



FALSE CLAIMS ACT REPRESENTATION

BILLIONS LOST TO FRAUD

Each year, the federal government loses billions of dollars to waste, fraud and abuse of taxpayer funds. Whistleblowers can combat that fraud by filing a lawsuit under the federal False Claims Act or under similar state laws – and receive a portion of the recovery for a successful suit. Our whistleblower attorneys have dedicated their entire practice to fighting corporate fraud and litigating False Claims Act cases and, as former DOJ and SEC attorneys, understand how to effectively investigate fraud claims, present cases to government agencies, and maximize potential awards.

What is the False Claims Act?

The False Claims Act (“FCA”) is a federal statute designed to combat fraud against federal programs by allowing whistleblowers (called “relators”) to bring suit on behalf of the Government against entities that fraudulently obtain federal funds or property.

The FCA has been a highly effective weapon in combating fraud against nearly in Government programs, with more than \$38 billion recovered by the end of 2013 and more than \$17 billion recovered in the last five years alone.

Because the U.S. relies on whistleblowers to expose and combat fraud against federal programs, the FCA empowers private citizens to file suit on behalf of the U.S. and collect a portion of whatever funds are recovered from the defendant. Over 70% of the \$38 billion recovered since 1986 has come from whistleblower suits.

What types of fraud are covered by the False Claims Act?

The FCA was broadly designed to cover numerous types of fraud perpetrated against the government in all types of industries including: healthcare, defense, pharmaceutical, finance, banking, education, and research.

For example, an FCA suit could be brought against:

- a hospital that bills Medicare for services not provided or bills for more expensive services than those provided;

- a drug company that markets drugs for off-label purposes or pays kickbacks to prescribers;
- a physician practice that receives kickbacks for referrals paid for by Medicare or Medicaid;
- a defense contractor that bills the Department of Defense for substandard equipment;
- a financial institution that knowingly underwrites non-compliant mortgages receiving federal insurance coverage;
- an oil company that fails to pay royalties for oil or gas obtained from federal lands.

To be liable under the FCA, a defendant must act “knowingly.” This means that the defendant must at the very least act with reckless disregard to the truth of the claims submitted to the Government. Mere negligence or honest mistakes are not covered under the FCA.

How is a False Claims Act case initiated?

To initiate an FCA action, a complaint is filed under seal in a federal district court. Filing under seal means that the lawsuit is essentially secret - a copy of the complaint is not served on the defendant and the existence of the lawsuit is not made public. Instead, copies of the complaint and a written disclosure of the evidence supporting the alleged fraud are provided to the Attorney General and the U.S. Attorney for the federal district where the suit was filed.

After the case is filed, the Department of Justice has 60 days to investigate the allegations contained in the whistleblower's complaint and decide whether to intervene (take over responsibility of litigating the case). This 60 day period is frequently extended, as the Government commonly requests a longer period of time to conduct its investigation.

Once this investigatory period has ended, the government makes a decision about whether to join the case (intervene) or decline intervention. If the government declines to join the case, the whistleblower may persist in litigating against the defendant.

What are the potential rewards for a whistleblower under the False Claims Act?

Whistleblowers who file suit under the False Claims Act are eligible to receive between 15% and 25% of funds recovered from a defendant's settlement or judgment if the Government chooses to intervene in the suit, and between 25% and 30% of the recovery if the Government chooses not to intervene.

Does the False Claims Act include protection from retaliation?

Yes. The FCA prohibits retaliation against whistleblowers for filing a suit under the FCA or taking steps to stop violations of the FCA. Whistleblowers that are fired, demoted, harassed, threatened, suspended, or in other ways

discriminated against for bringing an FCA suit or for taking actions to stop FCA violations may be entitled to relief for the retaliation. This relief includes reinstatement with the same seniority status, two times the amount of back pay with interest, compensation for special damages suffered, as well as reasonable costs and attorney's fees. These protections apply to both employees and independent contractors.

What about fraud against state governments?

To combat fraud against state treasuries, twenty-nine states and the District of Columbia have enacted their own state false claims acts, many of which are modeled after the federal FCA. Like under the federal statute, these states allow individuals to file suit under seal on behalf of the state and collect a portion of the recovered funds. Although most state false claims acts are very similar to the federal FCA, there are important differences. Some state false claims acts are more expansive than the federal version, while others are more restrictive. For instance, the Illinois and New York FCAs cover tax fraud, which is not covered by the federal statute.

If you would like to speak to one of our attorneys about a potential whistleblower matter, please email us at wbinfo@ktmc.com or call us at (610) 667-7706. All case evaluations are confidential and free.