
The False Claims Act: 2012 Year-In-Review

2013-01-02

The upward trends in False Claims Act (FCA) enforcement that we described in our 2011 Year-In-Review continued in 2012. In the fiscal year that ended on September 30, 2012, the U.S. Department of Justice (DOJ) secured \$4.9 billion in FCA settlements and civil judgments, beating the previous record by more than \$1.7 billion. Federal FCA recoveries since January 2009 add up to \$13.3 billion, which is the largest four-year total in DOJ history. Large settlements came not only in the healthcare sector as in past years but also from financial institutions in areas such as mortgage fraud. Qui tam relators and the DOJ continued the push to expand FCA liability by arguing that claims become false if the company submitting them violated a regulatory or contract requirement connected with the goods or services that are being reimbursed by the government, since the claims carry a false “implied certification” of regulatory and contract compliance, thereby converting regulatory and contract terms into major punishments. There was also a high level of state FCA activity this year, including an Arkansas case in which a pharmaceutical company was ordered to pay \$1.19 billion for violating the state's Medicaid FCA, as well as a number of states amending their FCAs to make them hew more closely to the federal statute.

This ongoing growth means that companies doing business with the government must remain vigilant in their efforts to avoid liability. The

boundaries of the FCA will continue to be tested. As recently as December 4, Attorney General Eric Holder and other DOJ top officials reiterated the Obama Administration's ongoing commitment to vigorous enforcement of the FCA. And, as we describe in our section on Trends in 2012 and Tips for 2013, whistleblower activity is at an all-time high.

Companies should pay attention to these developments and strengthen their internal compliance programs to resolve potential problems early and internally-before they lead to protracted litigation and potentially hefty damages awards and penalties. To help our clients stay ahead of the curve, WilmerHale provides updates about significant changes in FCA law, analyzing what these developments mean as a practical matter, and suggesting compliance tips to avoid potential liability. At the end of each year, we look back, identify major developments over the past 12 months, and translate these into compliance tips and other recommendations for the coming year.

Here is our False Claims Act 2012 Year-In-Review. First, we summarize the key provisions of the FCA that every company working with the government should know. Next, we discuss federal legislative and regulatory developments, and then noteworthy federal settlements, judgments, and complaints in key business sectors. From there, we analyze the most important federal FCA decisions of 2012. Then we turn to state and local developments. Finally, we synthesize all of this information to identify some key trends in the FCA arena and offer some practical recommendations for clients for 2013.

[Read the False Claims Act 2012 Year-In-Review.](#)

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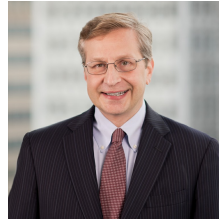
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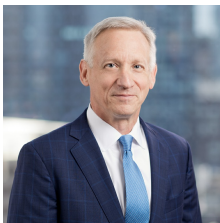
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