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The False Claims Act: How Everyday People Can Be Rewarded for Reporting Fraud

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The False Claims Act: How Everyday People Can Be Rewarded for Reporting Fraud

By: Emily Shepard, Staff Editor, Vol. 110



Government spending has been a hot topic for many years with the government consistently running on a deficit.[1] A growing area of government spending is on government contracts, in 2020 spending in this area grew by fourteen percent.[2] Many people know the government is run on a deficit and worry about how their tax dollars are being spent. However, what many typically do not know is, there is a mechanism for everyday people to ensure that government contract expenditures are kept in check.[3] The False Claims Act (FCA) allows any individual to bring a lawsuit on behalf of the U.S. to sue an individual or group who has defrauded the U.S. by receiving more money in a government contract than they should have.[4] These types of lawsuits can range from claims for overpayment in Medicare and Medicaid to construction and procurement fraud.[5]

Bringing a lawsuit on behalf of the U.S. for fraud can be a lot of work, but the reward can be substantial.[6] When a lawsuit is brought, the government has two options: to join the lawsuit to help litigate, or to refuse to join and allow the plaintiff, known as a relator, to continue the lawsuit by themselves.[7] The damages to be paid in a FCA suit are treble (triple) damages plus a fine for each false claim.[8] The relator in these cases typically get anywhere from fifteen to thirty percent of the awarded damages, depending on whether the government decides to intervene in the lawsuit.[9] In

2020, lawsuits brought under the FCA got a total of \$1,686,124,824 in judgments in settlements.[10] Approximately eighteen percent, or \$309,416,126 was awarded to the relators in the settled lawsuits.[11]

The FCA was originally adopted in 1863 in response to the Civil War to counter the fraud occurring in defense contracting.[12] Over the years, the statute has been revised to adapt to changes in the US.[13] Most notably, there have been amendments to protect relators from retaliation, to clarify who may sue, and to make clear that lawsuit may not be brought based on public information.[14] One important modification that has received attention lately is the addition of the "first-to-file bar." [15] This is a provision which states that only the first relator to bring a suit may pursue the claim, and no other person may intervene, aside from the government.[16] One goal of this provision is to ensure there is not duplicate litigation around a single instance of fraud.[17]

Recently various federal circuit courts have heard cases and decided what this first-to-file bar means in practice.[18] There has been a split over whether the provision should strictly prohibit all parties aside from the government to join or "intervene" in the lawsuit, or whether relators should have a say in who is

allowed to intervene.[19] As one could imagine, having inconsistent applications across the U.S. could lead to problems, and each reading has its issues. A narrow reading of the provision, which would allow the relator to bring in other parties, could result in long term litigation where the relators could change often.[20] On the other hand, a broad reading of intervene that only allows the government to join, could lead to more cases being dismissed when a relator is unable to continue to litigate for some reason.[21]

In the end, the FCA is an important tool that everyday people can use to ensure that their tax dollars are not being fraudulently spent on government contracts, and also get financially rewarded for reporting fraud.[22] An important issue that has arisen within this area is the interpretation of the first-to-file bar.[23] In the future, it will be interesting to note how the Supreme Court will resolve the circuit split surrounding the first-to-file bar and how it will affect FCA lawsuits moving forward.

[1] Beta Data Lab, *Federal Deficit Trends Overtime*, <https://datalab.usaspending.gov/americas-finance-guide/deficit/trends/>

[2] Frank Konkel, *Government's Contract Spending Reached Record High in Fiscal 2020*, (June 11, 2021), <https://www.nextgov.com/cio-briefing/2021/06/governments-contract-spending-reached-record-high-fiscal-2020/174668/> (<https://www.nextgov.com/cio-briefing/2021/06/governments-contract-spending-reached-record-high-fiscal-2020/174668/>).

[3] U.S. Department of Justice, *The False Claims Act*, (Jan. 14, 2021), <https://www.justice.gov/civil/false-claims-act>.

[4] *Id.*

[5] U.S. Department of Justice, *Practice Areas*, (Oct. 4, 2021), <https://www.justice.gov/civil/practice-areas-0>.

[6] U.S. Dept. of Just., Civil Div., *Fraud Statistics Overview, October 1, 1986 – September 30, 2020*, 2, <https://www.justice.gov/opa/press-release/file/1354316/download>.

[7] Charles Doyle, Congressional Research Service, R40786, *Qui Tam: An Abridged Look at the False Claims Act and Related Federal Statutes* (Apr. 26, 2021), <https://crsreports.congress.gov/product/pdf/R/R40786/8>.

[8] *Id.* at 9.

[9] *Id.* at 10.

[10] U.S. Department of Justice, *Supra* n. 6, at 2.

[11] *Id.*

[12] Doyle, *Supra* n. 7, at 2.

[13] *Id.* at 3-4.

[14] *Id.*

[15] S. Rep. No. 99-345, 99th Cong., 2d Sess. (July 28, 1986), <https://www.justice.gov/sites/default/files/jmd/legacy/2013/10/31/senaterept-99-345-1986.pdf>.

[16] 31 U.S.C. § 3730(b)(5).

[17] Doyle, *Supra* n. 7, at 2.

[18] See *United States v. Sanofi-Aventis U.S. LLC*, 974 F.3d 228 (3rd Cir. 2020); *United States ex rel. Little v. Triumph Gear Sys.*, 870 F.3d 1242 (10th Cir. 2017).

[19] Compare *United States v. Sanofi-Aventis U.S. LLC*, 974 F.3d 228 (3rd Cir. 2020) (holding intervene is limited to the meaning of Fed. R. Civ. Pro. 24, allowing many parties to join lawsuits,) with *United States ex rel. Little v. Triumph Gear Sys.*, 870 F.3d 1242 (10th Cir. 2017) (holding intervene has a broad meaning, only allowing the government to join the lawsuit).

[20] *United States v. Sanofi-Aventis U.S. LLC*, 974 F.3d 228 (3rd Cir. 2020).

[21] *United States ex rel. Little v. Triumph Gear Sys.*, 870 F.3d 1242 (10th Cir. 2017).

[22] Doyle, *Supra* n. 7, at 2.

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