

## 2015 DOJ False Claims Act Statistics Reveal Trend Shifts and Increasing Enforcement for 2016

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On December 3, 2015, the U.S. Department of Justice (“DOJ”) announced that it secured in fiscal year 2015 more than \$3.5 billion in settlements and judgments from civil cases involving fraud and false claims against the government brought under the False Claims Act.<sup>1</sup> Although this amount is lower than last year’s record \$5.7 billion recovered by the DOJ in such actions, it marks the fourth consecutive year that recoveries have exceed \$3.5 billion (and sixth consecutive year exceeding \$3 billion). The \$3.5 billion recovered in fiscal year 2015 brings the total amount that the federal government has recovered to over \$26 billion, dating back to the 2009 amendment of the False Claims Act through the Fraud Enforcement and Recovery Act.

For the sixth consecutive year, over 700 new False Claims Act matters were docketed in fiscal year 2015, with more than 600 of those matters filed under the Act’s whistleblower, or *qui tam*, provisions that allow individual whistleblowers, known as relators, to file lawsuits alleging false claims on behalf of the government and share in any recovery. Although this marked a slight decline from the over 800 new False Claims Act matters filed in fiscal year 2014, fiscal year 2015 saw a record \$1.1 billion recovered in *qui tam* cases in which the government declined to intervene and a record of over \$597 million received by relators.

### Industries Targeted

#### Health Care Industry

Of the \$3.5 billion recovered by the federal government in fiscal year 2015, the largest portion—\$1.9 billion—was recovered from companies and individuals in the health care industry accused of various wrongdoing, including for allegedly paying “kickbacks” to health care providers to induce the use of certain goods or services reimbursed by the government; providing unnecessary or inadequate care; or overcharging for goods or services reimbursed by governmental health care programs. In many of these cases, substantial additional amounts were recovered for consumers and state treasuries. After having fallen behind recoveries from banks and other financial institutions in 2014, the health care industry returned to its traditional position as the leading industry targeted for False Claims Act enforcement in fiscal year 2015. Since January 2009, the DOJ has recovered nearly \$16.5 billion in health care fraud matters.

A significant portion of the \$1.9 billion total recovered from the health care industry came from two settlements with DaVita Healthcare Partners, Inc., a leading provider of dialysis services. In October 2014, the DOJ announced that DaVita agreed to pay \$350 million to resolve claims that it violated the False Claims Act by paying kickbacks to induce the referral of patients to its dialysis clinics. That settlement was followed in June 2015 with the announcement that DaVita agreed to pay \$450 million to settle claims that it violated the False Claims Act by knowingly creating unnecessary waste in administering two drugs to dialysis patients and then billing the government for that avoidable waste. Also significantly contributing to the \$1.9 billion recovered was the announcement in October 2015 of 70 settlements involving 457 hospitals in 43 states for more than \$250 million (a portion of which appears to have been included in the 2015 reported figures) related to cardiac devices implanted in Medicare patients in violation of Medicare coverage requirements. Settlements and recoveries from the pharmaceutical industry also contributed \$96 million to the \$1.9 billion recovered.

### **Government Contracts**

Government contracts and federal procurement represented the second-largest sector for recoveries, accounting for \$1.1 billion in fraud settlements and judgments in fiscal year 2015. Significant settlements in this area included (i) a \$146 million settlement for alleged false claims submitted to the Department of Defense for fuel and transporting cargo to American soldiers in Afghanistan, (ii) a \$75.5 million settlement resolving allegations of violation of the False Claims Act by misrepresenting commercial pricing practices and overcharging the government on software products and services, (iii) a \$44.5 million settlement resolving allegations of overcharging federal agencies for record storage activities under General Services Administration contracts, and (iv) a \$27.5 million settlement resolving allegations of knowingly overbilling the government for work performed by employees who lacked required job qualifications.

### **Banking and Other Financial Services**

The financial industry represented the third-largest sector for False Claims Act recoveries in fiscal year 2015. The DOJ announced that it recovered \$365 million from banks and other financial institutions in matters involving alleged false claims in connection with federally insured mortgages and loans. This marks a significant decline from the \$3.1 billion secured in fiscal year 2014, when recoveries from banks and financial institutions represented the majority of the nearly \$5.7 billion recovered by the federal government in False Claims Act matters. The decline, however, was not unexpected, as the significant recoveries in 2014 primarily resulted from four large settlements stemming from the 2008-2009 financial crisis. Despite the decline, companies and individuals operating in the financial sector are likely to face continued scrutiny under the False Claims Act.

## **Whistleblower Actions**

In fiscal year 2015, 632 of the 737 new False Claims Act matters were filed under the Act's whistleblower, or *qui tam*, provisions. In such actions, the whistleblower, also known as the relator, receives up to 30 percent of any recovery. As in prior years, *qui tam* actions were a significant factor in False Claims Act recoveries in 2015. Of the \$3.5 billion total recovered this past fiscal year, approximately \$2.9 billion (over 81 percent) was received in connection with *qui tam* lawsuits filed in this and prior years.<sup>2</sup> A considerable portion of that amount—over \$1.1 billion—was attributable to cases where the government declined to intervene, and the whistleblower pursued the action on his or her own.

In 2015, whistleblowers received over \$597 million in False Claims Act cases, a significant increase over the \$444 million recovered in fiscal year 2014. Whistleblowers' recoveries in 2015 marked the largest ever, topping the \$559 million recovered in 2011.

From January 2009 through the end of fiscal year 2015, the government has recovered \$19.4 billion in settlements and judgments related to *qui tam* lawsuits and paid whistleblower awards of \$3 billion.

## **Takeaways**

The DOJ's summary of fiscal year 2015 False Claims Act recoveries and related statistics are noteworthy in several respects.

First, the statistics suggest a far greater willingness by whistleblowers to proceed with their False Claims Act actions, even where the government has decided not to intervene in the action. Specifically, fiscal year 2015 marked a dramatic increase in recoveries in *qui tam* cases in which the government declined to intervene. As noted above, of the \$2.91 billion recovered in *qui tam* actions, approximately \$1.15 billion (or over 39 percent) was recovered in actions pursued by the whistleblowers without intervention by the government. This marked the greatest dollar amount recovered in non-intervened cases, dwarfing the \$80 million recovered in such cases in 2014 and the previous high of \$174 million recovered in 2011. The larger recoveries for whistleblowers in non-intervened cases will continue to embolden whistleblowers and the relators' bar.

Second, given that 2015 marked the sixth consecutive year that over 700 new False Claims Act matters were filed, it seems clear that the DOJ's focus on False Claims Act enforcement will continue. Prior to 2010, there was only one year in the history of the False Claims Act that the number of new matters filed topped 700. The consistently high number of *qui tam* suits filed in recent years may be explained, at least in part, by recent amendments to the False Claims Act. For example, the 2009 Fraud Enforcement and Recovery Act expanded the scope of False Claims Act liability by, among other things, loosening the intent requirement by effectively overturning the Supreme Court's decision in *Allison Engine Co. v. U.S. ex rel. Sanders*, 128 S.Ct. 2123 (2008); broadening "reverse" false claims liability by adding a provision that creates liability even where a defendant does not make a false record or statement; eliminating the direct presentment requirement; and broadening the anti-retaliation provision.

Third, there likely will be increased government scrutiny of the conduct of individuals in False Claims Act matters. In fiscal year 2015, the government intervened in a number of False Claims Act matters naming individuals as defendants and also reached a number of settlements of \$1 million or more with individuals. This increased scrutiny of individuals for False Claims Act enforcement will undoubtedly continue, especially in view of the September 9, 2015 Yates Memo announcing the DOJ's various initiatives designed to strengthen its pursuit of individual corporate wrongdoing and ensure that individuals are held accountable for corporate misdeeds, both criminally and civilly.

<sup>1</sup> See DOJ Press Release, "Justice Department Recovers Over \$3.5 Billion From False Claims Act Cases in Fiscal Year 2015" (Dec. 3, 2015), available [here](#); see also DOJ Fraud Statistics (Nov. 23, 2015), available [here](#).

<sup>2</sup> Amounts are from the underlying DOJ Fraud Statistics, available [here](#).

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Washington, DC

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Department of Justice (DOJ)

False Claims Act (FCA)

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## Related Professionals

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