False Claims Act

The federal False Claims Act–also known as "Lincoln's Law"–dates to the Civil War, when it was enacted to punish military suppliers who sold defective supplies to Union troops. Today, the Act is applied to a broad range of fraud, though scams involving medical fraud and, indeed, military contractors account for the lion's share of prosecutions.

What hasn't changed is the method of bring a False Claims Act case–a tactic that predates the Act itself by some five centuries: A "*qui tam*" action is filed by a private citizen against a fraudulent actor on behalf of the filer as well as for the filing party's government. Under the False Claims Act, the reporting party, or "relator," typically receives between 15 and 30 percent of the recovery based on their role in unveiling the fraud. Generally speaking, the relator will receive a larger share if the government declines to assist the relator in his or her private prosecution of the civil fraud.

The federal False Claims Act holds that "any person" who "knowingly presents, or causes to be presented" a "false or fraudulent claim for payment or approval" to "an officer or employee of the United States Government" is liable for fines ranging between $5,500 and $11,000 per fraudulent claim as well as for three times the amount of damages the government "sustains because of the act of [the defendant]." A relator must hire an attorney to file a federal *qui tam* action, which the relevant federal district court will typically file under seal as the U.S. Department of Justice ("DOJ") and any other agency with jurisdiction over the accused violation investigate the claim and decide whether or not to intervene on the relator's behalf. While the agencies are required to decide within 60 days, in practice they often request, and receive, extensions that can delay a case by months or even years. Should the government choose to intervene, it generally assumes control of the matter, though the realtor remains a co-plaintiff and will be expected to offer assistance as needed. Notably, the False Claims Act does not set a total recovery minimum in order for relators to recover monetary rewards (as opposed to, for example, whistleblowers who report violations of securities laws under the Dodd-Frank Act).

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FALSE CLAIMS ACT

In addition to the federal Act, many states have enacted analogous false claims acts, with *qui tam* suits filed under those in the respective state courts. While the state analogs generally follow the substance of the federal False Claims Act, some carry meaningful differences. The California False Claims Act, for example, protects relators from retaliation while providing potentially larger incentives than its federal inspiration; under California law, relators are entitled to between 15 and 33 percent of a total action recovery if the state intervenes in the prosecution. If the state declines the opportunity, the relator has a right to as much as half of the total recovery.

For more information on the federal False Claims Act, the California False Claims Act, or other state false claims acts, please follow up with Niall McCarthy or Justin Berger.

- Email Niall
- Email Justin
- Call Niall or Justin at (650) 697-6000.

News

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