

False Claims Act Developments

University of Texas School of Law Continuing Legal Education

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Panelists

Danny S. Ashby, Partner
O'Melveny | Dallas

Holly Clarke, Head of Legal - Defense
GKN Aerospace | Dallas

Taryn McDonald, Partner
Haynes Boone | Dallas

Moderator

Jay Dewald, Partner
Norton Rose Fulbright | Dallas

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False Claims Act: 2022 Statistics

- **948 new False Claims Act (FCA) cases were filed last year**
 - 652 (69%) were *qui tam* lawsuits filed by relators
- **Settlements and judgments**
 - Exceeded \$2.2 B for fiscal year ending Sept. 30, 2022
 - \$1.7 B (77%) involved the healthcare and life sciences industry
 - Including drug and medical device manufacturers, home health, managed care providers, hospitals, pharmacies, and physicians
 - \$1.9 B (86%) arose from lawsuits filed by relators (whistleblowers)
 - Under the *qui tam* provisions and pursued by either the government or relators

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False Claims Act: The Basics

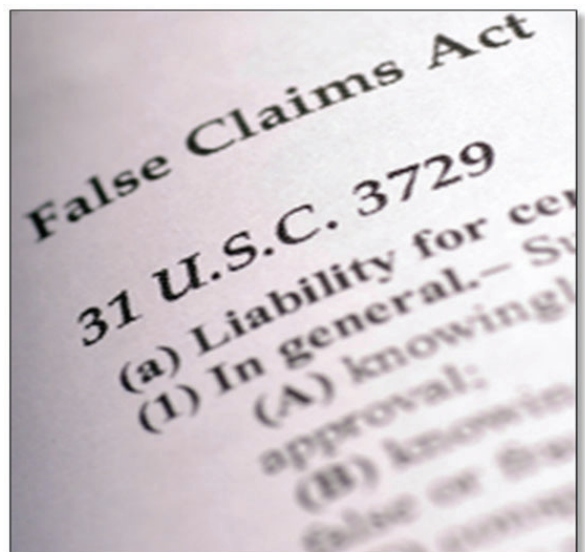
- **Government's primary fraud enforcement tool imposes liability against persons who:**
 - Submit false or fraudulent claims to the government
 - Cause false or fraudulent claims to be submitted
 - Avoiding paying the government or retaining an overpayment by the government (“reverse false claim”)
 - Conspire to submit false or fraudulent claims

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False Claims Act: The Basics

- **FCA litigation can be commenced by relators**
 - On behalf of the government
 - Receive a portion of recovery
- **Penalties for violation of the FCA**
 - \$13,508 to \$27,018 per fraudulent claim
 - Plus, treble damages caused to the government by each fraudulent claim



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False Claims Act: State Equivalent FCAs

At least 30 states have enacted their own versions of the FCA

- **California**
 - Mirrors the federal FCA
- **District of Columbia**
 - Provides an opportunity for a relator to file a suit regarding virtually any kind of false claim made against the District of Columbia
- **Maryland**
 - Limited to medical health plans
- **New York**
 - Very broad; includes claims for fraud involving any type of government contract or business relationship involving state or local money, as well as the failure to pay state taxes
- **Texas**
 - Relates only to Medicaid claims
- **Virginia**
 - Creates liability for any false claim if the Commonwealth has provided any portion of money

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False Claims Act: Scienter

- **Negligence is not enough**
- **“Knowing” or “knowingly”**
 - Actual knowledge
 - Deliberate ignorance
 - Reckless disregard
 - No specific intent to defraud required

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