

## FALSE CLAIMS ACT

### OVERVIEW

Any company that does business with the federal government – no matter how much or how little – must be aware of the federal False Claims Act (FCA). The FCA prohibits falsely billing the government and provides for civil sanctions that can be devastating to a company – up to three times the damages as well as penalties for each false claim. Since the 1986 amendments to the FCA, the government has increasingly used the statute to generate billions of dollars from settlements and judgments. In the last 15 years, the Department of Justice has recovered an average of \$3.5 billion per year, with the total recovery between 2009 and 2023 of more than \$53 billion. Additionally, the government often uses a company's FCA violation as the basis for suspension and/or debarment from government contracting, which means the company will not be awarded any new government contracts nor will existing government contracts be renewed. And, perhaps most concerning, FCA investigations are at times worked in parallel with civil and criminal components of the DOJ. That means a civil matter can quickly turn into a criminal one, with the risk of prison time for employees. There are 93 U.S. Attorneys in the United States charged with enforcing federal criminal and civil laws. In each office, there is a team of lawyers who review each FCA claim for criminal prosecution, civil enforcement, or both. Understanding this process is critical to the early resolution of an FCA investigation to avoid criminal prosecution and/or civil fines and penalties.

The federal government is particularly focused on bringing FCA cases in the healthcare industry. Since 2007, the U.S. Department of Justice has deployed Healthcare Fraud Strike Forces (comprised of prosecutors and investigators) throughout the country to target regions where healthcare fraud investigations are warranted. In the healthcare area, the Federal Bureau of Investigation has committed significant resources, including agents and analysts to FCA enforcement and more broadly, healthcare fraud. Healthcare-related FCA recoveries for the 2009 to 2023 period average \$2.5 billion per year with a total recovery of just under \$38 billion. Given the federal government's involvement in almost every aspect of healthcare, it is not surprising that this area continues to serve as a target-rich environment for federal prosecutors and regulators. Individual whistleblowers often bring FCA claims on behalf of the government. These suits are called *qui tam* suits and, if successful, the whistleblower is entitled to receive up to 30% of the amount recovered by the government. This provides tremendous incentive for individuals to file their own suits, often without even going through the company's compliance procedures. In addition, whistleblowers often bring retaliation claims with the *qui tam* suit.

As a general compliance tool for companies, the Firm has compiled a [Whistleblower Litigation Mitigation Checklist](#), recommending proactive steps a company can take to avoid becoming subject to a whistleblower complaint. Our team appreciates working closely with our clients to customize emerging best practices and practical approaches to minimize their risk profile – ranging from policy adoption, to personnel training, to standardizing internal investigation pathways and protocols. Each company has a unique culture, history, and lifecycle that our team will intimately get to know to provide nuanced and commercially minded recommendations.

The Firm's white collar, healthcare, government contracts and litigation attorneys have extensive experience in investigating, defending and negotiating claims under the FCA. These attorneys ensure that the company works proactively with the relevant government officials from the outset while at the same time investigating the claims thoroughly to marshal any defenses. For cases in which the complaint has already been filed, they litigate aggressively to try to dismiss it as early as possible. Moreover, our attorneys have experience in protecting against follow-on claims by state and local governments pursuant to their own false claims statutes and for any shareholder litigation that may result.

## MEET THE TEAM



### **Mark A. Srere**

Partner, Washington

[mark.srere@bclplaw.com](mailto:mark.srere@bclplaw.com)

[+1 202 508 6050](tel:+12025086050)

## RELATED PRACTICE AREAS

- Litigation & Dispute Resolution
- White Collar
- Healthcare & Life Sciences

# EXPERIENCE

## Healthcare Related FCA Representations

- Represented a large regional not for profit hospital in a *qui tam* matter under the FCA alleging Medicare and Medicaid fraud.
- Represented a Fortune 200 healthcare company in a FCA lawsuit brought by a whistleblower.
- Represented a Fortune 200 healthcare company in an investigation by the U.S. Attorney's Office and U.S. Health and Human Services in an investigation relating to the Anti-Kickback Statute and Stark Law.
- Defended health care company in case involving FCA and Medicare overbilling claims.
- Represented Fortune 500 health care provider in a federal criminal and civil investigation relating to alleged False Claims, Anti-Kickback Statute and Stark Law violations.
- Represented subsidiary of Fortune 500 company in protective equipment industry in civil FCA investigation and negotiated settlement on a non-FCA basis.
- Represented New York City hospital in a FCA *qui tam* suit.

## Further Special Healthcare Investigations

- Represented numerous medical device companies in FDA investigations, including investigations conducted by FDA's Office of Criminal Investigations.
- Represented executive officers of medical device company in criminal investigation by U.S. Attorney's Office.
- Represented Fortune 500 medical device manufacturer in criminal investigation by U.S. Attorney's Office.
- Represented non-profit provider of mental health services in Medicare fraud investigation.

## General FCA Representations

- Represented GSA Schedule contractor in connection with *qui tam* lawsuit and related DOJ investigation under the FCA alleging violations of the price reduction clause.
- Represented GSA Schedule contractor in connection with *qui tam* lawsuit and related DOJ investigation under the FCA alleging violations of commercial sales practices requirements.

- Represented major defense contractor in connection with *qui tam* lawsuit and related DOJ investigation under the FCA alleging false certification of compliance with a component of the Department of Defense's contracts.
- Conducted internal investigation for government contractor to determine whether a mandatory disclosure related to potential violations of the FCA was necessary and appropriate.
- Represented major equipment manufacturer in connection with civil investigation demands issued by the Defense Criminal Investigative Service regarding telecommunications equipment.
- Represented several defense industry companies in FCA investigations handled by Department of Justice or Defense Criminal Investigative Services agency.
- Defended industry-leading nuclear power plant designer from FCA and retaliation claims.
- Represented a food manufacturing company in an FCA case brought by an USDA inspector relating to the manner in which mozzarella cheese was manufactured and sold to the government. Damages were alleged to exceed one billion dollars.
- Represented a national telecom provider in a *qui tam* matter under the FCA alleging fraud against the Federal Government E-Rate program.
- Represented a large civil engineering firm in a *qui tam* matter under the FCA and a civil and criminal investigation by the Department of Energy and the Department of Justice.
- Represented a large engineering and infrastructure corporation in *qui tam* and FCA investigation by the U.S. Department of Justice and the U.S. Attorney's Office related to liquid petroleum gas installations issued during Hurricane Katrina recovery.

## RELATED INSIGHTS

Insights

Jul 11, 2023

### U.S. Supreme Court explains meaning of “knowingly” under the False Claims Act

Insights

Jun 15, 2023

### U.S. Health Care Industry: Risk Mitigation Tips in the Post-Supervalu FCA Landscape

News

Apr 19, 2023

## **Partners author article in ‘Law360’ on FCA case**

Insights

Apr 19, 2023

### **U.S. Health Care Industry Takes Note: U.S. Supreme Court 2023 Attention on False Claims Act**

News

Oct 12, 2021

### **Attorneys Author Article in ‘Wall Street Lawyer’ on Private Equity Firms and FCA Liability Risk**

Events

Sep 28, 2021

### **BCLP Hosts Healthcare Fraud Enforcement Webinar with Guest Speaker from U.S. Attorney’s Office**

Insights

Jul 02, 2020

### **What Recipients of Provider Relief Fund Payments Can Do to Mitigate Whistleblower Risk**

Insights

Jun 25, 2020

### **Action Items for Recipients of Provider Relief Funds to Mitigate Risk Related to Fraud Allegations**

Insights

Jun 17, 2020

### **Health Care Providers in Receipt of Provider Relief Funds: What You Need to Know and Do to Mitigate Fraud Risk**