

FALSE CLAIMS ACT

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1. FCA Liability:

- A. A false claim is submitted to an officer of the U.S.
- B. A false record or statement is used to get a false claim paid.
- C. Conspiracy to do A or B above.

2. “Claim” is defined as:

- request or demand for money or property;
- made under a contract “or otherwise”;
- to a contractor, grantee or other recipient if the U.S. provides any part of what is requested;
- or if the U.S. will reimburse such contractor, grantee or other recipient for any portion of the money.

3. Damages and Penalties/Forfeitures
 - Treble damages
 - Penalties -- \$5,500 -- \$11,000 per false claim

4. Level of knowledge required for liability to attach
 - A. Actual knowledge of falsity
 - B. Deliberate ignorance of the truth or falsity of the claim
 - C. Reckless disregard of the truth or falsity of the claim

5. Who may bring an action under the FCA
 - A. United States acting through the Dept. of Justice.
 - B. A private person suing in the name of the U.S.
 - Called a “Qui Tam” lawsuit
 - Plaintiff (“Relator”) in Qui Tam suit:
 - Must submit complaint and a statement disclosing “substantially all material evidence and information the person possesses” to the Government;
 - And must file the case under seal

6. The lawsuit stays under seal for at least 60 days for the Government to decide whether or not to intervene and take over the case
 - Vast majority of recoveries in Qui Tam cases are in those in which U.S. intervenes
 - U.S. intervenes in fewer than 20% of procurement-related cases
 - If U.S. does not intervene, Relator may proceed on own.

7. Relators' recovery;

- If Government intervenes, 15-25% of total recovery;
- If Government does not intervene, 25-30% of total recovery.
- Plus recovery of reasonable attorneys fees and costs of litigation.

8. Defenses available to Defendant

- The obvious one – claims were not false
- Public Disclosure/Original Source
 - Public disclosure of allegations or transactions in a criminal, civil or administrative hearing or GAO report, hearing, audit or investigation or from the news media
 - Original source is one who has direct and independent knowledge of the information on which the allegations are based and voluntarily provides the information to the Government before filing suit

Defenses available to Defendant (Cont' d.)

- Statute of Limitations – 6 years; may be “tolled” to up to 10 years.
- Materiality – would the Government have paid the claim if it had known of the FCA allegations?

9. Burden of Proof

- Preponderance of the evidence

False Claims Act Correction Act

- Introduced in the Senate Sept. 12, 2007 (S.2041)
 - Unanimously approved by the Senate Judiciary Committee on April 3, 2008
- **U.S. ex rel. Sanders v. Alison Engine Co.**
 - Oral Arguments heard by the Supreme Court on Feb. 26, 2008

False Claims Act Correction Act

- Removes the “Presentment” requirement
 - Provides for liability when a false claim involves Government money or property
- Removes jurisdictional defense of public disclosure
 - Provides it is the exclusive right of the Attorney General to dismiss based upon public disclosure

False Claims Act Correctional Act

- Expands FCA to include any funds under the custody or management of the U.S. Government
 - Expands FCA to funds used in Iraq
- Expands statute of limitations to 10 years

False Claims Act Correction Act

- Allows Federal Government Employees to bring FCA claims
 - April 3rd Amendments places limits on claims brought by Fed. employees