

# FCA\* for BEGINNERS

\*FALSE CLAIMS ACT

31 U.S.C § 3729 *et seq.*

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# WHY CHEAT THE GOVERNMENT?

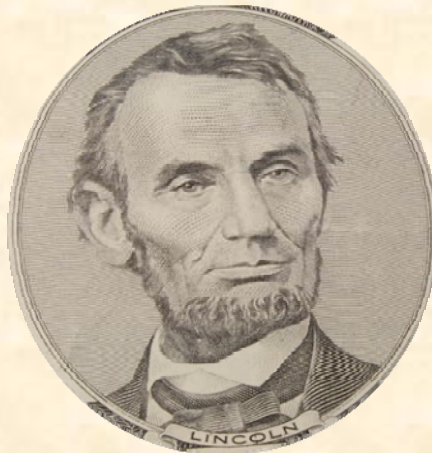
- “There is no kind of dishonesty into which otherwise good people more easily and frequently fall than that of defrauding the Government.”

- Benjamin Franklin

- Sheer Magnitude of Government Programs
  - Defense/Security - \$625 Billion (2008 budget; approx 20%)
  - Social Security - \$617 Billion (2008 budget; approx 20%)
  - Medicare/Medicaid/CHIP - \$599 Billion (2008 budget; approx 20%)
  - TARP (Troubled Asset Relief Program)
  - ARRA (American Reinvestment and Recovery Act)

# BRIEF HISTORY OF FCA

- 31 U.S.C. § 3729 *et seq.*
- Civil War Origins - “Lincoln’s Law”



- Deeply Rooted in English & American law

# MANY STATE FCAs

- CALIFORNIA
- DELAWARE
- DISTRICT of COLUMBIA
- FLORIDA
- GEORGIA
- HAWAII
- ILLINOIS
- INDIANA
- LOUISIANA
- MASSACHUSETTS
- MICHIGAN
- MINNESOTA
- MONTANA
- NEVADA
- NEW HAMPSHIRE
- NEW JERSEY
- NEW MEXICO
- NEW YORK
- NORTH CAROLINA
- OKLAHOMA
- RHODE ISLAND
- TENNESSEE
- TEXAS
- VIRGINIA
- WISCONSIN

# “QUI TAM” PROVISION

- *qui tam pro domino rege quam pro si ipso in hac parte sequitur*
- Translation: One who sues on behalf of the King as well as for himself
- Allows a private individual, not injured by a defendant’s conduct (and therefore not an eligible plaintiff under traditional notions of standing), to sue on behalf of the Government

# THE “RELATOR”

- The “Qui Tam” plaintiff is commonly referred to as the “Relator” (or often times a Whistle Blower)
  - Who can become a Relator?
- Why become a Relator?
  - “Truth is not only violated by falsehood; it may be outraged by silence.” - Henri Frederick Amiel
  - In addition to helping catch the bad guys and protecting the Government treasury, the Relator shares in any recovery (\$\$\$) by the Government
  - Downside/Risk to becoming a Relator?

# FRAUD STATISTICS: 10/87-09/09

- Qui Tam case filings
  - '87 = 30 → '09 = 433 (Total - 6,628)
- Qui Tam case settlements/judgments
  - '87 = 0 → '09 = \$1.97B (Total - \$15.6B)
- Relator Share Awards
  - '87 = 0 → '09 = \$255M (Total - \$2.5B)

# FCA LIABILITY

- The FCA imposes liability on any person who commits any of the following acts:
  - a) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
  - b) knowingly makes, uses , or causes to be made or used, a false record or statement material to a false or fraudulent claim;
  - c) conspires to commit a violation of (a) or (b) above, or (d) thru (g) below;



# FCA LIABILITY con't

d) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;

e) . . . .

f) . . . .

g) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government;

# “KNOWINGLY”

- A person acts “knowingly” with respect to information if he/she:
  - has actual knowledge of the information;
  - acts in deliberate ignorance of the truth or falsity of the information; or
  - acts in reckless disregard of the truth or falsity of the information;
- Does not require a showing of “specific intent” to defraud

# “CLAIM”

- Means a request or demand for money or property that is:
  - presented to an officer, employee or agent of the U.S., or
  - made to a contractor or grantee involved in a Government program, if
    - » U.S. has provided any portion of the money requested or demanded, or
    - » U.S. will reimburse the contractor or grantee for any portion of the money requested or demanded
- Does not apply to IRS matters

# FCA DAMAGES



# FCA DAMAGES con't

- A defendant is liable to the Government for:
  - 3 x actual damages;
  - costs of litigation; and
  - civil penalty of not less than \$5K or more than \$10K for each act
- Defendant is also separately liable for the Relator's attorney's fees and litigation costs

# LIMITATION on DAMAGES

- A Defendant can limit its liability to 2 x actual damages if:
  - Def furnished all information about the FCA violation to the Government w/in 30 days of obtaining the information, and
  - Def fully cooperated with any Government investigation of the FCA violation, and
  - At time the info was given to the Government there was no pending criminal, civil or administrative case concerning the FCA violation, and
  - Def had no knowledge of any Government investigation of the FCA violation

# FCA LITIGATION

- The Relator takes the following steps:
  - Files Complaint under seal
  - Does not serve the Defendant(s)
  - Serves a copy of the Complaint on the Government
  - Includes with the Complaint a written “disclosure statement” which must substantially cover all material evidence and information in the Relator’s possession

# FCA LITIGATION con't

- The Government then:
  - Must investigate the Complaint's allegations
  - Decide w/in 60 days whether to "intervene" (time can be extended for good cause)
  - If Government intervenes, the Complaint is unsealed and served on the Defendant(s)
  - If Government declines intervention, the Relator takes over litigation of the case (Complaint unsealed and served on Def)
  - After declining intervention, Government may seek to intervene if Relator inadequately protecting Government's interests



# FCA LITIGATION con't

- The Defendant(s) : *blissfully ignorant*, at least initially



# EMPLOYMENT PROTECTION

- Any employee who is discharged, demoted, suspended, harassed, etc because of efforts to stop FCA violations is entitled to the following relief:
  - Reinstatement with seniority
  - Double lost earnings with interest
  - Any special damages resulting from discrimination
  - Attorney's fees and costs
  - Any other relief necessary to make employee whole

# LIMITS ON FCA ACTIONS

- No FCA case can be brought:
  - Against a Member of Congress, a member of the judiciary, or a senior executive branch official, if the action is based on evidence or information known to the Government when the action was brought
  - Based upon allegations or transactions which are the subject of a civil suit or an administrative civil penalty proceeding in which the Government is already a party

# LIMITS con't

- Based upon the public disclosure of allegations or transactions in a:
  - » criminal, civil or administrative hearing
  - » congressional, administrative, or GAO report, hearing, audit or investigation
  - » the news media,
- Unless, the action is brought by
  - » the Attorney General, or
  - » a person who is the “original source” of the information

# RELATOR'S SHARE

- Intervened Cases:
  - not less than 15% nor more than 25%
- Declined Cases:
  - not less than 25% nor more than 30%

# ADDITIONAL RESOURCES

- Taxpayers Against Fraud - [www.taf.org](http://www.taf.org)
- U.S. Department of Justice Briefing Room
  - [www.justice.gov](http://www.justice.gov)
- False Claims Act: Whistleblower Litigation (5<sup>th</sup> Ed), by James B. Helmer, Jr. (Top Gun - Publishers)
- Civil False Claims and *Qui Tam* Actions (3<sup>rd</sup> Ed) by John T. Boese (Wolters Kluwer - Publishers)

**NEED ADDITIONAL HELP?**



# CONTACT INFORMATION

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