# False Claims Act Developments

### University of Texas School of Law Continuing Legal Education

10<sup>th</sup> Annual Government Enforcement Institute

September 19, 2024

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## False Claims Act: The Basics

- Government's primary fraud enforcement tool
- FCA litigation can be commenced by relators (Qui Tam)
  Receive a portion of recovery
- Every Case Presents Potentially Huge Damages Model
  - Penalties for violation of the FCA (\$13,508 to \$27,018 per claim)
  - Treble damages
  - Attorney's Fees
- Many States have their own FCA statutes

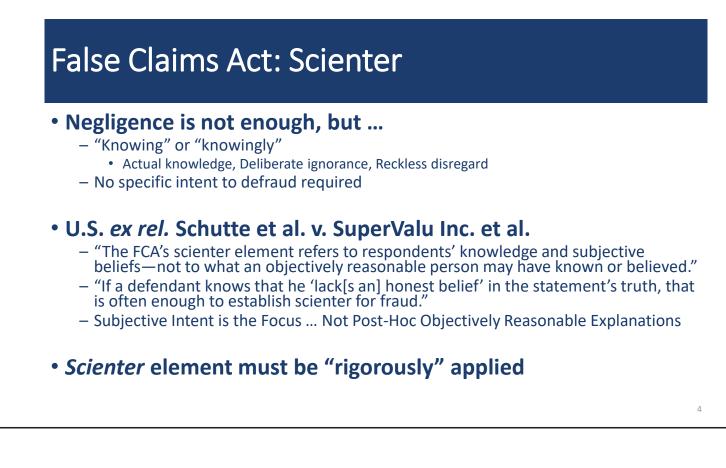
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### False Claims Act: 2023 Statistics

	2023	2022
# of FCA Cases Filed	1212	948
# of QT	712 (59% of cases)	652 (69% of cases)
Total Recovery	\$2.68B	\$2.2B
Healthcare	\$1.8B (67% of total)	\$1.7B (77% of total)
Qui Tams	\$2.3B (86% of total)	\$1.9B (86% of total)

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## False Claims Act: The Evolution of Escobar

#### Implied false certification theory

 Where claim does not merely request payment, but also makes specific representations about goods or services provided, failure to disclose noncompliance with material statutory, regulatory, or contractual requirements makes representations misleading half-truths

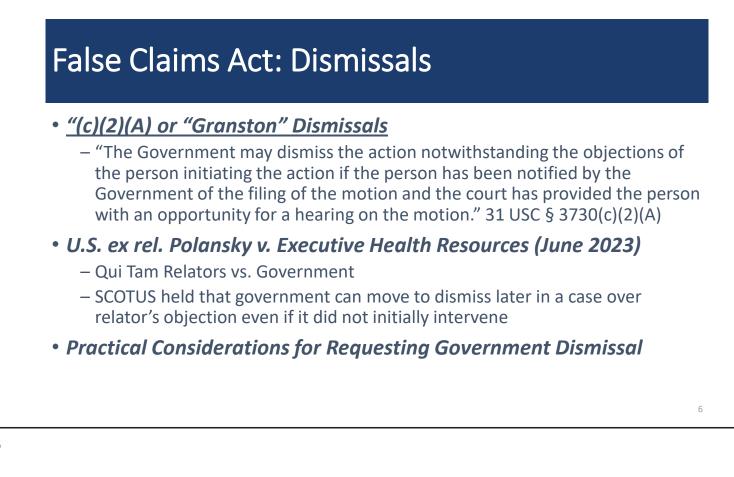
#### **Materiality standard**

- Liability attaches if omission of noncompliance with statutory, regulatory, or contractual requirements is **material** to the government's decision to pay
- Not enough to show "Government would be entitled to refuse payment were it aware of the violation"
- "[I]f the Government pays a particular claim in full despite its actual knowledge that certain requirements were violated, that is very strong evidence that those requirements are not material"

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#### **Current State of the Case Law**





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First appeared as part of the conference materials for the 10<sup>th</sup> Annual Government Enforcement Institute session "False Claims Act Developments"