the False Claims Act to recover for alleged fraud in connection with contracts to monitor and review hospital discharge payments under the Medicare program. U.S. ex rel. McCoy v. California Medical Review, Inc., N.D.Cal.1989, 723 F.Supp. 1363. Federal Civil Procedure 636

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Counts alleging that all defendants participated in alleged fraud by preparing and submitting allegedly false drug claims and seeking to attach liability to one defendant due to her role as active participant, rather than as nominal corporate officer were sufficient to state claim against such participant under False Claims Act. U.S. v. Children's Shelter, Inc., W.D.Okla.1985, 604 F.Supp. 865. United States 120.1

Claim against retail grocery store under former §§ 231 to 235 of this title which sought double damages and penalty for submission of false claims to the United States based on store's fraudulent redemption of food stamp coupons stated a cause of action. Grand Union Co. v. U. S., N.D.Ga.1980, 495 F.Supp. 331. United States 102

Several counts alleging that defendants procured Federal Housing Administration [now Department of Housing and Urban Development] insurance by executing false credit applications or completion certificates, and that government paid insured lending institutions on loss occasioned by borrowers' default, stated valid claims. U. S. v. Globe Remodeling Co., D.C.Vt.1960, 196 F.Supp. 652. United States 120.1

Complaint, which alleged that president of corporation presented letter of real estate dealer to government agency stating that dealer had client who was interested in purchasing property for certain sum knowing same to be false and that president represented to government agency that property had a certain value when he knew it to be untrue, and that government, relying on such representations and without knowledge that they were false, entered into contract for leasing of such property, was sufficient to state cause of action founded on fraud for recovery of penalty and double amount of damages under former § 231 [now § 3729] of this title, sustained by government by reason of such fraudulent representations. U.S. v. Goldberg, E.D.Pa.1956, 159 F.Supp. 151. United States 122

Amended complaint in action under former § 231 [now § 3729] of this title which alleged that defendants had entered into conspiracy for approval of false and fraudulent claims against United States government in that they falsely represented that their publication was entitled to admission to mails as second class matter, stated a “claim” upon which relief could be granted. U.S. ex rel. Rodriguez v. Weekly Publications, S.D.N.Y.1946, 68 F.Supp. 767. United States 122

Government met its burden of pleading scienter in suit alleging that hospitals submitted false Medicare and Medicaid claims in violation of the False Claims Act (FCA), by submitting claims and receiving payment for procedures involving cardiac devices that had not been approved for marketing by the Food and Drug Administration (FDA); government alleged that hospitals were on notice that Medicare considered procedures involving non-FDA-approved cardiac devices to be non-covered, and they acted with reckless disregard of their compliance with Medicare rules and instructions. In re Cardiac Devices Qui Tam Litigation, D.Conn.2004, 221 F.R.D. 318. United States 122

175. Miscellaneous complaints insufficient

Special education teacher failed to establish claim under whistleblower provision of False Claims Act (FCA), in connection with teacher's complaints that defendant school district failed to comply with federal law governing special education programs, as teacher was not investigating fraud on part of district, but was merely trying to get district to comply with federal and state regulations, and evidence did not establish that district was aware that teacher was engaging in protected activity. U.S. ex rel. Hopper v. Anton, C.A.9 (Cal.) 1996, 91 F.3d 1261, certiorari denied 117 S.Ct. 958, 519 U.S. 1115, 136 L.Ed.2d 844. Schools 147.12

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Former clinical director of mental health clinic alleged no causal connection between her discharge and any conduct in furtherance of her qui tam claim, as required to maintain retaliation claim under False Claims Act (FCA), where complaint alleged only that director advised her superiors that defendants were not complying with minimum program requirements of Medicaid, but monitoring and reporting activities described in complaint were exactly those activities director was required to undertake in fulfillment of her job duties, and she never put defendants on notice that she intended to utilize such noncompliance in furtherance of FCA action. U.S. ex rel. Ramseyer v. Century Healthcare Corp., C.A.10 (Okla.) 1996, 90 F.3d 1514. Labor And Employment 780

Allegations that holders of concessions on military installations under a lease providing for payment of a specific percentage of gross receipts from operations to government agency submitted false statements of their monthly receipts did not state a claim upon which relief could have been granted to United States under former § 231 [now § 3729] of this title on ground that there had been a demand upon government for payment of money or delivery of property. U. S. v. Howell, C.A.9 (Cal.) 1963, 318 F.2d 162. United States 120.1

Where defendant had pleaded guilty to indictment which charged that defendant had concealed and covered up by trick or scheme a material fact and made a false representation knowing it to be false and there was no proof that defendant had any transactions with prime contractor who agreed to supply eggs to the government, and there was no evidence that any claim growing out of charges contained in indictment or complaint in civil action was ever presented to government, and there was no evidence even tending to prove that government accepted the eggs or in any manner became liable to pay any claim based thereon, or that the government suffered damage by reason of the transaction, government's complaint to recover penalty under former § 231 [now § 3729] of this title, stated no cause of action. Hyslop v. U. S., C.A.8 (Neb.) 1958, 261 F.2d 786. United States 122

Allegation that defective engines had been constructed for United States by using defective piston rings was merely an allegation of evidence as to circumstances out of which a false claim or representation covered by false claims might arise, and did not state a cause of action where facts constituting the false claim or fraud were not set forth. Hillgrove v. Wright Aeronautical Corp., C.C.A.6 (Ohio) 1945, 146 F.2d 621. United States 122

Allegations that physicians' actions in making referrals had violated Medicare anti-kickback and anti-fraud statutes were insufficient, in and of themselves, to state claim under False Claims Act based on claims submitted in connection with referrals; required showing was that claims themselves were fraudulent. U.S. ex rel. James M. Thompson v. Columbia/HCA Healthcare Corp., S.D.Tex.1996, 938 F.Supp. 399, affirmed in part , vacated in part 125 F.3d 899, rehearing denied, on remand 20 F.Supp.2d 1017. United States 122

Complaint alleging that defendant held concessionaire contracts with military exchange providing that he would remit to military exchange specific percentage of gross receipts, and that he fraudulently misrepresented actual amount of net profits, so that provision was not made for payment of just and fair rate of commission by defendant to military exchange did not state cause of action under former § 231 [now § 3729] of this title. U. S. v. Brethauer, W.D.Mo.1963, 222 F.Supp. 500. United States 120.1

Complaint based on theory that manufacturer of signal pyrotechnics had conspired with government contract negotiator in order that it could submit lower competitive bid on signal pyrotechnics to government failed to state a cause of action

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under former § 231 [now § 3729] of this title. U. S. v. Farina, D.C.N.J.1957, 153 F.Supp. 819. United States 122

In informer's action, complaint which alleged that company which had contracted to manufacture airplanes for the United States was guilty of deliberate or negligent extravagance and waste in maintaining large numbers of useless employees upon the payroll and which failed to charge that any false claim was presented to any officer of the government, failed to state a cause of action under former § 231 [now § 3729] of this title and former § 232 of this title. Cahill v. Curtiss-Wright Corp., W.D.Ky.1944, 57 F.Supp. 614. United States 122

A complaint in informer's action under former § 232 of this title, which alleged that contracts for the manufacture of certain articles for the Navy Department were obtained by defendant on the misrepresentation that defendant itself would manufacture such articles, was insufficient to allege a cause of action where defendant merely contracted that it had the organization and facilities for doing the work and pleadings showed that defendant manufactured some of the parts, subcontracting for others, and the contracts expressly provided for subcontracting. U.S. ex rel. Edelstein v. Brussell Sewing Mach. Co., S.D.N.Y.1943, 51 F.Supp. 760. United States 122

A complaint, in informer's action under former § 232 of this title, which alleged that excess profits were made by defendant under contracts to manufacture certain articles for the Navy Department, was insufficient to support cause of action where the contracts revealed that Navy Department was fully cognizant of the cost of manufacture of such articles, contained statements of government's estimated cost, and accepted price, and excess profits if any could have been recaptured by the government under renegotiation. U.S. ex rel. Edelstein v. Brussell Sewing Mach. Co., S.D.N.Y.1943, 51 F.Supp. 760. United States 122

A complaint, which alleged that defendants were guilty of fraudulent representations in procurement of contracts to supply tire requirements of federal government by reasons of their submitting collusive bids, and that as a result government was forced to pay more for its tires than it would have paid had bids been competitive, sounded in “tort” and was not on “contract” and was insufficient to state a cause of action under former § 231 [now § 3729] of this title, since it was not an action for damages sustained by the government because of the presentation for payment or approval of fraudulent claims. Mandel v. Cooper Corporation, S.D.N.Y.1941, 42 F.Supp. 317. United States 122

176. In camera filing, complaint

Amendment to False Claims Act (FCA) that added explicit filing and service requirements for qui tam relators could not be applied retrospectively to complaint which was filed prior to amendment's effective date, since such application would have retroactive effect in that relator's failure to comply with filing and service requirements of qui tam provisions would impose new duties on government contractor with respect to complaint already filed. Hyatt v. Northrop Corp., C.A.9 (Cal.) 1996, 80 F.3d 1425, vacated 117 S.Ct. 2476, 521 U.S. 1101, 138 L.Ed.2d 986, on remand 137 F.3d 1179. United States 122

Second amended complaint, which added additional defendant in False Claims Act suit, was not subject to dismissal on ground that failure to file that complaint in camera and under seal deprived the Government of the opportunity to determine if it wished to intervene in the claims against added defendant, since second amended complaint alleged the same type of fraudulent conduct as the original complaint, which the Government already had a chance to review and declined

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to intervene. Wisz ex rel. U.S. v. C/HCA Development, Inc., N.D.Ill.1998, 31 F.Supp.2d 1068. United States 122

In camera filing and service requirements for qui tam actions under False Claims Act were not jurisdictional, absent any bad faith by relator in failing to file his complaint under seal, even though relator was licensed attorney who failed to insist that complaint be filed under seal. U.S. v. Fiske, E.D.Ark.1997, 968 F.Supp. 1347. United States 122

Failure of qui tam relator in action under False Claims Act to file amended complaint in camera and under seal after complaint was amended to add additional defendants did not require dismissal of complaint as to added defendants; original complaint was filed in camera and under seal as required by statute, no duty existed to file any amendments in camera and under seal, and purpose of requirements is to protect relators and government and not to benefit defendants. U.S. ex rel. Milam v. Regents of University of California, D.Md.1995, 912 F.Supp. 868. United States 122

False Claims Act requires that qui tam complaint be filed in camera and kept under seal so that United States may review complaint and determine whether intervention is appropriate. U.S. ex rel. Fine v. University of California, N.D.Cal.1993, 821 F.Supp. 1356, reversed 39 F.3d 957, rehearing en banc granted 60 F.3d 525, opinion vacated on rehearing 72 F.3d 740, certiorari denied 116 S.Ct. 1877, 517 U.S. 1233, 135 L.Ed.2d 173. United States 122

Relator's failure to file qui tam complaint in camera and to await court order for service on defendant warranted dismissal of action. Erickson ex rel. U.S. v. American Institute of Biological Sciences, E.D.Va.1989, 716 F.Supp. 908. United States 122

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201. Discovery and inspection, evidence and witnesses

District court was not required to permit discovery before granting county's motion to dismiss qui tam action brought under the False Claims Act (FCA) for lack of subject matter jurisdiction, since court treated motion as a facial attack and considered only the complaint and the attached exhibits, and court did not decide any issues of disputed fact, but rather accepted all of relators' allegations in the complaint as true. McElmurray v. Consolidated Government of Augusta-Richmond County, C.A.11 (Ga.) 2007, 501 F.3d 1244, rehearing and rehearing en banc denied 255 Fed.Appx. 504, 2007 WL 4302139. Federal Civil Procedure 1269.1; Federal Courts 30; Federal Courts 32; Federal Courts 34

Particularity pleading requirement with respect to fraud claims would not be relaxed to allow a qui tam relator to conduct discovery in order to satisfy the heightened pleading requirement, for purposes of his complaint brought under the False Claims Act (FCA) against hospital and chief of anesthesiology claiming that defendants submitted and conspired to submit false claims to the government seeking payment for anesthesia services, medical supplies, and prescriptions. U.S. ex rel. Joshi v. St. Luke's Hosp., Inc., C.A.8 (Mo.) 2006, 441 F.3d 552, rehearing and rehearing en banc denied , certiorari denied 127 S.Ct. 189, 549 U.S. 881, 166 L.Ed.2d 142. Federal Civil Procedure 1264

District court acted within its discretion, in government's action against psychiatrist and his wife for allegedly submitting claims for reimbursement of services provided to Medicare/Medicaid patients in violation of False Claims Act, in denying further discovery regarding psychiatrist's and wife's billing of private pay patients, where private pay records for the 25 “worst” days yielded only two additional days on which psychiatrist and wife billed for more than 24 hours of work, making it unlikely that any more 24-hour days would be discovered. U.S. v. Krizek, C.A.D.C.1999, 192 F.3d 1024, 338 U.S.App.D.C. 187. United States 122

Evidence publicly disclosed for first time during discovery phase of False Claims Act qui tam suit is not barred from use in that same suit by section prohibiting prosecution based upon publicly disclosed information; if suit was barred by disclosure during discovery, qui tam plaintiffs would have little choice but to waive their right to discovery for fear of disclosing information that would bar claims for which they might wish discovery in first place. Wang v. FMC Corp., C.A.9 (Cal.) 1992, 975 F.2d 1412. United States 122

Sanction of excluding expert's testimony from trial was too harsh a remedy for failure of relators in qui tam action to

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provide a timely expert report, where any prejudice suffered by defendant from tardiness of relators' expert report could be addressed by various alternative remedies. U.S. ex rel. O'Connell v. Chapman University, C.D.Cal.2007, 245 F.R.D. 652. Federal Civil Procedure 1278

In relators' qui tam action on behalf of the United States against university, alleging violations of the False Claims Act (FCA) and state law, relator was required to answer contention interrogatories, in which university asked relator to discuss and explain the nature of the contentions she made in the complaint, and, further, asked relator to give detailed information regarding the factual bases for her contentions, since those interrogatories were permissible and acceptable under rule governing interrogatories to parties, and requiring relator to answer contention interrogatories was consistent with rule requiring plaintiffs to have some factual basis for the allegations in their complaint. U.S. ex rel. O'Connell v. Chapman University, C.D.Cal.2007, 245 F.R.D. 646. Federal Civil Procedure 1506

Extent of previous public access factor in analysis of motion to unseal records favored lifting seal in qui tam action against contractor alleging violation of False Claims Act (FCA) to extent that certain sealed materials already were in public domain. U.S. ex rel. Schweizer v. Oce, N.V., D.D.C.2008, 577 F.Supp.2d 169. Records 32

A relator's failure to provide all tangentially-related, but immaterial, documents in the relator's possession to the government did not constitute grounds for dismissal of False Claims Act (FCA) suit. U.S. ex rel. Whitten v. Community Health Systems, Inc., S.D.Ga.2008, 575 F.Supp.2d 1367. United States 122

In action brought against ambulance companies, alleging that companies defrauded federal government by falsifying documents to obtain reimbursement for ambulance transportation services provided to Medicare patients, proposed protective order would not restrict government's use of confidential patient medical records solely to purposes of litigation; such limitation would have conflicted with government's express authorization to perform health oversight activities. U.S. ex rel. Kaplan v. Metropolitan Ambulance & First-Aid Corp., E.D.N.Y.2005, 395 F.Supp.2d 1. Federal Civil Procedure 1625

Government was not required, in prosecution for alleged Medicare fraud conspiracies, to disclose all pleadings and other documents filed in related False Claims Act action initiated by qui tam relators; defendants could review portions of file of qui tam action that were in public records, defendants failed to show entitlement to documents that were under seal or were not filed in qui tam action, and government was required, under Brady, to disclose any documents containing exculpatory evidence. U.S. v. Shaw, D.Mass.2000, 113 F.Supp.2d 152. Criminal Law 627.6(2)

Provision of False Claims Act which requires Attorney General diligently to investigate violations of Act does not allow Government to contact defendant's employees ex parte, under Missouri rule permitting lawyer to have ex parte communication with party represented by another lawyer if “authorized by law.” U.S. ex rel. O'Keefe v. McDonnell Douglas Corp., E.D.Mo.1997, 961 F.Supp. 1288, affirmed 132 F.3d 1252, rehearing and suggestion for rehearing en banc denied. Attorney And Client 32(12)

Paragraph of plant manager's affidavit addressing manager's belief that “team-building activities” were inappropriate at plant during investigation triggered by employee's whistleblowing would not be stricken on grounds that it allegedly con-

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tained facts not disclosed in discovery that were inconsistent with defendant employer's discovery responses, in employee's retaliation action under False Claims Act alleging that employee's duties, including “team-building,” were improperly curtailed; paragraph did not necessarily indicate that manager instructed employee's supervisor to curtail employee's activities in this regard. Neal v. Honeywell, Inc., N.D.Ill.1996, 942 F.Supp. 388, on reconsideration 958 F.Supp. 345. Federal Civil Procedure 1278

In False Claims Act (FCA) suit initiated as qui tam action and intervened in by government, FCA did not protect, as privileged material, written disclosure filed by relator with the government from defendant's discovery efforts. U.S. ex rel. O'Keefe v. McDonnell Douglas Corp., E.D.Mo.1996, 918 F.Supp. 1338. Witnesses 216(1)

Discovery would not be limited to statute of limitations issues in action brought by Government against hospital and hospital administrator for medicare/medicaid fraud under False Claims Act, where limitations issue was inextricably bound up with other facts in dispute. U.S. v. Kensington Hosp., E.D.Pa.1991, 760 F.Supp. 1120. Federal Civil Procedure 1272.1

A motion for an “order compelling the production of the books and papers of the defendants, namely the following”, then followed only by a list of names of defendants, was denied because of an insufficient designation. United States ex rel. Bayarsky v. Brooks, D.C.N.J.1943, 51 F.Supp. 974. Federal Civil Procedure 1618

Qui tam relator did not waive attorney-client privilege by tendering documents to United States as required by False Claims Act (FCA), since, at time of disclosures, relator and government shared common interest in prosecution of common defendants; relator had filed action and government had commenced investigation before relator submitted disclosures, and government attorneys prosecuting action were assigned to case from time of filing. Miller v. Holzmann, D.D.C.2007, 240 F.R.D. 20, reconsideration denied 2007 WL 915235. Witnesses 219(3)

Plaintiff's requests for admissions, in qui tam action under False Claims Act (FCA) alleging conspiracy to rig bids on projects, asking defendant whether on a certain date a corporation's 60 percent interest in a joint venture was assigned to another entity, whether pursuant to a certain agreement the corporation remained financially responsible for certain projects, whether pursuant to a letter agreement the corporation and the other entity formed a joint venture for completion of certain unfinished projects, and whether pursuant to a letter agreement the corporation and the other entity created a joint venture that was authorized to manage their efforts in certain unfinished projects, did not improperly call for admissions to legal conclusions. Miller v. Holzmann, D.D.C.2006, 240 F.R.D. 1. Federal Civil Procedure 1673.1

Financial condition between 1980 and 1995 of corporation that sold industrial pumps to Nigeria was not relevant, and, thus, corporation would not be compelled to produce documents regarding its financial condition between 1980 and 1995 in qui tam action brought by its former employee, despite government's contention that such information was directly relevant to show corporation's motive to commit fraud, where government had not included any allegations in its complaint regarding a potential financial motive, and financial motive was not an element of government's False Claims Act and unjust enrichment claims. U.S. ex rel. Purcell v. MWI Corp., D.D.C.2006, 238 F.R.D. 321. Federal Civil Procedure 1588

Deliberative process privilege did not preclude disclosure, in United States' action under False Claims Act alleging that

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pharmaceutical manufacturer engaged in fraudulent scheme that caused Medicare and Medicaid programs to pay excessive reimbursement to its customers, of government documents referencing its knowledge that average wholesale price (AWP) listed by drug companies in publications relied on by government to reimburse for infusion and inhalation drugs was not true price, and that there was "spread" between price actually paid by providers and price reported to government; evidence of government's full knowledge of material facts could negate scienter required for FCA violation. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2008, 254 F.R.D. 35. Witnesses 216(1)

Discovery was warranted as to sales and marketing of human growth hormone in pharmaceutical companies' marketing region that included Indiana, where relator bringing fraud action against pharmaceutical companies alleged that off-label claims that were approved by Indiana's Drug Utilization Review Board were the result of illegal kickbacks and that companies engaged in marketing practices that caused submission of false claims by doctors. U.S. ex rel. Rost v. Pfizer, Inc., D.Mass.2008, 253 F.R.D. 11. Federal Civil Procedure 1272.1

Separation agreement prepared by attorney for direct endorser of federally-insured mortgages was not protected by attorney-client privilege from disclosure in qui tam action alleging fraudulent presentation of claims to Department of Housing and Urban Development (HUD); agreement spoke to terms and conditions of discharge of endorser's employee rather than disclosing confidential communication from endorser to attorney for purpose of securing legal advice. U.S. ex rel. Fago v. M & T Mortg. Corp., D.D.C.2007, 242 F.R.D. 16. Witnesses 201(1)

Disclosure by direct endorser of federally-insured mortgages of findings of its internal investigation of fraud allegations to Department of Housing and Urban Development (HUD) did not constitute subject matter waiver, in qui tam action, of work product protection for documents used to create presentation, where relator was given copy of presentation, endorser disclaimed its intention of using to its advantage HUD's decision not to take administrative action, and relator was able to depose employees who were interviewed during investigation. U.S. ex rel. Fago v. M & T Mortg. Corp., D.D.C.2006, 238 F.R.D. 3, reconsideration denied 242 F.R.D. 16. Federal Civil Procedure 1604(2)

Defendant's failure to complete production of medical records in suit alleging submission of false Medicare claims in violation of the False Claims Act warranted sanctions, where, despite being warned that failure to timely comply with court's discovery orders would subject defendant to severe sanctions, defendant continuously failed to meet discovery deadlines, and came forward, more than five months after the close of discovery, to inform court that there were yet more medical records that it needed to produce. Hill v. Morehouse Medical Associates, Inc., N.D.Ga.2006, 236 F.R.D. 590. Federal Civil Procedure 1636.1

In qui tam action alleging that mortgage company fraudulently caused Department of Housing and Urban Development (HUD) to guarantee and subsequently pay claims for loans that it otherwise would not have insured, mortgage company would be compelled to answer interrogatory requiring it to identify all conversations, meetings, or other contacts between itself and HUD concerning allegations of its fraud and forgery; even though three of the four communications were spelled out in letters, a complete answer to interrogatory would explain that those letters were the only communications between mortgage company and HUD other than a meeting. U.S. ex rel Fago v. M & T Mort. Corp., D.D.C.2006, 235 F.R.D. 11. Federal Civil Procedure 1505

Federal government, through the Federal Communications Commission (FCC), was not a "real party in interest" to a qui

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tam action in which it had elected not to intervene, and therefore it could not be compelled as a real party in interest to respond to discovery subpoena under federal rule. U.S. ex rel. Taylor v. Gabelli, D.D.C.2005, 233 F.R.D. 174. Federal Civil Procedure 139; Witnesses 16

Health maintenance organization (HMO) would not be compelled to answer contention interrogatory regarding counterdamage theory it planned to employ in action under False Claims Act and state law charging it with engaging in systematic discrimination against potential Medicaid enrollees based upon their health status, despite relators' contention that answer would enable them to comply with current schedule for providing expert report, where HMO had not asserted any counterclaims, HMO was considering several viable alternative damage theories, expert discovery had not yet commenced, and any answer HMO might give would not be binding on it and could be abandoned during course of expert discovery. U.S. ex rel. Tyson v. Amerigroup Illinois, Inc., N.D.Ill.2005, 230 F.R.D. 538. Federal Civil Procedure 1506

Relator who brought action against government contractors under the False Claims Act (FCA) based on claim that contractors falsely certified their eligibility to participate in section 8(a) program of the Small Business Administration (SBA) as small, disadvantaged businesses (SDBs) would not be permitted additional discovery in response to the defendants' motion for partial summary judgment in order to seek information regarding defendants' “small business” status under other federal regulations, as such information was not relevant to claims and defenses in suit. U.S. ex rel. Fisher v. Network Software Associates, D.D.C.2005, 227 F.R.D. 4. Federal Civil Procedure 2553

In action brought against corporate defendants under False Claims Act, stemming from allegedly improper use of Minority Small Business Development Program, scope of discovery would be properly limited to documents regarding defendants' involvement in program for time period in which they enjoyed program benefits, since such limitation would strike proper balance between government's need for comparative information and production burden upon defendants. U.S. ex rel. Fisher v. Network Software Associates, D.D.C.2003, 217 F.R.D. 240. Federal Civil Procedure 1588

Defendants in False Claims Act action could not establish substantial need and undue hardship with respect to documents prepared by plaintiff's attorney in connection with presentation of case to the government where counsel provided defendants with access to all information which they used to prepare plaintiff's communication with the government. U.S. ex rel. Burroughs v. DeNardi Corp., S.D.Cal.1996, 167 F.R.D. 680. Federal Civil Procedure 1604(1)

Confidential disclosure statement which plaintiff had to serve on government as prerequisite for bringing qui tam action on behalf of United States against government contractor under False Claims Act was not protected by attorney-client privilege, even though document was apparently prepared by plaintiff's attorney. U.S. ex rel. Stone v. Rockwell Intern. Corp., D.Colo.1992, 144 F.R.D. 396. Witnesses 204(2)

Qui tam plaintiffs would be allowed to depose three employees of peer review organization and two employees of Health Care Financing Administration as part of discovery regarding fairness of proposed settlement of civil action brought against the organization under the False Claims Amendments Act. U.S. ex rel. McCoy v. California Medical Review, Inc., N.D.Cal.1990, 133 F.R.D. 143. Compromise And Settlement 69

Discovery would have been permitted by defendant of documents and/or portions thereof that were relevant to subject

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matter of action to recover double damages and forfeitures of former § 231 [now § 3729] of this title for alleged false, fictitious or fraudulent claims for payments under government program of financial assistance to foreign countries administered by Department of Agriculture in that they had bearing on manner in which defendant had transacted its tobacco sales to Egypt, but discovery would not have been permitted with respect to other portions of reports and documents relating to investigation or conduct of companies other than defendant. U. S. v. A. C. Monk & Co., E.D.N.C.1969, 50 F.R.D. 491. Federal Civil Procedure 1617

202. Admissions, evidence and witnesses

Report of findings made by of Office of Research Integrity (ORI) in investigation of scientific inquiries made in programs funded by grants from federal government, in which ORI found that there was not sufficient evidence for further investigation, was admissible as admission of party opponent in action under False Claims Act; report was relevant and highly probative, as it was detailed report by scientific oversight agency on precise issues in case, and was not unduly prejudicial as it was simply one item of probative evidence among many. U.S. ex rel. Milam v. Regents of University of California, D.Md.1995, 912 F.Supp. 868. Evidence 146; Evidence 222(2)

Even if alleged participants in kick-back scheme in connection with disaster relief effort could bring forth evidence to show that United States had stated that they were not required to pay restitution as condition of probation, and even if such representation constituted admission, District Court could still hear action under False Claims Act [31 U.S.C.A. §§ 3729-3731], and under civil laws of Alabama. U.S. v. Killough, M.D.Ala.1986, 625 F.Supp. 1399. United States 75(6); United States 120.1

In prior prosecution for conspiring to defraud the government by presenting false claims for meat products sold government, pleas of guilty did not constitute judicial admission of responsibility for acts set forth in recital in indictment of deeds done as part of conspiracy, but established an evidential admission which could have been used in subsequent action for forfeitures and double damages under former § 231 [now § 3729] of this title for allegedly making false claims against government. U.S. v. American Packing Corp., D.C.N.J.1953, 113 F.Supp. 223. Evidence 207(4); Evidence 265(11)

In informer's action to recover penalty under former § 231 [now § 3729] of this title and double the amount of damages sustained by United States as result of a conspiracy by defendants and defendants' acts in presenting false claims against United States, a statement of claim in a previous action filed in Pennsylvania courts against defendants was admissible to show admissions made by certain defendants upon being served with copy of statement of claim in Pennsylvania action and to show that the action was discussed in conference with some defendants. U. S. ex rel. Marcus v. Hess, W.D.Pa.1941, 41 F.Supp. 197, reversed 127 F.2d 233, certiorari granted 63 S.Ct. 40, 317 U.S. 613, 87 L.Ed. 498, reversed 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. Conspiracy 19

203. Presumptions, evidence and witnesses

Fraud, for purposes of former § 231 [now § 3729] of this title required clear and convincing evidence and presumption was against fraud. U. S. ex rel. Hughes v. Cook, S.D.Miss.1980, 498 F.Supp. 784. United States 122

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In action by the United States against subcontractor and his guardians for damages under former § 231 [now § 3729] of this title because of alleged conspiracy to defraud the United States by submission of bills and invoices for more hours of work than actually performed, and under § 51 of Title 41 authorizing recovery by the United States in event of kickbacks by subcontractors on cost-plus-a-fixed-fee or cost reimbursable contracts, the United States was entitled to an opportunity to rebut the presumption created by Pennsylvania decree entered many years before that subcontractor was weak-minded and should have guardian appointed to take care of property, and to show that subcontractor was not weak-minded during time covered by complaint. U.S. v. Koenig, E.D.Pa.1956, 144 F.Supp. 22. United States 120.1

There is a presumption in favor of open settlement hearings under the False Claims Amendments Act; settlement hearings will be heard in camera only where there has been a showing of good cause, and the burden to show good cause is on the party moving for an in camera hearing. U.S. ex rel. McCoy v. California Medical Review, Inc., N.D.Cal.1990, 133 F.R.D. 143. Compromise And Settlement 69

204. Inferences, evidence and witnesses

Evidence of dispute within Army Corps of Engineers on legal issue of degree of precision and currency of cost allocation between county and Corps for dam project required by Water Supply Act did not support reasonable inference that cost allocation used by Corps in contract with county was false for purposes of former Corps employee's qui tam action under False Claims Act. Hagood v. Sonoma County Water Agency, C.A.9 (Cal.) 1996, 81 F.3d 1465, certiorari denied 117 S.Ct. 175, 519 U.S. 865, 136 L.Ed.2d 116, rehearing denied 117 S.Ct. 501, 519 U.S. 1001, 136 L.Ed.2d 393. United States 122

Although under certain circumstances, refraining from testifying or producing certain witnesses may have led to an inference that their testimony was unfavorable, where the totality of a plaintiff's evidence, in a civil case under former § 231 [now § 3729] of this title did not even spell out a prima facie case, no inference arose from the fact that defendants did not present evidence. U.S. v. Cherkasky Meat Co., C.A.3 (Pa.) 1958, 259 F.2d 89. Evidence 75

There could be no inference of fraud based on physicians' mere submission of medicaid claims for necessary medical services performed. U. S. ex rel. Hughes v. Cook, S.D.Miss.1980, 498 F.Supp. 784. United States 120.1

205. Burden of proof, evidence and witnesses--Generally

The relator bears the burden of alleging facts essential to show jurisdiction under the False Claims Act (FCA) as well as supporting those allegations by competent proof. U.S. ex rel. Grynberg v. Praxair, Inc., C.A.10 (Colo.) 2004, 389 F.3d 1038, certiorari denied 125 S.Ct. 2964, 545 U.S. 1139, 162 L.Ed.2d 888, on subsequent appeal 183 Fed.Appx. 724, 2006 WL 1531413. United States 122

In action under former § 231 [now § 3729] of this title against executive director of lessee of government housing project to recover double amount of payments wrongfully received by director for materials allegedly never furnished to project plus penalty under such section, burden of proof was on government, but burden was on director of going forward with a suitable explanation accounting for all sums handled by director in au unorthodox manner. Smith v. U.S., C.A.5 (Tex.) 1961, 287 F.2d 299. United States 122

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Government contractor did not have burden of persuasion, but only of producing legally sufficient evidence of reasons for discharge of contractor administrator, in order to avoid liability in action brought by former contract administrator in which he alleged that he was discharged in retaliation for his investigation of allegedly fraudulent charging practices in furtherance of qui tam action. Robertson v. Bell Helicopter Textron, Inc., N.D.Tex.1993, 863 F.Supp. 346, affirmed 32 F.3d 948, certiorari denied 115 S.Ct. 1110, 513 U.S. 1154, 130 L.Ed.2d 1075. Labor And Employment 861

Plaintiff who brought case under former § 232 of this title was not excused from meeting its burden of proof, and speculation and conjecture did not suffice to overcome motion for summary judgment. U. S. ex rel. Sacks v. Philadelphia Health Management Corp., E.D.Pa.1981, 519 F.Supp. 818. Federal Civil Procedure 2544

United States suing under former § 231 [now § 3729] of this title which provided for forfeiture of $2,000 by anyone knowingly making fraudulent claim against the government had burden of proof. U. S. v. Sawin, S.D.Iowa 1965, 243 F.Supp. 744. United States 122

United States failed to sustain its burden of proving overpayments or any false claim by beauty culture school for instruction of veterans. U. S. v. MacMurtrie, E.D.Pa.1962, 206 F.Supp. 147. United States 122

In action by the United States to recover amounts paid under lease in excess of 15 percent of fair market value of demised premises, prescribed by § 278a of Title 40, lessors had burden of proving applicability of § 278b of Title 40 which excepted certain vital leases during war or emergency from operation of 15 percent limitation. U. S. v. Goldberg, E.D.Pa.1958, 158 F.Supp. 544. United States 75(4)

206. ---- Clear and convincing evidence, burden of proof, evidence and witnesses

Degree of proof necessary to establish fraud demands more than a preponderance of the evidence; indeed, it was clearly established that defendant had the burden of proving by “clear and convincing” evidence that plaintiff's conduct constituted fraud against the government within the purview of former § 231 et seq. of this title. Hageny v. U. S., Ct.Cl.1978, 570 F.2d 924, 215 Ct.Cl. 412. United States 120.1

Under former § 231 [now § 3729] of this title, gravamen of the action was intentional fraud and misrepresentation which the government was required to establish by clear and convincing evidence. U.S. v. Ekelman & Associates, Inc., C.A.6 (Mich.) 1976, 532 F.2d 545. United States 120.1

Former § 231 [now § 3729] of this title was applicable only to claims which were “false, fictitious, or fraudulent” and there must have been clear and convincing proof. U. S. v. Foster Wheeler Corp., C.A.2 (N.Y.) 1971, 447 F.2d 100. United States 120.1; United States 122

United States suing under former § 231 [now § 3729] of this title was required to establish intentional fraud and misrepresentation by clear, unequivocal, and convincing evidence. U.S. v. Ueber, C.A.6 (Mich.) 1962, 299 F.2d 310. United States 122

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The proof by the government of a violation of former § 231 [now § 3729] of this title must have been by clear, explicit and unequivocal evidence. Woodbury v. U. S., D.C.Or.1964, 232 F.Supp. 49, affirmed in part, reversed in part on other grounds 359 F.2d 370. United States 122

Government's proof that false claim was made against it should be by clear, explicit, and unequivocal evidence. U. S. v. Robbins, D.C.Kan.1962, 207 F.Supp. 799. United States 122

More than mere weight or preponderance of evidence is required to prove fraud, and the evidence must be clear, unequivocal and convincing. U.S. v. U.S. Cartridge Co., E.D.Mo.1950, 95 F.Supp. 384, affirmed 198 F.2d 456, certiorari denied 73 S.Ct. 645, 345 U.S. 910, 97 L.Ed. 1345. Fraud 58(1)

207. ---- Preponderance of evidence, burden of proof, evidence and witnesses

The United States is required to prove all essential elements of claim for violation of the False Claims Act by a preponderance of evidence. Brooks v. U.S., C.A.7 (Ill.) 1995, 64 F.3d 251. United States 120.1

To establish a violation of sections 3729-3731 of this title, the United States must demonstrate, by a preponderance of the evidence, that the defendant possessed guilty knowledge or guilty intent to cheat the government. U.S. v. Thomas, C.A.5 (Tex.) 1983, 709 F.2d 968. United States 120.1

United States, suing owner of beauty culture school to recover overpayments allegedly secured by school from Veterans' Administration by presenting false claims for instruction to veterans, had burden of proving all elements of claim by fair preponderance of evidence. U. S. v. MacMurtrie, E.D.Pa.1962, 206 F.Supp. 147. United States 122

Degree of proof required in forfeiture proceeding is preponderance of evidence instead of proof beyond reasonable doubt, though forfeiture bears resemblance to criminal penalty. U. S. v. Cato Bros., Inc., E.D.Va.1959, 175 F.Supp. 811, reversed on other grounds 273 F.2d 153, certiorari denied 80 S.Ct. 753, 362 U.S. 927, 4 L.Ed.2d 746. Forfeitures 5

In action by United States for alleged violations of former § 231 [now § 3729] of this title in connection with sale of automobile to disabled veterans and claim for reimbursement from Veterans' Administration made pursuant to Act Aug. 8, 1946, c. 870, 60 Stat. 910, providing for gift of an automobile by federal government to disabled veterans of World War II who lost one or both legs, with cost not to exceed $1,600, government had burden to show by preponderance of proof that defendant intended to and did present a false claim to government to be paid by government, and to show that defendant intended that result of presenting false claim was to get something out of government to which defendant knew he was not entitled. U.S. v. Park Motors, E.D.Tenn.1952, 107 F.Supp. 168. United States 122

In action by United States to recover forfeitures and double damages for false claims in connection with furnishing butane gas to federal housing projects, the plaintiff had burden of proving allegations of complaint by a preponderance of evidence. U.S. v. Gardner, N.D.Ala.1947, 73 F.Supp. 644. United States 122

208. ---- Reasonable doubt standard, burden of proof, evidence and witnesses

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Violation of former § 231 [now § 3729] of this title was not required to be proved beyond reasonable doubt in civil action. U. S. v. Klein, W.D.Pa.1964, 230 F.Supp. 426, affirmed 356 F.2d 983. United States 122

209. ---- Conspiracy, burden of proof, evidence and witnesses

In action for forfeitures and double damages under former § 231 [now § 3729] of this title for allegedly making false claims against government for meat products sold, although defendants had pleaded guilty in prior criminal action to conspiring to defraud the government by presenting such claims, government had burden of proving that specific transactions affecting such contracts were fruitful result of such combination. U.S. v. American Packing Corp., D.C.N.J.1953, 113 F.Supp. 223. United States 122

The rules respecting burden of proof in criminal cases were not applicable in an informer's action to recover penalty under former § 231 [now § 3729] of this title and double not amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for such work. U. S. ex rel. Marcus v. Hess, W.D.Pa.1941, 41 F.Supp. 197, reversed 127 F.2d 233, certiorari granted 63 S.Ct. 40, 317 U.S. 613, 87 L.Ed. 498, reversed 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. United States 122

210. ---- Damages, burden of proof, evidence and witnesses

Court of Federal Claims properly assessed only the statutory penalty against government contractor under the False Claims Act after finding government contractor violated Act, but that the government did not incur any damages from the contractor's false claim. Daewoo Engineering and Const. Co., Ltd. v. U.S., C.A.Fed.2009, 557 F.3d 1332, rehearing and rehearing en banc denied , petition for certiorari filed 2009 WL 1976052. United States 122

Demonstration that Government would not have guaranteed Small Business Administration (SBA) loan “but for” bank's false statement was sufficient to establish causal relationship between false claim and Government's damages necessary to permit recovery under the False Claims Act. U.S. v. First National Bank of Cicero, C.A.7 (Ill.) 1992, 957 F.2d 1362. United States 120.1

In order to recover double damages under sections 3729-3731 of this title, United States must show that its losses were actually sustained as a result of false or fraudulent statements. U.S. v. Thomas, C.A.5 (Tex.) 1983, 709 F.2d 968. United States 120.1

Government, which in general contractor's breach of contract action filed counterclaim under former § 232 of this title had burden of proving what amount it lost as result of contractor's fraudulent acts. Brown v. U. S., Ct.Cl.1975, 524 F.2d 693, 207 Ct.Cl. 768. United States 120.1

United States as plaintiff in civil action pursuant to former § 231 [now § 3729] of this title to recover forfeitures and double damages had burden of proving damages. U. S. v. Bornstein, C.A.3 (N.J.) 1974, 504 F.2d 368, certiorari granted 95 S.Ct. 823, 420 U.S. 906, 42 L.Ed.2d 835, reversed on other grounds 96 S.Ct. 523, 423 U.S. 303, 46 L.Ed.2d 514. United States 122

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Government's damages from false billing by university physicians of Medicaid program for services provided by certified nurse midwives satisfied any statutory requirement of damages as element of claim for penalty against hospital under False Claims Act, even though university reached settlement allegedly satisfying United States' claim; for all the time between payment of the allegedly fraudulent bills and the ultimate restoration of its funds through an extended legal proceeding, the government had suffered damages. U.S. ex rel. Romano v. New York Presbyterian, S.D.N.Y.2006, 426 F.Supp.2d 174. United States 122

Defendant who was previously found guilty on criminal charges of making false statements and false claims to the Federal Emergency Management Agency (FEMA) was collaterally estopped in subsequent civil action brought by the Government under the Civil False Claims Act from contesting issues determined by guilty verdicts, including essential elements of offenses; however, Government still bore burden of proving its damages. U.S. v. Nardone, M.D.Pa.1990, 782 F.Supp. 996. Judgment 648

Before United States can recover treble damages and forfeitures under False Claims Act, it must demonstrate causation between defendant's false financial statement and Government's loss in form of payments on defaulted guaranteed loans. U.S. v. Hill, N.D.Fla.1987, 676 F.Supp. 1158. United States 122

211. ---- Intent or knowledge, burden of proof, evidence and witnesses

To establish discrimination because of protected activity, as required to support a retaliation claim under the False Claims Act, an employee must demonstrate that the employer had knowledge of the employee's protected activity and that the retaliation was motivated by the protected activity. Shekoyan v. Sibley Intern., C.A.D.C.2005, 409 F.3d 414, 366 U.S.App.D.C. 144, certiorari denied 126 S.Ct. 1337, 546 U.S. 1173, 164 L.Ed.2d 53. Labor And Employment 778

An employee must show the employer had actual or constructive knowledge of the protected activity in order to establish a prima facie case of retaliation under the whistleblower provision of the False Claims Act (FCA). Schuhardt v. Washington University, C.A.8 (Mo.) 2004, 390 F.3d 563. Labor And Employment 780

In determining whether employer had notice of employee's protected conduct, as required for employee to prevail under the “whistleblower” provision of the False Claims Act (FCA), the district court erroneously held employee to the heightened standard reserved for those employees who are charged with discovering fraud in the normal course of their job duties; employee's job as employer's director of information technology (IT) did not involve reporting or investigating fraud, and so he was not required to use any “magic words” to put employer on notice of his investigation into the possible misappropriation of federal funds. Fanslow v. Chicago Mfg. Center, Inc., C.A.7 (Ill.) 2004, 384 F.3d 469. Labor And Employment 779

To make prima facie case under False Claims Act (FCA), relator must show that (1) defendant made claim against United States, (2) claim was false or fraudulent, and (3) defendant knew claim was false or fraudulent. U.S. ex rel. Golden v. Arkansas Game & Fish Com'n, C.A.8 (Ark.) 2003, 333 F.3d 867, rehearing and rehearing en banc denied , certiorari denied 124 S.Ct. 1069, 540 U.S. 1108, 157 L.Ed.2d 894. United States 122

Former Army Corps of Engineers employee failed to satisfy scienter requirement for qui tam claim under False Claims

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Act for alleged presentation of false claim concerning cost allocation in contract between county water agency and Army Corps of Engineers for dam project; evidence indicated that county was told by Corps that new cost allocation would not be required after modification of project, and county's knowledge that Corps' legal responsibility to reallocate costs was not clear did not show knowing fraud by county. Hagood v. Sonoma County Water Agency, C.A.9 (Cal.) 1996, 81 F.3d 1465, certiorari denied 117 S.Ct. 175, 519 U.S. 865, 136 L.Ed.2d 116, rehearing denied 117 S.Ct. 501, 519 U.S. 1001, 136 L.Ed.2d 393. United States 122

Evidence that government contractor was aware that contract administrator's investigations were in furtherance of qui tam action was required to establish that contractor possessed retaliatory intent when discharging administrator, in violation of whistleblower provision of False Claims Act. Robertson v. Bell Helicopter Textron, Inc., C.A.5 (Tex.) 1994, 32 F.3d 948, certiorari denied 115 S.Ct. 1110, 513 U.S. 1154, 130 L.Ed.2d 1075. Labor And Employment 776

Government seeking to impose penalties on farmer contractor for presentation of false claims against government had burden of showing by clear, explicit and unequivocal evidence that farmer contractor had knowledge that claims were false. U. S. v. Mead, C.A.9 (Cal.) 1970, 426 F.2d 118. United States 122

United States, which filed counterclaims in Court of Claims [now United States Claims Court] under former § 231 [now § 3729] of this title against partnership operating school attended by veterans under G. I. Bills, had burden by clear and convincing evidence to establish that partnership knew that claims in question for tuition were false, fictitious, or fraudulent. Eastern School v. U. S., Ct.Cl.1967, 381 F.2d 421, 180 Ct.Cl. 676. United States 122

In order to prevail on cause of action under False Claims Act, Government had burden of proving that subcontractor proposals used by contractor in developing contract price were cost or pricing data within the meaning of the Truth in Negotiations Act, that contractor failed to disclose those data as required by the Act, and that he acted willfully and with guilty intent. U.S. v. JT Const. Co., Inc., W.D.Tex.1987, 668 F.Supp. 592. United States 122

To sustain its burden of proof in action under former § 231 [now § 3729] of this title, government was required to prove false, fictitious or fraudulent claim against United States, with knowledge by those submitting claim that it was false, fictitious or fraudulent. U. S. v. Foster Wheeler Corp., S.D.N.Y.1970, 316 F.Supp. 963, modified on other grounds 447 F.2d 100. United States 120.1

Burden was on United States to prove by clear and convincing evidence that defendant, who allegedly caused false applications to be made for veterans' home loans under Servicemen's Readjustment Act, § 1801 et seq. of Title 38, knowingly made false, fictitious, or fraudulent representations of material facts with knowledge of their falsity and caused Veterans' Administration to act to its detriment. U. S. v. Klein, W.D.Pa.1964, 230 F.Supp. 426, affirmed 356 F.2d 983. United States 122

In action under former § 231 of this title on ground that the defendant defrauded the United States in misrepresenting value of premises leased to the United States, the United States failed to sustain its burden of showing intent to defraud. U. S. v. Goldberg, E.D.Pa.1958, 158 F.Supp. 544. Fraud 50

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212. ---- Jurisdiction generally, burden of proof, evidence and witnesses

Plaintiff has the burden of establishing jurisdiction when jurisdiction is properly controverted by the opposing party. Pettis ex rel. U. S. v. Morrison-Knudsen Co., Inc., C.A.9 (Idaho) 1978, 577 F.2d 668. Federal Courts 34

Under former § 232 of this title, proof on jurisdictional issue need not have gone to the extent of showing that relator could have made a prima facie case. U.S. ex rel. Coates v. St. Louis Clay Products Co., E.D.Mo.1946, 65 F.Supp. 645. United States 122

213. ---- Original source of information, burden of proof, evidence and witnesses

False Claims Act (FCA) is most naturally read to preclude suits based in any part on publicly disclosed information; therefore, plaintiff basing FCA qui tam claim in any part on publicly disclosed information must demonstrate that plaintiff is an original source of that information. Battle v. Board of Regents for Georgia, C.A.11 (Ga.) 2006, 468 F.3d 755. United States 122

Relator need not prove that he was “original source” of information to entity that disclosed information in order to satisfy jurisdictional prerequisites for qui tam suits under False Claims Act (FCA). Cooper v. Blue Cross and Blue Shield of Florida, Inc., C.A.11 (Fla.) 1994, 19 F.3d 562. United States 122

Owner of royalty interest in carbon-dioxide reservoir in southwestern Colorado failed to plead or argue any fact that would convince a rational jury that his facts and theories were not public or that he was the original source, as required to bring False Claims Act action against oil companies transporting gas in reservoir to West Texas on behalf of the United States for underpayment of royalties, in light of numerous other royalty payment actions already brought against oil companies. Bailey v. Shell Western E & P, Inc., S.D.Tex.2008, 555 F.Supp.2d 767. United States 122

214. Admissibility of evidence, evidence and witnesses

Evidence of damages to federal Minority Business Enterprise (MBE) and Disadvantaged Business Enterprise (DBE) programs would be excluded from consideration in action brought on behalf of United States against contractor, alleging violations of federal and California False Claims Acts as to railcar refurbishment contract, to extent that proffered witnesses lacked personal knowledge of such damages; witnesses would be permitted to testify as to programs' scope, general compliance requirements, goals, and effectiveness. U.S. ex rel. Laymon v. Bombardier Transp. (Holdings) USA, Inc., W.D.Pa.2009, 2009 WL 2475127. Witnesses 37(1)

In qui tam False Claims Act suit alleging that group health insurer caused insureds to file false Social Security Disability Insurance (SSDI) claims, plaintiff's expert's statistical estimate of total false claims, which utilized sampling of and extrapolation from overlapping cohorts, and weighted averages to account for overlaps, was excludible as insufficiently reliable; no peer-reviewed literature supported method, insurer's expert showed by unrebutted example that method could produce highly inaccurate answer, and method produced extremely wide confidence interval of ±5,868 on estimate of 8,027 total false claims. U.S. ex rel. Loughren v. UnumProvident Corp., D.Mass.2009, 604 F.Supp.2d 259. Evidence 557

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Admission of hearsay statement by contractor's president that vice president and relator should retain personal attorneys due to possible legal implications was not clear miscarriage of justice, as required for new trial on ground that jury may have interpreted statement as reflecting contractor's consciousness of wrongdoing, in qui tam suit alleging that contractors violated False Claims Act (FCA) by bid-rigging conspiracy for construction projects in Egypt funded by United States, since vice president's next comments eclipsed prejudicial effect and value to relator's and government's case by indicating that president also asked him to brief corporate attorney who then conducted investigation. Miller v. Holzmann, D.D.C.2008, 563 F.Supp.2d 54. Federal Civil Procedure 2334

Where employee's summary judgment affidavit consistently tracked his deposition testimony, so that there was no inherent inconsistency between the affidavit and deposition, the district court abused its discretion in excluding the affidavit from consideration in granting summary judgment to employer on employee's claims for violation of the False Claims Act (FCA); situation was not one in which a plaintiff directly contradicted her own earlier statements, without explaining the contradiction or attempting to resolve the disparity. Fanslow v. Chicago Mfg. Center, Inc., C.A.7 (Ill.) 2004, 384 F.3d 469. Federal Civil Procedure 2539

Government was prejudiced in prosecution of its claim against psychiatrist and his wife under False Claims Act, in connection with their submission of claims for reimbursement of services provided to Medicare/Medicaid patients, by district court's actions in initially announcing its intent to use nine-hour day as benchmark and then changing benchmark to 24-hour day, and thus district court was required on remand to permit government to introduce evidence regarding conservative assumptions it had offered to determine how much time to allocate to each “CPT code” on reimbursement forms, and was then required to consider whether to change Special Master's calculation of number of hours billed each day. U.S. v. Krizek, C.A.D.C.1999, 192 F.3d 1024, 338 U.S.App.D.C. 187. Federal Courts 947; United States 122

In action against corporation under False Claims Act for fraud on Government committed by corporate officials and others, false invoices submitted for purpose of obtaining money for benefit of corporate official were admissible, as business records, to show that false claims had been made against agency of United States. U.S. v. O'Connell, C.A.1 (Mass.) 1989, 890 F.2d 563, 107 A.L.R. Fed. 653. Evidence 355(3)

District court in action brought against farmer by Federal Crop Insurance Corporation under False Claims Act in [31 U.S.C.A. §§ 3729-3731] for understating crop yields and receiving crop indemnity payments to which he was not entitled did not err in admitting neighboring farmers' testimony concerning farmer's probable yields, based upon their own yields for the same period and their postharvest observation of farmer's fields, where neighboring farmers had for years grown corn, as did farmer, on similar land, and from their experience neighboring farmers had specialized knowledge pertaining to some of the issues at trial that qualified them to assist jury. Federal Crop Ins. Corp. v. Hester, C.A.8 (Mo.) 1985, 765 F.2d 723. Evidence 555.9

Findings in prosecution of defendant under § 714m of Title 15 making crimes the making of false statements to Commodity Credit Corporation were admissible in action by United States against defendant under former § 231 [now § 3729] of this title under doctrine of res judicata or estoppel by judgment, insofar as findings determined issues identical to both cases. Sell v. U. S., C.A.10 (Colo.) 1964, 336 F.2d 467. Judgment 648

In actions instituted by United States under former § 231 [now § 3729] of this title wherein it was alleged that defendants

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in connection with their participation in Cotton Loan Program conducted by Commodity Credit Corporation presented or caused to be presented claims which they knew to be false, prior written inconsistent statements of government's witness were properly excluded as hearsay, although the witness was present in court and subject to cross-examination. U.S. v. Rainwater, C.A.8 (Ark.) 1960, 283 F.2d 386. Witnesses 392(1)

In action by government for alleged overpayment to school which had filed false statement of costs, with Veterans' Administration, allowance of Federal Bureau of Investigation agent's calculations in evidence was not error where figures were arrived at by taking 10 school checks payable to others and expressly assuming that they represented materials never purchased and court instructed jury that if it found that materials were purchased it could not accept agent's figures. U.S. v. Sytch, C.A.3 (N.J.) 1958, 257 F.2d 475. Armed Services 127

Evidence that government elected not to intervene in relators' qui tam action against hospital under False Claims Act (FCA) was not “relevant” to relators' claim that hospital submitted false claims to Medicare for anesthesia services in the absence of showing of actual motivation for government's decision, notwithstanding hospital's contention that government's investigation and subsequent inaction addressed materiality of allegedly false claims, and therefore evidence of government's election was inadmissible at trial. U.S. ex rel. El-Amin v. George Washington University, D.D.C.2008, 533 F.Supp.2d 12. United States 122

In False Claims Act (FCA) suit against insurance agent based on his part in a scheme to obtain federally reinsured crop insurance payments for persons not eligible for such benefits, evidence of reimbursement and payment procedures between the Federal Crop Insurance Corporation (FCIC) and crop insurer and retention by the United States of premiums paid by the insureds pursuant to the standard reinsurance agreement (SRA) was admissible; such evidence was relevant to the jury's calculation of the government's actual damages. U.S. v. Hawley, N.D.Iowa 2008, 562 F.Supp.2d 1017. United States 122

Contract between defendant contractor and Federal Emergency Management Agency (FEMA), which was attached to motion to dismiss for failure to state claim, was not central to False Claims Act (FCA) suit alleging that contractor submitted false certifications that it was licensed to install manufactured homes, and thus contract could not be considered without converting motion into one for summary judgment, particularly where it appeared that more than contract existed between contractor and FEMA during relevant period. U.S. ex rel. Chabot v. MLU Services, Inc., M.D.Fla.2008, 544 F.Supp.2d 1326. Federal Civil Procedure 1832; Federal Civil Procedure 2533.1

Best evidence rule, requiring original be admitted into evidence to prove content of writing, did not bar secondary evidence of hospital's submission of false claims to Medicare for anesthesia services, in relators' qui tam action, under False Claims Act (FCA), since relators were excused from presenting original claim forms to prove content of allegedly false claims, since forms could not be obtained by any available judicial process or procedure, relators made reasonable effort to locate forms, and secondary evidence was reliable as it consisted of billing documentation that was created by either government or hospital, both of whom were reliable sources. U.S. ex rel. El-Amin v. George Washington University, D.D.C.2007, 522 F.Supp.2d 135. Evidence 177; Evidence 179(3); Evidence 186(1)

Employee's allegations of conspiracy in her response were inadmissible as evidence on government contractors' motion for summary judgment, on employee's claim, in qui tam action against contractors, for false claims conspiracy under the

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False Claims Act (FCA), where employee admitted in her deposition that she was without personal knowledge as to validity of the allegations of conspiracy in the amended complaint and had never been told that contractors conspired to defraud the government. U.S. ex rel. Vargas v. Lackmann Food Service, Inc., M.D.Fla.2007, 510 F.Supp.2d 957. Federal Civil Procedure 2545

Proposed adverse inferences from witness' seemingly blanket invocation of his Fifth Amendment right to remain silent, as defendant in civil case under False Claims Act (FCA), should jury have chosen to draw them, were based upon personal knowledge of subject about which he refused to testify, and thus were not unreliable, where record contained ample evidence of witness' involvement in billing with regard to government contract. U.S. ex rel. DRC, Inc. v. Custer Battles, LLC, E.D.Va.2006, 415 F.Supp.2d 628. Witnesses 309

In deciding motion for stay under primary jurisdiction doctrine, in qui tam action alleging conspiracy to defraud through abuse of Federal Communications Commission (FCC) bidding procedure for wireless telecommunications licenses, district court could consider affidavit of former FCC general counsel offered in support of stay, despite contention that former FCC general counsel was not primary author of affidavit, which allegedly was outlined by defendants' counsel and prepared by attorneys with law firm of former FCC general counsel who lacked FCC experience before undergoing extensive review by defendants' attorneys, in that there was no compelling reason to believe affidavit's substantive information was not opinion of former FCC general counsel and revisions were not particularly substantive or surprising; however, affidavit would be considered in light of relator's concerns. U.S. ex rel. Taylor v. Gabelli, S.D.N.Y.2004, 345 F.Supp.2d 340. Telecommunications 1055

In student's qui tam action against private, post-secondary school, in which student alleged violations of False Claims Act (FCA), student could present evidence of practices she observed while attending school as well as evidence of which she learned through her own investigations while at school or thereafter; presentation of such evidence was not precluded by public disclosure bar. U.S. ex rel. Haskins v. Omega Institute, Inc., D.N.J.1998, 25 F.Supp.2d 510. United States 122

Where issues were not sharply defined in federal government's action under former § 231 [now § 3729] of this title and use of polygraphic evidence was not very likely to have been helpful, defendants' motion for admission of such evidence was denied. U. S. v. Levinson, E.D.Mich.1973, 369 F.Supp. 575. Evidence 150

In action under former § 231 [now § 3729] of this title and to recover payments by the government of rents in excess of maximum annual rate of 15 percent of fair market value of demised premises, testimony as to replacement value of buildings without regard to value of land was not inadmissible as not bearing on fair market value and on ground that witnesses had not become familiar with property involved until much later than 1945 when lease had been executed, but such factors would have been considered in evaluating weight of such testimony. U. S. v. Goldberg, E.D.Pa.1958, 158 F.Supp. 544. Evidence 555.6(2)

In action by United States under former § 231 [now § 3729] of this title to recover for false claims presented in connection with contracts for sale of meat products, evidence of amounts defendants had actually paid for the meat furnished was immaterial to issue of damages and was inadmissible. U. S. v. American Packing Corp., D.C.N.J.1954, 125 F.Supp. 788. United States 120.1

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In informer's action to recover penalty under former § 231 [now § 3729] of this title and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for work evidence respecting actual cost to defendants of doing work called for by contracts on projects was not admissible for purpose of mitigating damages. U. S. ex rel. Marcus v. Hess, W.D.Pa.1941, 41 F.Supp. 197, reversed 127 F.2d 233, certiorari granted 63 S.Ct. 40, 317 U.S. 613, 87 L.Ed. 498, reversed 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. United States 122

Corporate defendants who were charged with violating False Claims Act, stemming from allegedly improper use of Minority Small Business Development Program, demonstrated that letter from attorney to defendant regarding stock valuation involved confidential communication that defendant never intended to be seen by anyone but his counsel, and thus letter would be properly excluded from evidence under attorney-client privilege; even though letter appeared to convey same substantive information as earlier non-privileged letter and spreadsheet, its disclosure would have revealed client's rationale for seeking legal advice. U.S. ex rel. Fisher v. Network Software Associates, D.D.C.2003, 217 F.R.D. 240. Witnesses 205

215. Competency of evidence, evidence and witnesses

In informer's action to recover penalty under former § 231 [now § 3729] of this title and double the amount of damages sustained by United States as result of a conspiracy by defendants and defendants' acts in presenting false claims against United States, evidence respecting defendants' reputation for honesty was not competent. U. S. ex rel. Marcus v. Hess, W.D.Pa.1941, 41 F.Supp. 197, reversed 127 F.2d 233, certiorari granted 63 S.Ct. 40, 317 U.S. 613, 87 L.Ed. 498, reversed 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. Evidence 106(1)

216. Weight and sufficiency of evidence, evidence and witnesses

Record was insufficient to determine whether employee's discharge by nonprofit corporation was motivated, at least in part, by his protected conduct in investigating executives' alleged misappropriation of federal funds; record lacked explanations from key decisionmakers, including employee's supervisor, about why she placed him on a “Performance Action Plan” (PAP) and ultimately terminated him. Fanslow v. Chicago Mfg. Center, Inc., C.A.7 (Ill.) 2004, 384 F.3d 469. Labor And Employment 863(2)

Evidence was sufficient to support jury finding that contractor, in seeking government approval of subcontract, knowingly submitted to the Department of Energy (DOE) a false certification that no organizational conflicts of interest existed between contractor and subcontractor, and thus possessed the requisite scienter to be held liable under the False Claims Act (FCA); contractor's employee knew that subcontractor was submitting a bid on the subcontract, the employee was one of the three contractor employees who graded the bid before it was submitted to DOE, contractor's procurement specialist cautioned employee to ensure that no contract employees would have access to procurement sensitive information, and subcontractor's employee, who was a contract employee for contractor, had unrestricted access to procurement sensitive documents. U.S. ex rel. Harrison v. Westinghouse Savannah River Co., C.A.4 (S.C.) 2003, 352 F.3d 908. United States 122

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Relator proffered no evidence that individual members of state game and fish commission made false claims for government reimbursement, in their individual capacities, as required to support qui tam action against commission members under False Claims Act (FCA). U.S. ex rel. Golden v. Arkansas Game & Fish Com'n, C.A.8 (Ark.) 2003, 333 F.3d 867, rehearing and rehearing en banc denied , certiorari denied 124 S.Ct. 1069, 540 U.S. 1108, 157 L.Ed.2d 894. United States 122

Former employee presented sufficient evidence, in her action against employer under whistleblower-protection provision of False Claims Act, to support jury's finding that she was constructively discharged after reporting employer's violation of the Act; most of former employee's job responsibilities were taken away, immediate supervisor made former employee feel like traitor, manager made threats to harm whoever reported employer's violation, and employer tolerated manager's tirades. Neal v. Honeywell, Inc., C.A.7 (Ill.) 1999, 191 F.3d 827. Labor And Employment 863(2)

Evidence that employee provided employer with notice that suit under False Claims Act would be a reasonable possibility, as required for prima facie case of retaliation under False Claims Act by employee tasked by employer with internal investigation of fraud against government, was sufficient for submission to jury; employee testified not only that he characterized billings to government as illegal during course of investigation, but also that he advised employer's majority owner to obtain counsel both for employer and for himself. Eberhardt v. Integrated Design & Const., Inc., C.A.4 (Va.) 1999, 167 F.3d 861. Labor And Employment 873

Government presented sufficient proof that food store owner's food stamp redemptions greatly exceeded his actual food stamp eligible sales, to establish that he knowingly filed false claims for food stamp redemptions in violation of the False Claims Act, though owner did not retain any sales receipts or purchase invoices and government did not ask owner's food suppliers for sales invoices, where owner projected $75,000 in annual food stamp eligible sales in his application and then redeemed $232,256 in food stamps over ten-month period, Food and Nutrition Service (FNS) agents testified that owner's food stamp redemptions grossly exceeded average redemptions for similar stores in same geographical area and that it was not possible for owner to legitimately redeem such large amount; and owner's former bookkeeper testified that store's small inventory in food stamp eligible items could not have supported volume of owner's redemptions. Brooks v. U.S., C.A.7 (Ill.) 1995, 64 F.3d 251. United States 122

Conclusory allegations as to what documents and testimony could be produced at a hearing were not sufficient to satisfy plaintiff's burden to establish jurisdiction where jurisdiction was properly controverted by the opposing party. Pettis ex rel. U. S. v. Morrison-Knudsen Co., Inc., C.A.9 (Idaho) 1978, 577 F.2d 668. Federal Courts 34

Government's right to recover in action for violation of former § 231 et seq. of this title which alleged that defense contractor knowingly submitted defective material to the government could have been established by circumstantial evidence. U. S. v. Hangar One, Inc., C.A.5 (Ala.) 1977, 563 F.2d 1155. United States 120.1

Evidence that president of corporation which contracted to supply Navy with new bearings signed the contract with the government and that the purchase order for bearings which were reworked to fill the contract bore rubber stamp facsimile of his signature was insufficient to establish that president, who testified that he had no knowledge of origin or subsequent use of the bearings until the government began its investigation, knowingly caused presentation of false claim to government. U. S. v. Aerodex, Inc., C.A.5 (Fla.) 1972, 469 F.2d 1003. United States 122

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Where contract authorized contractor to recover from government a greater amount for rental of equipment belonging to third parties than for rental of equipment belonging to contractor, uncontradicted evidence showing that automobiles and trucks ostensibly rented to contractors by a third party actually belonged to contractor, although carried in third party's name, required a verdict for government in action under former § 231 [now § 3729] of this title. U. S. v. Grannis, C.A.4 (N.C.) 1949, 172 F.2d 507, certiorari denied 69 S.Ct. 1160, 337 U.S. 918, 93 L.Ed. 1727. United States 122

Jury's verdict, in determining that contractor, through acts of president and vice president, as agents, conspired as joint venture partner to submit false claims to federal government by collusion to rig bids for construction contract in Egypt funded by United States, knowingly caused false claims to be presented and made, and was liable for co-conspirators' knowing creation and presentation of false claims, in violation of False Claims Act (FCA), was supported by sufficient evidence including that agents had authority to act for contractor, vice president had actual knowledge of bid-rigging conspiracy due to wilfully joining and advancing conspiracy by drafting addendum to bid-rigging agreement ratified with his signature, president documented in pocket calendar precise amounts of payoffs for bid rigging, and claims submitted by joint venture would have not been false but for contractor's participation in conspiracy. Miller v. Holzmann, D.D.C.2008, 563 F.Supp.2d 54. Conspiracy 19

In False Claims Act (FCA) action, government failed to establish that Medicare services provider furnished “false” claims regarding the medical necessity of the pulmonary rehabilitation services and simple pulmonary stress tests provided; there was no articulated, objective standard that dictated that the documentation underlying the claims was false, inaccurate, or incomplete. U.S. v. Prabhu, D.Nev.2006, 442 F.Supp.2d 1008. United States 120.1

There was no evidence to support a finding that contractor's requests for progress payments constituted false claims; contractor's requests were based upon a mutually agreed-upon methodology, and there was no basis to infer fraud based on any differences between its survey data and government's data. U.S. ex rel. Bettis v. Odebrecht Contractors of California, Inc., D.D.C.2004, 297 F.Supp.2d 272, affirmed 393 F.3d 1321, 364 U.S.App.D.C. 250. United States 122

Evidence of hospital's internal thought process, that patients might keep coming to it after a practice purchase and employment situation, was not sufficient to support relator's claims that hospital's purchases of physician's private practices constituted illegal referral relationships in violation of Antikickback Statute (AKS) and Stark Act, in lawsuit under False Claims Act (FCA), since relator failed to demonstrate what fair market value of practices was, much less that there were any amounts paid in excess of fair market value that could have been attributed to improper inducement. U.S. ex rel Perales v. St. Margaret's Hosp., C.D.Ill.2003, 243 F.Supp.2d 843. United States 122

Former employee failed to establish that supervisor engaged in a pattern of retaliatory discrimination after employee engaged in conduct protected under the False Claims Act (FCA) whistleblower protection provision, by acting “angrily” towards her, denying her access to supervisor's computer, excluding her from meetings, and assigning new responsibilities to her; there was no evidence that employee was singled out for negative treatment, or that she should have been included in meetings. Mann v. Olsten Certified Healthcare Corp., M.D.Ala.1999, 49 F.Supp.2d 1307. Labor And Employment 777 ; Labor And Employment 827

Evidence did not support finding that transit system owned and operated by city had made false statements and representations to Federal Transit Administration (FTA) in order to obtain annual grant funds, in violation of False Claims Act

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(FCA), by falsely maintaining that system's plan to bus school children comported with federal requirements; city appeared to have been innocently mistaken regarding precise “tripper” service requirements, and city made attempts to comply after complaints were filed with FTA. U.S. ex rel. Lamers v. City of Green Bay, E.D.Wis.1998, 998 F.Supp. 971, affirmed 168 F.3d 1013. United States 122

Former employee presented sufficient evidence to support claim that she had been constructively discharged, in violation of False Claims Act, in retaliation for internally reporting falsified test data relating to employer's contract with federal government, though she had been offered lateral positions with other facilities of employer appropriate to her education and experience and at same salary; evidence showed that former employee had expectation of receiving promotion within two years of being hired, that former employee had suffered harassment and recriminations following her internal report just before her two-year anniversary, that transfers without accompanying raises were viewed as disciplinary in nature and that job responsibilities had been taken away from her following report. Neal v. Honeywell, Inc., N.D.Ill.1997, 958 F.Supp. 345. Labor And Employment 863(2)

There was no basis on which jury could have concluded government contractor knew its contract administrator was acting in furtherance of qui tam action, and thus jury's finding that administrator was discharged because of his actions in furtherance of qui tam action was unsupported by evidence and had to be reversed. Robertson v. Bell Helicopter Textron, Inc., N.D.Tex.1993, 863 F.Supp. 346, affirmed 32 F.3d 948, certiorari denied 115 S.Ct. 1110, 513 U.S. 1154, 130 L.Ed.2d 1075. Labor And Employment 863(2)

Despite fact that named payee of fraudulently issued Treasury checks protested to Department of Labor employee who issued the checks and asked for stoppage of the checks, payee's acceptance of the checks, presentment of them and depositing of the proceeds in her bank account established violation of this section. U.S. v. President, N.D.Ill.1984, 591 F.Supp. 1313. Fraud 68.10(2)

Testimony by physical therapist, director of nursing, and secretary to director of nursing home that they did not know that physician whose name was signed to medicare claims was the medical director for the nursing home and that the physician never gave directions with regard to physical therapy showed that claims submitted by director of nursing home, who was the physician's brother, were not for services rendered under the personal direction of a physician and were false. Peterson v. Richardson, N.D.Tex.1973, 370 F.Supp. 1259, affirmed 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96 S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. United States 120.1

217. Production of records, evidence and witnesses

Relators voluntarily waived any attorney client privilege or work product protection that might have attached to confidential disclosure statement and exhibits by filing those documents under seal along with their complaint, without any privilege assertion, in qui tam action against contractor alleging violation of False Claims Act (FCA); statute compelled relators to turn over complaint, confidential disclosure statement, and sealed exhibits to government, but it obliged them to file only their complaint with court and court did not direct or even encourage relators to file their confidential disclosure statement and supporting materials on docket. U.S. ex rel. Schweizer v. Oce, N.V., D.D.C.2008, 577 F.Supp.2d 169. Federal Civil Procedure 1604(2)

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Evidence established that failure of owner of beauty culture school, being sued to recover overpayments allegedly secured by presenting false claims for instruction to veterans, to produce its original attendance records was completely innocent. U. S. v. MacMurtrie, E.D.Pa.1962, 206 F.Supp. 147. United States 122

Profit made by corporation that sold industrial pumps to Nigeria was not only reasonably calculated to lead to discovery of admissible evidence, but was patently central to government's unjust enrichment claims, and, thus, production of documents regarding corporation's profits was warranted in qui tam action brought by its former employee. U.S. ex rel. Purcell v. MWI Corp., D.D.C.2006, 238 F.R.D. 321. Federal Civil Procedure 1588

218. Credibility of witnesses, evidence and witnesses

Where no objection was made to evidence as to plea of nolo contendere to information charging director of lessee of government housing project with making a false report, conviction based on the plea was a relevant circumstance on credibility of director as a witness in civil action brought under former § 231 [now § 3729] of this title. Smith v. U.S., C.A.5 (Tex.) 1961, 287 F.2d 299. Witnesses 345(2)

The government must prove its case beyond a reasonable doubt, and defendant may introduce evidence of good character, for the proceeding, while civil in form, is criminal in its nature. U.S. v. Shapleigh, C.C.A.8 (Mo.) 1893, 54 F. 126, 4 C.C.A. 237.

219. Expert witnesses, evidence and witnesses

Where defendant's accounting practices were undisputed and the only question in suit under the False Claims Act was whether the practices were legal, the district court was not required to accept expert's opinion on legality. U.S. ex rel. Oliver v. Parsons Co., C.A.9 (Cal.) 1999, 195 F.3d 457, certiorari denied 120 S.Ct. 2657, 530 U.S. 1228, 147 L.Ed.2d 272. Evidence 506

In action by government for alleged overpayment to school which had filed false statements of costs with Veterans' Administration, wherein only issue was whether government had been overcharged, and if so how much, exclusion of testimony of expert as to whether portion of cost allotted by school for teaching students was reasonable was not an abuse of discretion. U. S. v. Sytch, C.A.3 (N.J.) 1958, 257 F.2d 475. Armed Services 127

Former employee of Missouri Department of Aging was disqualified from serving as expert witness for health care corporation in suit by United States under False Claims Act alleging that corporation submitted false or fraudulent bills for Medicaid reimbursement, which suit was prompted by state agency's investigation of corporation; former employee clearly gained confidential information concerning investigation while employed by state agency, since she directed lower-level employees to make finding of neglect against corporation, and to assign severity level and calculate civil penalty, and jury's knowledge that employee had worked for agency would have been in-and-of-itself prejudicial to United States. U.S. v. NHC Health Care Corp., W.D.Mo.2001, 150 F.Supp.2d 1013. Evidence 535

Scientific findings contained in applications for federal grants for scientific research did not constitute false statements for purposes of False Claims Act, even though qui tam relator alleged that test results reflected in findings were based on

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practices which deviated from those commonly accepted in scientific community and that she had been unable to replicate results; other scientists had replicated results, relator had altered protocol for testing in manner which altered process, and relator's claims of deviation from scientific norms were unsupported by expert testimony. U.S. ex rel. Milam v. Regents of University of California, D.Md.1995, 912 F.Supp. 868. United States 122

220. Immunity of witnesses, evidence and witnesses

The joinder of claim under former § 232 of this title in government's suit for damages for violation of antitrust laws did not make former § 32 of Title 15 [now § 6001 et seq. of Title 18] inapplicable, and it was conclusively presumed that testimony which government intended to elicit from witness was germane to antitrust claim, thus affording him immunity as to all of this testimony in this cause, where both claims involved fraud, both were based on same illegal course of conduct, and proof required to establish the claims was virtually identical. Rutherford v. U. S., C.A.9 (Wash.) 1966, 365 F.2d 353, certiorari denied 87 S.Ct. 598, 385 U.S. 987, 17 L.Ed.2d 449, rehearing denied 87 S.Ct. 771, 385 U.S. 1043, 17 L.Ed.2d 688. Criminal Law 42.6; Witnesses 21

224. Awards to defendants, evidence and witnesses

District court did not abuse its discretion in awarding costs in the amount of $26,408.36 to prevailing defendants in action under the False Claims Act (FCA), though plaintiffs were public interest groups and individual qui tam plaintiffs with limited financial resources, where plaintiffs produced no evidence of their inability to pay the award. U.S. ex rel. Costner v. U.S., C.A.8 (Ark.) 2003, 317 F.3d 889, rehearing and rehearing en banc denied. United States 122

V. DEFENSES

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241. Defenses generally

When United States fails to adopt or prosecute informer's suit, defendants to such suit may raise issue as to merits of informer's activity in bringing such suit. U.S. ex rel. Leslie v. Potomac Elec. Power Co., C.A.D.C.1953, 208 F.2d 39, 93 U.S.App.D.C. 108. Penalties 32

242. Waiver of defenses

Defendants did not acquiesce in splitting of plaintiff's claims, and did not waive defense of claim preclusion when plaintiff, having failed to recover for his alleged wrongful dismissal under the “whistleblower” provision of the False Claims Act, later sought to recover in separate lawsuit on theory that he was wrongfully dismissed for exercising his free speech rights; defense of res judicata was raised at the earliest possible time, in defendants' answer, and put plaintiff on notice that he should either move to consolidate or amend his pleadings in order to avoid potential of res judicata. Wilkins v. Jakeway, S.D.Ohio 1998, 993 F.Supp. 635, affirmed in part, reversed in part and remanded 183 F.3d 528, rehearing and suggestion for rehearing en banc denied , on remand 2000 WL 1469354. Judgment 633; Judgment 948(4)

Defendant contractor in government's suit under former § 231 [now § 3729] of this title waived defense that claim was compulsory counterclaim in his prior action against government which was pending when action under such former section was instituted where he first advanced the argument in posttrial memorandum in suit under such former section and he was not granted permission to amend answer to assert such defense. U. S. v. Greenberg, S.D.N.Y.1965, 237 F.Supp. 439. Federal Civil Procedure 775.1; Federal Civil Procedure 846

243. Bankruptcy, defenses

Bankruptcy of manufacturers did not defeat claim of the United States under former § 231 [now § 3729] of this title for loss due to fraud of manufacturers. U.S. v. American Precision Products Corp., D.C.N.J.1953, 115 F.Supp. 823. Bankruptcy 2825

244. Contractual provisions, defenses

High-value items clause (HVIC), set forth in federal regulations and incorporated into military procurement contracts, provided no defense to claims against contractor for violations of the False Claims Act (FCA); high-value items clause

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was applicable only to contractual remedies, and claims under the False Claims Act were not contractual remedies. U.S. ex rel. Roby v. Boeing Co., S.D.Ohio 1999, 73 F.Supp.2d 897. United States 122

245. Contributory negligence, defenses

In view of fact that former § 231 [now § 3729] of this title which provided a remedy for conduct in the nature of common law fraud, which was an intentional tort, contributory negligence was no defense. U. S. v. Kates, E.D.Pa.1976, 419 F.Supp. 846. United States 120.1

246. Double jeopardy, defenses

Disparities between district court's $16,000 approximation of Government's costs in investigating and prosecuting defendant's false Medicare claims as well as $585 actual damages and civil liability to which defendant convicted of 65 counts of violating criminal false claims statute was subject under civil False Claims Act, at $2,000 per violation, or $130,000, were sufficiently disproportionate that civil penalty authorized by Act constituted second punishment in violation of double jeopardy. U.S. v. Halper, U.S.N.Y.1989, 109 S.Ct. 1892, 490 U.S. 435, 104 L.Ed.2d 487. Double Jeopardy 25

Proceedings under former § 231 [now § 3729] of this title were “remedial” and imposed a “civil sanction” and hence did not subject persons previously prosecuted under such former section for presenting fraudulent claims to “double jeopardy”. U. S. ex rel. Marcus v. Hess, U.S.Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. Double Jeopardy 23

Imposition of civil forfeitures against defendants charged with violation of False Claims Act did not violate double jeopardy clause even though defendants had previously pled guilty to criminal charges arising out of same fraudulent scheme. U.S. v. Killough, C.A.11 (Ala.) 1988, 848 F.2d 1523. Double Jeopardy 25

Imposition of civil sanctions of former § 231 [now § 3729] of this title on defendant convicted of criminal violation of its provisions did not place defendant in double jeopardy. Berdick v. U. S., Ct.Cl.1979, 612 F.2d 533, 222 Ct.Cl. 94. Double Jeopardy 23; Sentencing And Punishment 1566

The defense of double jeopardy was not applicable in civil actions under former § 231 [now § 3729] of this title. U. S. v. Grannis, C.A.4 (N.C.) 1949, 172 F.2d 507, certiorari denied 69 S.Ct. 1160, 337 U.S. 918, 93 L.Ed. 1727. Double Jeopardy 22

Damages and penalties imposed pursuant to False Claims Act (FCA) were civil in nature, and thus Double Jeopardy Clause did not preclude United States from instituting action under False Claims Act (FCA) against federal employee for damages and penalties for cashing disability checks obtained pursuant to false statements after employee had been convicted of making false statement in order to obtain federal employees' compensation. U.S. v. Lamanna, W.D.N.Y.2000, 114 F.Supp.2d 193. Double Jeopardy 23

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Double jeopardy did not bar Government's civil action against defendant under False Claims Act following defendant's guilty plea, where Government sought to recover damages apart from civil penalty which could be assessed under Act, so that penalty did not so exceed actual damages as to amount to criminal punishment. U.S. v. Howell, S.D.Miss.1988, 702 F.Supp. 1281. Double Jeopardy 23

Proceeding by United States to recover $2,000 forfeiture provided in former § 231 [now § 3729] of this title from individual who had pleaded guilty to violation of § 1001 of Title 18 which proscribes knowing and willful falsification or making of fraudulent statements or representations in matter within jurisdiction of department or agency of United States, and had been fined $500 did not subject defendant to double jeopardy. U. S. v. Annicchiarico, D.C.N.J.1963, 238 F.Supp. 339. Double Jeopardy 25

An action under former § 231 [now § 3729] of this title did not place defendant previously convicted of making false statements with respect to same matter in double jeopardy. U. S. v. Greenberg, S.D.N.Y.1965, 237 F.Supp. 439. Double Jeopardy 22

Recovery of forfeiture and double damages in civil suit by the United States under former § 231 [now § 3729] of this title in addition to sentence on charge of conspiring to commit offenses against the United States by willfully making or presenting false claims in order to defraud the United States did not constitute double jeopardy in violation of U.S.C.A. Const. Amend. 5. U. S. v. Ben Grunstein & Sons Co., D.C.N.J.1955, 127 F.Supp. 907. Double Jeopardy 23

Where defendants were acquitted of criminal charges based on certain transactions, subsequent civil action under former § 231 [now § 3729] of this title based on same transactions did not expose defendants to double jeopardy. U S v. MacEvoy, D.C.N.J.1950, 10 F.R.D. 323. Double Jeopardy 23

247. Estoppel, defenses--Generally

Government was not judicially estopped from dismissing False Claims Act cases against citrus growers and packinghouses, in which defendants were alleged to have violated citrus marketing orders, despite earlier statement made during oral argument on government's motion to intervene that government intended to prosecute cases; government's change in policy was result of changed circumstances in industry. U.S. ex rel., Sequoia Orange Co. v. Baird-Neece Packing Corp., C.A.9 (Cal.) 1998, 151 F.3d 1139, certiorari denied 119 S.Ct. 794, 525 U.S. 1067, 142 L.Ed.2d 657. Estoppel 68(2)

Doctrine of estoppel must be applied with great caution to the government and its officials, but in the proper circumstances the doctrine does apply. U. S. v. Fox Lake State Bank, C.A.7 (Ill.) 1966, 366 F.2d 962. Estoppel 62.2(3)

Prior criminal proceeding in which contractor entered guilty plea to all elements of Sherman Act bid-rigging conspiracy for construction projects in Egypt funded by United States, and prior proceeding to determine factual basis for plea in which contractor acknowledged submitting bids pursuant to conspiracy, both extended preclusion to issues essential to contractor's plea, and thus, contractor was collaterally estopped from contesting civil bid-rigging conspiracy in violation of False Claims Act (FCA) by conspiring with others to get false or fraudulent claims allowed or paid by United States, and from contesting that claims were actually submitted, which constituted overt acts for FCA conspiracy. Miller v. Holzmann, D.D.C.2008, 563 F.Supp.2d 54. Judgment 648; Judgment 724

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Government's claims for unjust enrichment and payment under mistake of fact were essentially duplicative of each other and sought the same relief as had been awarded under the jury's verdict in a False Claims Act (FCA) case, and the court would not proceed with the academic exercise of considering liability on the equitable claims, as any recovery under them would have been duplicative. U.S. ex rel. Miller v. Bill Harbert Intern. Const., Inc., D.D.C.2007, 505 F.Supp.2d 20. Damages 15

In absence of some particular sovereign objective necessary to orderly government and where morals and justice so require, government may be estopped by acts of its employees. U. S. v. Lazy FC Ranch, D.C.Idaho 1971, 324 F.Supp. 698, affirmed 481 F.2d 985. Estoppel 62.2(3)

248. ---- Civil immunity, estoppel, defenses

United States was not estopped from seeking recovery under former § 231 [now § 3729] of this title by unauthorized grant of civil immunity. U. S. v. Levering, D.C.Del.1978, 455 F.Supp. 1165. Estoppel 62.2(4)

Even though letter sent by assistant United States attorney to the defendant might reasonably have led defendant to believe that grant of immunity in criminal action would also carry with it immunity in all related nontax civil matters, where evidence established that no assistant United States attorney was authorized to grant defendant immunity against any civil claim by government, including claim under former § 231 [now § 3729] of this title, United States was not estopped from seeking recovery under such former section by any unauthorized grant of civil immunity. U. S. v. Levering, D.C.Del.1978, 455 F.Supp. 1165. Estoppel 62.2(4)

249. ---- Criminal convictions, estoppel, defenses

In civil action brought by United States to recover subsidy payments made pursuant to farm support program, lower court, in finding payee liable under sections 3729-3731 of this title, properly applied doctrine of collateral estoppel to preclude litigation of those claims upon which payee had been convicted in criminal prosecution arising from same facts in view of facts that payee did not come forward with proof to sustain position that criminal and civil judgments were incorrect, facts established by Government were uncontested, and same trial judge presided over both criminal and civil actions and thus was thoroughly acquainted with facts of both cases. U.S. v. Thomas, C.A.5 (Tex.) 1983, 709 F.2d 968. Judgment 648

Defendant's convictions of 36 violations of former § 231 [now § 3729] of this title, which arose from his presentation of false claims for medicare reimbursement, conclusively established his civil liability to government under former § 232 of this title. Berdick v. U. S., Ct.Cl.1979, 612 F.2d 533, 222 Ct.Cl. 94. Judgment 648

Where government contractor's alleged bid rigging was not shown to have extended to each purchase order involved in contractor's breach of contract suit, the government, which filed counterclaim under former § 232 of this title could not have prevailed on each purchase order; however, contractor was estopped from denying those facts regarding his activities established by jury verdict against him in earlier criminal suit based on the bid rigging. Brown v. U. S., Ct.Cl.1975, 524 F.2d 693, 207 Ct.Cl. 768. Judgment 648; United States 122

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Prior jury verdict, which found subcontractor guilty beyond reasonable doubt of knowingly making false statements of material facts to federal agency by documenting fictional costs for construction project, necessarily established civil liability against subcontractor by preponderance of evidence through statutory collateral estoppel for knowingly presenting same false claim for payment or approval to United States. U.S. ex rel. Virgin Islands Housing Authority v. Coastal General Const. Services Corp., D.Virgin Islands 2004, 299 F.Supp.2d 483. Judgment 648

Criminal convictions of hospital president and controller for submitting false documents to Department of Housing and Urban Development (HUD) to obtain federally insured mortgage funds collaterally estopped president and controller from litigating liability under False Claims Act (FCA); complaint in FCA action was based on same allegations that served as basis for criminal convictions. U.S. v. Stella Perez, D.Puerto Rico 1993, 839 F.Supp. 92, reversed 55 F.3d 703, 139 A.L.R. Fed. 813, on remand 956 F.Supp. 1046. Judgment 648

Defendant's criminal conviction for filing of false statement as guarantor in federal loan guarantee application of another was sufficient to collaterally estop his defense to civil liability for same statements under False Claims Act, where federal agency's reliance upon those statements was uncontrovertedly demonstrated by its initial refusal to make loan guarantee until defendant had agreed to be a private guarantor. U.S. v. Hill, N.D.Fla.1987, 676 F.Supp. 1158. Judgment 648

Defendants' convictions of criminal conspiracy to defraud Government by filing false claims, along with trial transcript and appellate decision affirming convictions, conclusively established liability of defendants in civil claim under False Claims Act; defendants were estopped in subsequent civil proceeding from denying liability under Act. U.S. v. Uzzell, D.D.C.1986, 648 F.Supp. 1362. Judgment 648

Corporate defense subcontractor's officers, who pled guilty to criminal charges of submitting false statements to Government, were collaterally estopped from denying their civil liability for making false claims to Government under False Claims Act, although officers remained free to fully litigate issue of damages in civil action. U.S. v. DiBona, E.D.Pa.1984, 614 F.Supp. 40. Judgment 648

When granting a government motion for summary judgment in a civil suit under former § 231 [now § 3729] of this title, a prior criminal conviction established facts underlying the conviction conclusively for purposes of subsequent civil proceedings instituted by the federal government on basis of same facts and collateral estoppel was therefore operative whether the conviction was obtained by jury verdict or through a guilty plea. Alsco-Harvard Fraud Litigation, D.C.D.C.1981, 523 F.Supp. 790. Judgment 648

In civil action by government against defendant under former § 231 of this title, defendant's conviction of making a false loan application to a federally insured bank conclusively established that defendant caused to be made a certificate containing false information, and where it was undisputed that there had been a “claim” upon government and that there had been a payment by government, violation of former § 231 of this title was established so as to require imposition of the penalty of $2,000 forfeiture. U. S. v. Rapoport, S.D.N.Y.1981, 514 F.Supp. 519. Fraud 58(2); Fraud 62

Where all questions relevant to civil liability under former § 231 [now § 3729] of this title had been put in issue and directly determined in criminal prosecution, defendant in government's action to recover for submission of false medicaid

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claims was bound by collateral estoppel effect of prior criminal judgment, and government was thus entitled to summary judgment of liability. U. S. v. Jacobson, S.D.N.Y.1979, 467 F.Supp. 507. Federal Civil Procedure 2515; Judgment 648

Prior criminal conviction establishes facts underlying the conviction conclusively for purposes of a subsequent civil proceeding instituted by the federal government on the basis of the same facts. U.S. v. Cripps, E.D.Mich.1978, 460 F.Supp. 969. Judgment 648

Collateral estoppel doctrine that question of fact or law distinctly put in issue and directly determined by a court was conclusively settled by the final judgment or decree applied to decisions in both civil and criminal proceedings, including suits brought under former § 231 [now § 3729] of this title. U. S. v. Kates, E.D.Pa.1976, 419 F.Supp. 846. Judgment 648

Because conviction of conspiracy to defraud the United States required finding that defendants “entered into” the unlawful agreement, defendants' prior conviction of such conspiracy conclusively established that defendants “entered into” the unlawful scheme and, therefore, where conspiracy charged in civil fraud action under former § 231 [now § 3729] of this title was the same conspiracy for which defendants were convicted, convictions conclusively established that defendants were liable for conspiracy to violate such former section. U. S. v. Kates, E.D.Pa.1976, 419 F.Supp. 846. Judgment 648

Where none of the defendants in federal government's action under former § 231 [now § 3729] of this title were found guilty of count in prior criminal indictment relating to loan forming basis of present civil action, and it was not possible to determine that facts surrounding such loan were necessarily found in favor of government in another count of the criminal case on which defendants were convicted, there was no basis for estoppel of defendants from denying liability for loss in connection with the loan. U. S. v. Levinson, E.D.Mich.1973, 369 F.Supp. 575. Judgment 648

Where jury in prior criminal case could not have found three of the present defendants in federal government's action under former § 231 [now § 3729] of this title guilty under the conspiracy count in the criminal case without finding that such defendants had entered into conspiracy to defraud the government by obtaining or aiding to obtain payment or allowance of a false or fraudulent claim as required to establish liability under such former section such defendants were estopped from denying existence of that fact in subsequent civil action. U. S. v. Levinson, E.D.Mich.1973, 369 F.Supp. 575. Judgment 648

Where count of complaint in federal government's action under former § 231 [now § 3729] of this title involved same loans that were subject of a count in prior criminal indictment against three of the present defendants, and a finding of guilty in the criminal case could not have been made without finding of facts of the crime creating liability under such former section such defendants were estopped by the findings and judgment of conviction to deny that they were liable to government for the losses from the loans. U. S. v. Levinson, E.D.Mich.1973, 369 F.Supp. 575. Judgment 648

Government in action against contractor could rely upon prior judgment of conviction of defendant for aiding and abetting subcontractors in making false statements to government to establish issues relevant to action which were necessarily determined by conviction. U. S. v. Greenberg, S.D.N.Y.1965, 237 F.Supp. 439. Judgment 648

Defendants who had been convicted of making false statements to procure Federal Housing Administration [now Depart-

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ment of Housing and Urban Development] insurance were not collaterally estopped to contest whether lending institutions had presented claims for reimbursement. U. S. v. Globe Remodeling Co., D.C.Vt.1960, 196 F.Supp. 652. Judgment 648

Defendants who had been convicted of making false statements to Federal Housing Administration [now Department of Housing and Urban Development] to procure insurance were collaterally estopped to contest whether their statements had caused lending institution to make false claim. U. S. v. Globe Remodeling Co., D.C.Vt.1960, 196 F.Supp. 652. Judgment 648

Where suit by United States, under former § 231 [now § 3729] of this title, for recovery upon 14 specific false lumber invoices presented by defendants to agent of former War Shipping Administration, involved identical transactions upon which defendants were found guilty in prior criminal trial, defendants were estopped by judgment in criminal case from relitigating issues adjudicated therein. U. S. v. Salvatore, E.D.Pa.1956, 140 F.Supp. 470. Judgment 648

Judgment of conviction on plea of guilty to indictment charging a conspiracy to commit offenses against the United States by willfully making or presenting false claims in order to defraud the United States conclusively and finally established that pleading defendants participated in the conspiracy charged and that it was a conspiracy primarily to obtain payment of a knowingly false claim by the United States, and defendants so pleading were estopped from relitigating such issues in subsequent civil suit by the United States for alleged conspiracy to defraud the United States by obtaining or aiding to obtain payment of knowingly false claim. U. S. v. Ben Grunstein & Sons Co., D.C.N.J.1955, 127 F.Supp. 907. Estoppel 3(3); Judgment 648

Conviction of president of corporation for conspiracy to defraud the government of the United States by obtaining payment of a false or fraudulent claim, estopped president of corporation from denying civil liability in civil action by the United States under former § 231 [now § 3729] of this title. U.S. v. American Precision Products Corp., D.C.N.J.1953, 115 F.Supp. 823. Judgment 648; United States 123

250. ---- Government agents, estoppel, defenses

If false claim presented to officers or employees of Federal Deposit Insurance Corporation (FDIC), as agency of the government, was as plaintiffs contended a false claim against the government for purposes of their qui tam action under False Claims Act, then presence of FDIC as a party in the related civil litigation met the definition of “government” as used in Act's section providing that in no event may person bring action which is based upon allegations or transactions which are the subject of a civil suit in which the government is already a party. U.S. ex rel. S. Prawer & Co. v. Fleet Bank of Maine, D.Me.1993, 855 F.Supp. 419. United States 120.1; United States 122

Where government employee, acting within scope of actual authority makes statement upon which another party relies to his detriment government is subject to defense of estoppel as is private person. U. S. v. Fox Lake State Bank, N.D.Ill.1963, 225 F.Supp. 723. Estoppel 62.2(3)

Government could not have been estopped from bringing suit under former § 231 [now § 3729] of this title predicated on filing of alleged false claims with Federal Housing Administration [now Department of Housing and Urban Develop-

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ment] as government employee could not have acted within authority in telling one to file false claim with understanding that sanctions of legislation would not be applied. U. S. v. Fox Lake State Bank, N.D.Ill.1963, 225 F.Supp. 723. Estoppel 62.2(4)

251. ---- Guilty pleas, estoppel, defenses

Guilty pleas entered by defendants in prior criminal prosecution related to kickback scheme that arose during hurricane relief efforts were admissible in subsequent civil action brought by Government under False Claims Act on issue of damages inasmuch as pleas contained defendants' admissions of monetary amount of kickbacks; moreover, pleas were not unfairly prejudicial to defendants because district court had already entered summary judgment for Government on issue of liability, and total damages jury awarded were not excessive. U.S. v. Killough, C.A.11 (Ala.) 1988, 848 F.2d 1523. Evidence 207(4)

In indictment, charging defendants with conspiring to violate former § 231 [now § 3729] of this title by causing veterans to file false statements in applications for veterans' priority certificates in connection with purchase of surplus trucks from former War Assets Administration, allegations that veterans had purchased trucks and transferred them to defendants were superfluous; and, therefore, defendants' pleas of guilty to indictment, and judgments of conviction entered thereon, did not conclusively establish their liability for each of nine overt acts set forth in indictment, for purposes of civil action thereafter brought by government. United States v. Guzzone, C.A.2 (N.Y.) 1959, 273 F.2d 121. Judgment 648

Where government's complaint under former § 231 [now § 3729] of this title for specific transactions whereby defendant in business with another had sold eggs to a general contractor who resold the eggs to the government, and such transactions were denied, and such specific transactions had not been charged in indictment to which defendant had pleaded guilty, the mere proof of the plea of guilty was insufficient to sustain cause of action under complaint on theory that defendant was collaterally estopped from relitigating the same issues of facts that were admitted by him, since the issues and facts were not the same. Hyslop v. U. S., C.A.8 (Neb.) 1958, 261 F.2d 786. Judgment 648

When an issue is resolved in favor of United States in a criminal prosecution, defendant may not contest the same issue in a subsequent civil suit brought by the Government; rule applies regardless of whether the defendant was found guilty either by jury verdict or guilty plea. U.S. v. Nardone, M.D.Pa.1990, 782 F.Supp. 996. Judgment 648

Even though defendants denied any criminal intent to defraud government, pleas of guilty to making false and fraudulent claims against United States by submitting false invoices pleas sufficiently established liability to create estoppel in favor of government in proceeding against defendants under former § 231 [now § 3729] of this title. U. S. v. Krietemeyer, S.D.Ill.1980, 506 F.Supp. 289. Criminal Law 273.2(2)

For purpose of civil recovery for bribery of federal agent, contractor's guilty plea to criminal charge, in which he admitted that he made payments on behalf of area management broker and that he did so for a purpose of gaining control over repair contract program in broker's area, conclusively established contractor's civil liability for bribery as it established payment of something of value to a public official for the purpose of influencing him in his official duties. U.S. v. Cripps, E.D.Mich.1978, 460 F.Supp. 969. United States 75(4)

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Where one of the defendants in federal government's action under former § 231 [now § 3729] of this title pleaded guilty to count in prior criminal indictment involving same loan forming basis of present civil action, such defendant was estopped by the finding and judgment of conviction to deny he was liable to government for the loss from the loan. U. S. v. Levinson, E.D.Mich.1973, 369 F.Supp. 575. Judgment 648

Conviction on plea of guilty to indictment counts alleging filing of false claims could work estoppel in favor of government, in subsequent action to recover for loss sustained as result of false claims as to complaint paragraphs whose allegations were encompassed in indictment counts. U. S. v. Eagle Beef Cloth Co., E.D.N.Y.1964, 235 F.Supp. 491. Judgment 648

Defendants who had previously pleaded guilty to criminal charge of making false statements to procure Federal Housing Administration [now Department of Housing and Urban Development], insurance were collaterally estopped to deny that lending institution's claim for reimbursement was a false claim. U. S. v. Globe Remodeling Co., D.C.Vt.1960, 196 F.Supp. 652. Judgment 648

Plea of guilty to indictment charging a conspiracy to commit offenses against the United States by willfully making or presenting false claims to the United States in order to defraud it did not estop pleading defendants from contesting the effectuation of admitted conspiracy in subsequent civil suit by the United States for conspiracy to defraud the United States by obtaining or aiding to obtain payment of a knowingly false claim. U. S. v. Ben Grunstein & Sons Co., D.C.N.J.1955, 127 F.Supp. 907. Estoppel 3(3)

252. ---- Nolo contendere pleas, estoppel, defenses

Government could not rely on fact that defendant pleaded nolo contendere to a criminal indictment to establish defendant's civil liability in a subsequent fraud action arising out of the same transactions which led to the criminal indictment. U. S. v. Kates, E.D.Pa.1976, 419 F.Supp. 846. Evidence 207(4)

253. ---- Miscellaneous issues or actions estopped, defenses

Putative relators were judicially estopped from bringing qui tam claim against former co-shareholder and corporation on basis that relators failed to disclose existence of qui tam claim as contingent asset of bankruptcy estate, since putative relators represented to bankruptcy court through their failure to list qui tam claim on their schedule of assets that they did not possess such claim and by filing qui tam action in court they asserted that they could pursue such claim. U.S. ex rel. Gebert v. Transport Administrative Services, C.A.8 (Mo.) 2001, 260 F.3d 909. Bankruptcy 2154.1; Estoppel 68(2)

In view of lengthy and detailed correspondence between bank officials and Federal Housing Administration [now Department of Housing and Urban Development] regarding a series of loans made by bank in violation of Administration regulations due to fraud of bank employee and Administration insistence that eligibility of loans for insurance was not to be discussed until claims were filed, government was estopped to bring action against bank under former § 231 [now § 3729] of this title for statutory forfeitures based on bank's filing of hastily prepared claims which did not detail the circumstances of the loans. U. S. v. Fox Lake State Bank, C.A.7 (Ill.) 1966, 366 F.2d 962. Estoppel 62.2(4)

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Nothing in record showed that government, which did not sign completion agreement otherwise signed by all interested parties in the government housing project, had waived or was estopped from asserting claims against defendant under former § 231 [now § 3729] of this title. U. S. v. Woodbury, C.A.9 (Or.) 1966, 359 F.2d 370. Estoppel 62.2(4)

Subcontractor was collaterally estopped from denying civil liability under False Claims Act (FCA), where civil and criminal cases involved same issue, issue was actually litigated in criminal action where subcontractor had full and fair opportunity to defend himself, jury's judgment convicting subcontractor of all ten fraudulent acts and subsequent affirmance on appeal made it valid and final judgment, and jury's determination that subcontractor knowingly committed ten fraudulent acts was clearly essential to final judgment convicting him of fraud and false statements. U.S. ex rel. Virgin Islands Housing Authority v. Coastal General Const. Services Corp., D.Virgin Islands 2004, 299 F.Supp.2d 483. Judgment 648

In suit by United States against real estate salesman under former § 231 [now § 3729] of this title, which alleged that false certifications submitted by salesman induced Federal Housing Administration [now Department of Housing and Urban Development] to insure certain mortgages upon which mortgagors defaulted, requiring United States to honor claims of mortgagee, salesman's conviction of making or causing to be made false statements to Administration estopped him from disputing that he caused to be submitted to Administration false certifications as to condition of roofs, and plumbing and heating and electrical systems for purpose of influencing action by Administration. U. S. v. Hibbs, E.D.Pa.1976, 420 F.Supp. 1365, vacated on other grounds 568 F.2d 347. Judgment 648

Physician convicted of ten counts of medicare fraud was civilly liable to United States for fraudulently obtained benefits under former § 231 [now § 3729] of this title on basis of doctrine of collateral estoppel. U. S. v. Zulli, E.D.Pa.1975, 418 F.Supp. 252. Judgment 648

254. Knowledge of government official, defenses

Prior product liability lawsuits against manufacturer of heart pacemaker leads, alleging leads were not as safe as had been reported to Food and Drug Administration (FDA), precluded relator's qui tam claims under False Claims Act against manufacturer alleging medicare fraud for manufacturer's alleged fraud in providing information to FDA; government could have reasonably inferred fraud allegations from various parts of prior complaints, prior complaints mentioned both a change in design specifications and fraud surrounding manufacture of leads, and medicare fraud claim necessarily relied on FDA fraud claim. U.S. ex rel. Gilligan v. Medtronic, Inc., C.A.6 (Ohio) 2005, 403 F.3d 386, rehearing and rehearing en banc denied , certiorari denied 126 S.Ct. 1054, 546 U.S. 1094, 163 L.Ed.2d 860. United States 122

Fact that United States Department of Housing and Urban Development (HUD) made housing assistance payments (HAPs) to Section 8 housing owners, despite having knowledge that owners' certifications in HAP vouchers that their property was in a “decent, safe, and sanitary” condition were allegedly false, did not, on estoppel or waiver grounds, preclude finding of falsity required for government to establish civil claim under the False Claims Act (FCA). U.S. v. Southland Management Corp., C.A.5 (Miss.) 2002, 288 F.3d 665, rehearing en banc granted 307 F.3d 352, on rehearing 326 F.3d 669. United States 122

Even if Medicare program administrator's internal investigation of alleged fraudulent Medicare billing practices qualified

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as administrative investigation, it did not trigger provision of False Claims Act barring claims by relators based on public disclosures, inasmuch as results of investigation were not publicly disclosed, but rather were known only by persons involved in initiating, requesting, or conducting investigation. U.S. ex rel. Aflatooni v. Kitsap Physicians Services, C.A.9 (Wash.) 1998, 158 F.3d 439, amended opinion, withdrawn from bound volume.

Government's knowledge of facts underlying claim is not automatic bar to suit under False Claims Act. U.S. ex rel. Butler v. Hughes Helicopters, Inc., C.A.9 (Cal.) 1995, 71 F.3d 321. United States 120.1

Under former § 232 of this title, knowledge on part of a government official who was implicated in the fraud did not preclude suit by the informer. U.S. v. Rippetoe, C.A.4 (S.C.) 1949, 178 F.2d 735. United States 122

While government's knowledge of problems with research is not absolute defense to action under False Claims Act based on alleged failure to disclose problems, it may be relevant to defendant's liability. U.S. ex rel. Milam v. Regents of University of California, D.Md.1995, 912 F.Supp. 868. United States 120.1

255. Lack of indispensable party, defenses

Absence of defaulting borrowers, who were not indispensable parties, was no defense to action against defendants who had allegedly procured Federal Housing Administration [now Department of Housing and Urban Development] insurance through false statements, where complete relief could be granted in absence of borrowers. U. S. v. Globe Remodeling Co., D.C.Vt.1960, 196 F.Supp. 652. Federal Civil Procedure 211

256. Limitations, defenses

See Notes of Decisions under § 3731 of this title.

256a. Laches, defenses

Six-year delay in bringing lawsuit against employees of tribal business alleging violation of False Claims Act (FCA) was not unreasonable, and thus laches defense did not apply to claims that employees filed false claims for brushing and road grading work performed under contract with Bureau of Indian Affairs (BIA); government filed suit within six-year statute of limitations, and lawsuit was result of lengthy federal investigation. U.S. v. Menominee Tribal Enterprises, E.D.Wis.2009, 601 F.Supp.2d 1061, reconsideration denied 2009 WL 1373952, entered 2009 WL 2877083. United States 122

257. Res judicata, defenses

University employee's whistleblower and False Claims Act claims were barred by res judicata since they could and should have been asserted in her prior employment discrimination suit; whistleblower and False Claims Act claims asserted by employee, who alleged that her harassment and termination stemmed from her reporting of university pharmacy's submission of false claims to governmental health care programs, arose from the same operative facts as those upon which discrimination suit was based. Cole v. Board of Trustees of University of Illinois, C.A.7 (Ill.) 2007, 497 F.3d 770,

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certiorari denied 128 S.Ct. 1110, 169 L.Ed.2d 810. Judgment 585(2)

Res judicata barred employee's claim for retaliatory discharge under False Claims Act (FCA), which was filed after settlement of his qui tam action under FCA alleging fraudulent billing practices by employer, since both retaliatory discharge and qui tam claims arose from same nucleus of operative fact, to extent that employer engaged in illegal conduct and employee's discovery of that conduct led to his discharge, a series of transactions closely related in time, space, and origin; thus, the causes of action were the same for purposes of res judicata. Ragsdale v. Rubbermaid, Inc., C.A.11 (Ga.) 1999, 193 F.3d 1235, rehearing and suggestion for rehearing en banc denied 207 F.3d 666, certiorari denied 120 S.Ct. 2237, 530 U.S. 1223, 147 L.Ed.2d 265. Compromise And Settlement 17(1)

Action by former state employee against former superiors individually, alleging discharge in violation of the First Amendment, was not barred by claim preclusion by reason of former employee's prior suit under whistleblower provision of the False Claims Act (FCA), based on the same facts; in determining in the prior suit that the individual defendants were simply employee's supervisors and not his “employers,” the court essentially found that they, in their individual capacities, were not the proper parties, and this did not go to the actual merits of the case, which was whether employee was unlawfully discharged in violation of the FCA, even though the court stated it was acting under rule governing dismissal for failure to state a claim, as employee was not completely barred from pursuing his FCA claims, but only had to identify the proper party. Wilkins v. Jakeway, C.A.6 (Ohio) 1999, 183 F.3d 528, rehearing and suggestion for rehearing en banc denied , on remand 2000 WL 1469354. Judgment 570(9)

Qui tam plaintiffs' action under the False Claims Act (FCA), alleging that contractors engaged in pattern of knowingly submitting false claims for payment under their contracts to perform hazardous waste treatment and disposal services at site of chemical plant, was not barred by doctrine of res judicata; FCA claims were not simply repackaging of prior claims asserted in environmental litigation involving the same site but, rather, constituted new set of charges arising from separate “nucleus of operative facts” upon which no final judgment had been previously rendered. Costner v. URS Consultants, Inc., C.A.8 (Ark.) 1998, 153 F.3d 667, rehearing and suggestion for rehearing en banc denied. Judgment 585(3)

Acquittal in criminal action, as to each item of alleged fraud of two members of partnership, which operated school attended by veterans under G. I. Bills, had no effect on counterclaims of United States against partnership under former § 231 [now § 3729] of this title in Court of Claims [now United States Claims Court]. Eastern School v. U. S., Ct.Cl.1967, 381 F.2d 421, 180 Ct.Cl. 676. Judgment 559

Default judgment on notes given for government loans merged government's alternative remedy under former § 231 [now § 3729] of this title based on false and fraudulent statements of borrowers and was res judicata as to action under such section. U. S. v. Temple, C.A.7 (Ill.) 1962, 299 F.2d 30. Judgment 582

Acquittal of corporation's secretary-treasurer and government building contractors' purchasing agent in criminal prosecution for conspiracy to defraud United States by raising corporation's bid for sale of faucets to contractors, on agent's secret suggestion, to higher price than would otherwise have been submitted, was not res judicata of issues in or bar to government's subsequent suit against such alleged conspirators and the corporation to recover forfeitures and double damages under former § 231 [now § 3729] of this title in view of difference in degree of burden of proof in criminal and civil cases. Murray & Sorenson v. U.S., C.A.1 (R.I.) 1953, 207 F.2d 119. Judgment 559

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Relator in a qui tam action founded on former § 231 [now § 3729] of this title was equally concluded by a judgment in the Court of Claims [now United States Claims Court] against the United States. U.S. ex rel. McManus v. Moore, D.C.Sup.1877, 10 D.C. 226. United States 144

Relator's False Claims Act (FCA) claims against medical college and other defendants were barred by res judicata to extent they related to same National Institutes of Health (NIH) grant that was subject of government's settlement with college, which also released individual defendants, as claims arose from same nucleus of operative fact, namely, college's submission of false statement in application for grant and continuing grant monies, even if amended complaint asserted greater misconduct regarding grant than that asserted in government's complaint-in-intervention or settlement. U.S. ex rel. Sarafoglou v. Weill Medical College of Cornell University, S.D.N.Y.2006, 451 F.Supp.2d 613. Judgment 570(6); Judgment 585(2)

Qui tam action brought under False Claims Act (FCA) by physician against hospital, alleging that hospital defrauded United States by falsely billing for radiological procedures, was barred by prior qui tam suit involving same parties; both actions featured allegations regarding fraudulent billing of Medicare and Medicaid for radiological studies that had not been interpreted by qualified doctors, physician brought retaliation and defamation claims against hospital similar to those in first action, and differences asserted between actions were insufficient to distinguish them. U.S. ex rel. Smith v. Yale-New Haven Hosp., Inc., D.Conn.2005, 411 F.Supp.2d 64, on reconsideration 2006 WL 387297. United States 122

Res judicata barred qui tam relator from litigating his claims under False Claims Act (FCA) following United States' settlement of his qui tam claims, where qui tam claims were dismissed with prejudice. U.S. ex rel. Hinden v. UNC/Lear Services, Inc., D.Hawai'i 2005, 362 F.Supp.2d 1203. Judgment 570(6)

Under Texas law, former employee's prior wrongful discharge suit against employer under “public policy exception” to Texas employment at-will doctrine involved same cause of action as his current qui tam suit against employer under False Claims Act (FCA) based on employer's alleged misrepresentation of data in financial reports to government, and thus res judicata barred FCA suit, even though current suit asserted different theory and measure of recovery than he had asserted in prior suit, where prior decision involved identical facts, and employee could have raised FCA claim in prior suit. U.S. ex rel. Mayfield v. Lockheed Martin Engineering and Sciences Company, S.D.Tex.2002, 186 F.Supp.2d 711, vacated 336 F.3d 346. Judgment 828.15(1)

Former employee's claims for his alleged wrongful dismissal for exercising his free speech rights were barred by preclusive effect of an earlier court's grant of these same defendants' motion for summary judgment, and dismissal with prejudice of employee's complaint under the “whistleblowing” provisions of the False Claims Act. Wilkins v. Jakeway, S.D.Ohio 1998, 993 F.Supp. 635, affirmed in part, reversed in part and remanded 183 F.3d 528, rehearing and suggestion for rehearing en banc denied , on remand 2000 WL 1469354. Judgment 569

Defendant's prior acquittal in prosecution under False Claims Act did not preclude Government from recovering in civil action under the Act. U.S. v. JT Const. Co., Inc., W.D.Tex.1987, 668 F.Supp. 592. United States 122

Action by United States against a contractor under former § 231 [now § 3729] of this title was not maintainable on theory

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that under the finality clause of contract the Board of Appeals had only authority to decide questions of fact and therefore Board did not have authority to determine law questions and action was one to determine questions of law; however, action was maintainable irrespective of finality clause and decision of Board, and therefore federal court would strike defenses based on theory of res judicata and estoppel. U. S. v. Williams, M.D.Ala.1957, 162 F.Supp. 903. United States 73(14)

Res judicata effect of prior order of bankruptcy court approving global settlement between debtors and government of debtors' obligations in connection with electromagnetic spectrum licenses on which they had successfully bid was such as to bar relator, in qui tam action that characterized this global settlement as “false claim” under the False Claims Act (FCA), from attempting to relitigate question of whether debtors' spectrum auction debt was dischargeable in bankruptcy, or whether discharge was barred by the Federal Credit Reform Act (CRA), where government, despite being advised of possible applicability of the CRA, had chosen not to raise it as a defense to global settlement, prior to its being approved by bankruptcy court. U.S. ex rel. Finney v. Nextwave Telecom, Inc., S.D.N.Y.2006, 337 B.R. 479. Judgment 542; Judgment 567; Judgment 585(4)

Judgment entered against debtor prepetition in cause of action under the False Claims Act, for knowingly supplying federal government with coal from nonconforming mine with result that coal received was of lesser quality than that contracted, was not entitled to res judicata effect in subsequent proceeding to except judgment debt from discharge as one for debtor's “willful and malicious injury”; jury's answers to special interrogatories, viewed as a whole with its findings that debtor had not committed a forgery or conspired to defraud government, at most established a knowing breach of contract and could not, as res judicata, support finding that debtor had willfully and maliciously intended to cause injury to government. Elza v. U.S., E.D.Ky.2006, 335 B.R. 654. Judgment 588; Judgment 590(2)

Doctrine of res judicata did not bar relator in qui tam action from seeking recovery of alleged government overpayments for continuous passive motor exercisers (CPMs), following government's settlement of qui tam suit involving different medical device. U.S. ex rel. Barmak v. Sutter Corp., S.D.N.Y.2003, 2003 WL 21436213, Unreported. United States 122

258. Sovereign immunity, defenses

Laboratory, although wholly-owned corporation of state university, was not “arm of the state,” due to its anticipated and actual financial independence, and thus was “person” against which suit could be brought by private relator under False Claims Act (FCA); state treasury was not legally liable for any judgment against laboratory, laboratory retained substantial autonomy in its operations, and laboratory generated operating funds and profit through its own commercial activity. U.S. ex rel. Sikkenga v. Regence Bluecross Blueshield of Utah, C.A.10 (Utah) 2006, 472 F.3d 702, on remand 2007 WL 2713913. United States 122

Even though it was organized as corporation with power to sue and be sued, Regents of University of California, when acting as manager of laboratory, was arm of state of California, and consequently not subject to suit under the False Claims Act (FCA). U.S. ex rel. Adrian v. Regents of University of California, C.A.5 (La.) 2004, 363 F.3d 398. United States 120.1

Entity which Congress created to serve no other role than that of promoting and conducting relations between people of

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United States and people of Taiwan, and which, in performing that role, engaged in traditional government activities such as processing visa applications, providing consular services, and entering into customs and trade agreements, was immune from suit in a qui tam action under the False Claims Act, as agency or instrumentality of the United States. Wood ex rel. U.S. v. American Institute in Taiwan, C.A.D.C.2002, 286 F.3d 526, 351 U.S.App.D.C. 14. United States 53(6.1)

Congress did not waive United States' sovereign immunity in False Claims Act (FCA), thus barring qui tam relator's garnishment proceeding against governmental agency, by which relator sought to recover on judgment for attorney fees, litigation expenses, and costs awarded after her successful prosecution of consolidated FCA qui tam and wrongful discharge actions against her former employer. Shaw v. U.S., C.A.10 (Okla.) 2000, 213 F.3d 545. United States 125(9)

Congress has not waived sovereign immunity of Federal Prison Industries, Inc., (FPI) in the False Claims Act; "person" liable under the Act does not include government corporations. Galvan v. Federal Prison Industries, Inc., C.A.D.C.1999, 199 F.3d 461, 339 U.S.App.D.C. 248. United States 125(5)

Research institution, which was simply division or department of state university and subsumed within university organizational structure, was "arm of the state," and thus was not "person" against which False Claims Act (FCA) claim could be asserted, but, rather, was entitled to assert state's immunity under Eleventh Amendment; although institution competed with private businesses and derived all of its funding from research grants and contracts it obtained from federal government or other entities, university owned all property used by institution, including building in which main office was located, university wrote all checks for institution expenditures, and university assumed liability for all institution debts, which were incurred in university's name rather than institution's. U.S. ex rel. Burlbaw v. Regents of New Mexico State University, D.N.M.2004, 324 F.Supp.2d 1209. United States 122

Government's affirmative act of filing qui tam action under False Claims Act (FCA) constituted waiver of sovereign immunity as to compulsory counterclaim for recoupment. U.S. v. Intrados/International Management Group, D.D.C.2003, 277 F.Supp.2d 55. United States 130(7)

United States was immune from suit for allegedly aiding government contractors in defending against qui tam action under False Claims Act. Pentagen Technologies Intern. Ltd. v. U.S., S.D.N.Y.2000, 103 F.Supp.2d 232. United States 125(9)

Anti-retaliation provision of False Claims Act abrogated Eleventh Amendment immunity of state university and its health center with respect to qui tam suit brought by former employee. U.S. ex rel. Foulds v. Texas Tech University, N.D.Tex.1997, 980 F.Supp. 864, reversed 171 F.3d 279, rehearing and suggestion for rehearing en banc denied, certiorari denied 120 S.Ct. 2194, 530 U.S. 1202, 147 L.Ed.2d 231, certiorari denied 120 S.Ct. 2194, 530 U.S. 1203, 147 L.Ed.2d 231. Federal Courts 269

Eleventh Amendment did not bar claim by state employee against individual state defendants in their official capacities, under whistleblower provision of False Claims Act, insofar as he was seeking prospective injunctive relief. Wilkins ex rel. U.S. v. State of Ohio, S.D.Ohio 1995, 885 F.Supp. 1055. Federal Courts 272

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Even if False Claims Act was intended to cover federal employees, “whistle blower” provision stating that employee may commence action in federal court if employee is discharged because of lawful acts done by employee in furtherance of action under Act does not constitute waiver of sovereign immunity. Daly v. Department of Energy, D.Colo.1990, 741 F.Supp. 202. United States 125(25.1)

Federal government was immune from any liability to purchaser of Chapter 11 debtors' health care facilities for its alleged tortious interference with purchaser's right to receive payment from debtors for Medicaid/Medicare payments that they received from operating these facilities during transition period, by entering into separate agreement with debtors to have these Medicaid/Medicare payments offset based on government's claims against debtors under the False Claims Act; Federal Tort Claims Act (FTCA) specifically provided that government's immunity was not waived with respect to such tortious interference claims. In re Integrated Health Services, Inc., Bkrtcy.D.Del.2003, 303 B.R. 577. United States 78(5.1)

District Court lacked jurisdiction to consider action, under the False Claims Act (FCA), against federal agency, where Congress had made no express waiver of sovereign immunity for that agency. Doe v. Doe, C.A.10 (Okla.) 2005, 134 Fed.Appx. 229, 2005 WL 1097322, Unreported. United States 125(9)

259. Qualified immunity, defenses

Defendant school district officials were not entitled to qualified immunity from terminated internal auditor's claims under False Claims Act (FCA) anti-retaliation/whistleblower provision, since granting government officials protection of qualified immunity would be inconsistent with goals of FCA, and, given ongoing public interest in whistleblowing issues, reasonable official would know that it would be violation of plaintiff's rights to fire him after he blew the whistle. Samuel v. Holmes, C.A.5 (La.) 1998, 138 F.3d 173. Schools 63(3)

State university officials, who were assured by federal government that university was a minority institution (MI) for contracting and grant purposes, were entitled to qualified immunity in False Claims Act (FCA) suit claiming that university falsely certified that it was minority institution in connection with research contracts awarded by Defense Department (DOD); there was no evidence that any university official engaged in a deliberate falsehood when certifying that university qualified as an MI for purposes of DOD contracting since officials were entitled to rely on government's eligibility list and did not have a duty to independently verify university's eligibility as an MI in order to avoid violating the FCA. U.S. ex rel. Burlbaw v. Orenduff, D.N.M.2005, 400 F.Supp.2d 1276, affirmed 548 F.3d 931. Colleges And Universities 7; United States 122

State employees being sued under False Claims Act (FCA) in individual capacity, in qui tam action on behalf of United States, were entitled to qualified immunity, rather than absolute immunity. U.S. ex rel. Burlbaw v. Regents of New Mexico State University, D.N.M.2004, 324 F.Supp.2d 1209. States 79

260. Unclean hands, defenses

Acceptance of bribes by government agents could not have been basis of charging government with unclean hands or estoppel in action brought under former § 231 [now § 3729] of this title in which government alleged that defendant bribed

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two employees of Federal Housing Authority to obtain preferential treatment on his application for Federal Housing Authority mortgage insurance. U. S. v. Levering, D.C.Del.1978, 455 F.Supp. 1165. Equity 65(2); Estoppel 62.2(4)

261. Miscellaneous defenses

Innocent mistake is a defense to criminal charge or civil complaint; so is mere negligence. U.S. ex rel. Hagood v. Sonoma County Water Agency, C.A.9 (Cal.) 1991, 929 F.2d 1416, on remand. Criminal Law 23; Criminal Law 33; Torts 121; Torts 123

General release executed by technology company in connection with stock sale to qui tam relators was unenforceable, pursuant to False Claims Act (FCA), with respect to relators' action alleging scheme to defraud government in contracts solicited under federal Small Business Innovation Research Program (SBIR), since government was entitled by statute to 60-day period for evaluating alleged fraud. U.S. ex rel. Longhi v. Lithium Power Technologies, Inc., S.D.Tex.2007, 481 F.Supp.2d 815. Release 20

Allegation that qui tam plaintiff could have revealed information of fraud against United States earlier and thereby reduced loss to United States did not preclude monetary reward in False Claims Act suit. U.S. v. General Elec., S.D.Ohio 1992, 808 F.Supp. 580. United States 122

Federally owned research facility operated and managed by state university was not entitled to Eleventh Amendment immunity in action under qui tam provision of False Claims Act, although United States had declined to intervene. U.S. v. Rockwell Intern. Corp., D.Colo.1990, 730 F.Supp. 1031. Federal Courts 265

Even if someone at Department of Housing and Urban Development authorized contractor to engage in collusive bidding scheme in connection with rehabilitation of residential properties acquired pursuant to foreclosure of insured mortgages, such was no defense to government's damage action under former § 231 [now § 3729] of this title as any such conduct by Department personnel would have been ultra vires. U.S. v. Cripps, E.D.Mich.1978, 460 F.Supp. 969. United States 120.1

Even if conduct of government agents contributed to loss which government sustained from submission of false and inflated claims, where any actions by the agents which might have contributed to such loss would have been unauthorized, government would not have been precluded by such conduct from recovery under former § 231 [now § 3729] of this title from parties who conspired to submit the false claims. U. S. v. Kates, E.D.Pa.1976, 419 F.Supp. 846. United States 122

VI. REVIEW

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291. Time to appeal, review

United States was not a party to qui tam action under the False Claims Act (FCA), even though it was the real party in interest pursuant to the FCA, and therefore the 30-day period for filing a notice of appeal set forth in the Federal Rules of Appellate Procedure, rather than the extended 60-day period applicable in actions involving the U.S. as a party, applied; even though it requested continued service of the pleadings, the U.S. had declined to exercise its statutory right to intervene. U.S. ex rel. Eisenstein v. City of New York, New York, U.S.2009, 129 S.Ct. 2230, 173 L.Ed.2d 1255. Federal Courts 668

United States was a “party” in former hospital employees' qui tam action under the False Claims Act against hospital, so that 60-day deadline for filing notice of appeal when the United States was a party applied rather than 30-day filing deadline generally applicable to civil suits, although the United States conceded to employees the right to conduct the action when it declined to intervene, where the United States remained a party in the literal sense, given that its name was on the caption. Rodriguez v. Our Lady of Lourdes Medical Center, C.A.3 (N.J.) 2008, 552 F.3d 297, as amended. Federal Courts 668

United States was not a party to a qui tam action filed under the False Claims Act for purpose of determining the time period for filing of a notice of appeal, and thus, 30-day period, rather than the extended 60-day period, applied for filing notice of appeal from District Court's dismissal order, although the United States was the real party in interest under the False Claims Act, where the United States failed to intervene or to raise or resist any legal claim. U.S. ex rel. Eisenstein v. City of New York, C.A.2 (N.Y.) 2008, 540 F.3d 94, certiorari granted 129 S.Ct. 988, 173 L.Ed.2d 172, affirmed 129 S.Ct. 2230, 173 L.Ed.2d 1255. Federal Courts 668

When the United States has declined to intervene in a False Claims Act suit filed by a qui tam plaintiff, the remaining parties have 60 days from the entry of the judgment or order appealed from to file notices of appeal, pursuant to rule establishing such period where the United States is a party. U.S. ex rel. Russell v. Epic Healthcare Management Group, C.A.5 (Tex.) 1999, 193 F.3d 304. Federal Courts 668; Federal Courts 669

Relator in qui tam action could bring timely appeal 51 days after entry of summary judgment, though United States filed notice of its decision not to intervene in action; United States was still named as party and would receive most of any

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judgment recovered. U.S. ex rel. Haycock v. Hughes Aircraft Co., C.A.9 (Cal.) 1996, 98 F.3d 1100, supplemented 99 F.3d 1148, certiorari denied 117 S.Ct. 1693, 520 U.S. 1211, 137 L.Ed.2d 820, rehearing denied 117 S.Ct. 2533, 521 U.S. 1130, 138 L.Ed.2d 1032. Federal Courts 652.1

Where former § 232 of this title which allowed private individuals to sue in the name of the United States to uncover fraudulent claims made against the United States gave the government option to prosecute the case itself or withdraw, and the government in the instant case withdrew so that proceeding in its name thereafter was merely a statutory formality, and action was thereafter dismissed for failure to state a claim on which relief could be granted, plaintiff had 30 days to file appeal, and not 60 days as would have been the case where "the United States or an officer or agency thereof is a party." U. S. ex rel. Petrofsky v. Van Cott, Bagley, Cornwall, McCarthy, C.A.10 (Utah) 1978, 588 F.2d 1327, certiorari denied 100 S.Ct. 77, 444 U.S. 839, 62 L.Ed.2d 50, rehearing denied 100 S.Ct. 692, 444 U.S. 1026, 62 L.Ed.2d 661. Federal Courts 652.1

No good cause or excusable neglect existed so as to warrant extension of time for employer to file appeal from district court's ruling, on employer's motion to dismiss employee's False Claims Act whistleblower retaliation action, that action was not subject to employment contract's mandatory arbitration provision; Federal Arbitration Act clearly permitted appeal from ruling. Nguyen v. City of Cleveland, N.D.Ohio 2001, 138 F.Supp.2d 938, appeal dismissed 312 F.3d 243. Alternative Dispute Resolution 213(1)

292. Findings, review--Generally

Trial court's finding in government's suit under former § 231 [now § 3729] of this title which was unnecessary insofar as the particular result was concerned was set aside where a claim was still pending in the proper forum. U. S. v. Woodbury, C.A.9 (Or.) 1966, 359 F.2d 370. Federal Courts 932.1

293. ---- Clearly erroneous findings, review

Finding of trial court that government did not sustain any damages by reason of false claims relating to construction of houses in critical defense housing area since government agency had lent money which it agreed to lend on project and got as security what it had agreed to take was not clearly erroneous. U. S. v. Woodbury, C.A.9 (Or.) 1966, 359 F.2d 370. Federal Courts 876

Finding that United States, which sought to recover double amount of damages allegedly sustained as result of home builder's presentation of two false claims to induce Veterans' Administration to grant loan guarantees and pay cash gratuities in connection with purchase of homes by veterans, had paid cash gratuities of $160 in each case, was not clearly erroneous. Beckwith v. U. S., C.A.5 (Tex.) 1961, 293 F.2d 471. United States 120.1

Finding that executive director of lessee of government housing project made payment for materials that had never been furnished to or for the project but the cost of which had been included in quarterly reports filed with government, was not clearly erroneous. Smith v. U.S., C.A.5 (Tex.) 1961, 287 F.2d 299. United States 122

294. Issues reviewable--Generally

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Government's decision to dismiss False Claims Act (FCA) qui tam action notwithstanding objections of person who had initiated action was not reviewable in federal district court or in federal appellate court, as long as such person was afforded hearing to give her opportunity to convince government not to end case, and absent showing of fraud on the court or the like. Hoyte v. American Nat. Red Cross, C.A.D.C.2008, 518 F.3d 61, 380 U.S.App.D.C. 185. United States 122

Court of Appeals would not exercise its discretion in False Claims Act litigation to review waived issue of district court's misapplication of collateral estoppel doctrine to findings of board of contract appeals in related Contract Dispute Act proceeding, to effect that contractor had made material omissions from its progress reports, that were not necessary to decision, where contractor's culpability for making material omissions from reports was undisputed, forcing government to litigate issue after considerable litigation delay would have prejudiced it, and any False Claims Act damages awarded government would do little more than offset costs that had been awarded to contractor in contract dispute. U.S. v. TDC Management Corp., Inc., C.A.D.C.2002, 288 F.3d 421, 351 U.S.App.D.C. 168, rehearing and rehearing en banc denied , certiorari denied 123 S.Ct. 632, 537 U.S. 1048, 154 L.Ed.2d 522, rehearing denied 123 S.Ct. 1013, 537 U.S. 1179, 154 L.Ed.2d 928. Federal Courts 612.1

In action to recover for alleged fraud in connection with termination of claims against the United States where lower court entered an order quashing both the garnishee summons and the service of summons on defendants and subsequently entered an order consolidating the cases quashing the garnishee summons and enjoining plaintiffs from taking any further steps in the litigation, the orders were appealable in view of the injunctional features. U. S. v. Onan, C.A.8 (Minn.) 1951, 190 F.2d 1, certiorari denied 72 S.Ct. 112, 342 U.S. 869, 96 L.Ed. 654. Federal Courts 558

Where identical stay orders were entered in each of three actions against the same defendants by the United States and by the United States on the relation of informers to recover penalties and damages for making a false claim against the United States, it was immaterial whether the United States perfected its appeal from one or the other of the record entries of such order. U.S. v. Baker-Lockwood Mfg. Co., C.C.A.8 (Mo.) 1943, 138 F.2d 48. Federal Courts 651

Since decision whether to file suit against a party found to have violated the False Claims Act was solely within the discretion of the Justice Department, decision was not subject to review under Administrative Procedures Act (APA). New Jersey Hosp. Ass'n v. U.S., D.N.J.1998, 23 F.Supp.2d 497. United States 122

295. ---- Final orders or judgments, issues reviewable

Where civil judgment entered by district court in action against real estate agent for violating former § 231 [now § 3729] of this title did not indicate amount of defendant's liability, but government relied solely on forfeiture provision of such section, and jury found against defendant on ten separate counts, thus making amount of defendant's liability necessarily $20,000, judgment was final for purposes of review notwithstanding omission of amount of liability. U. S. v. Hughes, C.A.7 (Ind.) 1978, 585 F.2d 284. Federal Courts 598.1

Where order allowing the United States to intervene in an informer's action, pursuant to former § 232(C) of this title, did not give the United States any permanent status as a party, but merely added a new party plaintiff on a tentative basis pending development, such order was not a “final order” from which an appeal would have been appropriate. U.S. ex rel. Rodriguez v. Weekly Publications, C.C.A.2 (N.Y.) 1944, 144 F.2d 186. Federal Courts 587

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An order permitting the United States to intervene in an informer's action, pursuant to former § 232(C) of this title, which order merely had effect of postponing the trial until the United States could have been added as a party plaintiff, could not have been regarded as “final” and appealable on ground that it constituted an injunction restraining relator from carrying on the action, or denying an injunction to relator against prosecution of action by United States. U.S. ex rel. Rodriguez v. Weekly Publications, C.C.A.2 (N.Y.) 1944, 144 F.2d 186. Federal Courts 587

District court order staying prosecution of federal government's civil action to recover penalties and damages for making a false claim against the United States and granting precedence to trial of action instituted by an informer against same defendants and based upon same cause of action, was injunctive in nature and appealable, since it put an end to government's action. U.S. v. Baker-Lockwood Mfg. Co., C.C.A.8 (Mo.) 1943, 138 F.2d 48. Federal Courts 593

Interlocutory appeal was appropriate from district court's ruling, on employer's motion to dismiss employee's False Claims Act whistleblower retaliation action, that action was not subject to employment contract's mandatory arbitration provision; ruling concerned novel question with substantial ground for difference of opinion, and, if Court of Appeals reversed, immediate appeal would advance ultimate termination of litigation and serve purposes of Federal Arbitration Act. Nguyen v. City of Cleveland, N.D.Ohio 2001, 138 F.Supp.2d 938, appeal dismissed 312 F.3d 243. Alternative Dispute Resolution 213(3)

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296. ---- Issues not raised below, issues reviewable

Even if Excessive Fines Clause of the Eighth Amendment applied to $64,000,000 damages award entered against hospital administrator in government's action under False Claims Act (FCA), issue could not be addressed on appeal, given that administrator did not make excessive fines argument in district court, and there was no general doctrine of plain error review in civil actions, and that administrator made the record unsuitable to resolution of issue by persuading district court to exclude evidence that was not relevant to penalty issue under FCA but would have been relevant to excessive fines analysis. U.S. v. Rogan, C.A.7 (Ill.) 2008, 517 F.3d 449. Federal Courts 634; Federal Courts 774

Question of whether chemical manufacturer committed direct False Claims Act (FCA) violation by submitting false records and thereby obtaining emission reduction credits (ERCs), raised for the first time in amended complaint, was better addressed in first instance by district court, rather than by Court of Appeals on interlocutory appeal; case was certified on district court's initial order denying motion to dismiss for failure to state a claim upon which relief could be granted which, though filed after amended complaint, addressed only motion filed before amended complaint existed. U.S. ex rel. Bain v. Georgia Gulf Corp., C.A.5 (La.) 2004, 386 F.3d 648, on subsequent appeal 208 Fed.Appx. 280, 2006 WL 3093637. Federal Courts 614

In action by government for alleged overpayment to school which had filed false statements of costs with Veterans' Administration, reception of evidence of Federal Bureau of Investigation agent as to invoices turned over to him did not call for action by reviewing court of its own motion where no objections were made to reception in court below. U. S. v. Sytch, C.A.3 (N.J.) 1958, 257 F.2d 475. Appeal And Error 204(2)

On subsequent appeal from bankruptcy court's disallowance of proofs of claim arising out of relator's qui tam action against debtors, Court of Appeals lacked jurisdiction to consider issues related to prior order confirming debtors' proposed plan of organization, given failure of relator and his attorney in qui tam action to seek to revoke or appeal order of confirmation before deadline. In re Vencor Inc., C.A.3 (Del.) 2004, 98 Fed.Appx. 93, 2004 WL 843283, Unreported. Bankruptcy 3773; Bankruptcy 3779

297. Law of case, review

In civil suit under this section in which government alleged that United States representative falsely certified that numerous telephone calls charged to his congressional office were “official,” ruling of district judge granting government's motion for determination of relevancy and materiality, which decided the precise issue raised by motion of clerk of United States House of Representatives to quash subpoena issued following court's ruling, was law of the case for purposes of ruling on clerk's motion to quash. U.S. v. Eilberg, D.C.D.C.1981, 553 F.Supp. 1. Courts 99(4)

298. Scope of review

Reviewing court could not have reviewed evidence to determine whether government suing under former § 231 [now § 3729] of this title made out case by clear, unequivocal, and convincing evidence. U.S. v. Ueber, C.A.6 (Mich.) 1962, 299 F.2d 310. Federal Courts 841

299. De novo review

The interpretation and application of the statute which governs subject matter jurisdiction over an action under the False Claims Act (FCA) based upon the public disclosure of allegations or transactions is reviewed de novo. U.S. ex rel. Grynberg v. Praxair, Inc., C.A.10 (Colo.) 2004, 389 F.3d 1038, certiorari denied 125 S.Ct. 2964, 545 U.S. 1139, 162 L.Ed.2d 888, on subsequent appeal 183 Fed.Appx. 724, 2006 WL 1531413. Federal Courts 776

Although court of appeals generally reviews factual findings underlying jurisdictional questions for clear error, decision regarding whether a particular document triggers jurisdictional bar of section of False Claims Act (FCA) regarding when qui tam relator can bring action is best characterized as mixed question of law and fact and would therefore be reviewed de novo. U.S. ex rel. Lindenthal v. General Dynamics Corp., C.A.9 (Cal.) 1995, 61 F.3d 1402, certiorari denied 116 S.Ct. 1319, 517 U.S. 1104, 134 L.Ed.2d 472. Federal Courts 776

300. Harmless or prejudicial error, review

Although district court should have set out a procedure for briefing issue of subject matter jurisdiction in qui tam False Claims Act (FCA) claim by physician against health care center, alleging Medicare or Medicaid fraud, the district court's failure to do so did not prejudice physician so as to require reversal, where physician had an opportunity to sufficiently plead original source status, to attach proof necessary to support those allegations, to respond to the government's brief, and had not made adequate pre-filing voluntary disclosures. U.S. ex rel. King v. Hillcrest Health Center, Inc., C.A.10 (Okla.) 2001, 264 F.3d 1271, certiorari denied 122 S.Ct. 1205, 535 U.S. 905, 152 L.Ed.2d 143. Federal Courts 893

Since case involving former § 231 [now § 3729] of this title was submitted to jury upon clear and comprehensive special interrogatories and the answers, consistent with the evidence, were such as to establish liability to full extent of resulting judgment, court's disregard of government's alternative counts did not constitute error prejudicial to defendant. U. S. v. Lagerbusch, C.A.3 (Pa.) 1966, 361 F.2d 449. Federal Courts 907

301. Record, review

In False Claims Act suit, record contained insufficient information to review district court's bases for determining that virtually all of qui tam relator's attorneys' fees were reasonable and that legal expenses were necessarily incurred and reasonable; factual disputes included questions as to whether relator's evasion of company's compliance policy unfairly denied company opportunity to conduct internal investigation of corrupt practices, whether evasion unduly extended subsequent litigation process resulting in greater expenses and attorney fees, whether there was unnecessary delay in sending counsel documents necessary to assess merits of claims, and whether delay extended subsequent litigation process, nature of lawyer-client relationship between relator and law firm during specified period, whether there was procrastination on part of law firm, and whether there were ethical considerations in relationship between relator and law firm affecting relator's portion of attorney fee

award. U.S. ex rel. Taxpayers Against Fraud v. General Elec. Co., C.A.6 (Ohio) 1994, 41 F.3d 1032 , rehearing and suggestion for rehearing en banc denied. United States 122

Record in action for imposition of penalties under former § 231 [now § 3729] of this title with respect to claims asserted by farmer contractor, who constructed conservation practices on farms of others and placed claims with United States for reimbursement in accordance with former § 232 of this title, demonstrated that action of farmer contractor, who erroneously placed actual or fair value of projects as basis of claim although he charged substantially smaller amounts to farmers who signed claims, was inconsistent with knowing presentation of false claims or intent to deceive the government. U. S. v. Mead, C.A.9 (Cal.) 1970, 426 F.2d 118 . United States 122

302. Remand, review

In light of Supreme Court's decision in *Allison Engine Co. v. United States ex rel. Sanders*, the court of appeals would vacate and remand district court's decision categorically excluding false claims made to state transportation agencies from the purview of the False Claims Act (FCA), as *Allison Engine* left open the possibility that FCA liability could exist if the federal government was somehow involved in the state transportation agency's disbursement of federal funds. The U.S. Dept. Of Transportation, ex rel. Arnold v. CMC Engineering, C.A.3 (Pa.) 2009, 564 F.3d 673. Federal Courts 940

Where only reasonable conclusion that could be drawn from crude and deliberate mislabeling of regulators manufactured by wholesaler and delivered to United States under contract was that purpose of mislabeling was to deceive, on reversal of determination that no claim was false, it was unnecessary to send case back to trial court for further findings on elements of intent, in action under former § 231 [now § 3729] of this title. U. S. v. National Wholesalers, C.A.9 (Cal.) 1956, 236 F.2d 944, certiorari denied 77 S.Ct. 719, 353 U.S. 930, 1 L.Ed.2d 724. Federal Courts 941

31 U.S.C.A. § 3730, 31 USCA § 3730

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Effective:[See Notes]

United States Code Annotated Currentness
Title 31. Money and Finance (Refs & Annos)
Subtitle III. Financial Management
Chapter 37. Claims (Refs & Annos)
Subchapter III. Claims Against the United States Government (Refs & Annos)
§ 3731. False claims procedure

(a) A subpena requiring the attendance of a witness at a trial or hearing conducted under section 3730 of this title may be served at any place in the United States.

(b) A civil action under section 3730 may not be brought--

(1) more than 6 years after the date on which the violation of section 3729 is committed, or

(2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed,

whichever occurs last.

(c) If the Government elects to intervene and proceed with an action brought under 3730(b), the Government may file its own complaint or amend the complaint of a person who has brought an action under section 3730(b) to clarify or add detail to the claims in which the Government is intervening and to add any additional claims with respect to which the Government contends it is entitled to relief. For statute of limitations purposes, any such Government pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the Government arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

(d) In any action brought under section 3730, the United States shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(e) Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of section 3730.

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CREDIT(S)

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 979; Pub.L. 99-562, § 5, Oct. 27, 1986, 100 Stat. 3158; Pub.L. 111-21, § 4(b), May 20, 2009, 123 Stat. 1623.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1982 Acts

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3731(a)	31:232(F)	R.S. § 3491(F); added Nov. 2, 1978, Pub.L. 95-582, § 1, 92 Stat. 2479.
3731(b)	31:235	R.S. § 3494.

In subsection (b), the words "A civil action under section 3730 of this title" are substituted for "Every such suit" for clarity.

1986 Acts. Senate Report No. 99-345, see 1986 U.S. Code Cong. and Adm. News, p. 5266.

2009 Acts. Senate Report No. 111-10, see 2009 U.S. Code Cong. and Adm. News, p. 430.

Statement by President, see 2009 U.S. Code Cong. and Adm. News, p. S21.

References in Text

The Federal Rules of Criminal Procedure, referred to in subsec. (e), are classified to Title 18, Crimes and Criminal Procedure.

The Federal Rules of Evidence, referred to in subsec. (e), are classified to Title 28, Judiciary and Judicial Procedure.

Amendments

2009 Amendments. Subsec. (c). Pub.L. 111-21, § 4(b)(1), (3), redesignated former subsec. (c) as (d) and inserted a new subsec. (c).

Subsec. (d). Pub.L. 111-21, § 4(b)(1), (2), redesignated former subsec. (c) as (d); redesignated former subsec. (d) as (e).

Subsec. (e). Pub.L. 111-21, § 4(b)(2), redesignated former subsec. (d) as (e).

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1986 Amendments. Subsec. (b). Pub.L. 99-562 substituted provision that the civil action may not be brought more than 6 years after the date on which the violation of section 3729 is committed or more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the appropriate official, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last, for provision that the civil action must be brought within 6 years from the date the violation is committed.

Subsecs. (c), (d). Pub.L. 99-562 added subsecs. (c) and (d).

Effective and Applicability Provisions

2009 Acts. Except as otherwise provided under Pub.L. 111-21, § 4(f)(1), (2), amendments made by Pub.L. 111-21, § 4, shall take effect on May 20, 2009, and shall apply to conduct on or after May 20, 2009, see Pub.L. 111-21, § 4(f), set out as a note under 31 U.S.C.A. § 3729.

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Limitations as affirmative defense, see Fed.Rules Civ.Proc. Rule 8, 28 USCA.

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162 ALR, Fed. 147, Construction and Application of “Reverse False Claim Provision” of False Claims Act (31 U.S.C.A. § 3729(A)(7)).

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139 ALR, Fed. 645, When Does Statute of Limitations Begin to Run in Action Under False Claims Act (31 U.S.C.A. §§ 3729-3733).

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8 ALR 2nd 6, Change in Party After Statute of Limitations Has Run.

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Federal Procedural Forms § 61:1, Statutes of Limitation, and Other Time Limits, Within United States Code.

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Federal Procedural Forms § 34:577, Burden and Standard of Proof.

Federal Procedural Forms § 34:578, Trial.

Treatises and Practice Aids

Emp. Discrim. Coord. Analysis of Related Issues § 1:47, Federal Statutory Protection.

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1. Constitutionality

Federal government's bringing of civil False Claims Act suit against convicted Medicaid fraud defendant did not violate double jeopardy; 4.7 to 1 ratio of recovery sought to government's loss did not amount to “second punishment.” U.S. v. Sazama, D.Utah 2000, 88 F.Supp.2d 1270. Double Jeopardy 22

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2. Construction

Former § 235 was strictly construed. U.S. ex rel. Nitkey v. Dawes, C.C.A.7 (Ill.) 1945, 151 F.2d 639, certiorari denied 66 S.Ct. 808, 327 U.S. 788, 90 L.Ed. 1015.

3. Retroactive effect

Increase in statute of limitations for suit by United States under False Claim Act (FCA) was procedural and applied retroactively to pre-existing claims that were viable on effective date of amendment. U.S. ex rel. Thistlethwaite v. Dowty Woodville Polymer, Ltd., S.D.N.Y.1998, 6 F.Supp.2d 263. Limitation Of Actions 6(1)

Amended statute of limitations under False Claims Act which was adopted in 1986 was applied to claim in action under Act which was based on allegedly false statement in grant application which was made in 1982; retroactive application of statute of limitations did not bar any right possessed by defendant. U.S. ex rel. Milam v. Regents of University of California, D.Md.1995, 912 F.Supp. 868. Limitation Of Actions 6(1)

Ten-year statute of limitations in amendments to False Claims Act (FCA) applied to relator's action based on conduct occurring prior to amendment, except as to conduct occurring before date claims would have become stale under six-year statute of limitations in existence prior to amendments; extending period to include such claims would have altered defendant's substantive rights. U.S. ex rel. Newsham v. Lockheed Missiles and Space Co., Inc., N.D.Cal.1995, 907 F.Supp. 1349, order vacated on reconsideration 1997 WL 858547, affirmed in part , reversed in part 171 F.3d 1208, amended and superseded 190 F.3d 963, certiorari denied 120 S.Ct. 2196, 530 U.S. 1203, 147 L.Ed.2d 232. Limitation Of Actions 6(1)

Amendment to statute of limitations for qui tam actions under False Claims Act (FCA) applied retroactively to action which arose prior to adoption of amendment where claims were not stale on date of amendment and defendants had not shown that application of amendment would cause manifest injustice or otherwise contravene legislative intent of amendment. Hyatt v. Northrop Corp., C.D.Cal.1995, 883 F.Supp. 484, affirmed 91 F.3d 1211. Limitation Of Actions 6(1)

Amendment to the statute of limitations of the False Claims Act (FCA) in 1986 should be applied retroactively to FCA claims that were not stale at the time they were filed; amendment added to the six-year statute of limitation a provision that action may be brought within 3 years after the date when facts material to the right of action are known or reasonably should have been known by the government, but in no event more than 10 years after the date the violation was committed. Jana, Inc. v. U.S., Fed.Cl.1998, 41 Fed.Cl. 735. Federal Courts 1106

4. Jurisdictional nature of section

Jurisdiction of subject matter could not have been acquired even by consent, in opposition to former § 235 of this title which required action to be commenced in 6 years from commission of wrongful act. U.S. ex rel. Nitkey v. Dawes, C.C.A.7 (Ill.) 1945, 151 F.2d 639, certiorari denied 66 S.Ct. 808, 327 U.S. 788, 90 L.Ed. 1015. Courts 24

Former § 235 of this title was more than a mere statute of limitations and it was jurisdictional and strictly limited the power of court to assume jurisdiction. U.S. ex rel. Nitkey v. Dawes, C.C.A.7 (Ill.) 1945, 151 F.2d 639, certiorari denied

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66 S.Ct. 808, 327 U.S. 788, 90 L.Ed. 1015.

Former § 235 of this title was not mere limitation of action but was jurisdictional in scope, and it must have appeared that action was brought within six years from commission of act or acts on which action was based. U. S. v. Klein, W.D.Pa.1964, 230 F.Supp. 426, affirmed 356 F.2d 983.

Former § 235 of this title was a limitation, not only on plaintiff's right to maintain the action, but also on the jurisdiction of the court. U S v. MacEvoy, D.C.N.J.1950, 10 F.R.D. 323. Limitation Of Actions 165

5. Actions or proceedings subject to limitations

Six-year statute of limitations applicable to private rights of action under the False Claims Act, rather than closely analogous state limitations period, applies to private rights of action under the Medicare Secondary Payer Act (MSP), for which no limitations period is stated. Manning v. Utilities Mut. Ins. Co., Inc., C.A.2 (N.Y.) 2001, 254 F.3d 387, on remand 2004 WL 235256.

Former § 235 of this title was not limited to suits brought by a private prosecutor in the name of the United States, but clearly and unambiguously applied to every suit under former § 231 [now § 3729] of this title, which included one brought by the United States. U.S. v. Borin, C.A.5 (Tex.) 1954, 209 F.2d 145, certiorari denied 75 S.Ct. 33, 348 U.S. 821, 99 L.Ed. 647.

Time does not run against the sovereign government. U.S. v. City of Alexandria, C.C.E.D.Va.1882, 19 F. 609. United States 133

Six-year limitations period in Federal False Claims Act applied to relator's qui tam action against drug manufacturer, and thus false claims alleged to have occurred more than six years prior to filing of action were time-barred. U.S. ex rel. Foster v. Bristol-Myers Squibb Co., E.D.Tex.2008, 587 F.Supp.2d 805. United States 122

Six-year statute of limitations under False Claims Act, and not statute creating three-year tolling provision and ten-year limit for filing suit, applied in qui tam action alleging that defense contractor and subcontractors improperly charged United States for nonconforming and substandard tooling, where United States did not intervene in case. U.S. ex rel. Howard v. Lockheed Martin Corp., S.D.Ohio 2007, 499 F.Supp.2d 972. United States 122

Most closely analogous state limitations period, and not False Claims Act's (FCA's) six-year limitations period for qui tam actions, governed relator's retaliation claim under the FCA. U.S. ex rel. Brooks v. Lockheed Martin Corp., D.Md.2006, 423 F.Supp.2d 522, affirmed in part , dismissed in part 237 Fed.Appx. 802, 2007 WL 627372. Labor And Employment 856

Former employee's retaliatory discharge claim against employer under False Claim Act (FCA) was subject to Hawaii Whistleblowers' Protection Act's 90-day statute of limitations, as such claim was most closely analogous to retaliation claim. U.S. ex rel. Hinden v. UNC/Lear Services, Inc., D.Hawai'i 2005, 362 F.Supp.2d 1203. Labor And Employment

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Assuming that False Claims Act (FCA) retaliation claim was subject to most closely analogous forum state statute of limitations, not FCA's six-year limitations period, Maryland three-year general statute of limitations for torts, which was applicable to analogous wrongful discharge claims, applied. U.S. ex rel. Ackley v. International Business Machines Corp., D.Md.2000, 110 F.Supp.2d 395. Labor And Employment 856

Six-year limitations period under federal False Claims Act, rather than six-month limitations period under Ohio Whistleblower Act, applied to former employee's action under remedial provision of Major Fraud Act after he was discharged, allegedly for cooperating in investigation of alleged fraud at Job Corps center; both federal statutes were designed to protect Government from fraud and to protect employees who assist Government in reporting or identifying fraud. Kowalski v. Alpha Kappa Alpha Sorority, Inc., N.D.Ohio 1997, 993 F.Supp. 619. Labor And Employment 856

Six-year statute of limitations in False Claims Act, rather than five-year Illinois retaliatory discharge statute, applied to action by employee alleging discrimination in violation of whistleblower protection provision of False Claims Act based on her intracorporate complaint about fraud against the government. Neal v. Honeywell, Inc., N.D.Ill.1993, 826 F.Supp. 266, affirmed 33 F.3d 860. Labor And Employment 856

Where supervisors of veterans institutional on-the-farm training program knew that applicant was not engaged in farming full time but approved him for training and supervisors, as part of fraudulent scheme, prepared claim forms as though applicant were qualified, money paid applicant was paid as result of fraud, rather than mistake; thus, timeliness of suit to recover money paid was governed by six-year limitation period of former § 235 of this title, notwithstanding claim that the government was not suing under former § 231 [now § 3729] of this title. U. S. v. Coates, M.D.La.1972, 345 F.Supp. 1011, affirmed 477 F.2d 595. United States 133

Former § 231 [now § 3729] of this title imposed civil penalties, and action or counterclaim therefor was barred where not brought within six-year period prescribed by former § 235 of this title. Erie Basin Metal Products, Inc. v. U.S., Ct.Cl.1957, 150 F.Supp. 561, 138 Ct.Cl. 67. Limitation Of Actions 5(3)

Limitations provision of the False Claim Act (FCA), permitting an FCA action to be brought within three years of date that "facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act," was limited in its application to FCA actions brought by the government, and did not apply to qui tam action brought by private relator, in which government had not intervened; such a private relator could not take advantage of three-year discovery rule but had to file suit within six years of commission of alleged FCA violation. U.S. ex rel. Finney v. Nextwave Telecom, Inc., S.D.N.Y.2006, 337 B.R. 479. Limitation Of Actions 58(1); Limitation Of Actions 100(1)

6. Retaliation claims

Six-year statute of limitations in the False Claims Act (FCA) does not govern FCA civil actions for retaliation; rather, in assessing timeliness of FCA retaliation claim, court should borrow the most closely analogous state limitations period. Graham County Soil & Water Conservation Dist. v. U.S. ex rel. Wilson, U.S.2005, 125 S.Ct. 2444, 545 U.S. 409, 162

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L.Ed.2d 390, rehearing denied , rehearing denied 126 S.Ct. 24, 545 U.S. 1158, 162 L.Ed.2d 922, on remand 424 F.3d 437 . Labor And Employment 856

Suit under whistleblower protection provision of False Claims Act was not rendered untimely by fact that, under applicable limitations statute, time to file suit could expire before retaliation would occur; such fact did not condemn statute as absurd but merely showed that Congress opted for ease of administration. Neal v. Honeywell Inc., C.A.7 (Ill.) 1994, 33 F.3d 860. Labor And Employment 856

Employee's retaliation claims against hospital employer under False Claims Act (FCA) were governed by 180-day Texas statute of limitations for claims of retaliation against whistleblowing against hospital employees, rather than two-year limitations period on Texas claims for trespass for injury, conversion of personal property, taking or detaining personal property, personal injury, or forcible entry and detainer, since whistleblowing statute was more closely analogous. U.S. ex rel. Smart v. Christus Health, S.D.Tex.2009, 626 F.Supp.2d 647. Labor And Employment 856

Pennsylvania's two-year residual statute of limitations for personal injury actions, rather than 180-day limitations period under Pennsylvania's Whistleblower law or limitations period for wrongful discharge claims under Pennsylvania law, governed terminated employee's retaliation claim against employer under whistleblower provision False Claims Act (FCA), since the residual limitations period was the most closely analogous period that could be uniformly applied to employee's claims; FCA encompassed a diverse variety of conduct and residual personal injury statute of limitations was broad enough to be uniformly applied to wide spectrum of potential claims, FCA had no precise counterpart in Pennsylvania law and residual limitations period provided practical solution, Pennsylvania Whistleblower Law was more limited in scope than FCA, and there was no cause of action under Pennsylvania law for wrongful discharge in retaliation for whistleblowing. Campion v. Northeast Utilities, M.D.Pa.2009, 598 F.Supp.2d 638. Labor And Employment 856

Six year statute of limitations for filing civil action under False Claims Act applied to retaliation claim brought pursuant to False Claims Act. Storey v. Patient First Corp., E.D.Va.2002, 207 F.Supp.2d 431. Labor And Employment 856

The six-year statute of limitations for a qui tam action under False Clams Act applied to employee's retaliatory discharge claim under the Act; although retaliation provision of Act did not contain statute of limitations, plain language of limitations provision and interrelatedness of qui tam and retaliation claims indicated that Congress intended claims to have identical statutes of limitations. Grand ex rel. U.S. v. Northrop Corp., S.D.Ohio 1992, 811 F.Supp. 333. United States 36; United States 122

Former Army employee failed to comply with procedural filing requirements for qui tam actions under False Claims Act (FCA) in asserting allegations of fraud against three government contractors, given that former employee's claims were brought directly in district court, in former employee's name, and were not filed under seal. Foster v. Savannah Communication, C.A.11 (Ga.) 2005, 140 Fed.Appx. 905, 2005 WL 1719221, Unreported, rehearing and rehearing en banc denied 167 Fed.Appx. 169, 2005 WL 3630312. United States 122

7. Official charged with responsibility to act

Government did not exercise due diligence in attempting to uncover the material facts of its False Claims Act causes of

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action based on bid-rigging conspiracy so as to warrant tolling of Act's three-year statute of limitations; a reasonable Department of Justice (DOJ) Civil Division attorney would have, and should have, sought information from the criminal investigation of same bid-rigging conspiracy being conducted by the Antitrust Division, or, at the very least, the civil attorneys should have taken steps on their own to investigate the conduct at issue. U.S. ex rel. Miller v. Bill Harbert Intern. Const., D.D.C.2007, 505 F.Supp.2d 1. Limitation Of Actions 99(1)

Phrase "official of United States charged with responsibility to act," as used in tolling provision of False Claims Act's limitations period, which begins to run when material facts are known or should have been known to such official, means pertinent Department of Justice (DOJ) officials, not officials of other government agencies; however, in unusual circumstances knowledge of other government agencies might trigger running of limitations period, where such knowledge "should have been known" to and thus can be imputed to DOJ. U.S. v. Tech Refrigeration, N.D.Ill.2001, 143 F.Supp.2d 1006. Limitation Of Actions 100(1)

Contracting officer was not the only "official of the United States charged with responsibility to act in the circumstances" within meaning of statute of limitations for suit under False Claims Act more than three years after material facts are known or reasonably should have been known by official of the United States charged with responsibility to act in the circumstances; rather, senior Army officials in charge of helicopter project could be officials charged with responsibility to act. U.S., ex rel. Kreindler & Kreindler v. United Technologies Corp., N.D.N.Y.1991, 777 F.Supp. 195, affirmed 985 F.2d 1148, certiorari denied 113 S.Ct. 2962, 508 U.S. 973, 125 L.Ed.2d 663. Limitation Of Actions 100(13)

8. Private parties

Six-year limitations period applies in qui tam actions when United States decides not to intervene. U.S. ex rel. Fisher v. Network Software Associates, Inc., D.D.C.2002, 180 F.Supp.2d 192. United States 122

Six-year statute of limitations under False Claims Act, and not statute creating three-year tolling provision and ten-year limit for filing suit, applied to action in which former nurse anesthetists at university hospital asserted claims under False Claims Act against hospital and anesthesiologists at hospital based on alleged submission of false Medicare claims, in which government had declined to intervene. U.S. ex rel. Amin v. George Washington University, D.D.C.1998, 26 F.Supp.2d 162. United States 122

Statute of limitations permitting United States to sue under False Claim Act (FCA) within three years of acquiring actual or constructive knowledge of violation did not apply to contractor's former employee as private party; rather, private citizen must bring suit within six years of violation. U.S. ex rel. Thistlethwaite v. Dowty Woodville Polymer, Ltd., S.D.N.Y.1998, 6 F.Supp.2d 263. Limitation Of Actions 58(1); Limitation Of Actions 100(1); United States 122

Provision of False Claims Act (FCA) which tolls limitations period until three years after facts material to cause of action were known or should have been known by official of United States charged with responsibility to act applies only to actions brought by government under FCA, and not to qui tam actions brought by private individuals. Hyatt v. Northrop Corp., C.D.Cal.1995, 883 F.Supp. 484, affirmed 91 F.3d 1211. Limitation Of Actions 100(1)

9. Commencement and running of period--Generally

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Government's action under False Claims Act (FCA) commenced, for limitations purposes, on date its complaints-in-intervention were filed in relator's qui tam suit. U.S. v. The Baylor University Medical Center, C.A.2 (Conn.) 2006, 469 F.3d 263. Limitation Of Actions 124

As to qui tam plaintiff bringing claim under False Claims Act, three-year extension of the statute of limitations begins to run once plaintiff knows or reasonably should have known facts material to his right of action. U.S. ex rel. Hyatt v. Northrop Corp., C.A.9 (Cal.) 1996, 91 F.3d 1211. Limitation Of Actions 100(1)

Statute of limitations governing government's civil suit under False Claims Act against those allegedly involved in diverting proceeds of federally insured mortgage loan for hospital did not, as defendants contended, begin to run 30 days after hospital missed payment on loan, despite contention that, at such time, private lender was entitled to seek reimbursement from government under terms of its contract. U.S. v. Rivera, C.A.1 (Puerto Rico) 1995, 55 F.3d 703, 139 A.L.R. Fed. 813, on remand 956 F.Supp. 1046. Limitation Of Actions 58(1)

Number of assertable False Claims Act claims is not measured by the number of contracts, but by the number of fraudulent acts committed by the defendant, and as to each such claim, the six-year limitations period begins to run on the date claim is made, or if the claim is paid, on the date of payment. U.S. ex rel. Kreindler & Kreindler v. United Technologies Corp., C.A.2 (N.Y.) 1993, 985 F.2d 1148, certiorari denied 113 S.Ct. 2962, 508 U.S. 973, 125 L.Ed.2d 663. Limitation Of Actions 99(1)

Claims brought against pharmaceutical manufacturers, alleging unfair and deceptive trade practices in overpricing of drugs reimbursed in part by Medicare, began to accrue when qui tam relator filed its complaint under False Claims Act (FCA), rather than when complaint in intervention was filed by government; district court had granted filing extensions to government for good cause, and complaint was served in timely manner once it had been unsealed. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2007, 498 F.Supp.2d 389, motion to amend denied 2008 WL 163644. Limitation Of Actions 99(1)

False Claims Act's six-year statute of limitations begins on the date six years prior to the date the complaint was filed, and ends at the filing of the relator's complaint; accordingly, the relator may use any overt acts that occur within that time frame to prove the underlying conspiratorial agreement, but may not use overt acts occurring prior to the date the statute of limitations began to run. U.S. ex rel. Miller v. Bill Harbert Intern. Const., D.D.C.2007, 505 F.Supp.2d 1. Limitation Of Actions 99(1); Limitation Of Actions 118(2); Limitation Of Actions 165

Relator's retaliation claim under the False Claims Act against his employer and its parent corporation accrued, and applicable limitations period began to run, when relator was terminated. U.S. ex rel. Deering v. Physiotherapy Associates, Inc., D.Mass.2009, 601 F.Supp.2d 368. Limitation Of Actions 58(1)

Government's claims that contractors engaged in bid-rigging conspiracy on construction contracts for project in Egypt funded by United States, in violation of False Claims Act (FCA), related back to filing date of relator's timely sealed qui tam complaint for purposes of statute of limitations, where claims formed part of overarching conspiracy alleged in relator's complaint. Miller v. Holzmann, D.D.C.2008, 563 F.Supp.2d 54. Limitation Of Actions 127(3)

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Two-year statute of limitations for retaliation claims under False Claims Act (FCA) began to accrue when employees either resigned upon demand or were fired. U.S. ex rel. Woodruff v. Hawaii Pacific Health, D.Hawai'i 2008, 560 F.Supp.2d 988. Limitation Of Actions 58(1)

Statute of limitations on government's False Claims Act (FCA) action against president of defendant manufacturer of industrial pumps accrued on date that relator filed qui tam complaint and statement of material evidence against the manufacturer, for whom relator was formerly employed, as relator's filings provided government with evidence supporting at least the beginnings of its cause of action against president under the FCA; even though evidence did not include particular and specific information about what president and manufacturer had paid its other sales agents, government knew that president had approved a commission for a Nigerian sales agent for around 30%, that Nigerian law allegedly capped commissions at 2% and that relator, a former management-level employee, had accused president of failing to disclose such commissions and fraudulently signing supplier's certificates for payment from United States Export-Import Bank. U.S. ex rel. Purcell v. MWI Corp., D.D.C.2007, 520 F.Supp.2d 158. Limitation Of Actions 100(12)

Even if equitable tolling provision of False Claims Act's (FCA) statute of limitations applied to relator in qui tam action against hospital and other corporate entities, as well as surgeon, alleging that surgeon regularly performed medically unnecessary therapeutic cardiac catheterizations on patients in non-emergent circumstances even though hospital did not have open heart surgery facilities, and that defendants routinely engaged in fraudulent coding for billing purposes by misrepresenting level of service provided and/or misrepresenting type of service provided, cause of action for FCA violations accrued, and three-year limitations period began to run, when relator was informed of surgeon's alleged unlawful and unnecessary performance of procedures. U.S. ex rel Lowman v. Hilton Head Health Systems, L.P., D.S.C.2007, 487 F.Supp.2d 682. Limitation Of Actions 99(1); Limitation Of Actions 104.5

Cause of action for retaliation in violation of the False Claims Act (FCA) accrued, and four-year limitations period on various tort claims under Ohio law, or 180-day limitations period for claim of retaliation against a whistleblower under Ohio law, or three-year limitations period for various civil actions under Maryland began to run, when relator was terminated. U.S. ex rel. Brooks v. Lockheed Martin Corp., D.Md.2006, 423 F.Supp.2d 522, affirmed in part , dismissed in part 237 Fed.Appx. 802, 2007 WL 627372. Limitation Of Actions 58(1)

Medicare fraud claims in Government's second amended complaint for years not asserted in original complaint in False Claims Act (FCA) action did not relate back to filing of original complaint for limitations purposes, where original complaint alleged that false claims were filed until the date the complaint was filed, but offered no facts to support that allegation, and made its allegations “on information and belief.” U.S. ex rel. Health Outcomes Technologies v. Hallmark Health System, Inc., D.Mass.2006, 409 F.Supp.2d 43. Limitation Of Actions 127(12)

Insufficient facts could be adduced from face of complaint brought by former human resources director under False Claims Act (FCA) against former employers, alleging that employers defrauded government under commercial roofing contracts, to determine when applicable statute of limitations began to accrue, since it was unclear when government made last payment on each contract, and thus action would not be time-barred as matter of law. Allen v. Beta Const., D.D.C.2004, 309 F.Supp.2d 42. Limitation Of Actions 180(2)

False Claims Act (FCA) case commenced, for statute of limitation purposes, upon qui tam relator's initial act of filing

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suit, not when complaint was unsealed. U.S. ex rel. Downy v. Corning, Inc., D.N.M.2000, 118 F.Supp.2d 1160. Limitation Of Actions 118(2)

Six year False Claims Act statute of limitations for United States' claim against president of small business investment company seeking to recover monies paid out under Small Business Administration (SBA) guaranties when company defaulted on its debenture obligations began to run on date that SBA transferred investment company to liquidation status under SBA regulations, rather than when government made guaranty payments on company's debentures; SBA's act of transferring company into liquidation status operated as “claim” or “demand for money” that induced government to disburse funds pursuant to guaranties as required under False Claims Act statute of limitations. U.S. v. Vanoosterhout, D.D.C.1995, 898 F.Supp. 25, affirmed 96 F.3d 1491, 321 U.S.App.D.C. 43. Limitation Of Actions 58(1)

False Claims Act's six-year statute of limitations began to run, not when bank and other defendants filed false application for loan guarantees with Farmers Home Administration, but when demand had been made upon Government for performance on guaranty within six years of filing of complaint. U.S. v. Ettrick Wood Products, Inc., W.D.Wis.1988, 774 F.Supp. 544, adopted in part 683 F.Supp. 1262. Limitation Of Actions 99(1)

Payment by United States Government triggers limitations period under the False Claims Act; limitations period is not triggered by the date of the allegedly false claim or by approval for payment. U.S. ex rel. Duvall v. Scott Aviation, a Div. of Figgie Intern., Inc., W.D.N.Y.1990, 733 F.Supp. 159. Limitation Of Actions 58(1)

Statute of limitations applicable to civil claim under False Claims Act began to run when Government discovered violations of Act, rather than when violations occurred through presentation to Small Business Administration of false disbursement requests; calling into doubt *United States v. Borin*, 209 F.2d 145 (5th Cir.); *A.J. Phillips Co. v. Grand Trunk Western Ry. Co.*, 35 S.Ct. 444, 236 U.S. 662, 59 L.Ed. 774. U.S. v. Uzzell, D.D.C.1986, 648 F.Supp. 1362. Limitation Of Actions 100(1)

Limitations on causing a false claim to be presented for payment commence when claim is presented to United States. U.S. v. Globe Remodeling Co., D.C.Vt.1960, 196 F.Supp. 652. Limitation Of Actions 58(1)

Government contractor who contended that fraud counterclaims against it were time-barred failed to establish that auditor's “early alert” of suspected irregularity provided such notice of material facts as to trigger the three-year statute of limitations of the False Claims Act in May, 1990; contractor did not prove that the Civil Division of the Department of Justice received notice of the alleged false claims in May, 1990, through the early alert, or any time before May 17, 1992. Jana, Inc. v. U.S., Fed.Cl.1998, 41 Fed.Cl. 735. Federal Courts 1113

Six-year limitation period for bringing action based on commission of violation of False Claims Act begins to run upon commission of violation, irrespective of whether it has been discovered by government. Jana, Inc. v. U.S., Fed.Cl.1995, 34 Fed.Cl. 447. Federal Courts 1107

Date on which government's False Claims Act (FCA) claims accrued against public contractor, for purposes of statute of limitations, was date on which government learned of public contractor's alleged fraudulent concealment of construction

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deficiencies. Tyger Const. Co. Inc. v. U.S., Fed.Cl.1993, 28 Fed.Cl. 35. Federal Courts 1107

10. ---- Amendment of complaint, commencement and running of period

Additional equity claims for payments by mistake and unjust enrichment asserted in government's qui tam complaint in intervention against manufacturer of industrial pumps and its former president arose out of same alleged failure to disclose on same supplier's certificates regarding same set of loans pertaining to same pump sales as relator's original False Claims Act (FCA) claim and, thus, were timely under the relation-back doctrine, where relator's complaint gave manufacturer and president adequate notice of additional equity claims. U.S. ex rel. Purcell v. MWI Corp., D.D.C.2003, 254 F.Supp.2d 69. Limitation Of Actions 127(3)

Government's complaint in intervention against pharmaceutical manufacturers, alleging unfair and deceptive trade practices in overpricing of drugs reimbursed in part by Medicare, would be treated as amended complaint relating back to qui tam relator's initial complaint under False Claims Act (FCA) for limitations purposes; although government had been granted filing extensions, there was no evidence that extensions were improper, in bad faith, or prejudicial. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2007, 498 F.Supp.2d 389, motion to amend denied 2008 WL 163644. Limitation Of Actions 124

Even if relation back doctrine applied to sealed qui tam actions under the False Claims Act (FCA), relator's proposed retaliation and defamation claims did not arise out of same occurrences as those underlying the fraud alleged, even though relator claimed to have been terminated for reporting his employer and its parent corporation's Medicare and Medicaid fraud, where fraud allegations pleaded in original complaint did not suggest that employer took any adverse action against relator for engaging in protected conduct, and did not mention any defamatory statements. U.S. ex rel. Deering v. Physiotherapy Associates, Inc., D.Mass.2009, 601 F.Supp.2d 368. Limitation Of Actions 127(12)

Filing by government of complaint in intervention in False Claims Act (FCA) suit, as well as common-law claims asserted for first time in government's complaint, related back to the filing of the original sealed complaint by relator; allegations all arose out of same conduct, transaction, or occurrence set out in the original pleading. U.S. ex rel. Serrano v. Oaks Diagnostics, Inc., C.D.Cal.2008, 568 F.Supp.2d 1136. Limitation Of Actions 127(3)

Relator's third amended complaint under False Claims Act (FCA) related back to date his initial complaint was filed, where relator filed original complaint, amended complaint clearly arose out of same occurrences as were set forth in original complaint, defendants had been on notice of those claims since original complaint was unsealed, and defendants gave their permission for relator to file third amended complaint. U.S. ex rel. Repko v. Guthrie Clinic, P.C., M.D.Pa.2008, 557 F.Supp.2d 522. Limitation Of Actions 127(3)

Although amended complaint under False Claims Act (FCA) in which relator alleged that Federal National Mortgage Association (Fannie Mae) sought insurance reimbursement from Department of Housing and Urban Development (HUD) on non-qualifying loans did not satisfy heightened pleading standards of fraud pleading rule, it articulated outlines of scheme to defraud sufficient to put Fannie Mae on notice of nature of alleged wrongdoing, and therefore basis existed for application of relation back doctrine to make amended complaint timely under FCA's six-year statute of limitations. U.S. ex rel. Cericola v. Federal Nat. Mortg. Assoc., C.D.Cal.2007, 529 F.Supp.2d 1139. Limitation Of Actions 127(8)

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Relator in a private qui tam suit under the False Claims Act (FCA) would not be granted leave to amend his complaint to allege an instance of a contractor's wrongfully retaining money within the limitations period; the relator had never brought this possible claim to the attention of the court or the contractor despite having first filed his complaint nearly four years earlier, it would have substantially burdened the contractor to try to defend such the ill-defined claim so late in the process, and the fact discovery period had ended over two months earlier. U.S. ex rel. Told v. Interwest Const. Co., Inc., D.Utah 2007, 505 F.Supp.2d 1245, affirmed 2008 WL 598113. Federal Civil Procedure 840

Government's Medicare fraud claims against two hospitals under the False Claims Act (FCA) did not relate back for limitations purposes to the date relator originally filed the claims against the hospitals in an improper venue, and instead related back only to date they were transferred to proper venue, where Government ignored deficiencies with respect to joinder and venue for more than five years before it chose to intervene, then chose to fix the deficiencies ex parte so that they did not come to light until much later. U.S. ex rel. Health Outcomes Technologies v. Hallmark Health System, Inc., D.Mass.2006, 409 F.Supp.2d 43. Limitation Of Actions 120

Under former § 231 [now § 3729] of this title, each separate act of fraud, i.e., submission of collusive bids for completion, renovation and modernization of homes which had been conveyed to Secretary of Housing and Urban Development would have been separately punishable and statute of limitations would have begun to run separately as to each act and, hence, amendment of complaint to add additional overt acts in support of charged conspiracy to defraud the government did not relate back to filing of the original complaint. U. S. v. Cripps, E.D.Mich.1978, 451 F.Supp. 598. Criminal Law 149

Original complaint which sought forfeiture under former § 231 [now § 3729] of this title for alleged obtaining unauthorized loans from Commodity Credit Corporation, and second count of amended complaint, which sought double damages plus forfeitures allowable under such former section for wrongful procuring of such loans, had such identity of general wrong as to permit relation back for purpose of former § 235 of this title. U. S. v. Templeton, E.D.Tenn.1961, 199 F.Supp. 179. Limitation Of Actions 127(3)

11. ---- Filing of false claims, commencement and running of period

The “commission of the act” starting the running of six-year limitation period of former § 235 of this title was the filing of the false claim. Smith v. U.S., C.A.5 (Tex.) 1961, 287 F.2d 299. Limitation Of Actions 59(1)

Claims brought under False Claims Act (FCA) by qui tam relator, governmental entities and private parties against pharmaceutical manufacturers, alleging unfair and deceptive trade practices in overpricing of drugs reimbursed in part by Medicare, accrued each time false claim was presented; false price data was initially published with knowledge that figures would be used to set reimbursement figures for subsequent claims. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2007, 498 F.Supp.2d 389, motion to amend denied 2008 WL 163644. Limitation Of Actions 99(1)

Six year False Claims Act statute of limitations for United States' claim based on false financial statements against president of small business investment company for monies paid out under Small Business Administration (SBA) guaranties of debentures after company defaulted began to run on date that company submitted its false financial statements to SBA

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as part of its SBA guarantied debenture financing; false statement itself was violation of False Claims Act provision prohibiting knowing use of false statements or records to conceal, avoid or decrease obligation to pay or transmit money or property to SBA. U.S. v. Vanoosterhout, D.D.C.1995, 898 F.Supp. 25, affirmed 96 F.3d 1491, 321 U.S.App.D.C. 43. Limitation Of Actions 58(1)

Statute of limitations began to run on federal government's False Claims Act claim against the applicants for Small Business Administration loan once defendants submitted claim for payment to United States. U.S. v. Entin, S.D.Fla.1990, 750 F.Supp. 512. Limitation Of Actions 99(1)

The six-year limitation period of former § 235 of this title for false claims cases was computed from time of commission of act; the "act" was the filing of the false claims. Woodbury v. U. S., D.C.Or.1964, 232 F.Supp. 49, affirmed in part, reversed in part on other grounds 359 F.2d 370. Limitation Of Actions 59(1); United States 122

Government's contract claims against county medical center, arising from ancillary Medicare claims submitted by medical center, accrued, and six-year statute of limitations began to run, as of the date of submission of claims. U.S. v. Erie County Medical Center, W.D.N.Y.2002, 2002 WL 31655004, Unreported. Limitation Of Actions 46(6)

12. ---- Final payment, commencement and running of period

Statute of limitations under False Claims Act began to run when Government made payments for first helicopters with allegedly concealed defect, even though purported fraud allegedly was continuing with subsequent delivery of each helicopter; senior officials in charge of Army's helicopter project had responsibility to act and were aware or should have known of the material facts relating to the defect and knew that payments were made. U.S., ex rel. Kreindler & Kreindler v. United Technologies Corp., N.D.N.Y.1991, 777 F.Supp. 195, affirmed 985 F.2d 1148, certiorari denied 113 S.Ct. 2962, 508 U.S. 973, 125 L.Ed.2d 663. Limitation Of Actions 100(12)

Six-year limitation period of former § 235 of this title did not start to run until final payment date of each claim. U. S. ex rel. Vance v. Westinghouse Elec. Corp., W.D.Pa.1973, 363 F.Supp. 1038. United States 133

Former § 235 of this title became operative only on final payment by United States. U. S. v. Klein, W.D.Pa.1964, 230 F.Supp. 426, affirmed 356 F.2d 983.

Government's fraud claims against county medical center, arising from ancillary Medicare claims submitted by medical center, accrued, and three-year statute of limitations began to run, on date government paid the claims. U.S. v. Erie County Medical Center, W.D.N.Y.2002, 2002 WL 31655004, Unreported. Limitation Of Actions 99(1)

13. ---- Federal housing programs, commencement and running of period

Where claim was based on Department of Housing and Urban Development employee's allegedly taking illegal payments for rendering inflated appraisals on property, which resulted in Federal Housing Administration insuring inflated mortgage and ultimately resulted in mortgagee's application for insurance benefits, claim did not accrue for purpose of six-

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year statute of limitations at time of inflated appraisal, but accrued either upon mortgagor's default or upon mortgagee's filing claim. Jankowitz v. U. S., Ct.Cl.1976, 533 F.2d 538, 209 Ct.Cl. 489. Limitation Of Actions 58(2)

No cause of action in favor of the United States under former § 231 et seq. [now § 3729 et seq.] of this title arose and, consequently, statute of limitations did not begin to run, until mortgage holder presented a claim to the Veterans' Administration or Federal Housing Administration [now Department of Housing and Urban Development] for payment on the guaranty or insurance; former § 235 of this title did not begin to run upon the lending institution's application for the guaranty or insurance. U.S. v. Ekelman & Associates, Inc., C.A.6 (Mich.) 1976, 532 F.2d 545. United States 133

Government's obligation to pay on federally insured mortgage arose on October 26, 1979, when mortgagee assigned its claims under mortgage to federal agency, rather than on May 1, 1979, when mortgage loan was defaulted, so that government's False Claims Act (FCA) action filed on October 25, 1985 was timely under six-year statute of limitations. U.S. v. Stella Perez, D.Puerto Rico 1993, 839 F.Supp. 92, reversed 55 F.3d 703, 139 A.L.R. Fed. 813, on remand 956 F.Supp. 1046. Limitation Of Actions 99(1)

Statute of limitations on false claims count began to run on date that allegedly collusive bids for completion, renovation and modernization of homes which had been conveyed to Secretary of Housing and Urban Development were presented to the Department for payment. U. S. v. Cripps, E.D.Mich.1978, 451 F.Supp. 598. Criminal Law 149

“Act” from which six-year limitation period of former § 235 of this title ran in action to recover from defendant for allegedly making false loan applications to Federal Housing Administration [now Department of Housing and Urban Development] insured banks was the default in repayment, not the filing of false applications. U. S. v. Goldberg, D.C.Mass.1966, 256 F.Supp. 540. United States 133

Even though federal government's complaint to recover damages from defendant for allegedly making false loan applications to Federal Housing Administration [now Department of Housing and Urban Development] insured banks was not stated in language of former § 231 [now § 3729] of this title, essence of cause of action was that defendant caused a claim for payment to be presented to United States and that act occurred for purposes of former § 235 of this title when defendant defaulted on the loan. U. S. v. Goldberg, D.C.Mass.1966, 256 F.Supp. 540. United States 120.1

Limitations on action against defendants who allegedly procured Federal Housing Administration [now Department of Housing and Urban Development] insurance by means of false statements, began to run when insured lending institutions presented claims for reimbursement from government, not when false statements were made. U. S. v. Globe Remodeling Co., D.C.Vt.1960, 196 F.Supp. 652. Limitation Of Actions 58(1)

14. ---- Vouchers, commencement and running of period

Cause of action in favor of United States against subcontractor for false claims for direct labor did not arise in July 1951, when subcontractor began practice of charging for such time, but arose in November 1951, when prime contractors presented vouchers containing such charges to government, and action, which was commenced in September 1957, was not barred by six-year limitation period of former § 235 of this title. U.S. v. Ueber, C.A.6 (Mich.) 1962, 299 F.2d 310. Limitation Of Actions 59(1)

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15. Extension of period

Former § 235 of this title disclosed no intention to extend the limitation period on account of any fraud or concealment, and thus suit filed more than six years after the making of the alleged false claims was barred by limitations, even though falsity was allegedly not discovered until less than six years before bringing of suit. U.S. v. Borin, C.A.5 (Tex.) 1954, 209 F.2d 145, certiorari denied 75 S.Ct. 33, 348 U.S. 821, 99 L.Ed. 647.

16. Tolling or suspension of period--Generally

Tolling provision of False Claims Act (FCA) statute of limitations, based on when facts material to action were known or should have been known, was inapplicable to claim brought by qui tam relator against laboratory owned by state university, alleging that laboratory obtained payment from Medicare provider for inadequately documented tests, with respect to purported false budget request; provision was intended to apply only to United States government, not to relators. U.S. ex rel. Sikkenga v. Regence Bluecross Blueshield of Utah, C.A.10 (Utah) 2006, 472 F.3d 702, on remand 2007 WL 2713913. Limitation Of Actions 100(1)

Three-year tolling period in False Claims Act (FCA), which runs from date when facts material to the right of action are known or reasonably should have been known by government, if applicable at all, ran from government's receipt of relator's original complaint under seal inasmuch as complaint sufficiently pled facts material to government's subsequent intervention. U.S. v. The Baylor University Medical Center, C.A.2 (Conn.) 2006, 469 F.3d 263. Limitation Of Actions 100(12)

Tolling provision of False Claims Act's limitations section applies both to government and to qui tam plaintiffs and, as to qui tam plaintiffs, statute of limitations begins to run when plaintiff knew or should have discovered facts underlying alleged fraud. U.S. ex rel. Saaf v. Lehman Brothers, C.A.9 (Cal.) 1997, 123 F.3d 1307. Limitation Of Actions 100(1)

Congress did not intend to restrict tolling provisions of False Claims Act to suits brought by Attorney General alone, but intended tolling provision to apply to qui tam plaintiffs as well. U.S. ex rel. Hyatt v. Northrop Corp., C.A.9 (Cal.) 1996, 91 F.3d 1211. Limitation Of Actions 100(1)

Former § 235 of this title was not tolled or extended on account of fraud. U.S. ex rel. Nitkey v. Dawes, C.C.A.7 (Ill.) 1945, 151 F.2d 639, certiorari denied 66 S.Ct. 808, 327 U.S. 788, 90 L.Ed. 1015.

Government had inquiry notice of the injury resulting from bid-rigging conspiracy and its cause within False Claims Act's three-year statute of limitations; relator's complaint and disclosure statement provided in detail the various pieces of evidence and allegations supporting a finding that the defendants engaged in a conspiracy to rig bids on multiple contracts for construction jobs in Egypt. U.S. ex rel. Miller v. Bill Harbert Intern. Const., D.D.C.2007, 505 F.Supp.2d 1. Limitation Of Actions 99(1)

Relators are included within the scope of False Claims Act's (FCA) tolling provision; in qui tam actions where the United States does not intervene, the same statute of limitations applies as would apply in any other False Claims Act case: (1) six years from the date of the violation, or (2) three years from the from the date when facts material to the right of action

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are or should be known to the relevant government official, whichever occurs last, but (3) in no event more than ten years after the violation is committed. U.S. ex rel. Pogue v. Diabetes Treatment Centers of America, D.D.C.2007, 474 F.Supp.2d 75. Limitation Of Actions 99(1); Limitation Of Actions 100(1)

Limitations periods applicable to relator's retaliation claim under the False Claims Act (FCA) and defamation claim against his employer and its parent corporation were not tolled for period in which relator's original complaint, alleging Medicare and Medicaid fraud, remained sealed; FCA's sealing provision did not provide for tolling of statute of limitations for new claims, unrelated to the original one and obviously known to relator from the outset, and the seal did not prevent relator from developing his claims. U.S. ex rel. Deering v. Physiotherapy Associates, Inc., D.Mass.2009, 601 F.Supp.2d 368. Limitation Of Actions 58(1)

Limitations period for relator's qui tam action, claiming that former employer, regional community Head Start program, made false and fraudulent claims to United States, and that he was fired for whistleblowing, in violation of False Claims Act (FCA), was tolled, under Virginia's tolling provision, permitting party who voluntarily dismissed action to recommence it within six months, for time that relator took voluntary dismissal of his state-court action and refiled action in federal district court within six months. U.S. ex rel. Herndon v. Appalachian Regional Community Head Start, Inc., W.D.Va.2008, 572 F.Supp.2d 663. Limitation Of Actions 130(5)

False Claims Act's (FCA) equitable tolling provision applies only to claims by the United States, not relators in private qui tam suits. U.S. ex rel. Told v. Interwest Const. Co., Inc., D.Utah 2007, 505 F.Supp.2d 1245, affirmed 2008 WL 598113. Limitation Of Actions 104.5

Provision of False Claims Act (FCA) permitting action to be brought within three years of plaintiff's discovery of facts material to right of action is tolling provision that does not limit amount of time to file complaint from six to three years when plaintiff receives knowledge of material facts. U.S. v. Intrados/Intern. Management Group, D.D.C.2002, 265 F.Supp.2d 1. Limitation Of Actions 100(1)

Limitation stated in former § 235 of this title was one which, when it expired, barred not only remedy but also the right, and, therefore, such limitation could not have been tolled. Canned Foods, Inc. v. U. S., Ct.Cl.1956, 146 F.Supp. 470, 135 Ct.Cl. 862. Limitation Of Actions 104.5; Limitation Of Actions 165

Doctrine of equitable tolling was not applicable to toll statute of limitations of the False Claims Act (FCA) from date of first complaint which was dismissed on finding that original relator did not meet jurisdictional requirements, despite relators' contention that complaint was dismissed based upon a “technical defect” in the identity of the relator and that they “offered” to intervene in original action. U.S. ex rel. Koch v. Koch Industries, Inc., N.D.Okla.1999, 188 F.R.D. 617. Limitation Of Actions 104.5

17. ---- Concealment of fraud, tolling or suspension of period

Where action under former § 231 [now § 3729] of this title was based on theory that national bank's contract to assume and pay state bank's deposit liabilities was invalid under Smith-Hurd Ann.St., ch. 16 1/2, § 12, because national bank did not assume all liabilities of state bank including its loan from former Reconstruction Finance Corporation, but where

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all parties to contract and government had full knowledge of facts at time contract was executed, fact that national bank in subsequent reports to Comptroller of Currency did not list as one of its liabilities loan by former Reconstruction Finance Corporation to state bank did not toll former § 235 of this title, on theory of concealment of alleged misconduct. U.S. ex rel. Nitkey v. Dawes, C.C.A.7 (Ill.) 1945, 151 F.2d 639, certiorari denied 66 S.Ct. 808, 327 U.S. 788, 90 L.Ed. 1015. Limitation Of Actions 104(2)

Since any reasonable jury would have found that the government was directly aware of myriad pieces of evidence pointing to a scheme to defraud the United States government involving the submission of bids on multiple contracts for construction jobs in Egypt, defendants' activities in covering up their respective involvement in the alleged conspiracy did not warrant tolling of False Claims Act's three-year statute of limitations based on fraudulent concealment; furthermore, even if limitations periods were able to be tolled due to concealment of an individual's particular involvement in a fraud, government knew of defendants' identities in association with the fraud within limitations period. U.S. ex rel. Miller v. Bill Harbert Intern. Const., D.D.C.2007, 505 F.Supp.2d 1. Limitation Of Actions 104(1)

United States was not entitled to equitably toll statutory period for bringing claim against government contractor pursuant to False Claims Act (FCA), even if contractor had fraudulently concealed material facts necessary for government to learn of alleged fraud, where Defense Contract Agency (DCA) performed audit of contractor, but Department of Justice (DOJ) did not file complaint until more than three years later. U.S. v. Intrados/Intern. Management Group, D.D.C.2002, 265 F.Supp.2d 1. Limitation Of Actions 104.5

Even assuming that tolling provision of the False Claims Act (FCA) extending limitations from six to ten years after the violation when the limitations period is triggered by knowledge of government official, could be invoked by private relators, six-year period still applied where private relators had knowledge of the alleged fraud more than three years before action was filed. U.S. ex rel. Koch v. Koch Industries, Inc., N.D.Okla.1999, 188 F.R.D. 617. Limitation Of Actions 100(1)

18. ---- Counterclaims, tolling or suspension of period

Failure to appeal from order dismissing government's suit against government claimant without prejudice was not controlling in determining, under circumstances, the tolling of running of limitation period of former § 235 of this title with respect to counterclaim under former § 231 [now § 3729] of this title, asserted by government in claimant's suit against government. U. S. v. Woodbury, C.A.9 (Or.) 1966, 359 F.2d 370. Limitation Of Actions 130(13)

Filing of petition by contractor in action against the United States under the Contract Settlement Act of 1944, § 101 et seq. of Title 41, did not toll running of five-year and six-year statutes of limitations against counterclaims of the United States against contractor under said Act and former § 235 of this title for damages for alleged fraud. Erie Basin Metal Products, Inc. v. U.S., Ct.Cl.1957, 150 F.Supp. 561, 138 Ct.Cl. 67. Limitation Of Actions 129

In action against the United States for amounts allegedly due plaintiff on contract by which plaintiff furnished cans of peas to the United States, United States' counterclaim, which alleged violations of former § 231 [now § 3729] of this title in regard to plaintiff's performance under such section, and which sought damages and penalties provided under such section, in fact arose out of the same transaction or occurrence on which plaintiff's action was based but did not in law so

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arise as a compulsory counterclaim, and, therefore, filing of plaintiff's action did not toll limitation period of former § 235 of this title in regard to the counterclaim. Canned Foods, Inc. v. U. S., Ct.Cl.1956, 146 F.Supp. 470, 135 Ct.Cl. 862. Limitation Of Actions 129

19. ---- Wartime, tolling or suspension of period

Action by the government to recover money allegedly obtained by defendant from the Smaller War Plants Corporations as loans by making a false representation which was not commenced within six years after commission of the alleged fraudulent act was not barred by limitations in view of the suspension of limitations by § 3287 of Title 18. U. S. v. Temple, N.D.Ill.1956, 147 F.Supp. 118. Limitation Of Actions 113

Civil suit by United States for recovery upon certain false lumber invoices presented by defendants to agent of former War Shipping Administration, though not filed until 1955, was not barred by elapse of more than 6 years from date of commission of acts, in view of § 3287 of Title 18, which extended commencement of running of six-year limitation period of former § 235 of this title until Jan. 1, 1950. U. S. v. Salvatore, E.D.Pa.1956, 140 F.Supp. 470. Limitation Of Actions 113

Section 3287 of Title 18, in force from 1944 through 1948, applied to all actions involving fraud against United States whether redress was sought by criminal or civil means, and if 1948 amendment included civil offenses, then six-year limitation period of former § 235 of this title on United States' counterclaim against contractor under former § 231 [now § 3729] of this title in respect to alleged fraud occurring in 1944 and 1945 did not expire until end of 1955, and if such 1948 amendment restricted § 3287 of this title to criminal offenses then six-year limitation period began to run on June 25, 1948, so that such counterclaim filed June 29, 1953 was timely. Dugan & McNamara, Inc. v. U. S., Ct.Cl.1955, 127 F.Supp. 801, 130 Ct.Cl. 603. Federal Courts 1106

Where party knowingly made false, fictitious, or fraudulent claim to Commodity Credit Corporation in connection with its wool program, and federal government proceeded by prosecution under § 287 of Title 18, general federal three-year [now five-year] limitations statute, § 3282 of Title 18, was suspended by § 3287 of Title 18, which suspended running of statutes of limitations on certain wartime frauds. U.S. v. Strange Bros. Hide Co., N.D.Iowa 1954, 123 F.Supp. 177. Criminal Law 151.1

20. Counterclaims

Mistake, if any, of government attorneys in bringing unsuccessful separate suit under former § 231 [now § 3729] of this title against government claimant for forfeiture and double recovery of damages within period of limitations, instead of asserting matters as compulsory counterclaims in claimant's suit against government, did not deprive government of right to assert such counterclaims later, though limitations would have run meanwhile, in absence of any prejudice to claimant. U. S. v. Woodbury, C.A.9 (Or.) 1966, 359 F.2d 370. Limitation Of Actions 105(1)

In action by contractor against the United States under the Contract Settlement Act of 1944, § 101 et seq. of Title 41, counterclaim of the United States under said Act for damages for alleged fraud or defense thereunder was barred by five-year statute of limitations as to all acts of alleged fraud committed within five years of filing of counterclaim, and coun-

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terclaim under former § 231 [now § 3729] of this title or defense thereunder was barred by six-year statute of limitations as to all acts of alleged fraud committed within six years of the filing of the counterclaim, whether alleged fraudulent acts were committed in connection with termination or renegotiation proceedings. Erie Basin Metal Products, Inc. v. U.S., Ct.Cl.1957, 150 F.Supp. 561, 138 Ct.Cl. 67. Limitation Of Actions 40(2); Limitation Of Actions 41

Former § 235 of this title barred counterclaims, which United States asserted in action against United States for services furnished United States under stevedoring contracts, and which were based upon acts which allegedly had occurred more than six years prior to filing of the counterclaims. Dugan & McNamara, Inc. v. U. S., Ct.Cl.1954, 124 F.Supp. 650, 130 Ct.Cl. 603, on rehearing 127 F.Supp. 801, 130 Ct.Cl. 603. Federal Courts 1105

Counterclaim alleging that surplus funds were built up under fixed price contracts and left in accounts from subsidized employment training program, even if within time frame of original complaint wherein the United States, alleging payment of public funds by mistake, sought to recoup those funds on basis of misrepresentation, deceit, and unjust enrichment, was unrelated to defendant's billing of labor costs under program and, hence, did not arise out of “same transaction” and did not preclude the United States from asserting sovereign immunity to obtain dismissal of counterclaim for lack of subject-matter jurisdiction. U.S. v. Isenberg, D.Conn.1986, 110 F.R.D. 387. United States 130(9)

United States' counterclaim against contractor under False Claims Act was timely when filed within six years of date on which United States made final payment. TS Infosystems, Inc. v. U.S., Fed.Cl.1996, 36 Fed.Cl. 570. Federal Courts 1105

21. Dismissal

Former § 235 of this title was not an ordinary statute of limitations but was a prerequisite to bringing a cause of action under former § 231 [now § 3729] of this title, and as such it was basis for motion to dismiss. U. S. ex rel. Vance v. Westinghouse Elec. Corp., W.D.Pa.1973, 363 F.Supp. 1038.

22. Timeliness of particular actions

Government's filing of complaints-in-intervention in relator's False Claims Act (FCA) qui tam action did not relate back to filing of relator's complaint under federal rule of civil procedure; secrecy required by FCA with respect to initial sealing of relator's complaint was incompatible with relation-back doctrine, which requires that original pleading give party adequate notice of basis of claim. U.S. v. The Baylor University Medical Center, C.A.2 (Conn.) 2006, 469 F.3d 263. Limitation Of Actions 124

Limitations period for qui tam plaintiff to bring False Claims Act lawsuit against his employer and others began to run when he became aware of alleged fraud in military defense programs sometime before he was fired. U.S. ex rel. Hyatt v. Northrop Corp., C.A.9 (Cal.) 1996, 91 F.3d 1211. Limitation Of Actions 100(12)

Action commenced against executive director of lessee of government housing project under former § 231 [now § 3729] of this title filed on July 11, 1957, based on a quarterly report of the director for quarter ending June 30, 1951, but prepared and mailed by director on July 12, 1951, was not barred by the six-year limitation period of former § 235 of this title. Smith v. U.S., C.A.5 (Tex.) 1961, 287 F.2d 299. Limitation Of Actions 59(1)

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Government's qui tam complaint in intervention against manufacturer of industrial pumps and its former president was timely under the relation-back doctrine; government's complaint was an amendment of relator's complaint, government's False Claims Act (FCA) claims, although structured differently, were nearly identical in substance to relator's FCA claim, and new FCA claim arose out of same conduct as original claim. U.S. ex rel. Purcell v. MWI Corp., D.D.C.2003, 254 F.Supp.2d 69. Limitation Of Actions 127(3)

Government's claims against jet engine contractor, including claims under False Claims Act (FCA), arising from contractor's alleged false certification that its contract bid's cost and pricing data were accurate, complete, and current did not accrue, for limitations purposes, until government employee discovered documents showing that contractor's basis for its best and final offer was false, even though government arguably could have learned of alleged falsity from previously discovered report. U.S. v. United Technologies Corp., S.D.Ohio 2003, 255 F.Supp.2d 779. Limitation Of Actions 100(12)

Relator's qui tam complaint against pharmaceutical manufacturers, alleging unfair and deceptive trade practices in overpricing of drugs reimbursed in part by Medicare, served as sufficient placeholder to achieve relation back, for limitations purposes, of government's subsequent complaint in intervention; original qui tam complaint was properly transferred and consolidated as part of overarching multi-district litigation. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2007, 498 F.Supp.2d 389, motion to amend denied 2008 WL 163644. Limitation Of Actions 124

Six-year delay in bringing lawsuit against employees of tribal business alleging violation of False Claims Act (FCA) was not unreasonable, and thus laches defense did not apply to claims that employees filed false claims for brushing and road grading work performed under contract with Bureau of Indian Affairs (BIA); government filed suit within six-year statute of limitations, and lawsuit was result of lengthy federal investigation. U.S. v. Menominee Tribal Enterprises, E.D.Wis.2009, 601 F.Supp.2d 1061, reconsideration denied 2009 WL 1373952, entered 2009 WL 2877083. United States 122

Even if laches defense could be asserted against United States, it was not established by four-month delay in bringing civil False Claims Act suit following defendant's conviction for Medicaid fraud, absent showing of prejudice. U.S. v. Sazama, D.Utah 2000, 88 F.Supp.2d 1270. United States 133

Under the 1986 amendments to False Claims Act, action was timely when filed within three years of time FBI submitted report to Civil Division of Department of Justice, which previously had no knowledge of violations. U.S. v. Macomb Contracting Corp., M.D.Tenn.1990, 763 F.Supp. 272. Limitation Of Actions 59(1)

Government's claim under the False Claims Act based on defendant's making false statements in connection with application for FmHA loan guarantees was timely where holder of the mortgage demanded repurchase by the Government in a letter dated February 5, 1980, and the action was filed on February 4, 1986. U.S. v. Stillwater Community Bank, W.D.Okla.1986, 645 F.Supp. 18. United States 133

Where some of allegedly false claims were paid as late as 1968, informer's suit under former § 231 [now § 3729] of this title filed in 1972 was timely. U. S. ex rel. Vance v. Westinghouse Elec. Corp., W.D.Pa.1973, 363 F.Supp. 1038. United

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States 133

Six-year statute of limitations for claims brought under False Claims Act (FCA) barred former employee's qui tam claims against government contractors, which were filed more than six years after former employee purportedly was constructively discharged for complaining about alleged underlying fraudulent activity, and thus concerned conduct that occurred more than six years before complaint was filed. Foster v. Savannah Communication, C.A.11 (Ga.) 2005, 140 Fed.Appx. 905, 2005 WL 1719221, Unreported, rehearing and rehearing en banc denied 167 Fed.Appx. 169, 2005 WL 3630312. Limitation Of Actions 58(1)

23. Summary judgment

Evidence that government agents received report by private investigator concerning allegations of embezzlement at hospital raised fact issue as to whether Government was aware of alleged medicare/medicaid fraud at hospital as of that date, commencing running of statute of limitations for claim under False Claims Act, precluding summary judgment on limitations grounds. U.S. v. Kensington Hosp., E.D.Pa.1991, 760 F.Supp. 1120. Federal Civil Procedure 2512.5

24. Estoppel

Federal employee's criminal conviction for making false statement in order to obtain federal employees' compensation collaterally estopped him from denying civil liability under False Claims Act (FCA) based on that statement. U.S. v. Lamanna, W.D.N.Y.2000, 114 F.Supp.2d 193. Judgment 648

Defense contractor's shareholders' guilty plea to conspiring to defraud Government and contents of stipulation entered in criminal proceeding collaterally estopped shareholders from disputing their liability in civil proceeding for civil penalties for submitting false claims to Government with respect to same laser modification kits. U.S. v. Fliegler, E.D.N.Y.1990, 756 F.Supp. 688. Judgment 648

Chapter 7 debtor's conviction, on his guilty plea, of counts of Medicaid and Medicare fraud, and of submitting false claims to federal agency, collaterally estopped him from denying that he had engaged in conduct which would also support award of treble damages under the False Claims Act, in amount three times the amount of criminal court's restitutionary award, pursuant to section of the False Claims Act dealing with collateral estoppel effects of criminal fraud convictions. In re Cassidy, Bkrtcy.W.D.Ky.1997, 213 B.R. 673. Judgment 648

31 U.S.C.A. § 3731, 31 USCA § 3731

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United States Code Annotated Currentness
Title 31. Money and Finance (Refs & Annos)
Subtitle III. Financial Management
Chapter 37. Claims (Refs & Annos)
Subchapter III. Claims Against the United States Government (Refs & Annos)
§ 3732. False claims jurisdiction

(a) Actions under section 3730.--Any action under section 3730 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

(b) Claims under state law.--The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local government if the action arises from the same transaction or occurrence as an action brought under section 3730.

(c) Service on State or local authorities.--With respect to any State or local government that is named as a co-plaintiff with the United States in an action brought under subsection (b), a seal on the action ordered by the court under section 3730(b) shall not preclude the Government or the person bringing the action from serving the complaint, any other pleadings, or the written disclosure of substantially all material evidence and information possessed by the person bringing the action on the law enforcement authorities that are authorized under the law of that State or local government to investigate and prosecute such actions on behalf of such governments, except that such seal applies to the law enforcement authorities so served to the same extent as the seal applies to other parties in the action.

CREDIT(S)

(Added Pub.L. 99-562, § 6(a), Oct. 27, 1986, 100 Stat. 3158, and amended Pub.L. 111-21, § 4(e), May 20, 2009, 123 Stat. 1625.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

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1986 Acts. Senate Report No. 99-345, see 1986 U.S. Code Cong. and Adm. News, p. 5266.

2009 Acts. Senate Report No. 111-10, see 2009 U.S. Code Cong. and Adm. News, p. 430.

Statement by President, see 2009 U.S. Code Cong. and Adm. News, p. S21.

References in Text

The Federal Rules of Civil Procedure, referred to in subsec. (a), are classified to Title 28, Judiciary and Judicial Procedure.

Amendments

2009 Amendments. Subsec. (c). Pub.L. 111-21, § 4(e), added subsec. (c).

Effective and Applicability Provisions

2009 Acts. Except as otherwise provided under Pub.L. 111-21, § 4(f)(1), (2), amendments made by Pub.L. 111-21, § 4, shall take effect on May 20, 2009, and shall apply to conduct on or after May 20, 2009, see Pub.L. 111-21, § 4(f), set out as a note under 31 U.S.C.A. § 3729.

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Forms

Federal Procedural Forms § 34:547, Jurisdiction.

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14 Wright & Miller: Federal Prac. & Proc. § 3653, Actions Brought by the United States--Illustrative Cases.

14B Wright & Miller: Federal Prac. & Proc. § 3722, Removal Jurisdiction--Cases Based on the Existence of a Federal Question.

14C Wright & Miller: Federal Prac. & Proc. § 3732, Procedure for Removal--Time for Seeking Removal.

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NOTES OF DECISIONS

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1. Subject matter jurisdiction

Subsection of False Claims Act (FCA) which referred to location in which lawsuit to enforce Act could properly be brought governed venue rather than subject matter jurisdiction; subsection did not mention district courts' jurisdiction, next subsection expressly dealt with subject matter jurisdiction by providing that district courts "shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local government," and presence of word "jurisdiction" in title of section did not transmute subsection's typical venue provision into one limiting subject matter jurisdiction. U.S. ex rel. Thistlethwaite v. Dowty Woodville Polymer, Ltd., C.A.2 (N.Y.) 1997, 110 F.3d 861, on remand 976 F.Supp. 207. United States 122

Provision of False Claims Act (FCA) giving federal district courts jurisdiction over state law cases for recovery of funds by state and local governments in actions arising under same transaction as action brought under FCA conferred supplemental, not original, jurisdiction, and thus filing of suit under FCA did not provide basis for removal of state's previously-filed state court action under state law, where state did not allege any federal causes of action. Hawaii v. Abbott Laboratories, Inc., D.Hawai'i 2006, 469 F.Supp.2d 835, appeal denied 469 F.Supp.2d 842. Federal Courts 15; Removal Of Cases 25(1)

Statute granting federal courts jurisdiction over state law actions seeking recovery of funds paid by state or local governments if actions arose from same transaction or occurrence as action brought under False Claims Act (FCA) did not confer original subject matter jurisdiction over state court actions brought by states and counties alleging that pharmaceutical companies fraudulently inflated drug prices, thereby causing them to pay excessive reimbursements under Medicaid program, and thus actions could not be removed to federal district court, even though claims arose from same transactions as gave rise to qui tam lawsuits against companies under FCA. In re Pharmaceutical Industry Average Wholesale Price, D.Mass.2007, 509 F.Supp.2d 82. Removal Of Cases 11

Federal district court did not have original subject matter jurisdiction under statute that governed false claims jurisdiction over removed state court action that state brought under state tort laws to recover Medicare Part B co-payments from pharmaceutical companies, although federal government had brought similar lawsuit in federal court under False Claims Act (FCA) against pharmaceutical companies; case could have been removed under statute that governed false claims jurisdiction only if it arose from same transaction or occurrence. Hawaii v. Abbott Laboratories, Inc., D.Hawai'i 2006, 469 F.Supp.2d 842. Removal Of Cases 19(1)

False Claims Act section establishing proper judicial district for bringing civil false claims actions was venue provision that did not affect court's subject matter jurisdiction analysis in non-qui tam actions. U.S. v. Universal Fruits and Vegetables Corp., CIT 2005, 387 F.Supp.2d 1251, 29 C.I.T. 673, subsequent determination 433 F.Supp.2d 1351, 30 C.I.T. 706, appeal dismissed 204 Fed.Appx. 881, 2006 WL 3151393. United States 122

Spanish corporation's contacts with United States were sufficient to allow district court to exercise personal jur-

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isdiction over it in qui tam action, where plaintiff alleged that corporation exported its high technology fabric cutting machines and parts from Spain into United States for several years, that corporation had business relationship with New York company as well as with 15 other United States companies, and that corporation's employees violated False Claims Act (FCA) at United States Airports, including two New York airports, during numerous trips from Spain on customer service calls. U.S. ex rel. Vallejo v. Investronica, Inc., W.D.N.Y.1998, 2 F.Supp.2d 330. Federal Courts 86

Court of Federal Claims lacked jurisdiction over plaintiffs' claims under the False Claims Act, as such qui tam suits may be heard only in the federal district courts. Schweitzer v. U.S., Fed.Cl.2008, 82 Fed.Cl. 592. Federal Courts 1139

Court of Federal Claims lacked jurisdiction over former city auditor's claim to share of disaster relief payments that city refunded to the federal government, which was asserted under the qui tam provisions of the False Claims Act (FCA), as federal district courts have exclusive jurisdiction over qui tam claims. Giles v. U.S., Fed.Cl.2006, 72 Fed.Cl. 335, appeal filed. Federal Courts 1141

Statute providing that federal district courts have exclusive jurisdiction over qui tam claims applied to all actions brought under the False Claims Act, including city auditor's action seeking portion of payments for debris removal that city had returned to the federal government. Giles v. U.S., C.A.Fed.2007, 233 Fed.Appx. 987, 2007 WL 788350, Unreported, rehearing and rehearing en banc denied. Federal Courts 1139

Subsection of False Claims Act (FCA) which referred to location in which lawsuit to enforce Act could properly be brought governed venue rather than subject matter jurisdiction. U.S. v. Universal Fruits and Vegetable Corp., CIT 2005, 2005 WL 3752953, Unreported. Federal Courts 74

2. Alien parties

District Court for the Southern District of New York lacked jurisdiction in qui tam action brought under False Claims Act, where all defendants were residents of England, no act proscribed by False Claims Act took place in and there were no other significant contacts with the district; False Claims jurisdiction statute was not only venue statute, but also geographically-limited grant of subject matter jurisdiction, so that Alien Venue Act, permitting alien to be sued in any district, did not overcome jurisdictional limitation. U.S. ex rel. Thistlethwaite v. Dowty Woodville Polymer Ltd., S.D.N.Y.1996, 911 F.Supp. 130, vacated 110 F.3d 861, on remand 976 F.Supp. 207. Federal Courts 192

3. Place of proscribed acts

Venue over claims against out-of-state hospitals in False Claims Act (FCA) action brought against 98 out-of-state hospitals and two in-state hospitals could not be based on Act's venue provision, which permitted such actions to be brought in district in which any one defendant may be found, absent allegation of conspiracy, concert of action, communication, contract, joint or several liability between or any kind of relationship among the 100 hospital-defendants. U.S. ex rel. Health Outcomes Technologies v. Hallmark Health System, Inc.,

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D.Mass.2006, 409 F.Supp.2d 43. Federal Courts 74

Venue was appropriate in qui tam action, where defendants' attorney conceded at oral argument that at least one defendant transacted business in judicial district with New York company, and plaintiff alleged that both defendants committed acts proscribed by False Claims Act (FCA) at airport in district, although defendants denied that they made any false statements at that airport. U.S. ex rel. Vallejo v. Investronica, Inc., W.D.N.Y.1998, 2 F.Supp.2d 330. Federal Courts 74

Venue for qui tam action under False Claims Act (FCA) was appropriate in Ohio even though claim was based on subcontractors' alleged discharge of bilge water into river during work on lock and dam project in West Virginia, in light of fact that claim was partially based on contract with Army Corps of Engineers in Ohio to repair lock and dam so that any statement by subcontractors to certify compliance with contract, and any claims for payment, would have been processed in Ohio. Pickens v. Kanawha River Towing, S.D.Ohio 1996, 916 F.Supp. 702. Federal Courts 74

4. Solicitation of contracts

District court had personal jurisdiction over individual defendants in action brought under False Claims Act, where solicitation for contract underlying claim was issued in district, bid proposal was submitted in district, and corporate defendant's prior government contracts presumably led company to transact business regularly in district. U.S. ex rel. Alexander v. Dyncorp, Inc., D.D.C.1996, 924 F.Supp. 292. United States 122

5. Removal

State of Wisconsin's suit brought in state court against pharmaceutical manufacturer for allegedly fraudulent pricing was not removable upon third notice of removal filed more than two years after suit was filed, on grounds of subsequent filing of qui tam suit against manufacturer in remote district court, under False Claims Act (FCA), since Wisconsin's suit alleged violation of state law, not federal law, parties lacked diversity, Wisconsin's suit was not related to qui tam suit, within meaning of FCA, qui tam complaint was not amended pleading, motion, order, or other paper from which removability could first be ascertained in suit sought to be removed, and judicial economies did not warrant removal as there would be no joint trial. Wisconsin v. Amgen, Inc., C.A.7 (Wis.) 2008, 516 F.3d 530. Removal Of Cases 19(1); Removal Of Cases 29; Removal Of Cases 79(1)

Actions brought by states and counties against pharmaceutical companies to recover for fraudulent inflation of drug prices, which caused them to pay excessive reimbursements under Medicaid program, did not fall within district court's federal question jurisdiction, and thus did not permit removal of state court actions against companies, despite statute permitting state and local governments to invoke court's supplemental jurisdiction if actions arose from same transaction or occurrence that gave rise to federal court action pursuant to False Claims Act (FCA). In re Pharmaceutical Industry Average Wholesale Price, D.Mass.2007, 509 F.Supp.2d 82. Federal Courts 15; Removal Of Cases 19(1)

6. Sanctions

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Pharmaceutical manufacturer's third notice of removal filed more than two years after suit was filed by State of Wisconsin, alleging fraudulent pricing under state law, did not warrant sanctions upon third remand, since paucity of appellate authority provided manufacturer objectively reasonable basis for seeking removal of suit arguably brought within federal jurisdiction due to later filing of suit under False Claims Act (FCA). Wisconsin v. Amgen, Inc., C.A.7 (Wis.) 2008, 516 F.3d 530. Removal Of Cases 107(11)

31 U.S.C.A. § 3732, 31 USCA § 3732

Current through P.L. 111-125 approved 12-28-09

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United States Code Annotated Currentness
Title 31. Money and Finance (Refs & Annos)
Subtitle III. Financial Management
Chapter 37. Claims (Refs & Annos)
Subchapter III. Claims Against the United States Government (Refs & Annos)
§ 3733. Civil investigative demands

(a) In general.--

(1) Issuance and service.--Whenever the Attorney General, or a designee (for purposes of this section), has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General, or a designee, may, before commencing a civil proceeding under section 3730(a) or other false claims law, or making an election under section 3730(b), issue in writing and cause to be served upon such person, a civil investigative demand requiring such person--

(A) to produce such documentary material for inspection and copying,

(B) to answer in writing written interrogatories with respect to such documentary material or information,

(C) to give oral testimony concerning such documentary material or information, or

(D) to furnish any combination of such material, answers, or testimony.

The Attorney General may delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served. Any information obtained by the Attorney General or a designee of the Attorney General under this section may be shared with any qui tam relator if the Attorney General or designee determine it is necessary as part of any false claims act investigation.

(2) Contents and deadlines.--

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(A) Each civil investigative demand issued under paragraph (1) shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated.

(B) If such demand is for the production of documentary material, the demand shall--

(i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

(ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

(iii) identify the false claims law investigator to whom such material shall be made available.

(C) If such demand is for answers to written interrogatories, the demand shall--

(i) set forth with specificity the written interrogatories to be answered;

(ii) prescribe dates at which time answers to written interrogatories shall be submitted; and

(iii) identify the false claims law investigator to whom such answers shall be submitted.

(D) If such demand is for the giving of oral testimony, the demand shall--

(i) prescribe a date, time, and place at which oral testimony shall be commenced;

(ii) identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted;

(iii) specify that such attendance and testimony are necessary to the conduct of the investigation;

(iv) notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

(v) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

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(E) Any civil investigative demand issued under this section which is an express demand for any product of discovery shall not be returned or returnable until 20 days after a copy of such demand has been served upon the person from whom the discovery was obtained.

(F) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date which is not less than seven days after the date on which demand is received, unless the Attorney General or an Assistant Attorney General designated by the Attorney General determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.

(G) The Attorney General shall not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.

(b) Protected material or information.--

(1) In general.--A civil investigative demand issued under subsection (a) may not require the production of any documentary material, the submission of any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under--

(A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of the United States to aid in a grand jury investigation; or

(B) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

(2) Effect on other orders, rules, and laws.--Any such demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(c) Service; jurisdiction.--

(1) By whom served.--Any civil investigative demand issued under subsection (a) may be served by a false claims law investigator, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States.

(2) Service in foreign countries.--Any such demand or any petition filed under subsection (j) may be served

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upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over any such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by any such person that such court would have if such person were personally within the jurisdiction of such court.

(d) Service upon legal entities and natural persons.--

(1) Legal entities.--Service of any civil investigative demand issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by--

(A) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(B) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

(C) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(2) Natural persons.--Service of any such demand or petition may be made upon any natural person by--

(A) delivering an executed copy of such demand or petition to the person; or

(B) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to the person at the person's residence or principal office or place of business.

(e) Proof of service.--A verified return by the individual serving any civil investigative demand issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f) Documentary material.--

(1) Sworn certificates.--The production of documentary material in response to a civil investigative demand served under this section shall be made under a sworn certificate, in such form as the demand designates, by--

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(A) in the case of a natural person, the person to whom the demand is directed, or

(B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person.

The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

(2) Production of materials.--Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

(g) Interrogatories.--Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by--

(1) in the case of a natural person, the person to whom the demand is directed, or

(2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory.

If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(h) Oral examinations.--

(1) Procedures.--The examination of any person pursuant to a civil investigative demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer

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before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Federal Rules of Civil Procedure.

(2) Persons present.--The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the Government, any person who may be agreed upon by the attorney for the Government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(3) Where testimony taken.--The oral testimony of any person taken pursuant to a civil investigative demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.

(4) Transcript of testimony.--When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.

(5) Certification and delivery to custodian.--The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

(6) Furnishing or inspection of transcript by witness.--Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness' testimony.

(7) Conduct of oral testimony.--(A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (a) may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal

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right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the district court of the United States under subsection (j)(1) for an order compelling such person to answer such question.

(B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of part V of title 18.

(8) Witness fees and allowances.--Any person appearing for oral testimony under a civil investigative demand issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the district courts of the United States.

(i) Custodians of documents, answers, and transcripts.--

(1) Designation.--The Attorney General shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and shall designate such additional false claims law investigators as the Attorney General determines from time to time to be necessary to serve as deputies to the custodian.

(2) Responsibility for materials; disclosure.--(A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under paragraph (4).

(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or other officer or employee of the Department of Justice. Such material, answers, and transcripts may be used by any such authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony under this section.

(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or other officer or employee of the Department of Justice authorized under subparagraph (B). The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subparagraph is intended to prevent disclosure to the Congress, including any committee or subcommittee of the Congress, or to any other agency of the United States for use by such agency in furtherance of its statutory responsibilities.

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(D) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe--

(i) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and

(ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by that person to examine such transcripts.

(3) Use of material, answers, or transcripts in other proceedings.--Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through introduction into the record of such case or proceeding.

(4) Conditions for return of material.--If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand under this section, and--

(A) any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any Federal agency involving such material, has been completed, or

(B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation,

the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator under subsection (f)(2) or made for the Department of Justice under paragraph (2)(B)) which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

(5) Appointment of successor custodians.--In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Attorney General shall promptly--

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(A) designate another false claims law investigator to serve as custodian of such material, answers, or transcripts, and

(B) transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated.

Any person who is designated to be a successor under this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction which occurred before that designation.

(j) Judicial proceedings.--

(1) Petition for enforcement.--Whenever any person fails to comply with any civil investigative demand issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

(2) Petition to modify or set aside demand.--(A) Any person who has received a civil investigative demand issued under subsection (a) may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph must be filed--

(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

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(3) Petition to modify or set aside demand for product of discovery.--(A) In the case of any civil investigative demand issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand, a petition for an order of such court to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this subparagraph must be filed--

(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

(4) Petition to require performance by custodian of duties.--At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (a), such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

(5) Jurisdiction.--Whenever any petition is filed in any district court of the United States under this subsection, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal under section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.

(6) Applicability of federal rules of civil procedure.--The Federal Rules of Civil Procedure shall apply to any petition under this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

(k) Disclosure exemption.--Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (a) shall be exempt from disclosure under section 552 of title 5.

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(*l*) Definitions.--For purposes of this section--

(1) the term "false claims law" means--

(A) this section and sections 3729 through 3732; and

(B) any Act of Congress enacted after the date of the enactment of this section which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to, any false claim against, bribery of, or corruption of any officer or employee of the United States;

(2) the term "false claims law investigation" means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;

(3) the term "false claims law investigator" means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the United States acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;

(4) the term "person" means any natural person, partnership, corporation, association, or other legal entity, including any State or political subdivision of a State;

(5) the term "documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery;

(6) the term "custodian" means the custodian, or any deputy custodian, designated by the Attorney General under subsection (i)(1);

(7) the term "product of discovery" includes--

(A) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

(B) any digest, analysis, selection, compilation, or derivation of any item listed in subparagraph (A); and

(C) any index or other manner of access to any item listed in subparagraph (A); and

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(8) the term "official use" means any use that is consistent with the law, and the regulations and policies of the Department of Justice, including use in connection with internal Department of Justice memoranda and reports; communications between the Department of Justice and a Federal, State, or local government agency, or a contractor of a Federal, State, or local government agency, undertaken in furtherance of a Department of Justice investigation or prosecution of a case; interviews of any qui tam relator or other witness; oral examinations; depositions; preparation for and response to civil discovery requests; introduction into the record of a case or proceeding; applications, motions, memoranda and briefs submitted to a court or other tribunal; and communications with Government investigators, auditors, consultants and experts, the counsel of other parties, arbitrators and mediators, concerning an investigation, case or proceeding.

CREDIT(S)

(Added Pub.L. 99-562, § 6(a), Oct. 27, 1986, 100 Stat. 3159, and amended Pub.L. 111-21, § 4(c), May 20, 2009, 123 Stat. 1623.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1986 Acts. Senate Report No. 99-345, see 1986 U.S. Code Cong. and Adm. News, p. 5266.

2009 Acts. Senate Report No. 111-10, see 2009 U.S. Code Cong. and Adm. News, p. 430.

Statement by President, see 2009 U.S. Code Cong. and Adm. News, p. S21.

References in Text

The Federal Rules of Civil Procedure, referred to in subsecs. (b)(1)(B), (c)(2), (h)(1), and (j)(6), are classified to Title 28, Judiciary and Judicial Procedure.

The date of enactment of this section, referred to in subsec. (l)(1)(B), means the date of enactment of Pub.L. 99-562, which was approved Oct. 27, 1986.

Amendments

2009 Amendments. Subsec. (a)(1). Pub.L. 111-21, § 4(c)(1)(A)(i), in the matter preceding subpar. (A), inserted ", or a designee (for purposes of this section)," after "Whenever the Attorney General"; and struck out "the Attorney General may, before commencing a civil proceeding under section 3730 or other false claims law," and inserted "the Attorney General, or a designee, may, before commencing a civil proceeding under section 3730(a) or other false claims law, or making an election under section 3730(b),".

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Pub.L. 111-21, § 4(c)(1)(A)(ii), in the matter following subpar. (D), struck out "may not delegate" and inserted "may delegate"; and added the following new sentence at the end: "Any information obtained by the Attorney General or a designee of the Attorney General under this section may be shared with any qui tam relator if the Attorney General or designee determine it is necessary as part of any false claims act investigation."

Subsec. (a)(2)(G). Pub.L. 111-21, § 4(c)(1)(B), struck out the second sentence, which read: "The Attorney General may not, notwithstanding section 510 of title 28, authorize the performance, by any other officer, employee, or agency, of any function vested in the Attorney General under this subparagraph."

Subsec. (i)(2)(B). Pub.L. 111-21, § 4(c)(2)(A), in the first sentence, struck out ", who is authorized for such use under regulations which the Attorney General shall issue" after "Department of Justice".

Subsec. (i)(2)(C). Pub.L. 111-21, § 4(c)(2)(B), at the end of subpar. (B), struck out the following sentence: "Disclosure of information to any such other agency shall be allowed only upon application, made by the Attorney General to a United States district court, showing substantial need for the use of the information by such agency in furtherance of its statutory responsibilities."

Subsec. (l)(6). Pub.L. 111-21, § 4(c)(3)(A), struck out "and" after the semicolon at the end.

Subsec. (l)(7). Pub.L. 111-21, § 4(c)(3)(B), struck out the period at the end and inserted "and".

Subsec. (l)(8). Pub.L. 111-21, § 4(c)(3)(C), added par. (8).

Effective and Applicability Provisions

2009 Acts. Except as otherwise provided under Pub.L. 111-21, § 4(f)(1), (2), amendments made by Pub.L. 111-21, § 4, shall take effect on May 20, 2009, and shall apply to conduct on or after May 20, 2009, see Pub.L. 111-21, § 4(f), set out as a note under 31 U.S.C.A. § 3729.

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1. Constitutionality

Issuance of civil investigative demands (CID) under False Claims Act to government contractor's current and former employees during pendency of grand jury investigation into same conduct did not unduly burden current and former employees' Fifth Amendment rights and was not fundamentally unfair. U.S. v. Witmer, M.D.Pa.1993, 835 F.Supp. 208, affirmed 30 F.3d 1489. Action 69(7); United States 40; Witnesses 297(4.1)

2. Purpose

Congress intended false claims civil investigative demand (CID) to provide Department of Justice with means to assess quickly, and at least cost to taxpayers or to party from whom information is requested, whether grounds exist for initiating false claim suit. U.S. v. Markwood, C.A.6 (Mich.) 1995, 48 F.3d 969. United States 122

Civil investigative demand (CID) provisions of False Claims Act were designed to provide government with prefiling information-gathering tool to combat perceived widespread fraud against government in military procurement contracts. U.S. v. Witmer, M.D.Pa.1993, 835 F.Supp. 201, order vacated in part on other grounds on reconsideration 835 F.Supp. 208, affirmed 30 F.3d 1489. United States 122

3. Construction with Federal Rules of Civil Procedure

Rule applying discovery rules to proceedings to enforce agency subpoenas permitted district court to curtail discovery in proceedings to enforce false claims civil investigative demand (CID) before court issued order to show cause. U.S. v. Markwood, C.A.6 (Mich.) 1995, 48 F.3d 969. United States 122

Statute providing that Federal Rules of Civil Procedure shall apply to any petition with respect to civil investigative demand (CID) under False Claims Act to extent that such Rules are not inconsistent with provisions of Act was not meant to rewrite ordinary rules for enforcement of administrative subpoenas to provide CID recipient with right to conduct routine discovery as if petition were civil action; rather, in all but the most extraordinary case, Congress intended to make Rules available to CID recipient for use as shield, not as sword. U.S. v. Witmer, M.D.Pa.1993, 835 F.Supp. 201, order vacated in part on other grounds on reconsideration 835 F.Supp. 208, affirmed 30 F.3d 1489. United States 122

4. Administrative subpoena

Administrative subpoenas issued by Inspector General for the Department of the Interior in connection with action under False Claims Act (FCA) were not subject to restrictions imposed upon civil investigative demands (CIDs) issued by Department of Justice under FCA. U.S. v. Chevron U.S.A., Inc., C.A.5 (Tex.) 1999, 186 F.3d 644. Mines And Minerals 5.1(8)

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5. Qui tam proceeding

Fact that qui tam relator has initiated proceedings under the False Claims Act does not prevent the Attorney General from issuing a civil investigative demand to the person who is the subject of the proceeding. Avco Corp. v. U.S. Dept. of Justice, C.A.D.C.1989, 884 F.2d 621, 280 U.S.App.D.C. 182. United States 122

6. Persons entitled to issue demands

False Claims Act civil investigative demands (CID) were not improper, although issued by acting Attorney General, rather than Attorney General, where acting Attorney General was entitled to perform all functions of office of Attorney General. U.S. v. Witmer, M.D.Pa.1993, 835 F.Supp. 208, affirmed 30 F.3d 1489. United States 40

7. Reasonableness of demand

Contractor failed to make prerequisite showing of institutionalized bad faith in Department of Justice's initiation of proceedings to enforce false claims civil investigative demand (CID) during its investigation of claim that contractor failed to include requisite amount of federal excise tax when it bid on billion dollar contract to supply Army with trucks, even though attorney who issued CID was Army attorney, assigned to Department, in absence of evidence that Attorney General adopted any alleged improper motive of Army attorney. U.S. v. Markwood, C.A.6 (Mich.) 1995, 48 F.3d 969. United States 122

False Claims Act civil investigative demand (CID) requesting government contractor's estimating materials was not unreasonable; materials, if substantiated, might well have led Justice Department to conclude that Act suit was warranted. U.S. v. Witmer, M.D.Pa.1993, 835 F.Supp. 208, affirmed 30 F.3d 1489. United States 40

8. Enforcement petition

District court's failure to prescribe date by which person resisting enforcement of false claims civil investigative demand (CID) had to be served with petition for enforcement did not infringe person's procedural right to service of petition, where, although not setting date for service of petition, show cause hearing occurred almost two months after person was served, giving him ample time to respond to petition. U.S. v. Markwood, C.A.6 (Mich.) 1995, 48 F.3d 969. United States 122

9. Persons entitled to be present

False Claims Act (FCA) deputy custodians were also false claims law investigators, for purposes of civil investigation of alleged fraud by defense contractor, and, therefore, were entitled to be present at deposition of defense contractor's former employee, which was conducted pursuant to civil investigative demand (CID). In re Oral Testimony of a Witness Subpoenaed Pursuant to Civil Investigative Demand No. 98-19, E.D.Va.1998, 182 F.R.D. 196. United States 122

10. Counsel

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In United States' investigation of alleged fraud by defense contractor under False Claims Act (FCA), investigator conducting deposition, pursuant to civil investigative demand (CID), of former employee of contractor could exclude contractor's counsel from examination, since they did not constitute “any other representative of the person giving the testimony,” under statute governing who could be present at such depositions. In re Oral Testimony of a Witness Subpoenaed Pursuant to Civil Investigative Demand No. 98-19, E.D.Va.1998, 1 F.Supp.2d 587, affirmed 182 F.R.D. 196. United States 122

Attorneys for defense contractor that was being investigated for fraud under False Claims Act (FCA) did not qualify as “representatives” of the contractor's former employee, and, therefore, were not entitled to be present at deposition of former employee, which was conducted pursuant to civil investigative demand (CID) issued by the Department of Defense Inspector General. In re Oral Testimony of a Witness Subpoenaed Pursuant to Civil Investigative Demand No. 98-19, E.D.Va.1998, 182 F.R.D. 196. United States 122

11. Disclosure

Inasmuch as it was apparent that communications between former employee and counsel for former employer and related defendants might have influenced former employee's deposition testimony in action brought under False Claims Act (FCA), government and relators could, subject to attorney-client privilege applicable to certain communications made while former employee still worked for former employer, obtain additional testimony from former employee with respect to statements made by defense counsel to former employee regarding nature of case, statements made by former employee to defense counsel regarding her conversations with government investigators, descriptions or summaries of witness testimony given to former employee by defense counsel, and conversations between defense counsel and former employee while she was under oath during deposition. U.S. ex rel. Hunt v. Merck-Medco Managed Care, LLC, E.D.Pa.2004, 340 F.Supp.2d 554. Witnesses 198(2)

Disclosure by Army attorney, who was on special assignment to Justice Department's civil division and investigating False Claims Act claim against government contractor which had been sued by Army while attorney was working for Army, to the Army that current and former employees of contractor would not appear for oral depositions and planned to invoke their Fifth Amendment rights did not violate civil investigative demands (CID) statute; disclosure did not involve answer to interrogatory or transcript of oral deposition nor was it documentary material within meaning of CID statute. U.S. v. Witmer, M.D.Pa.1993, 835 F.Supp. 208, affirmed 30 F.3d 1489. United States 40

31 U.S.C.A. § 3733, 31 USCA § 3733

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