
False Claims Act: 2018 Year-in-Review

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Federal False Claims Act (FCA) recoveries in fiscal year 2018 amounted to \$2.88 billion, down by roughly \$600 million from the prior year and dropping below \$3 billion for the first time in eight years. Healthcare cases, including ones involving drug and device companies, accounted for most of the total, at roughly \$2.51 billion, up slightly from the previous year. Recoveries in Defense Department cases totaled approximately \$107 million, less than half the 2017 figure. The value of settlements and judgments in the non-healthcare and non-defense category dropped sharply to just below \$260 million. In 2018, 645 new qui tam cases were filed—an average of more than 12 a week—down slightly from the year before but still at historically high levels.

The Justice Department took a series of significant initiatives, including exercising its authority to dismiss qui tam cases with new vigor, restricting use of agency guidance documents in affirmative litigation, establishing policies against duplicative corporate sanctions, and revising the “Yates Memo” concerning individual responsibility.

The Supreme Court agreed to resolve a longstanding Circuit split over the FCA’s statute of limitations, and the Court’s 2016 *Escobar* decision continued to cause debate among the lower courts over the facts needed to allege and prove falsity, materiality, and scienter. Some of those questions are beginning to return to the Court through petitions for certiorari. Lower courts also continued to divide over the first-to-file bar and Rule 9(b)’s pleading requirements.

WilmerHale’s comprehensive review of FCA developments surveys significant federal and state court decisions, settlements, and recently filed or unsealed complaints; legislative and regulatory changes at both the federal and state levels; changes in investigation and litigation strategy by relators, state attorneys general, and federal prosecutors; and proposals for reform of the FCA. By looking back over 2018, the report also provides an important guide to changes on the horizon for 2019.

[Read the full report.](#)

Authors



Christopher E. Babbitt

PARTNER

Co-Chair, False Claims Act
Practice

✉ christopher.babbitt@wilmerhale.com

☎ +1 202 663 6681