

Justice Department Recovers Nearly \$6 Billion From False Claims Act Cases in 2014

September 28, 2015

The U.S. Department of Justice (DOJ) obtained a record \$5.69 billion in settlements and judgments from civil cases involving fraud and false claims against the government in fiscal year 2014. This marks the first time the DOJ has exceeded \$5 billion in cases under the False Claims Act (FCA), 31 U.S.C. § 3729 et seq. and brings total recoveries from January 2009 through the end of fiscal year 2014 to \$22.75 billion (more than half the recovery since Congress amended the False Claims Act 28 years ago to strengthen the statute and increase the incentive for whistleblowers to file suit). The FCA, first passed in 1863, allows a private person, known as a "relator," to bring a lawsuit on behalf of the United States, where the private person has information that the named defendant has "knowingly submitted" or "caused the submission" of false or fraudulent claims to the United States. The relator need not have been personally harmed by the defendant's conduct. The FCA is the government's primary civil remedy to redress false claims for government funds and property under government contracts including national security and defense contracts, as well as under government programs as varied as Medicare, federally insured loans and mortgages, transportation, and research grants. With more whistleblowers coming forward since the Act was strengthened in 1986, the government opened more investigations, which led to the surge in recoveries we see today. Any business that does business, internationally or domestically, through any sort of government contracting is subject to and faces potential exposure under the FCA. To date, the industries that have been primary targets of FCA enforcement are pharmaceutical, medical device, health care, financial services, housing and mortgage, insurance, construction, and defense contracting. Other industries that have been increasingly exposed to FCA liability are stimulus projects and alternative energy, educational lending, and technology. Although mortgage, housing and health care fraud dominated FCA recoveries for fiscal year 2014 (and remain government enforcement priorities for 2015), the DOJ has aggressively pursued fraud in government procurement and other federal programs. The government has filed a complaint against global software provider CA Inc., after intervening in a whistleblower's suit against the company.

Additionally, the government recovered an \$80 million judgment against BNP Paribas, the global financial institution headquartered in Paris, for violations of the Department of Agriculture (USDA) Supplier Credit Guarantee Program. Examples of other large FCA recoveries in fiscal year 2014 include \$1.85 billion recovered from Bank of America, \$614 million from JP Morgan Chase, \$428 million from Sun Trust Mortgage and \$200 million from U.S. Bank. Additionally, global health care giant Johnson & Johnson and its subsidiaries paid \$1.1 billion to resolve FCA claims regarding various prescription drugs. Other significant recoveries by the DOJ include settlements with Hewlett Packard Company and the Boeing Company to resolve claims involving a contract for IT products and services with the U.S. Postal Service (\$32.5 million) and alleged false claims for labor on maintenance contracts for aircraft with the U.S. Air Force paid by Boeing (\$23 million). The FCA has a very detailed claim filing and pursuit process. The complaint, and all other filings in the case, remain under seal for a period of at least 60 days. Under the FCA, the Attorney General (or DOJ attorney) must investigate the allegations of FCA violations. The investigation usually involves one or more law enforcement agencies (such as the Office of Inspector General of the victim agency, the Postal Inspection Service, or the FBI). At the conclusion of the investigation the DOJ must choose one of three options named in the FCA: (1) intervene in one or more counts of the pending action; (2) decline to intervene in one or all counts of the pending action; or (3) move to dismiss the relator's complaint, either because there is no case or the case conflicts with significant statutory or policy interests of the United States. Upon intervention, the DOJ files a notice of intervention setting forth specific claims as to which the United States is intervening and a motion to unseal the complaint filed by the relator. After the relator's complaint is unsealed, the relator has an obligation to serve its complaint on each named defendant within 120 days. At that point, each named defendant has a duty to file an answer to the complaint or a motion within 20 days after service of the government's complaint. Discovery under the Federal Rules of Civil Procedure begins shortly thereafter. A company found in violation of the FCA is liable for (1) a civil penalty of \$5,500 to \$11,000 for each violation plus three times the amount of damages the government sustains (31 U.S.C. § 3729(a)(1)); (2) the costs of bringing the civil action to recover penalties and damages (31 U.S.C. § 3729(a)(3)). Companies anywhere in the world that do business with the U.S. government can minimize their exposure to FCA liability by implementing strong compliance programs and by self-disclosing any conduct that may be subject to the FCA. Because of the complex considerations at play in FCA matters, a company should seek the advice of counsel as soon as it believes it is the subject of a FCA investigation or lawsuit.

Related Practices

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