Effective:[See Notes]

United States Code Annotated Currentness
Title 31. Money and Finance (Refs & Annos)
Subtitle III. Financial Management
Chapter 37. Claims (Refs & Annos)
Subchapter III. Claims Against the United States Government (Refs & Annos)
§ 3729. False claims

(a) Liability for certain acts.--

(1) In general.--Subject to paragraph (2), any person who--

(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 subparagraph (A), (B), (D), (E), (F), or (G);

(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) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or

(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,

is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104-410 [FN1]), plus 3 times the amount of damages which the Government sustains because of the act of that person.

(2) Reduced damages.--If the court finds that--

(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date

on which the defendant first obtained the information;

(B) such person fully cooperated with any Government investigation of such violation; and

(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation,

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

(3) Costs of civil actions.--A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) Definitions.--For purposes of this section--

(1) the terms "knowing" and "knowingly" --

(A) mean that a person, with respect to information--

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information; and

(B) require no proof of specific intent to defraud;

(2) the term "claim"--

(A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that--

(i) is presented to an officer, employee, or agent of the United States; or

(ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government--

(I) provides or has provided any portion of the money or property requested or demanded; or

(II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and

(B) does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property;

(3) the term "obligation" means an established duty, whether or not fixed, arising from an express or implied contractual,

grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment; and

(4) the term "material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(c) Exemption from disclosure.--Any information furnished pursuant to subsection (a)(2) shall be exempt from disclosure under section 552 of title 5.

(d) Exclusion.--This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

[(e) Redesignated (d)]

CREDIT(S)

(Pub.L. 97-258, Sept. 13, 1982, 96 Stat. 978; Pub.L. 99-562, § 2, Oct. 27, 1986, 100 Stat. 3153; Pub.L. 103-272, § 4(f)(1)(O), July 5, 1994, 108 Stat. 1362; Pub.L. 111-21, § 4(a), May 20, 2009, 123 Stat. 1621.)

[FN1] So in original. Probably should read "Public Law 101-410".

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1982 Acts

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3729	31:231	R.S. § 3490.

In the section, before clause (1), the words "a member of an armed force of the United States" are substituted for "in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States" and "military or naval service" for consistency with title 10. The words "is liable" are substituted for "shall forfeit and pay" for consistency. The words "civil action" are substituted for "suit" for consistency in the revised title and with other titles of the United States Code. The words "and such forfeiture and damages shall be sued for in the same suit" are omitted as unnecessary because of rules 8 and 10 of the Federal Rules of Civil Procedure (28 App.U.S.C.). In clauses (1)-(3), the words "false or fraudulent" are substituted for "false, fictitious, or fraudulent" and "Fraudulent or fictitious" to eliminate unnecessary words and for consistency. In clause (1), the words "presents, or causes to be presented" are substituted for "shall make or cause to be made, or present or cause to be presented" for clarity and consistency and to eliminate unnecessary words. The words "officer or employee of the Government or a member of an armed force" are substituted for "officer in the civil, military, or naval service of the United States" for consistency in the revised title and with other titles of the Code. The words "upon or against the Government of the United States, or any department or officer thereof" are omitted as surplus. In clause (2), the word "knowingly" is substituted for "knowing the same to contain any fraudulent or fictitious statement or entry" to eliminate unnecessary words. The words "record or statement" are substituted for "bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition" for consistency in the revised title and with other titles of the Code. In clause (3), the words "conspires to" are substituted for "enters into any agreement, combination, or conspiracy" to eliminate unnecessary words. The words "of the United States, or any department or officer thereof" are omitted as surplus. In clause (4), the words "charge", "or other", and "to any other person having authority to receive the same" are omitted as surplus. In clause (5), the words "document certifying receipt" are substituted for "certificate, voucher, receipt, or other paper certifying the receipt" to eliminate unnecessary words. The words "arms, ammunition, provisions, clothing, or other", "to any other person", and "the truth of" are omitted as surplus. In clause (6), the words "arms, equipments, ammunition, clothes, military stores, or other"

are omitted as surplus. The words "member of an armed force" are substituted for "soldier, officer, sailor, or other person called into or employed in the military or naval service" for consistency with title 10. The words "such soldier, sailor, officer, or other person" are omitted as surplus.

1986 Acts. Senate Report No. 99-345, see 1986 U.S. Code Cong. and Adm. News, p. 5266.

1994 Acts. House Report No. 103-180, see 1994 U.S. Code Cong. and Adm. News, p. 818.

2009 Acts. Senate Report No. 111-10, see 2009 U.S. Code Cong. and Adm. News, p. 430.

Statement by President, see 2009 U.S. Code Cong. and Adm. News, p. S21.

References in Text

The Federal Civil Penalties Inflation Adjustment Act of 1990, referred to in subsec. (a)(1), is Pub.L. 101-410, Oct. 5, 1990, 104 Stat. 890, as amended, which is set out as a note under 28 U.S.C.A. § 2461.

The Internal Revenue Code of 1986, referred to in subsec. (d), is set out generally in Title 26, Internal Revenue Code.

Amendments

2009 Amendments. Subsec. (a). Pub.L. 111-21, § 4(a)(1), rewrote subsec. (a), which formerly read:

"(a) Liability for certain acts.--Any person who--

"(1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval;

"(2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;

"(3) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;

"(4) has possession, custody, or control of property or money used, or to be used, by the Government and, intending to defraud the Government or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

"(5) authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

"(6) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge the property; or

"(7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government,

"is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, plus 3 times

the amount of damages which the Government sustains because of the act of that person, except that if the court finds that--

"(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

"(B) such person fully cooperated with any Government investigation of such violation; and

"(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation;

"the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of the person. A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages."

Subsec. (b). Pub.L. 111-21, § 4(a)(2), rewrote subsec. (b), which formerly read:

"(b) Knowing and knowingly defined.--For purposes of this section, the terms 'knowing' and 'knowingly' mean that a person, with respect to information--

"(1) has actual knowledge of the information;

"(2) acts in deliberate ignorance of the truth or falsity of the information; or

"(3) acts in reckless disregard of the truth or falsity of the information,

"and no proof of specific intent to defraud is required."

Subsec. (c). Pub.L. 111-21, § 4(a)(2) to (4), struck out former subsec. (c); redesignated former subsec. (d) as (c); and in new subsec. (c) as redesignated, struck out "subparagraphs (A) through (C) of subsection (a)" and inserted "subsection (a)(2)". Prior to repeal, former subsec. (c) read as follows:

"(c) Claim defined.--For purposes of this section, 'claim' includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded."

Subsec. (d). Pub.L. 111-21, § 4(a)(3), redesignated former subsec. (e) as (d). Former subsec. (d) redesignated as (c).

Subsec. (e). Pub.L. 111-21, § 4(a)(3), redesignated former subsec. (e) as (d).

1994 Amendments. Subsec. (e). Pub.L. 103-272, § 4(f)(1)(*O*), substituted reference to the Internal Revenue Code of 1986, for reference to the Internal Revenue Code of 1954.

1986 Amendments. Subsec. (a). Pub.L. 99-562, § 2(1), in provision preceding par. (1) substituted "(a) Liability for certain acts.--Any person who--" for "A person not a member of an armed force of the United States is liable to the United States Government for a civil penalty of $2,000, an amount equal to 2 times the amount of damages the Government sustains because of the act of that person, and costs of the civil action, if the person--".

Subsec. (a)(1). Pub.L. 99-562, § 2(2), substituted "United States Government or a member of the Armed Forces of the United States" for "Government or a member of an armed force".

Subsec. (a)(2). Pub.L. 99-562, § 2(3), inserted "by the Government" after "approved".

Subsec. (a)(4). Pub.L. 99-562, § 2(4), substituted "control of property" for "control of public property" and "by the Government" for "in an armed force".

Subsec. (a)(5). Pub.L. 99-562, § 2(5), substituted "by the Government" for "in an armed force" and "true:" for "true; or".

Subsec. (a)(6). Pub.L. 99-562, § 2(6), substituted "an officer or employee of the Government, or a member of the Armed Forces," for "a member of an armed force" and "property; or" for "property.".

Subsec. (a)(7). Pub.L. 99-562, § 2(7), added par. (7).

Subsecs. (b) to (e). Pub.L. 99-562, § 2(7), added subsecs. (b) to (e).

Effective and Applicability Provisions

2009 Acts. Pub.L. 111-21, § 4(f), May 20, 2009, 123 Stat. 1625, provided that: "The amendments made by this section [amending this section and 31 U.S.C.A. §§ 3730 to 3733] shall take effect on the date of enactment of this Act [May 20, 2009] and shall apply to conduct on or after the date of enactment [May 20, 2009], except that--

"(1) subparagraph (B) of section 3729(a)(1) of title 31, United States Code, as added by subsection (a)(1) [amending subsec. (a) of this section], shall take effect as if enacted on June 7, 2008, and apply to all claims under the False Claims Act (31 U.S.C. 3729 et seq.) [Act Mar. 2, 1863, c. 67, 12 Stat. 698, which was repealed in the general revision of Title 31; the provisions of the Act are now contained in 31 U.S.C.A. §§ 3729 to 3731] that are pending on or after that date; and

"(2) section 3731(b) of title 31, as amended by subsection (b) [so in original; subsection (b) of Pub.L. 111-21, § 4, amended 31 U.S.C.A. § 3731(c) to (e)]; section 3733, of title 31, as amended by subsection (c) [amending 31 U.S.C.A. § 3733]; and section 3732 of title 31, as amended by subsection (e) [31 U.S.C.A. § 3732]; shall apply to cases pending on the date of enactment [May 20, 2009]."

Civil Penalties

Pub.L. 99-145, Title IX, § 931(b), Nov. 8, 1985, 99 Stat. 699, applicable to claims made or presented on or after Nov. 8, 1985, pursuant to Effective Date note under section 287 of Title 18, provided that:

"Notwithstanding section 3729 of title 31, United States Code [this section], the amount of the liability under that section in the case of a person who makes a false claim related to a contract with the Department of Defense shall be a civil penalty of $2,000, an amount equal to three times the amount of the damages the Government sustains because of the act of the person, and costs of the civil action."

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84 ALR 2nd 1412, When is Representation of Applicant's Interest by Existing Parties Inadequate and Applicant Bound by Judgment So as to be Entitled to Intervention as of Right Under Federal Rule 24(A)(2) and Similar State Statutes...

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NOTES OF DECISIONS

I. GENERALLY

<Subdivision Index>

1. Constitutionality

False Claims Act (FCA) was not sufficiently punitive in nature and effect so as to warrant application of Ex Post Facto Clause to bar relator's qui tam action against government contractors for FCA violations; sanctions under FCA did not approach imprisonment, had primarily been viewed as civil, separate criminal statute existed to prohibit same conduct, and FCA damages multiplier had both compensatory and punitive purposes. U.S. ex rel. Drake v. NSI, Inc., D.Conn.2010, 736 F.Supp.2d 489, leave to appeal denied. United States 120.1

Damages award of $5.7 million and civil penalties of $148,500 sought by United States did not violate Excessive Fines Clause in action under False Claims Act (FCA) alleging that real estate vendors illegally provided down payments for home mortgage loans insured by Department of Housing and Urban Development (HUD), even though vendors had already been subjected to criminal penalties for their conduct, where vendors engaged in broad, long-standing, sophisticated, successful scheme to defraud government, government sought no more than amount authorized by FCA, vendors' conduct resulted in approximately $5.5 million in fraudulent loans being funded using HUD insured home mortgage loans, and HUD made payments totaling $2.8 million. U.S. v. Eghbal, C.D.Cal.2007, 475 F.Supp.2d 1008, affirmed 548 F.3d 1281, certiorari denied 130 S.Ct. 153, 175 L.Ed.2d 38. Fines 1.3

Imposition of $729,454.92 in civil penalties and treble damages against owner of physical therapy clinic for violating False Claims Act (FCA) by submitting claims to Medicare for physical therapy services with unauthorized provider number did not violate Excessive Fines Clause, despite owner's contentions that government suffered no harm because patients for whom he submitted false Medicare claims actually received physical therapy services, and that his violations were “mere billing technicality,” where owner's maximum exposure was almost $86 million, government suffered direct damages as result of owner's actions, and owner engaged in course of deceit that involved submission of thousands of false claims over course of four years. U.S. v. Mackby, N.D.Cal.2002, 221 F.Supp.2d 1106, affirmed 68 Fed.Appx. 776, 2003 WL 21277386, published in full at 339 F.3d 1013, certiorari denied 124 S.Ct. 1657, 541 U.S. 936, 158 L.Ed.2d 356. Fines 1.3; United States 122

Former § 231 of this title was not violative of due process of law on any theory of lack of rational relationship between actual or possible damages and statutory penalty for each false claim. U. S. v. Greenberg, S.D.N.Y.1965, 237 F.Supp. 439.

Award of maximum civil penalties and treble damages under the False Claims Act for contractor's false claims for reimbursement on bond premiums and indemnity payments to parent company did not violate the substantive component of the Due Process Clause of the Fifth Amendment. Morse Diesel Intern., Inc. v. U.S., Fed.Cl.2007, 79 Fed.Cl. 116, reconsideration denied 81 Fed.Cl. 311. Constitutional Law 4426; United States 122

2. Construction

Former § 231 of this title was a criminal statute and therefore words "claim against the government" were carefully restricted, not only to their literal terms, but to evident purpose of Congress in using such terms, particularly where they were broad and susceptible to numerous definitions. U.S. v. McNinch, U.S.N.C.1958, 78 S.Ct. 950, 356 U.S. 595, 2 L.Ed.2d 1001. United States 120.1

The penal nature of former § 231 of this title required careful scrutiny to see if the alleged misconduct violated such former section. U. S. ex rel. Weinberger v. Equifax, Inc., C.A.5 (Fla.) 1977, 557 F.2d 456, rehearing denied 561 F.2d 831, certiorari denied 98 S.Ct. 768, 434 U.S. 1035, 54 L.Ed.2d 782, rehearing denied 98 S.Ct. 1477, 435 U.S. 918, 55 L.Ed.2d 511. United States 120.1

Former § 231 of this title was a "penal statute" and was strictly construed. U.S. ex rel. Brensilber v. Bausch & Lomb Optical Co., C.C.A.2 (N.Y.) 1942, 131 F.2d 545, certiorari granted 63 S.Ct. 1026, 319 U.S. 733, 87 L.Ed. 1695, affirmed 64 S.Ct. 187, 320 U.S. 711, 88 L.Ed. 417, rehearing denied 64 S.Ct. 256, 320 U.S. 814, 88 L.Ed. 492. See, also, Hyslop v. U.S., C.A.Neb.1959, 261 F.2d 786; U.S. ex rel. Hughes v. Cook, D.C.Miss.1980, 498 F.Supp. 784; U.S. v. Johnston, D.C.Okl.1956, 138 F.Supp. 525.

Former § 231 of this title was strictly construed, and recovery was permitted only when it was shown that defendants presented a false or fraudulent claim against government of the United States or a department or officer thereof. U.S. ex rel. Ostrager v. New Orleans Chapter, Associated General Contractors of America, C.C.A.5 (La.) 1942, 127 F.2d 649, certiorari granted 63 S.Ct. 49, 317 U.S. 613, 87 L.Ed. 498, reversed on other grounds 63 S.Ct. 393, 317 U.S. 562, 87 L.Ed. 458.

Informers who wished to recover under former § 231 of this title had to adhere to the exact language thereof. U. S. ex rel. Marcus v. Hess, C.C.A.3 (Pa.) 1942, 127 F.2d 233, certiorari granted 63 S.Ct. 40, 317 U.S. 613, 87 L.Ed. 498, reversed on other grounds 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. Penalties 9

Former § 231 of this title, being drastically penal, should have been strictly construed and fraud or deceit was a sine qua non of liability. Cahill v. Curtiss-Wright Corp., W.D.Ky.1944, 57 F.Supp. 614. See, also, U.S. v. National Wholesalers, D.C.Cal.1954, 126 F.Supp. 357, reversed on other grounds 236 F.2d 944, certiorari denied 77 S.Ct. 719, 353 U.S. 930, 1 L.Ed.2d 724. United States 121

3. Construction with other laws

In view of fact that former § 231 of this title incorporated, as a test of liability, provisions of R.S. § 5438 [now §§ 287 and 1001 of Title 18], scope of such former section was confined to its literal terms. Rainwater v. U.S., U.S.Ark.1958, 78 S.Ct. 946, 356 U.S. 590, 2 L.Ed.2d 996. United States 120.1

Although false claims provisions of Foreign Assistance Act (FAA) and False Claims Act (FCA) overlap, the two statutes are

fully capable of coexisting, and therefore the FAA does not preempt the FCA. U.S. ex rel. Miller v. Bill Harbert Intern. Const., Inc., C.A.D.C.2010, 608 F.3d 871, 391 U.S.App.D.C. 165, petition for certiorari filed 2010 WL 5490637. United States 120.1

A certified claim may be a source of liability under both the Contract Disputes Act and the False Claims Act. Daewoo Engineering and Const. Co., Ltd. v. U.S., C.A.Fed.2009, 557 F.3d 1332, rehearing and rehearing en banc denied , certiorari denied 130 S.Ct. 490, 175 L.Ed.2d 346. United States 122

Document received in response to Freedom of Information Act (FOIA) request is not necessarily administrative report or investigation, and thus not automatically a "public disclosure" within meaning of False Claims Act's (FCA) public-disclosure jurisdictional bar against qui tam actions; instead, whether document constitutes public disclosure for purposes of jurisdictional bar depends on whether it is from source enumerated in FCA section that details criteria for application of bar. U.S. v. Catholic Healthcare West, C.A.9 (Ariz.) 2006, 445 F.3d 1147, certiorari denied 127 S.Ct. 725, 549 U.S. 1077, 166 L.Ed.2d 561, certiorari denied 127 S.Ct. 730, 549 U.S. 1077, 166 L.Ed.2d 561, on remand 2007 WL 2330790. United States 122

Amtrak Reform and Accountability Act, in stating that National Railroad Passenger Corporation (Amtrak) "shall not be subject to title 31," which includes False Claims Act (FCA), erects no per se bar preventing individuals from bringing FCA actions against those who make false or fraudulent claims implicating federal funds invested in Amtrak, inasmuch as third party rather than grantee is made "subject to" FCA when plaintiff brings qui tam action against third party who has allegedly defrauded federal grantee, and withdrawal of FCA protection was not suggested by legislative history or purposes and aims of Reform Act as whole. U.S. ex rel. Totten v. Bombardier Corp., C.A.D.C.2002, 286 F.3d 542, 351 U.S.App.D.C. 30, on remand 2003 WL 22769033. United States 122

Retaliation claim under False Claims Act (FCA) was subject to California's one-year statute of limitations applicable to claim for wrongful termination in violation of public policy, as such claim was the most closely analogous to retaliation claim. U.S. v. Hughes Aircraft Co., C.A.9 (Cal.) 1998, 162 F.3d 1027, on remand 2000 WL 33775399. United States 36; United States 122

Qui tam plaintiffs' claims under the False Claims Act (FCA), alleging that contractors engaged in pattern of knowingly submitting false claims for payment under their contracts to perform hazardous waste treatment and disposal services at site of chemical plant, were not "challenges to removal or remedial action" precluded by CERCLA's jurisdictional bar; plaintiffs sought neither review of nor injunction against any remedial activity on site but, rather, alleged fraud and sought civil penalties on behalf of the United States. Costner v. URS Consultants, Inc., C.A.8 (Ark.) 1998, 153 F.3d 667, rehearing and suggestion for rehearing en banc denied. Environmental Law 645

Former § 2306(f) of Title 10 did not supersede former § 231 of this title as there was no inconsistency between an Act which dealt with fraud and one which dealt with data which was inaccurate, incomplete or noncurrent. U. S. v. Foster Wheeler Corp., C.A.2 (N.Y.) 1971, 447 F.2d 100. United States 120.1

One who presented for approval to Federal Housing Administration [now Department of Housing and Urban Development] six claims on the government of the United States, knowing such claims to be false, fictitious, or fraudulent, and who was correctly prosecuted and convicted under § 1010 of Title 18, for making false statements in connection with procuring loan, was not liable in damages to the United States under former § 231 of this title. U.S. v. Cochran, C.A.5 (Tex.) 1956, 235 F.2d 131, certiorari denied 77 S.Ct. 262, 352 U.S. 941, 1 L.Ed.2d 237. United States 122

Former § 231 of this title which incorporated R.S. § 5438 [now §§ 287 and 1001 of Title 18] regarding presentment of false claims against United States incorporated R.S. § 5438 as it stood when such former section was adopted, notwithstanding that R.S. § 5438 was later amended and that only amended R.S. § 5438 appeared in United States Code. U.S. ex rel. Kessler v. Mercur Corporation, C.C.A.2 (N.Y.) 1936, 83 F.2d 178, certiorari denied 57 S.Ct. 40, 299 U.S. 576, 81 L.Ed. 424. Statutes 51

Fines and penalties, including treble damages, under the False Claims Act (FCA) constituted "debt" within meaning of the Federal Debt Collection Procedures Act (FDCPA), for purposes of government's claim for prejudgment remedies against president and sole shareholder of Medicare provider, i.e., attachment of real property shareholder owned individually, even if shareholder did not benefit individually by government's alleged overpayments to provider. U.S. ex rel Doe v. DeGregorio, M.D.Fla.2007, 510 F.Supp.2d 877. United States 75.5

Congress, by granting Federal Communications Commission (FCC) the authority to construct a remedial scheme to address violations of FCC regulations, did not intend to "preempt" remedies under False Claims Act (FCA) for abuse of FCC's public bidding procedure for wireless telecommunications licenses. U.S. ex rel. Taylor v. Gabelli, S.D.N.Y.2004, 345 F.Supp.2d 313, stay denied 345 F.Supp.2d 340. United States 122

Offense of illegal acquisition of food stamps and claim for statutory penalties for false claims presented to Government as a result of illegal redemption of those stamps were separate for double jeopardy purposes. U.S. v. Byrd, E.D.N.C.2000, 100 F.Supp.2d 342. Double Jeopardy 25

Federal Employees' Compensation Act's (FECA) preclusion-of-review provision did not bar court from reviewing government's claims against postal employee under False Claims Act (FCA); inquiry into whether employee had violated FCA by falsifying his employment application and his subsequent claim for disability benefits did not constitute a review of Office of Workers' Compensation Programs' (OWCP) action in allowing a payment under FECA. U.S. v. Carpentieri, S.D.N.Y.1998, 23 F.Supp.2d 433. United States 122

Section 15a of Title 15 which permits government to recover for actual damage proximately caused by violation of Sherman Antitrust Act, §§ 1 to 7 of Title 15, and former § 231 of this title were auxiliary, so that enactment of § 15a of Title 15 was insufficient to have impliedly repealed such former section. U. S. v. Beatrice Foods Co., D.C.Utah 1971, 330 F.Supp. 577. Antitrust And Trade Regulation 523; United States 94

Passage of § 15a of Title 15 permitting government to recover for actual damage proximately caused it by violation of Sherman Antitrust Act, §§ 1 to 7 of Title 15, was not intended to limit or preclude government's right to recover damages or forfeitures under former § 231 of this title, but rather to extend its right under antitrust laws. U. S. v. Beatrice Foods Co., D.C.Utah 1971, 330 F.Supp. 577. Antitrust And Trade Regulation 528; United States 122

Former § 231 of this title was concerned with fraud of a pecuniary nature committed against the government, whereas § 3287 of Title 18 is concerned with the ease with which fraud could be concealed and seeks to grant to the government in time of war, a correspondingly longer time to discover it. U. S. v. Temple, N.D.Ill.1956, 147 F.Supp. 118.

Former § 3740 [now 7401] of Title 26 which provided that no action for recovery of taxes, or of any fine, penalty, or forfeiture shall have been commenced unless authorized by Commissioner of Internal Revenue, did not apply to an informer's action to recover penalty under former § 231 of this title and double the amount of damages sustained by United States as result of a conspiracy by defendants in bidding on electrical work on public work projects and defendants' acts in presenting false claims against United States for work. U. S. ex rel. Marcus v. Hess, W.D.Pa.1941, 41 F.Supp. 197, reversed 127 F.2d 233, certiorari granted 63 S.Ct. 40, 317 U.S. 613, 87 L.Ed. 498, reversed 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. United States 122

The scope of former § 231 of this title was not affected by subsequent amendments to R.S. § 5438 [now §§ 287 and 1001 of Title 18] originally referred to therein and it was construed as embracing those acts which were forbidden by that section and no other. U.S. ex rel. Boyd v. McMurtry, W.D.Ky.1933, 5 F.Supp. 515.

The amendment of 1918 to R.S. § 5438 [now §§ 287 and 1001 of Title 18] did not add to or diminish the scope of former §

231 of this title, which included acts forbidden by R.S. § 5438 as it stood when this section was enacted and no other. Olson v. Mellon, W.D.Pa.1933, 4 F.Supp. 947, affirmed 71 F.2d 1021, certiorari denied 55 S.Ct. 147, 293 U.S. 615, 79 L.Ed. 704, certiorari denied 55 S.Ct. 148, 293 U.S. 615, 79 L.Ed. 704.

Imposing civil penalties under the Anti-Kickback Act, and separate civil penalties and treble damages under the False Claims Act for the same acts, is neither duplicative nor prohibited. Morse Diesel Intern., Inc. v. U.S., Fed.Cl.2007, 79 Fed.Cl. 116, reconsideration denied 81 Fed.Cl. 311. United States 75(6)

False Claims Act (FCA) applied to allegedly false cost and pricing data supplied to government, in connection with contract to provide Low Altitude Navigation and Targeting Infrared for Night (LANTIRN) pods, even though under Arms Export Control Act, which governed acquisitions for ultimate sale to foreign governments, no loss could result to government. U.S. ex rel. Campbell v. Lockheed Martin Corp., M.D.Fla.2003, 282 F.Supp.2d 1324. United States 120.1

Payment to relator in qui tam action under False Claims Act (FCA) is not a penalty imposed on wrongdoer, as may be excludable from relator's gross income for income tax purposes; rather, it is financial incentive for private person to provide information and prosecute claims relating to fraudulent activity against the government, such as would be includable in gross income. Roco v. C.I.R., U.S.Tax Ct.2003, 121 T.C. 160, 2003 WL 22100687, Unreported. Internal Revenue 3124

4. Purpose

Objective of Congress in enacting former § 231 of this title was broadly to protect funds and property of the government from fraudulent claims, regardless of the particular form or function of the government instrumentality upon which such claims were made. Rainwater v. U.S., U.S.Ark.1958, 78 S.Ct. 946, 356 U.S. 590, 2 L.Ed.2d 996. United States 120.1

The chief purpose of former § 231 of this title was to provide for restitution of money taken from government by fraud. U. S. ex rel. Marcus v. Hess, U.S.Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. See, also, U.S. v. Beatrice Foods Co., D.C.Utah 1971, 330 F.Supp. 577; U.S. v. Klein, D.C.Pa.1964, 230 F.Supp. 426, affirmed 356 F.2d 983; U.S. v. National Wholesalers, D.C.Cal.1954, 126 F.Supp. 357, reversed on other grounds 236 F.2d 944, certiorari denied 77 S.Ct. 719, 353 U.S. 930, 1 L.Ed.2d 724.

The device of double damages provided for by former § 231 of this title plus a specified sum was chosen to make sure that government was made completely whose. U. S. ex rel. Marcus v. Hess, U.S.Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. See, also, U.S. v. Beatrice Foods Co., D.C.Utah 1971, 330 F.Supp. 577.

Section of the False Claims Act that prohibits any party from using false record or statement to get false claim "paid or approved by the Government" is complementary to separate section prohibiting party from presenting false claim to "officer or employee of the United States Government" and is designed to prevent those who make false records or statements to get claims paid or approved from escaping liability solely on ground that they did not themselves present claim for payment or approval. U.S. ex rel. Totten v. Bombardier Corp., C.A.D.C.2004, 380 F.3d 488, 363 U.S.App.D.C. 180, rehearing en banc denied , certiorari denied 125 S.Ct. 2257, 544 U.S. 1032, 161 L.Ed.2d 1059. United States 120.1

Former § 231 of this title was intended to protect the Treasury against the hungry and unscrupulous host that encompassed it on every side, and should have been construed accordingly; it was passed upon the theory, based on experience as old as modern civilization, that one of the least expensive and most effective means of preventing frauds on the Treasury was to make the perpetrators of them liable to actions by private persons acting, if you please, under the strong stimulus of personal ill will or the hope of gain. U.S. v. Griswold, D.C.Or.1885, 24 F. 361, 11 Sawy. 65.

False Claims Act prohibits fraudulent acts even if they do not cause loss to the government, since Act was intended to cover

not only acts that create loss to government but also acts which cause government to pay out sums of money to claimants it did not intend to benefit. U.S. ex rel. Pogue v. American Healthcorp, Inc., M.D.Tenn.1996, 914 F.Supp. 1507, transferred to 238 F.Supp.2d 258. United States 120.1

Purpose of False Claims Act is to discourage fraud against the government, and purpose of qui tam provisions of Act is to encourage those with knowledge of fraud to come forward. Neal v. Honeywell, Inc., N.D.Ill.1993, 826 F.Supp. 266, affirmed 33 F.3d 860. Labor And Employment 776; United States 122

Purposes of 1986 amendments to False Claims Act were to loosen restrictive judicial interpretation of Act's liability standard and burden of proof by defining previously undefined terms, by expanding qui tam jurisdictional provisions, and by increasing civil penalties. U.S. ex rel. Stinson, Lyons, Gerlin & Bustamante, P.A. v. Provident Life & Acc. Ins. Co., S.D.Fla.1989, 721 F.Supp. 1247. United States 122

Purpose of former § 231 of this title and similar statutes which authorized qui tam actions was to provide private citizen who would otherwise have had no judicially cognizable "interest" in rights protected by particular set of substantive provisions with interest sufficient to give that individual standing to sue to enforce such provisions. Public Interest Bounty Hunters v. Board of Governors of Federal Reserve System, N.D.Ga.1982, 548 F.Supp. 157. Forfeitures 5

Purpose of former § 231 of this title was to reasonably indemnify the government for all losses arising from the false claims and reflected a fair ratio to damages in order to make sure the government was made completely whole. Peterson v. Richardson, N.D.Tex.1973, 370 F.Supp. 1259, affirmed 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96 S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. United States 120.1

The purpose of former § 231 of this title was to prohibit the drawing of any money from the Treasury of the United States by false or fictitious claims. U.S. ex rel. Rodriguez v. Weekly Publications, S.D.N.Y.1946, 68 F.Supp. 767. United States 122

5. Retroactive effect

District court should have applied provisions of False Claims Act in effect on date that government's claim ripened, and its error in retroactively applying amendments adversely affected claimant by subjecting him to increased penalty provisions. Miller v. Federal Emergency Management Agency, C.A.8 (Mo.) 1995, 57 F.3d 687. Federal Courts 913; United States 122

Amendment to False Claims Act, which changed showing of knowledge required for imposition of civil liability for bid rigging from clear showing of actual knowledge of falsity of submitted claim to constructive knowledge of falsity, affected substantive rights and liabilities of electrical contractor and its employee, particularly where amendments were applied to increase liability of employee by more than $1 million; thus, district court erroneously applied amendments to Act retroactively. U.S. v. Murphy, C.A.6 (Tenn.) 1991, 937 F.2d 1032. United States 120.1

Relator's qui tam claim, alleging that government contractors violated former False Claims Act (FCA) provision that prohibited knowingly making, using, or causing to be made or used, false record or statement to conceal, avoid, or decrease obligation to pay or transmit money or property to government, could not be revived on motion for reconsideration following passage of Fraud Enforcement and Recovery Act (FERA); FERA neither altered substantive elements of relator's claim nor applied former FCA provision retroactively to conduct at issue. U.S. ex rel. Drake v. NSI, Inc., D.Conn.2010, 736 F.Supp.2d 489, leave to appeal denied. Federal Civil Procedure 1840

As used in provision of Fraud Enforcement and Recovery Act (FERA) that amended False Claims Act (FCA) and made new cause of action against anyone who knowingly made, used, or caused to be made or used a false record or statement material

to a false or fraudulent claim retroactively applicable to all claims under FCA pending on or after specified date, word "claims" referred to defendant's request for payment, not civil actions for FCA violations, and therefore amendment did not apply where complaint did not allege that defendants had any requests for payment pending on or after specified date, and, instead, unamended false statements provision applied. U.S. ex rel. Westrick v. Second Chance Body Armor, Inc., D.D.C.2010, 709 F.Supp.2d 52. United States 122

Amended version of False Claims Act (FCA), which removed the requirement that a false record or statement have been made "to get" a claim paid by the federal government did not retroactively apply to FCA claims that occurred prior to amendment; amendment version applied to claims, rather than cases, pending upon statute's effective date. U.S., ex rel. Baker v. Community Health Systems, Inc., D.N.M.2010, 709 F.Supp.2d 1084. United States 120.1

Amendment to False Claims Act (FCA) eliminating actual payment or approval requirement did not apply retroactively to health care provider that allegedly used fraudulently higher billing rate on claims submitted pursuant to Medicare Part B prior to amendment's effective date, even though Congress did not unambiguously preclude retrospective application of amendment, where application of amendment would have increased provider's liability for past conduct. U.S. v. Aguillon, D.Del.2009, 628 F.Supp.2d 542. United States 120.1

Amendment to False Claims Act, which lowered state of mind necessary to sustain finding of liability, applied to claims for payment submitted after amendment based on false statements made before amendment. U.S. v. United Technologies Corp., S.D.Ohio 2003, 255 F.Supp.2d 787. United States 120.1

Amendment to False Claims Act, to broaden definition of knowledge of falsity required in order to establish liability from actual knowledge to also include deliberate ignorance or reckless indifference, would not be applied retroactively; there was presumption against retroactive application of legislation, relief sought was backward looking and retroactive application would impose different duty of mental attention, after fact, with regard to transactions already completed and impair substantive standard for liability that party could expect to be applicable to transactions prior to amendment. U.S. v. Hercules, Inc., D.Utah 1996, 929 F.Supp. 1418. United States 120.1

Amendment to False Claims Act in 1986 which defined term "knowingly" to include "reckless disregard" or "deliberate ignorance" was applied to action under False Claims Act based on allegedly false statements in federal grant applications which occurred in part prior to 1986; application of statute did not apply new legal consequences to events prior to its enactment and was not retrospective, as knowledge as used in statute never meant more than reckless disregard. U.S. ex rel. Milam v. Regents of University of California, D.Md.1995, 912 F.Supp. 868. United States 120.1

Damages and penalties provisions of amendments to False Claims Act (FCA) have retroactive effect and, therefore, do not apply to conduct predating effective date of amendments; amendments increased amount of liability. U.S. ex rel. Newsham v. Lockheed Missiles and Space Co., Inc., N.D.Cal.1995, 907 F.Supp. 1349, order vacated on reconsideration 1997 WL 858547, affirmed in part , reversed in part 171 F.3d 1208, amended and superseded 190 F.3d 963, certiorari denied 120 S.Ct. 2196, 530 U.S. 1203, 147 L.Ed.2d 232. United States 122

Amendments to False Claims Act (FCA), providing for increase in damages from double to treble damages and increase in civil penalty, applied retroactively; there is nothing in amendment or legislative history indicating whether or not amendments were to be applied retroactively, FCA involves matters of serious public policy in that it addresses issue of fraud against government and its ability to recover losses resulting from fraud, and defendants who filed false claims had no vested right to specific remedy amount. U.S. v. Stella Perez, D.Puerto Rico 1993, 839 F.Supp. 92, reversed 55 F.3d 703, 139 A.L.R. Fed. 813, on remand 956 F.Supp. 1046. United States 122

Amendments to damages provisions in False Claims Act were applied retroactively to claims which had accrued before enactment of amendments but which were sued upon after passage of amendments, where changes merely addressed amount of damages in question and did not concern substantive changes, and changes were primarily remedial and not punitive in na-

ture. U.S. v. Stocker, E.D.Wis.1992, 798 F.Supp. 531. United States 122

Amendments to False Claims Act which increased potential liability and added definition of "knowing" and "knowingly" in order to clarify state of mind required for liability under Act involved substantive changes and could not be applied retroactively. U.S. v. Ettrick Wood Products, Inc., W.D.Wis.1988, 774 F.Supp. 544, adopted in part 683 F.Supp. 1262. United States 120.1

The 1986 amendments to the False Claims Act, including changes involving statute of limitations, applied retroactively. U.S. v. Macomb Contracting Corp., M.D.Tenn.1990, 763 F.Supp. 272. Limitation Of Actions 6(1); United States 120.1

False Claims Reform Act was retroactively applicable to allegedly fraudulent conduct perpetrated in order to obtain Small Business Investment Corporation license and, subsequently, to obtain funds from Small Business Administration, absent showing that application would result in manifest injustice. U.S. v. Entin, S.D.Fla.1990, 750 F.Supp. 512. United States 120.1

The 1986 amendments to the False Claims Act, imposing treble damages and increasing penalties for violation of Act, applied to case pending at time amendments became law. Kelsoe v. Federal Crop Ins. Corp., E.D.Tex.1988, 724 F.Supp. 448. United States 122

Retroactive application was appropriate for amendments to the False Claims Act, in action to recover for alleged fraudulent representations of performance of contract to monitor and review hospital discharge payments under the Medicare program. U.S. ex rel. McCoy v. California Medical Review, Inc., N.D.Cal.1989, 723 F.Supp. 1363. United States 122

The 1986 qui tam amendments to False Claims Act could be applied retroactively against insurer which allegedly engaged in scheme to defraud government by allowing Medicare to pay as primary and by avoiding or decreasing its obligation to reimburse Medicare or its beneficiaries. U.S. ex rel. Stinson, Lyons, Gerlin & Bustamante, P.A. v. Provident Life & Acc. Ins. Co., S.D.Fla.1989, 721 F.Supp. 1247. United States 122

Amendment to False Claims Act which increased liability for each violation applied retroactively; amendment addressed issue of national concern, retroactive application would not infringe upon or deprive defendants of right that had matured or become unconditional, and amendment did not impose new obligation upon defendants. U.S. v. Pani, S.D.N.Y.1989, 717 F.Supp. 1013. United States 122

Retroactive application to pending case of amendment of False Claims Act to increase penalties was appropriate, where defendants had no identifiable legal right as to magnitude of sanctions applicable to violations of law, and defendants received adequate notice that their liability would be considerable. U.S. v. Board of Educ. of City of Union City, D.N.J.1988, 697 F.Supp. 167. United States 122

Amendments to False Claims Act increasing civil penalty thereunder and defining term "knowingly" applied retroactively to medicare provider and related nonmedicare provider for allegedly submitting claims to Government without specifying their relationship; amendments were procedural and, therefore, presumption of retroactivity applied, absent contrary indication by Congress or manifest injustice to providers. U.S. v. Oakwood Downriver Medical Center, E.D.Mich.1988, 687 F.Supp. 302. United States 122

Amendments to False Claims Act did not involve substantive changes and could be retroactively applied; neither increased amounts of damages or forfeitures nor "new" definition of "knowingly" changed underlying requirements for liability or affected substantive liability of defendants. U.S. v. Ettrick Wood Products, Inc., W.D.Wis.1988, 683 F.Supp. 1262. United States 122

Amendments to False Claims Act are applicable retroactively. Gravitt v. General Elec. Co., S.D.Ohio 1988, 680 F.Supp. 1162, appeal dismissed 848 F.2d 190, certiorari denied 109 S.Ct. 250, 488 U.S. 901, 102 L.Ed.2d 239. United States 120.1

Retroactive application of amendments to False Claims Act, in civil case for recovery of damages arising out of Small Business Administration and Farm Home Administration loan scheme did not violate either ex post facto or due process clauses, even though amendments provided for higher potential forfeitures and increased damage awards. U.S. v. Hill, N.D.Fla.1987, 676 F.Supp. 1158. United States 120.1; Constitutional Law 4078; Constitutional Law 2800

Recent amendment increasing penalties under False Claims Act could not be applied retrospectively; retrospective application of amendment would create new liability in connection with past transactions. U.S. v. Bekhrad, S.D.Iowa 1987, 672 F.Supp. 1529. United States 94

Government contractor had no vested right to be protected from or exposed to treble damages rather than double damages under the False Claims Act, and 1986 False Claims Act amendments raising statutory damages to treble damages plus a maximum of $10,000 per claim could be applied retroactively. SGW, Inc. v. U.S., Cl.Ct.1990, 20 Cl.Ct. 174. United States 120.1

6. Power of Congress

Congress had power to impose forfeitures for conspiracy to defraud the United States by obtaining, or aiding to obtain, payment of knowingly false claims in addition to any previous criminal sentence for such conspiracy. U. S. v. Ben Grunstein & Sons Co., D.C.N.J.1955, 127 F.Supp. 907. Double Jeopardy 23

7. Remedial nature of section

Former § 231 of this title was remedial and covered the submission of claim known to have been false. U. S. v. Cooperative Grain & Supply Co., C.A.8 (Neb.) 1973, 476 F.2d 47. United States 120.1

8. Jurisdiction

Where qui tam relator failed to qualify as an "original source" within the meaning of the False Claims Act (FCA) provision setting forth the original-source exception to the public-disclosure bar on federal-court jurisdiction, the government's intervention in his case did not provide an independent basis of jurisdiction with respect to relator. Rockwell Intern. Corp. v. U.S., U.S.2007, 127 S.Ct. 1397, 549 U.S. 457, 167 L.Ed.2d 190, rehearing denied 127 S.Ct. 2300, 550 U.S. 954, 167 L.Ed.2d 1128, on remand 492 F.3d 1157. United States 122

Relator's allegations in qui tam action under False Claims Act against pharmaceutical company that company provided illegal inducements to physicians and pharmacists with goal of increasing drug prescriptions under guise of speaker fees, research grants, and improper gifts were based on information he learned and saw during time he was employed by company, and thus relator was "original source," as required for federal district court to have subject matter jurisdiction over relator's allegations of illegal inducements. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2008, 538 F.Supp.2d 367. United States 122

Employee alleged sufficient facts regarding parent company's control over subsidiary to justify imputing subsidiary's contacts in state to parent, as required for federal district court to have general jurisdiction over parent company in employee's wrongful termination and False Claims Act (FCA) retaliation action against subsidiary and parent company; some of subsidiary's decisions were approved by parent, parent and subsidiary had same accounting and financial recording system, and subsidiary was undercapitalized. Glynn v. EDO Corp., D.Md.2008, 536 F.Supp.2d 595. Federal Courts 82

Court's prior holding that relator failed to satisfy the False Claims Act's (FCA) jurisdictional prerequisites deprived the court of jurisdiction to enter a judgment on behalf of the United States where government had not intervened, nor expressed any interest in intervening until after court issued its order dismissing the case for lack of subject matter jurisdiction. U.S. ex rel. Maxwell v. Kerr-McGee Oil & Gas Corp., D.Colo.2007, 486 F.Supp.2d 1233. United States 122

Court of International Trade (CIT) had exclusive jurisdiction over government's False Claims Act (FCA) "reverse false claims" action against produce importer, who had allegedly engaged in conduct designed to avoid antidumping duties; action came within CIT's specific grant of jurisdiction over government actions to recover customs duties, and so was specifically excluded from jurisdiction of district court. U.S. v. Universal Fruits and Vegetables Corp., CIT 2005, 387 F.Supp.2d 1251, 29 C.I.T. 673, subsequent determination 433 F.Supp.2d 1351, 30 C.I.T. 706, appeal dismissed 204 Fed.Appx. 881, 2006 WL 3151393. Customs Duties 84(1); Federal Courts 1138

Claims that oil companies violated False Claims Act in connection with reporting the value of oil produced on federal and Indian leases and paying royalties for the oil produced would not be deferred to Department of Interior, under doctrine of primary jurisdiction; deferral would prolong unnecessarily resolution of dispute, claim did not depend on Department's determination that oil undervaluations occurred, and neither Department nor its Minerals Management Service (MMS) desired to have matter pursued through administrative process. U.S. ex rel. Johnson v. Shell Oil Co., E.D.Tex.1998, 34 F.Supp.2d 429. United States 122

By enacting False Claims Act (FCA) Congress has given federal district courts original jurisdiction over actions for false or fraudulent claims against government. U.S. v. Unified Industries, Inc., E.D.Va.1996, 929 F.Supp. 947. Federal Courts 976

Court of Federal Claims lacked jurisdiction over former city auditor's claim to share of disaster relief payments that city refunded to the federal government, which was asserted under the qui tam provisions of the False Claims Act (FCA), as federal district courts have exclusive jurisdiction over qui tam claims. Giles v. U.S., Fed.Cl.2006, 72 Fed.Cl. 335, appeal filed. Federal Courts 1141

Governors of Florida and New Jersey, and the New Jersey Administrative Office of the Courts lacked sufficient contacts with New York to establish personal jurisdiction in action brought under the False Claims Act and §§ 1983, 1985, and 1988. Eisenstein v. Whitman, C.A.2 (N.Y.) 2001, 4 Fed.Appx. 24, 2001 WL 125777, Unreported, certiorari denied 122 S.Ct. 1078, 534 U.S. 1134, 151 L.Ed.2d 979. Federal Courts 76.5

9. Duty of applicant for public funds

Applicant for public funds has duty to read the regulations or be otherwise informed of the basic requirements of eligibility. U. S. v. Cooperative Grain & Supply Co., C.A.8 (Neb.) 1973, 476 F.2d 47. United States 113

One seeking public funds must bear great measure of responsibility in advising the government of the true and accurate factual basis of the claim and eligibility for payments must be established by the recipient. U. S. v. Cooperative Grain & Supply Co., C.A.8 (Neb.) 1973, 476 F.2d 47. United States 113

Applicants for federal grant for scientific research had no statutory or fiduciary duty to disclose that data which had been relied on in earlier applications were false, and applications did not violate False Claims Act, where there was no evidence at time application was filed that data previously relied on were false. U.S. ex rel. Milam v. Regents of University of California, D.Md.1995, 912 F.Supp. 868. United States 120.1

10. Duty of government to inspect

Provision of government supply contract that inspection by United States would not be conclusive "as regards latent defects, fraud, or such gross mistakes as to amount to fraud" embodied established rule that, even where final inspection is obligation of the government, such obligation does not absolve contractor from liability for defraud. U. S. v. Aerodex, Inc., C.A.5 (Fla.) 1972, 469 F.2d 1003. United States 121

11. Matters to be proved generally

To establish knowing presentation of false claim to government under False Claims Act, plaintiff must show (1) that defendant presented or caused to be presented to agent of United States claim for payment, (2) claim was false or fraudulent, (3) defendant knew it was false or fraudulent, and (4) United States suffered damages as result. Wilkins ex rel. U.S. v. State of Ohio, S.D.Ohio 1995, 885 F.Supp. 1055. United States 122

Under former § 231 of this title, which provided that any person who made or caused to be made, for payment or approval, to any person or officer in civil service of the United States, claim against United States government knowing such claim to be false or fraudulent was liable to government for damages, government must have established by clear and convincing evidence, the following elements: defendant presented or caused to be presented, for payment or approval, to government of the United States, claims upon or against the United States; claim was false, fictitious, or fraudulent; defendant knew that claim was false, fictitious or fraudulent; and to recover damages, it must have been shown that United States sustained damage by reason of the false claim. U. S. v. Lawson, D.C.N.J.1981, 522 F.Supp. 746. United States 120.1

United States suing under former § 231 of this title which provided for $2,000 forfeiture by anyone knowingly making fraudulent claim upon or against the government must have proved that defendant had intent to defraud, that claim contained false, fraudulent, or fictitious statements, that defendant knew and understood that the claim was false, fraudulent, or fictitious in whole or part, and that the government believed and acted upon the false representations. U. S. v. Sawin, S.D.Iowa 1965, 243 F.Supp. 744. United States 122

In order to recover prescribed penalties under former § 231 of this title United States must have proved "fraud" in its accepted sense, i.e., false representation of material fact made with knowledge of its falsity and with intent to deceive, which representation must have been believed and acted upon by deceived party to his damage. U. S. v. Schmidt, E.D.Wis.1962, 204 F.Supp. 540. See, also, Woodbury v. U.S., D.C.Or.1964, 232 F.Supp. 49, affirmed in part, reversed in part on other grounds 359 F.2d 370; U.S. v. Robbins, D.C.Kan.1962, 207 F.Supp. 799. United States 122

12. Deceit

Mere fact that item supplied to United States under contract was as good as one contracted for did not relieve suppliers of liability under former § 231 of this title, if it could have been shown that they attempted to deceive government agency. U. S. v. Aerodex, Inc., C.A.5 (Fla.) 1972, 469 F.2d 1003. United States 121

Under former § 231 of this title, even though it would have been enough that a claimant secured his contract with United States by deceit, it would not have been sufficient that he secured it by any other kind of wrong. U.S. ex rel. Brensilber v. Bausch & Lomb Optical Co., C.C.A.2 (N.Y.) 1942, 131 F.2d 545, certiorari granted 63 S.Ct. 1026, 319 U.S. 733, 87 L.Ed. 1695, affirmed 64 S.Ct. 187, 320 U.S. 711, 88 L.Ed. 417, rehearing denied 64 S.Ct. 256, 320 U.S. 814, 88 L.Ed. 492. United States 121

Former § 231 of this title made "fraud" of some sort the basis of the liability, and used the word in its accepted sense of deceit. U.S. ex rel. Brensilber v. Bausch & Lomb Optical Co., C.C.A.2 (N.Y.) 1942, 131 F.2d 545, certiorari granted 63 S.Ct. 1026, 319 U.S. 733, 87 L.Ed. 1695, affirmed 64 S.Ct. 187, 320 U.S. 711, 88 L.Ed. 417, rehearing denied 64 S.Ct. 256, 320 U.S. 814, 88 L.Ed. 492. United States 121

Liability follows if claim be false or if it be fictitious or if it be fraudulent, and it was not necessary to recovery thereunder that government established fraud and deceit on part of defendant. U. S. v. Eagle Beef Cloth Co., E.D.N.Y.1964, 235 F.Supp. 491. United States 122

13. Intent--Generally

Intent to deceive is requisite element of proof under the pre-1986 version of the False Claims Act only if government asserts that defendant submitted "fraudulent" as opposed to "false" claims to the government. U.S. v. TDC Management Corp., Inc., C.A.D.C.1994, 24 F.3d 292, 306 U.S.App.D.C. 286. United States 120.1

Anyone who presented any claim upon or against United States government knowing such claim to have been false was liable under former § 231 of this title; government need not have established that defendant intended to deceive, defraud, or cheat government. U. S. v. Hughes, C.A.7 (Ind.) 1978, 585 F.2d 284. United States 120.1

"Intent," for purposes of former § 231 of this title, included the volitional action of presenting claim to the government, the ill will towards the government, and the knowledge of the action itself. U. S. v. Cooperative Grain & Supply Co., C.A.8 (Neb.) 1973, 476 F.2d 47. United States 120.1

A forfeiture could not have occurred under R.S. § 5438 [now §§ 287 and 1001 of Title 18] without the party having incurred the same being guilty of both fraudulent intent and conduct, while a violation of the customs and navigation laws involving a forfeiture or penalty might have, and often did, occur without fraudulent intent or willful negligence. U.S. v. Griswold, D.C.Or.1885, 24 F. 361, 11 Sawy. 65.

Requisite intent for claim under False Claims Act (FCA) is knowing presentation of what is known to be false, as opposed to innocent mistake or mere negligence. U.S. ex rel. Rueter v. Sparks, C.D.Ill.1996, 939 F.Supp. 636, affirmed 111 F.3d 133. United States 120.1

It was not necessary to establish intent to defraud government under former § 231 of this title, it was enough that defendant knowingly defrauded government. U. S. v. Krietemeyer, S.D.Ill.1980, 506 F.Supp. 289. United States 121

Intent to defraud was not required for violation under first two clauses of former § 231 of this title which prohibited making or presenting for payment any claim knowing such to be false and making or using for purpose of obtaining payment or approval of such claim any receipt, claim, certificate, or affidavit, knowing it to contain any fraudulent or fictitious statement or entry, though government must have proved that defendant had knowledge that claims were false. U. S. v. Fox Lake State Bank, N.D.Ill.1963, 225 F.Supp. 723. United States 120.1

Intent to defraud was a necessary prerequisite to civil liability under former § 231 of this title. U.S. v. Park Motors, E.D.Tenn.1952, 107 F.Supp. 168. See, also, Woodbury v. U.S., D.C.Or.1964, 232 F.Supp. 49, affirmed in part, reversed in part on other grounds 359 F.2d 370; U.S. v. Goldberg, D.C.Pa.1958, 158 F.Supp. 544. United States 121; United States 122

A "fraudulent claim" against federal government within meaning of former § 231 of this title, was a false or fictitious claim, gotten up or contrived by some person or persons with intent to present it for approval and thus to defraud the government. Mandel v. Cooper Corporation, S.D.N.Y.1941, 42 F.Supp. 317. United States 122

14. ---- Actual or specific intent

Department of Energy's (DOE) full knowledge of material facts underlying any representations implicit in contractor's con-

duct negated any knowledge that contractor had regarding truth or falsity of those representations, for purpose of lawsuit brought by relator under False Claims Act (FCA). U.S. ex rel. Becker v. Westinghouse Savannah River Co., C.A.4 (S.C.) 2002, 305 F.3d 284, certiorari denied 123 S.Ct. 1929, 538 U.S. 1012, 155 L.Ed.2d 848. United States 120.1

"Ill will" or specific intent were not necessary elements for actionable liability under former § 231 of this title; the real issue was whether the claimants knew they were submitting false claims. U. S. v. Cooperative Grain & Supply Co., C.A.8 (Neb.) 1973, 476 F.2d 47. United States 120.1

For purposes of former § 231 of this title the specific element of "intent," which was distinct from knowledge, was the specific will to act, an element of deliberateness or willfulness or not inadvertent or accidental. U. S. v. Cooperative Grain & Supply Co., C.A.8 (Neb.) 1973, 476 F.2d 47. United States 120.1

Under former § 231 of this title which imposed penalties for filing false claims with government, an actual intent to deceive must have been proved. U. S. v. Mead, C.A.9 (Cal.) 1970, 426 F.2d 118. United States 122

Specific intent requirement applied to claim under subsection of False Claims Act (FCA) prohibiting the creation or use of false records and statements as part of a scheme to persuade the government to pay a false claim which was pending on effective date of Fraud Enforcement and Recovery Act (FERA); furthermore, specific intent requirement applied to pending claims under state statutes modeled on the federal FCA. U.S. ex rel. Carpenter v. Abbott Laboratories, Inc., D.Mass.2010, 723 F.Supp.2d 395. United States 120.1

Applicant's representation in proposal for Small Business Innovation Research (SBIR) program grant that it already had office space, laboratories, and "dry room" was made with scienter necessary to support claim under False Claims Act (FCA), even if facilities were in place at time proposal was funded, where buildings were not yet complete when proposal was submitted. U.S. ex rel. Longhi v. Lithium Power Technologies, Inc., S.D.Tex.2007, 513 F.Supp.2d 866. United States 120.1

Alleged failure of Massachusetts Housing Finance Agency (MHFA), as mortgage lender, to seek legal opinion on effect of bond issuance on its existing mortgage notes did not show that MHFA had knowledge that claims for interest reduction payments under mortgage assistance program for owners of low-income housing projects were false or that it had intent to deceive Housing and Urban Development (HUD), where relator did not identify any duty on MHFA's part to seek such legal opinion, for purpose of relator's action under False Claims Act (FCA). U.S. ex rel. K & R Ltd. Partnership v. Massachusetts Housing Finance Agency, D.D.C.2006, 456 F.Supp.2d 46, affirmed 530 F.3d 980, 382 U.S.App.D.C. 67, rehearing en banc denied. United States 122

Government was not required to prove actual intent to submit false claims to establish liability under False Claims Act. U.S. v. Oakwood Downriver Medical Center, E.D.Mich.1988, 687 F.Supp. 302. United States 122

Specific intent is not required for violation of False Claims Act. U.S. v. Children's Shelter, Inc., W.D.Okla.1985, 604 F.Supp. 865. United States 120.1

A person who knowingly disobeyed requirements of former § 231 of this title, intending with bad purpose either to disobey or disregard that law, was acting with a specific intent. Woodbury v. U. S., D.C.Or.1964, 232 F.Supp. 49, affirmed in part, reversed in part on other grounds 359 F.2d 370. United States 120.1

15. ---- Imputation, intent

Where only officer of banks had actual knowledge of falsity of documents which accompanied claims for reimbursement submitted to Federal Housing Administration [now Department of Housing and Urban Development] and officer was not acting with purpose of benefitting banks but to profit personally, guilty intent of officer would not have been imputed to

banks, and they were not liable for forfeitures and double damages under former § 231 of this title. U. S. v. Ridglea State Bank, C.A.5 (Tex.) 1966, 357 F.2d 495. United States 122

16. ---- Particular cases, intent

There was no evidence that university medical center or company that managed center's physician staffing had actual knowledge that Medicare claims submitted were false, or that billing errors were made in reckless disregard of their truth, as required to satisfy scienter element of claims under False Claims Act (FCA), particularly given center's hiring of consultant to help it improve its compliance and voluntary repayment of amounts that had been erroneously double billed. U.S. ex rel. Hefner v. Hackensack University Medical Center, C.A.3 (N.J.) 2007, 495 F.3d 103. United States 122

Exporter's alleged reliance on officials of United States Department of Agriculture (USDA) to approve corrections to USDA's original export certificates made by exporter's employees did not preclude determination that employees, in making changes, acted with knowing intent to avoid obligation to government required to violate reverse false claims provision of False Claims Act, particularly given evidence that, in some instances, employees made major or significant changes to original certificates without USDA approval, thereby avoiding obligation to pay fee for in-lieu-of or replacement certificate. U.S. ex rel. Bahrani v. Conagra, Inc., C.A.10 (Colo.) 2006, 465 F.3d 1189, certiorari denied 128 S.Ct. 388, 552 U.S. 950, 169 L.Ed.2d 264, on remand 2009 WL 751169. United States 120.1

Relator failed to show that contractor fraudulently induced government to award construction contract to it by making promises at the time it submitted its bid regarding cost-saving devices it never intended to use; contractor substantially attempted to implement proposed cost-saving measures, and fact that some were ultimately abandoned as unfeasible did not permit inference that contractor never intended to implement them. U.S. ex rel. Bettis v. Odebrecht Contractors of Cal., Inc., C.A.D.C.2005, 393 F.3d 1321, 364 U.S.App.D.C. 250. United States 120.1

Contractors' openness with Environmental Protection Agency (EPA) about various problems in performing hazardous waste treatment and disposal services and their close working relationship with EPA in solving the problems negated the required scienter necessary to support claim under False Claims Act (FCA). U.S. ex rel. Costner v. U.S., C.A.8 (Ark.) 2003, 317 F.3d 883, rehearing and rehearing en banc denied , certiorari denied 124 S.Ct. 225, 540 U.S. 875, 157 L.Ed.2d 137. United States 120.1

Evidence was insufficient to show that electric cooperative selling power to a federal agency on a cost of production basis overcharged the government with the level of intentionality required for the False Claims Act's multiplied damages provisions; the only intentional act the district court pointed to was the discharge of some debt not related to the power plant at issue with proceeds from sale of the plant, cooperative attempted to deal with the consequences of this act by eliminating interest from the plant as a cost category in agency's bills, and there was no evidence that cooperative knew that some of this interest was charged to the agency through interest payments on common facilities. U.S. v. Basin Elec. Power Co-op., C.A.8 (N.D.) 2001, 248 F.3d 781, rehearing and rehearing en banc denied , certiorari denied 122 S.Ct. 924, 534 U.S. 1115, 151 L.Ed.2d 887. United States 122

Government contractor's alleged replacement of two lower salaried workers with two higher salaried workers, in order to charge government more money for subcontract, did not give rise to liability under False Claims Act, as there was no allegation of an intent to defraud, and higher salaried workers used for bid proposal were actually staffed on the subcontract. Harrison v. Westinghouse Savannah River Co., C.A.4 (S.C.) 1999, 176 F.3d 776. United States 122

Evidence that medicare claims falsely indicating that services had been rendered by physician were prepared by nursing home employee at instruction of nursing home operator and that physician whose name was placed on the forms was not medical director of the nursing home sustained determination that nursing home operator had guilty intent to make false claims against the government and was liable under former § 231 of this title. Peterson v. Weinberger, C.A.5 (Tex.) 1975, 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96

S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. United States 120.1

Where wholesaler by bid incorporated into United States contract offered to furnish regulators of designated proprietary number but delivered regulators manufactured by wholesaler and bearing spurious proprietary labels and sent as part of claims for regulators so delivered invoices describing regulators by proprietary numbers and ordnance stock numbers, there was intent on part of wholesaler to work deceit on government. U. S. v. National Wholesalers, C.A.9 (Cal.) 1956, 236 F.2d 944, certiorari denied 77 S.Ct. 719, 353 U.S. 930, 1 L.Ed.2d 724. United States 120.1

Speech pathologists and Medicare and Medicaid providers "cause[d] to be presented" false claims to the government under the False Claims Act (FCA), where their invoices to hospital containing false claims were intended to be used and were in fact used by hospital to determine the reimbursements it requested and received from Medicaid. U.S. ex rel. Putnam v. Eastern Idaho Regional Medical Center, D.Idaho 2010, 696 F.Supp.2d 1190. United States 120.1

Allegations in qui tam relator's complaint, that pharmaceutical companies knew that their false price representations would result in government making inflated reimbursements for claims submitted to Medicaid, were sufficient to state that companies intended that false statements be material to government's decision to pay or approve false claims, as required for False Claims Act (FCA) claims. U.S. ex rel. Ven-A-Care v. Actavis Mid Atlantic LLC, D.Mass.2009, 659 F.Supp.2d 262. United States 122

Relator did not demonstrate that Massachusetts Housing Finance Agency (MHFA), as mortgage lender, had knowledge that claims for interest reduction payments under mortgage assistance program for owners of low-income housing projects were false or that it had intent to deceive Housing and Urban Development (HUD), on allegations that MHFA had motive to defraud HUD because of MHFA's precarious financial condition and that MHFA made misrepresentations in financial statements for other programs, for purpose of relator's action under False Claims Act (FCA). U.S. ex rel. K & R Ltd. Partnership v. Massachusetts Housing Finance Agency, D.D.C.2006, 456 F.Supp.2d 46, affirmed 530 F.3d 980, 382 U.S.App.D.C. 67, rehearing en banc denied. United States 122

Even if some of Medicare services provider's claims for pulmonary rehabilitation services and simple pulmonary stress tests were "false" under the False Claims Act (FCA), government failed to show that provider "knowingly" submitted a false claim; provider's billing practice conformed to a reasonable interpretation of ambiguous regulations that he, and his staff, believed in good faith were proper, and provider complied with government instructions regarding the claims. U.S. v. Prabhu, D.Nev.2006, 442 F.Supp.2d 1008. United States 120.1

Relator failed to show that contractor fraudulently induced government to award the contract to it by making promises at the time it submitted its bid regarding cost-saving devices it never intended to use, failing to follow industry practices for preparing its bid, or by reaffirming its bid during the period of the bid protest or submitting a false request for equitable adjustment (REA) after the contract was awarded; contractor's REA, which ultimately resulted in a $6.9 million contract adjustment, reflected a contract dispute, not a false claim within the meaning of the False Claims Act. U.S. ex rel. Bettis v. Odebrecht Contractors of California, Inc., D.D.C.2004, 297 F.Supp.2d 272, affirmed 393 F.3d 1321, 364 U.S.App.D.C. 250. United States 120.1

Defendants did not act with the requisite intent to establish False Claims Act (FCA) liability for "reverse" false claims for purpose of decreasing royalty payments due under certain Federal leases; defendants did not "knowingly" make false statements regarding the gas volumes used for royalty purposes since the methodology employed for measuring and reporting gas production was known to and approved by the responsible government authorities, and defendants' statements about the value assigned to the gas for royalty purposes was not knowingly false since the approach used to determine that value was openly disclosed to the government and repeatedly accepted. U.S. ex rel. Grynberg v. Praxair, Inc., D.Colo.2001, 207 F.Supp.2d 1163, affirmed in part , reversed in part 389 F.3d 1038, certiorari denied 125 S.Ct. 2964, 545 U.S. 1139, 162 L.Ed.2d 888, on subsequent appeal 183 Fed.Appx. 724, 2006 WL 1531413. United States 120.1

To the extent that statement supplied by government contractor on DD-250 Forms, wherein government quality assurance representative certified compliance of modular pack mine system assemblies with government contract, together with other statements and documents and request for payment, had intended effect of inducing government to pay claims which were not properly payable, materials could constitute a false claim under False Claims Act (FCA) and, accordingly, summary judgment was precluded on that claim. U.S. ex rel. Fallon v. Accudyne Corp., W.D.Wis.1995, 921 F.Supp. 611. Federal Civil Procedure 2498.4

Evidence in action by United States to recover payments made to partners under soil bank program with respect to lands leased by individual partners from partnership was insufficient to support finding of an intent by partners to deceive, in view of record clearly indicating that partners had been led by government agents to believe that their actions were permissible under the law. U. S. v. Lazy FC Ranch, D.C.Idaho 1971, 324 F.Supp. 698, affirmed 481 F.2d 985. United States 120.1

Where claim presented to Veterans' Administration incorrectly stated that total purchase price of automobile by veteran from dealer did not exceed $1,600, but government was not overcharged for automobile and dealer received nothing he was not entitled to, and dealer did not with fraudulent design undertake to deceive and cheat government, dealer could retain amount of claim paid under Act Aug. 8, 1946, c. 870, 60 Stat. 915, providing for gift of automobile by federal government at cost of $1,600 to disabled veterans of World War II who lost one or both legs, notwithstanding falsity of claim. U.S. v. Park Motors, E.D.Tenn.1952, 107 F.Supp. 168. United States 120.1

17. Knowledge--Generally

False Claims Act provides for recovery of civil penalties from those who knowingly present false or fraudulent claim to the federal government for payment, or knowingly use false record to avoid or decrease obligation to pay the federal government. In re Schimmels, C.A.9 (Nev.) 1996, 85 F.3d 416. United States 122

Party "knowingly" presented false and fraudulent claims to the government under the pre-1986 version of the False Claims Act if he had actual knowledge or acted with deliberate ignorance and reckless disregard of the truth or falsity of his claims. U.S. v. TDC Management Corp., Inc., C.A.D.C.1994, 24 F.3d 292, 306 U.S.App.D.C. 286. United States 120.1

One violates False Claims Act if one has actual knowledge that one is submitting false or fraudulent claim to government for payment or approval, one acts in deliberate ignorance of truth or falsity of one's false claim, or one acts in reckless disregard of truth or falsity of one's false claim; innocent mistakes and negligence are not offenses under Act. Wang v. FMC Corp., C.A.9 (Cal.) 1992, 975 F.2d 1412. United States 122

There must have been a showing of actual knowledge to establish liability under former § 231 et seq. of this title. U.S. v. Ekelman & Associates, Inc., C.A.6 (Mich.) 1976, 532 F.2d 545. United States 120.1

"Knowing" within former § 231 of this title was "knowing" in civil sense and not the guilty knowledge of the criminal mens rea. U. S. v. Cooperative Grain & Supply Co., C.A.8 (Neb.) 1973, 476 F.2d 47. United States 120.1

Extreme carelessness of grain producers in not ascertaining whether purchased grain was eligible for commodity price support was "knowing" within former § 231 of this title. U. S. v. Cooperative Grain & Supply Co., C.A.8 (Neb.) 1973, 476 F.2d 47.

To have shown violation of former § 231 of this title, evidence must have demonstrated guilty knowledge of purpose on part of the defendant to cheat the government. U. S. v. Aerodex, Inc., C.A.5 (Fla.) 1972, 469 F.2d 1003. United States 122

Addition of conjunctive phrase "and should have known" to finding that subcontractor, sued by United States under former § 231 of this title for allegedly making improper claim for direct labor, knew and should have known of illegality and fraud of

its conduct did not impair finding that subcontractor had necessary scienter. U.S. v. Ueber, C.A.6 (Mich.) 1962, 299 F.2d 310. United States 122

Statement in Program Project Grant Application to National Institute on Aging (NIA), an organization under National Institutes of Health (NIH), by hospital and physicians stating that they had conducted reliability study on underlying data from entorhinal cortex (EC) was not false, in violation of False Claims Act (FCA), absent showing that hospital or physicians had any knowledge of any accuracy of statement. U.S. ex rel. Jones v. Brigham and Women's Hosp., D.Mass.2010, 2010 WL 4502079. United States 120.1

Qui tam relator supported False Claims Act claim, under false statement theory, by alleging that information technology services provider falsely listed 140 products as compliant with Trade Agreements Act (TAA) on website related to "solutions for enterprise-wide procurement" (SEWP) contract with National Aeronautics and Space Administration (NASA), that those products were purchased by government, and thus that those products were tied to provider's alleged false claims for payment from government, and that provider knew or should have known that product listings were false. U.S. ex rel. Folliard v. CDW Technology Services, Inc., D.D.C.2010, 722 F.Supp.2d 20. United States 122

Genuine issue of material fact existed regarding whether employees of tribal business knew that claims submitted for brushing and road grading work performed under contract with Bureau of Indian Affairs (BIA) were false, precluding summary judgment on government's False Claims Act (FCA) claims against employees. U.S. v. Menominee Tribal Enterprises, E.D.Wis.2009, 601 F.Supp.2d 1061, reconsideration denied 2009 WL 1373952, entered 2009 WL 2877083. Federal Civil Procedure 2498.4

University which received grants from government, under Cooperative Agreements, to undertake project to assist Russia in developing capital markets and foreign investments, was not liable under False Claims Act (FCA), on basis of violation, by university employees, of provisions of those Agreements which prohibited investment in Russia; university did not know that the statements it submitted to government, in which it certified compliance with the conditions of the grants, were false. U.S. v. President and Fellows of Harvard College, D.Mass.2004, 323 F.Supp.2d 151. United States 122

In order to be liable under False Claims Act, party must have knowingly presented claim that was known to be false. Plywood Property Associates v. National Flood Ins. Program, D.N.J.1996, 928 F.Supp. 500. United States 120.1

To establish False Claims Act violation, government need not prove intent to defraud, but only that the violations were committed knowingly, i.e., with willful blindness to existence of a fact or reckless disregard for the truth. U.S. v. Incorporated Village of Island Park, E.D.N.Y.1995, 888 F.Supp. 419. United States 120.1

False Claims Act provides penalties for those who knowingly present false or fraudulent claims to United States and incentives for whistleblowers who expose fraud by filing qui tam actions. U.S. ex rel. Fine v. University of California, N.D.Cal.1993, 821 F.Supp. 1356, reversed 39 F.3d 957, rehearing en banc granted 60 F.3d 525, opinion vacated on rehearing 72 F.3d 740, certiorari denied 116 S.Ct. 1877, 517 U.S. 1233, 135 L.Ed.2d 173. United States 122

Former § 231 of this title required only that defendants knowingly presented a false claim to the government. Alsco-Harvard Fraud Litigation, D.C.D.C.1981, 523 F.Supp. 790. United States 120.1

Threshold requirement under former § 231 of this title was that each defendant's claim against government was "knowingly" grounded in fraud. U. S. ex rel. Hughes v. Cook, S.D.Miss.1980, 498 F.Supp. 784. United States 120.1

In order to have been liable under former § 231 of this title, a party must have had at least knowledge of the fact he was submitting a false claim to the government. U. S. v. Kennedy, C.D.Cal.1977, 431 F.Supp. 877. United States 121

In action under former § 231 of this title, United States was not required to prove intent to defraud but was required only to prove, as matter of law, that claimant made claim upon or against government of United States, knowing it to have been false. U. S. v. Foster Wheeler Corp., S.D.N.Y.1970, 316 F.Supp. 963, modified on other grounds 447 F.2d 100. United States 120.1

18. ---- Deliberate ignorance, knowledge

Statutory definition of "knowingly" in False Claims Act requires at least deliberate ignorance or reckless disregard. U.S. ex rel. Hagood v. Sonoma County Water Agency, C.A.9 (Cal.) 1991, 929 F.2d 1416, on remand. United States 121

Amendments to False Claims Act, providing for violation in cases in which person submits claim in deliberate ignorance or reckless disregard of its truth or falsity, broadened liability under Act, which previously applied only to cases in which there was actual knowledge of falsity of claim. U.S. v. Hercules, Inc., D.Utah 1996, 929 F.Supp. 1418. United States 120.1

Fact that government contractor certified in final progress billing that subcontractors had been paid, despite still having failed to pay all its suppliers and subcontractors, supported conclusion, for purposes of the False Claims Act (FCA), that contractor also acted knowingly, or in deliberate ignorance with reckless disregard of falsehoods, when it certified the final progress billing. Lamb Engineering & Const. Co. v. U.S., Fed.Cl.2003, 58 Fed.Cl. 106. United States 120.1

19. ---- Government knowledge

"Government knowledge inference" negated the scienter element of False Claims Act (FCA) violation based on state university officials' false certification that university was a "minority institution" eligible for Department of Defense (DoD) set-aside contract grants; from university's enrollment data, the Department of Education (DoE) consistently placed university on its annual list of minority institutions, and, from those lists, the DoD consistently sent university solicitations for minority-institution contracts, assuring university that, if it was on DoE's list, it was eligible. U.S. ex rel. Burlbaw v. Orenduff, C.A.10 (N.M.) 2008, 548 F.3d 931. United States 120.1

Prior product liability lawsuits against manufacturer of heart pacemaker leads, alleging leads were not as safe as had been reported to Food and Drug Administration (FDA), precluded relator's qui tam claims under False Claims Act against manufacturer alleging medicare fraud for manufacturer's alleged fraud in providing information to FDA; government could have reasonably inferred fraud allegations from various parts of prior complaints, prior complaints mentioned both a change in design specifications and fraud surrounding manufacture of leads, and medicare fraud claim necessarily relied on FDA fraud claim. U.S. ex rel. Gilligan v. Medtronic, Inc., C.A.6 (Ohio) 2005, 403 F.3d 386, rehearing and rehearing en banc denied , certiorari denied 126 S.Ct. 1054, 546 U.S. 1094, 163 L.Ed.2d 860. United States 122

Contractor could not be held liable for submitting fraudulent claim to government under False Claims Act (FCA) when contractor acted pursuant to government's explicit directions in submitting proposal and invoices using excavation line-items for pond dredging project and in resubmitting invoices without excavation line-items. U.S. ex rel. Durcholz v. FKW Inc., C.A.7 (Ind.) 1999, 189 F.3d 542. United States 120.1

In determining whether government had such knowledge as would preclude qui tam suit under False Claims Act, government's knowledge need not be mirror image of that in hands of informer; rather, information need only be sufficient to enable government to adequately investigate case and decide whether to prosecute. U.S. v. TRW, Inc., C.A.6 (Ohio) 1993, 4 F.3d 417, rehearing denied, certiorari denied 114 S.Ct. 1370, 511 U.S. 1004, 128 L.Ed.2d 47. United States 122

Statutory basis for False Claims Act claim is defendant's knowledge of the falsity of its claim, which is not automatically exonerated by any overlapping knowledge by government officials, but fact that contractor has fully disclosed all information to the government may show that contractor has not "knowingly" submitted a false claim. U.S. ex rel. Kreindler & Kreindler

v. United Technologies Corp., C.A.2 (N.Y.) 1993, 985 F.2d 1148, certiorari denied 113 S.Ct. 2962, 508 U.S. 973, 125 L.Ed.2d 663. United States 122

Bureau of Indian Affairs (BIA) officials did not encourage or order resubmission of invoices with false amounts of work by employees of tribal business arm, and thus narrow exception to False Claims Act (FCA) for government's knowledge of falsity of claims did not apply to claims that employees submitted false claims for brushing and road grading work performed under contract with BIA. U.S. v. Menominee Tribal Enterprises, E.D.Wis.2009, 601 F.Supp.2d 1061, reconsideration denied 2009 WL 1373952, entered 2009 WL 2877083. United States 120.1

Documents/allegations in the United States' possession at the time relator filed its qui tam suit, whether or not characterized as "evidence," were sufficient to enable United States adequately to investigate the case and to make a decision whether to prosecute, and therefore qui tam action was barred by former statute barring qui tam suits based upon information in the government's possession. Makro Capital of America, Inc. v. UBS AG, S.D.Fla.2006, 436 F.Supp.2d 1342, reconsideration denied 2006 WL 4448860, affirmed 543 F.3d 1254. United States 122

Government was not estopped from claiming fraud under False Claims Act, based on corporation's billing of tasks required under specific contract to general defense research, despite corporation's claim that it informed government of its intent to perform required work using general research funds. U.S. ex rel. Mayman v. Martin Marietta Corp., D.Md.1995, 894 F.Supp. 218. Estoppel 62.2(4)

20. ---- Imputation, knowledge

Error of allowing for proof of scienter based on "collective knowledge" was not harmless, in False Claims Act (FCA) implied certification case, although jury had been instructed that government had to satisfy its burden of proof by "more than an honest mistake or mere negligence [by federal contractor]"; "collective knowledge" instruction undermined clarity of that separate "no mere negligence instruction" by misleading jury into believing that standard for knowledge under FCA could be based on "collective pool of information" derived from all of contractor's individual employees in spite of generally adequate compliance system and their reasonable beliefs of compliance. U.S. v. Science Applications Intern. Corp., C.A.D.C.2010, 626 F.3d 1257. Federal Courts 909

In government's action against defendant to recover forfeitures for submitting false claims for materials supplied by defendant as subcontractor on a Navy shipbuilding project, defendant could not escape liability on ground that he had no knowledge that the bids being submitted for Navy approval were not bona fide, where such bids were procured by defendant's agents for defendant's sole benefit. U. S. v. Rohleder, C.C.A.3 (Pa.) 1946, 157 F.2d 126. United States 122

University employees were not acting within the scope of their employment when they made investments in Russia which violated provision of university's agreement with government, prohibiting employees involved in project to assist Russia in developing capital markets and foreign investments, from investing in Russia, and thus university could not be charged or imputed with the collective knowledge of the employees for purposes of determining whether university had knowledge of the falsity of its certifications to government, as required for a violation of the False Claims Act (FCA); employees were not acting with an intent to benefit university. U.S. v. President and Fellows of Harvard College, D.Mass.2004, 323 F.Supp.2d 151. Colleges And Universities 5; United States 122

Government contractor's project superintendent's alleged concealment from government of employees' discovery and disturbance of asbestos in military housing during remodeling could be imputed to contractor for purposes of False Claims Act suit, regardless of whether superintendent's superiors were aware of asbestos; superintendent was working within scope of his employment, submitted daily reports to contractor and government, and served as liaison between contractor and government inspector, and thus acted with apparent authority. U.S. ex rel. Bryant v. Williams Building Corp., D.S.D.2001, 158 F.Supp.2d 1001. United States 120.1

Common-law doctrine of corporate knowledge would not be applied to impose liability on aircraft contractor, based on government's inflated pricing claims under False Claims Act, absent finding of intent to deceive government; although certificate of current cost or pricing data provided that responsibility of contractor would not be limited by personal knowledge of contractor's negotiator, whether or not to apply doctrine of corporate knowledge was not dependent on language of parties' agreement. U.S. v. United Technologies Corp., Sikorsky Aircraft Div., D.Conn.1999, 51 F.Supp.2d 167. United States 120.1

Bank officer's knowingly false representation on behalf of Small Business Administration loan applicant would be imputed to bank, for purpose of imposing liability under False Claims Act, in that officer was acting in course of his employment and for benefit of employer at time representation was made. U.S. v. Entin, S.D.Fla.1990, 750 F.Supp. 512. United States 122

21. ---- Information and belief, knowledge

Certification of nonsupervised lender that information which it was submitting to the Veterans' Administration or the Federal Housing Administration [now Department of Housing and Urban Development] for purposes of obtaining guarantee or insurance of home loans was true "to the best of my knowledge and belief" was a qualified assertion of facts and did not provide basis for holding the lender liable under former § 231 et seq. of this title on theory that it had made its representations recklessly. U.S. v. Ekelman & Associates, Inc., C.A.6 (Mich.) 1976, 532 F.2d 545. United States 120.1

Nonsupervised lender was not held liable under former § 231 of this title for failing to verify information which was subsequently determined to be false and which it had certified to the Veteran's Administration as being true to the best of its knowledge and belief. U.S. v. Ekelman & Associates, Inc., C.A.6 (Mich.) 1976, 532 F.2d 545. United States 120.1

22. ---- Particular cases, knowledge

Relator in qui tam action under False Claims Act (FCA) stated claim against government contractor under statute establishing liability where party knowingly made, used, or caused to be made or used a false record or statement material to a false or fraudulent claim by alleging that contractor, contrary to requirements of Vietnam Era Veterans Readjustment Assistance Act (VEVRAA), filed false reports regarding its employment of veterans, that it did so to procure contracts or obtain payment under existing contracts, which it could not do without filing reports, and that it did not have mechanism for identifying covered veterans, such that it fabricated numbers supplied in its reports. U.S. ex rel. Kirk v. Schindler Elevator Corp., C.A.2 (N.Y.) 2010, 601 F.3d 94, certiorari granted 131 S.Ct. 63, 177 L.Ed.2d 1152. United States 120.1

Evidence was sufficient to support jury finding that contractor, in seeking government approval of subcontract, knowingly submitted to the Department of Energy (DOE) a false certification that no organizational conflicts of interest existed between contractor and subcontractor, and thus possessed the requisite scienter to be held liable under the False Claims Act (FCA); contractor's employee knew that subcontractor was submitting a bid on the subcontract, the employee was one of the three contractor employees who graded the bid before it was submitted to DOE, contractor's procurement specialist cautioned employee to ensure that no contract employees would have access to procurement sensitive information, and subcontractor's employee, who was a contract employee for contractor, had unrestricted access to procurement sensitive documents. U.S. ex rel. Harrison v. Westinghouse Savannah River Co., C.A.4 (S.C.) 2003, 352 F.3d 908. United States 122

Even if government contractor's executive vice president violated criminal statute aimed at "revolving door" abuses by former government employees by representing contractor in matters related to contract, and even if contractor knew of such violation, it did not "knowingly" misrepresent validity of contract in violation of False Claims Act; issue of whether such violation could render contract voidable was open, and contract, even if voidable, would become invalid only upon contingency of government exercising its right to disclaim. U.S. ex rel. Siewick v. Jamieson Science and Engineering, Inc., C.A.D.C.2000, 214 F.3d 1372, 341 U.S.App.D.C. 459. United States 120.1

Department of Labor's efforts to establish wage classification for piping workers on water treatment plant project were not

uncertain and did not preclude finding of scienter in union's qui tam action for contractor's alleged violation of False Claims Act (FCA) in certifying falsely that it had paid piping workers on federally-funded project the applicable prevailing wage required by Davis-Bacon Act and related laws. U.S. ex rel. Plumbers and Steamfitters Local Union No. 38 v. C.W. Roen Const. Co., C.A.9 (Cal.) 1999, 183 F.3d 1088, certiorari denied 120 S.Ct. 2195, 530 U.S. 1203, 147 L.Ed.2d 232, on remand 2002 WL 73230. United States 120.1

Authorization of specialty pay for Department of Veterans Affairs (VA) clinic's chief of anesthesiology by clinic administrators and affiliated physicians did not support claim under False Claims Act, even if chief was not in fact entitled to specialty pay under VA guidelines, absent evidence that administrators and physicians knew that their application of guidelines was incorrect or were deliberately indifferent to or recklessly disregardful of alleged inapplicability of those provisions. U.S. ex rel. Hochman v. Nackman, C.A.9 (Cal.) 1998, 145 F.3d 1069. United States 121

Civil judgment finding real estate agent to be liable under former § 231 of this title for having combind with other to present false claims to Department of Housing and Urban Development was not erroneous on ground that no showing was made that defendant had intent to deceive, in that government was required only to establish that defendant knowingly presented false claim to government. U. S. v. Hughes, C.A.7 (Ind.) 1978, 585 F.2d 284. United States 120.1

Evidence sustained finding that there was no actual knowledge on part of lender that any information submitted by it to the Government with respect to VA and Federal Housing Administration loan guarantee and insurance programs was false or fraudulent. U.S. v. Ekelman & Associates, Inc., C.A.6 (Mich.) 1976, 532 F.2d 545. United States 120.1

Government contractor was subject to fine of $2,000 where it knowingly claimed reimbursement for personal services rendered by contractor's employees on another employee's farm, which matter was directly brought to attention of contractor's officials by federal agency, contractor thereafter failing to remove such personal expenditures from charges claimed. Acme Process Equipment Co. v. U. S., Ct.Cl.1965, 347 F.2d 509, 171 Ct.Cl. 324, certiorari granted 86 S.Ct. 1367, 384 U.S. 917, 16 L.Ed.2d 438, reversed on other grounds 87 S.Ct. 350, 385 U.S. 138, 17 L.Ed.2d 249, rehearing denied 87 S.Ct. 738, 385 U.S. 1032, 17 L.Ed.2d 680. United States 122

Evidence failed to show that military supply contractor knowingly made false claims against government. Klein v. U.S., Ct.Cl.1961, 285 F.2d 778, 152 Ct.Cl. 8. United States 120.1

In action under former § 231 of this title by United States against member of first partnership, which had a contract with Air Force for overhaul of marine engines, and which submitted vouchers for cost of spare parts at prices higher than those paid by second partnership, the spare parts supplier, because majority of members of second partnership were close relatives of members of first partnership, the United States was required to prove that member of first partnership personally had guilty knowledge of a purpose on part of first partnership to cheat the United States and to obtain payment of amounts for which she knew the United States was not liable under the contract. U. S. v. Priola, C.A.5 (Ala.) 1959, 272 F.2d 589. United States 122

In action by federal government against dairyman who delivered recombined milk in violation of his contract for delivery of fresh milk and presented claims for payment for delivery of fresh milk knowing such claims to be false, evidence sustained jury's finding that 15 percent of all milk delivered was not consumed by troops because 70 percent thereof was recombined milk. Faulk v. U.S., C.A.5 (Tex.) 1952, 198 F.2d 169. United States 122

In government's action against defendant to recover forfeitures for submitting false claims for materials supplied by defendant as subcontractor on a Navy shipbuilding project, evidence was sufficient to show that defendant knew that the bids being submitted for Navy approval were not bona fide. U. S. v. Rohleder, C.C.A.3 (Pa.) 1946, 157 F.2d 126. United States 122

Physician followed blinded methodologies when manually tracing entorhinal cortex (EC) in accordance with statements con-

tained in Program Project Grant Application to National Institute on Aging (NIA), an organization under National Institutes of Health (NIH), thereby precluding relator's qui tam action against hospitals and physicians pursuant to False Claims Act (FCA); physician was blinded to group status of participants for which he retraced boundaries of EC, he was also blinded to statistical significance of any data he produced, and he did not receive information concerning data going to statistical core, nor was he involved in analysis of that data. U.S. ex rel. Jones v. Brigham and Women's Hosp., D.Mass.2010, 2010 WL 4502079. United States 122

Relator's allegations that health care providers agreed in Medicare enrollment forms to comply with federal anti-kickback statute, and that pharmaceutical manufacturer, pharmaceutical services company, group purchasing organization (GPO), and affiliated companies provided kickbacks to providers in order to induce them to submit claims for prescription drug, were insufficient to state claim under False Claims Act (FCA) pursuant to express certification theory, where relator did not allege that, when providers signed enrollment forms, they knew that they would be accepting kickbacks in violation of anti-kickback statute. U.S. ex rel. Westmoreland v. Amgen, Inc., D.Mass.2010, 707 F.Supp.2d 123, reconsideration denied 2010 WL 2204603. United States 122

United States government alleged that synthetic fiber supplier acted with knowledge in making fraudulent requests for payment, as required to state claim under False Claims Act (FCA); complaint averred that, although supplier knew of fiber's deficiencies, it continued in partnership with bulletproof vest manufacturer to market fiber-based vests while concealing evidence of and issuing misleading statements about degradation. U.S. ex rel. Westrick v. Second Chance Body Armor, Inc., D.D.C.2010, 685 F.Supp.2d 129, reconsideration denied 709 F.Supp.2d 52. United States 122

Homeowners association board did not make false statement in violation of False Claims Act (FCA) when securing loan agreement to repair roofs that were damaged by hurricane, by submitting resolution stating that majority of owners had approved loan, as required for condominium owner's claim against homeowners association, board members, management company and management company's operator under False Claims Act (FCA), absent evidence of board's knowledge of falsity of information or intent to defraud government. U.S. ex rel. Crenshaw v. Degayner, M.D.Fla.2008, 622 F.Supp.2d 1258, reconsideration denied 2008 WL 4613084. United States 120.1

Genuine issue of material fact as to whether hospitals that established diabetes treatment centers presented Medicare claims to United States after operator of centers knowingly and willingly made excessive payments to physicians in return for patient referrals precluded summary judgment in action against operator under False Claims Act (FCA) based on violations of Anti-Kickback Statute (AKS). U.S. ex rel. Pogue v. Diabetes Treatment Centers of America, D.D.C.2008, 565 F.Supp.2d 153, reconsideration denied 576 F.Supp.2d 128. Federal Civil Procedure 2498.4

Jury charge, in suit alleging that contractors violated False Claims Act (FCA) by bid-rigging conspiracy for Egyptian construction projects funded by United States, instructing that contractors acted "knowingly" if they "had information which would lead a reasonably prudent person to make an inquiry through which he would have surely learned certain facts," fell within FCA's definition of knowledge for scienter requirement. Miller v. Holzmann, D.D.C.2008, 563 F.Supp.2d 54, affirmed in part, vacated in part and remanded 608 F.3d 871, 391 U.S.App.D.C. 165, petition for certiorari filed 2010 WL 5490637. Conspiracy 9

Genuine issue of material fact as to whether insurance agent knew he was submitting false or fraudulent crop insurance applications, acreage reports, production worksheets, and claim documents for persons not eligible for crop insurance, precluded summary judgment in favor of government on False Claims Act (FCA) claim that agent knowing made or used false statements to get a false crop insurance claim paid or approved by government. U.S. v. Hawley, N.D.Iowa 2008, 544 F.Supp.2d 787, subsequent determination 566 F.Supp.2d 918, reversed 619 F.3d 886, rehearing and rehearing en banc denied. Federal Civil Procedure 2498.4

Contractor hired to provide reimbursement rates for government reimbursements to schools, for implementation of School Health and Related Services (SHARS) program, did not have knowledge that rates were inflated, as required for liability for

causing filing of false reimbursement claims in violation of False Claims Act (FCA), despite assertions that state officials had told contractors rates seemed unreasonable, and that contractor had profit motive to set high rates. U.S. ex rel. Gudur v. Deloitte Consulting LLP, S.D.Tex.2007, 512 F.Supp.2d 920, affirmed 2008 WL 3244000. United States 120.1

Genuine issues of material fact existed as to whether government contractor acted with requisite scienter under False Claims Act (FCA) in falsely certifying its Cost Accounting Standards Board (CASB) disclosure statements by failing to list affiliated subcontractor among the companies with whom it engaged in inter-organizational transfers, and by allegedly violating the federal regulations governing its accounting practices, precluding summary judgment in favor of relator on False Claims Act (FCA) claims. U.S. ex rel. Oliver v. The Parsons Corp., C.D.Cal.2006, 498 F.Supp.2d 1260. Federal Civil Procedure 2498.4

Allegedly erroneous interpretation of mortgage notes by Massachusetts Housing Finance Agency (MHFA), as mortgage lender, did not demonstrate that MHFA had knowledge that claims for interest reduction payments under mortgage assistance program for owners of low-income housing projects were false or that it had intent to deceive Housing and Urban Development (HUD), for purpose of relator's action under False Claims Act (FCA); reasonableness of MHFA's interpretation, whether or not correct, was demonstrated on evidence that for 30 years every party to notes interpreted them in same way. U.S. ex rel. K & R Ltd. Partnership v. Massachusetts Housing Finance Agency, D.D.C.2006, 456 F.Supp.2d 46, affirmed 530 F.3d 980, 382 U.S.App.D.C. 67, rehearing en banc denied. United States 122

Because rules regarding documentation for establishing medical necessity for services provided were ambiguous, Medicare services provider could not be found to have "knowingly" submitted any "false" claim to the government regarding the medical necessity of his claims. U.S. v. Prabhu, D.Nev.2006, 442 F.Supp.2d 1008. United States 120.1

University which received grants from government, under Cooperative Agreements, to undertake project to assist Russia in developing capital markets and foreign investments, did not knowingly make false records or statements and thus was not liable under False Claims Act (FCA), despite violation, by university employees, of provisions of those Agreements which prohibited investment in Russia; university did not know that the statements it submitted to government, in which it certified compliance with the conditions of the grants, were false. U.S. v. President and Fellows of Harvard College, D.Mass.2004, 323 F.Supp.2d 151. United States 122

Government's allegations that private insurer was aware of applicable regulations regarding primary/secondary payment and knew that it was not accurately processing Medicare Secondary Payer (MSP) claims, and that insurer actually obtained information relevant to making accurate determinations regarding its payment obligations but nonetheless failed to incorporate such information into its claims processing systems were sufficient to allege knowing conduct element of claim under False Claims Act (FCA). U.S. ex rel. Drescher v. Highmark, Inc., E.D.Pa.2004, 305 F.Supp.2d 451. United States 122

Government contractor's alleged failure to implement proper channels of communication with subcontractors, allegedly resulting in submission of erroneous bid results to government, did not rise to level of reckless disregard so as to satisfy False Claims Act's "knowingly" criterion. U.S. ex rel. Ervin and Associates, Inc. v. Hamilton Securities Group, D.D.C.2004, 298 F.Supp.2d 91. United States 120.1

Contractors did not engage in pattern of knowingly submitting false claims for payment under their contracts to perform hazardous waste treatment and disposal services at site of chemical plant, and thus were not liable under False Claims Act (FCA), despite contention that worker had tampered with incinerator sensor to reduce occurrence of waste feed cutoffs, where contemporaneously recorded computer records contained no evidence of tampering, contractors had no actual knowledge of alleged tampering, oversight contractor hired to perform inspection services continuously on site never saw any evidence of tampering, and observed elevated levels of dioxin at site were attributable to numerous causes other than kiln puffs and tampering. U.S. ex rel. Costner v. URS Consultants, Inc., E.D.Ark.2001, 182 F.Supp.2d 754, affirmed 317 F.3d 883, rehearing and rehearing en banc denied , certiorari denied 124 S.Ct. 225, 540 U.S. 875, 157 L.Ed.2d 137. United States 120.1

Claim for Federal Employees Compensation Act (FECA) benefits filed by army hospital clerical assistant 21 months after alleged on-the-job lifting injury was false and subjected employee to a civil penalty under False Claims Act; employee was knowledgeable about his FECA rights, such that his waiting so long to file claim was incredible, as was his failure to mention injury during subsequent medical treatment. U.S. v. Bottini, W.D.La.1997, 19 F.Supp.2d 632, affirmed 159 F.3d 1357. United States 120.1

Material issue of fact existed as to whether contractor knowingly violated False Claims Act by submitting five sworn statements that it had performed work in accordance with its contract with United States, precluding summary judgment for United States on False Claims Act claim. U.S. v. Chilstead Bldg. Co., Inc., N.D.N.Y.1998, 18 F.Supp.2d 210. Federal Civil Procedure 2498.4

Government failed to establish that retail grocer "knowingly" acquired, possessed or redeemed illegally obtained food stamps and thus could not recover, under False Claims Act, damages arising from grocer's alleged violations of food stamp program requirements; although grocer admitted to being person responsible for redeeming food stamps for store and admitted to not having any unredeemed food stamps at store, government presented no direct evidence that grocer ever acquired, possessed or redeemed illegally obtained food stamps, and there was no evidence that grocer deliberately "turned his back" to misconduct of store's managers, who were grocer's mother and aunt. Haynes v. U.S. Through Food and Nutrition Service, E.D.Ark.1995, 956 F.Supp. 1487, affirmed 106 F.3d 405. United States 122

Former employee of federal contractors failed to establish that contractors had actual knowledge, acted with deliberate ignorance of truth or falsity or acted in reckless disregard of truth when it reported wrong wage rates for employees' maintenance work in certified payroll records provided to government under Copeland Act, for purposes of maintaining claim against contractors under False Claims Act (FCA), where contractor testified that he thought maintenance hours did not need to be included on certified payroll record since "General Wage Decision" under its contract did not provide classification for maintenance, contractors had followed same practice for 25 years, and audit performed by Department of Labor did not indicate that contractors were paying improper rate to employees for maintenance work. U.S. ex rel. Rueter v. Sparks, C.D.Ill.1996, 939 F.Supp. 636, affirmed 111 F.3d 133. United States 122

Genuine issues of material fact existed as to whether United States or government contractor were aware of radio frequency miscalibration, whether that miscalibration led to tender of defective modular pack mine system components, and whether failure to train operators more extensively contributed to malfunctioning of testing units, precluding summary judgment on United States' claim under False Claims Act (FCA) that contractor knowingly supplied data for nonconforming parts and failed to properly test completed products in performing contract for production of modular pack mine system components. U.S. ex rel. Fallon v. Accudyne Corp., W.D.Wis.1995, 921 F.Supp. 611. Federal Civil Procedure 2498.4

Director of university cancer research center who was principal investigator on grant for federal funding for research and its renewals did not knowingly submit false statements to federal agency, as would allow imposition of liability under False Claims Act, even though director signed application which contained allegedly false statements made by other investigators; director had no knowledge of dispute over research cited, and as director was entitled to delegate responsibility for scientific accuracy to subordinates who were trained researchers. U.S. ex rel. Milam v. Regents of University of California, D.Md.1995, 912 F.Supp. 868. United States 120.1

False Claims Act (FCA) complaint sufficiently alleged that shareholders of health care provider knowingly caused the submission of false claims to government under the Medicare, Medicaid, and TRICARE/CHAMPUS health insurance programs as a result of their alleged participation in making illegal referrals; complaint alleged that shareholders accepted illegal kickbacks for making referrals that supported the alleged claims eventually made to Medicare and other government programs by health care provider. U.S. ex rel. Bartlett v. Tyrone Hosp., Inc., W.D.Pa.2006, 234 F.R.D. 113. United States 122

Medicare insurer did not manipulate Medicare system computer software, which was designed to catch duplicate claims, so

that software ignored duplicate claims, knowing that such manipulation would cause false or fraudulent claim to be presented to government, in violation of the False Claims Act (FCA); representative of software developer stated it would have been impossible to manipulate software in such manner, and insurer had denied more claims as duplicate than national average. U.S. ex rel. Watson v. Connecticut General Life Ins. Co., E.D.Pa.2003, 2003 WL 303142, Unreported, affirmed 87 Fed.Appx. 257, 2004 WL 234970. United States 120.1

23. Motive

Finding that owner of physical therapy clinic knowingly presented false Medicare claims when he caused clinic to submit claims for Medicare payment which incorrectly represented that his physician father provided services performed was not clearly erroneous, and thus supported government's claims under False Claims Act (FCA), despite owner's contentions that he lacked motive to submit false claims because clinic could easily have qualified as physician-independent facility and that clinic's apparent physician-run status precluded it from billing Medicare clients at clinic's full rate once cap that applied to independent facilities was reached; clients presumably would have sought services from physicians or physician-run clinics to which cap did not apply, and clinic's status as apparent physician-run clinic enabled it to avoid cap altogether. U.S. v. Mackby, C.A.9 (Cal.) 2001, 261 F.3d 821, on remand 221 F.Supp.2d 1106. United States 120.1

24. Negligence

Medical school seeking reimbursement from government for radiology residents' work at hospital did not submit false claims in violation of the False Claims Act where residents performed work listed in invoices, in arranging residencies both school and hospital operated under assumption that federal funding for positions would be forthcoming and neither party knew the possibility of funding was foreclosed, no harm was done to government when funding ultimately did not become available as the hospital received benefit of two full-time residents at no cost, and, at most, school was negligent in not ascertaining whether funding had been approved before it invoiced hospital for its costs. Hindo v. University of Health Sciences/The Chicago Medical School, C.A.7 (Ill.) 1995, 65 F.3d 608, certiorari denied 116 S.Ct. 915, 516 U.S. 1114, 133 L.Ed.2d 846. United States 120.1

Negligent misrepresentation by claimant constituted the necessary “knowledge” within the meaning of former § 231 of this title. U. S. v. Cooperative Grain & Supply Co., C.A.8 (Neb.) 1973, 476 F.2d 47.

Standard of care that did not require physician to be present in office throughout administration of infusion treatment so long as physician was available by telephone and competent medical professionals were present was relevant in qui tam action under False Claims Act (FCA) as to whether physician merely had been negligent in not taking further steps to learn that plain language of unambiguous Medicare regulations required physician's availability and presence in office suite when billed as incident to physician services. Landau v. Lucasti, D.N.J.2010, 680 F.Supp.2d 659. United States 122

Negligence is not actionable under False Claims Act which requires intent element of knowing representation of what is known to be false. Ali v. U.S., E.D.Wis.1995, 904 F.Supp. 915. United States 120.1

25. Recklessness

Jury was entitled in implied certification case to conclude that federal contractor's vice president or others aware of his membership in trade organization knew, or recklessly failed to know, that his simultaneous work for Nuclear Regulatory Commission (NRC) on same subject matter created potential conflict of interest that company was obligated to disclose, in order to not submit false payment claim for provision of conflict-free counseling and technical assistance in violation of False Claims Act (FCA), where vice-president had served as officer and board member who had played active part in organization's advocating for standard governing release or recycle of radioactive material. U.S. v. Science Applications Intern. Corp., C.A.D.C.2010, 626 F.3d 1257. United States 122

Massachusetts Housing Finance Agency's (MHFA) interpretation of mortgage notes, without obtaining legal opinion or prior approval of Department of Housing and Urban Development (HUD), did not constitute "reckless disregard" for alleged false claims for subsidy payments submitted to HUD after MHFA's bond refund, as required for MHFA to knowingly make excessive claims in violation of False Claims Act (FCA) as asserted by relator in qui tam action, where MHFA specifically brought to HUD's attention MHFA's bond refund to lower its debt service, and HUD continued to pay claims. U.S. ex rel. K & R Ltd. Partnership v. Massachusetts Housing Finance Agency, C.A.D.C.2008, 530 F.3d 980, 382 U.S.App.D.C. 67, rehearing en banc denied. United States 120.1

High Value Items Clause (HVIC) in federal acquisition regulations (FAR) did not foreclose False Claims Act (FCA) as means for government to recover damages for loss of military helicopter, on contractor's failure to ensure quality of parts used for remanufacture of helicopter; even though HVIC limited contractor liability for high value items in fairly broad terms, nothing in HVIC suggested that its limitation of contractor liability covered statutory violations. U.S. ex rel. Roby v. Boeing Co., C.A.6 (Ohio) 2002, 302 F.3d 637, rehearing and suggestion for rehearing en banc denied, certiorari denied 123 S.Ct. 2641, 539 U.S. 969, 156 L.Ed.2d 675. United States 120.1

Psychiatrist and his wife acted with reckless disregard in submitting incorrect billings for treatment provided to Medicare patients, and thus acted "knowingly" under False Claims Act, where, inter alia, wife completed submissions with little or no factual basis, and psychiatrist failed utterly to review bills submitted on his behalf. U.S. v. Krizek, C.A.D.C.1997, 111 F.3d 934, 324 U.S.App.D.C. 175, on remand 7 F.Supp.2d 56. United States 120.1

Prior Medicare regulation governing reimbursement for services, that focused on type of service provided in physician's office, rather than upon who was providing it, and that used passive voice, i.e., "are commonly furnished," twice in describing those services, without speaking to physician's requirement to be present in office, was ambiguous as to whether physician had to be physically present in office, and thus prudent physician following industry-wide practice that did not require such physical presence would not have been reckless, as required for claim under False Claims Act (FCA), in not looking beyond regulation based only on concerns of two of his staff members. Landau v. Lucasti, D.N.J.2010, 680 F.Supp.2d 659. Health 535(1)

At the least, medical doctor acted with reckless disregard as to the truth or falsity of claims for Medicare and Medicaid reimbursement that were being submitted by his pain management clinic, and thus acted "knowingly" under False Claims Act (FCA), given that doctor failed to take any reasonable steps to ensure that billings were correct, gave complete control of billings to person with no prior experience with medical billing, and did not know or inquire into what codes were being used to bill for his services. U.S. v. Stevens, W.D.Ky.2008, 605 F.Supp.2d 863. United States 120.1

Fact that contractor in charge of Department of Housing and Urban Development (HUD) mortgage auction deployed only one employee to oversee work of subcontractor that devised revenue-optimization model to be applied to bids, allegedly resulting in submission of erroneous bid results to HUD, did not, by itself, constitute reckless disregard actionable under False Claims Act, especially absent any evidence of industry practice. U.S. ex rel. Ervin and Associates, Inc. v. Hamilton Securities Group, D.D.C.2004, 298 F.Supp.2d 91. United States 120.1

Contractor was liable to United States under False Claims Act (FCA) for asserting false claim for equitable adjustment of contract for replacement of underground water lines, since contractor failed to verify and document its claim and continued to press those portions found to be unrecoverable. Larry D. Barnes, Inc. v. U.S., C.A.Fed.2002, 45 Fed.Appx. 907, 2002 WL 1890798, Unreported. United States 120.1

Contractor's submission of claim for amount already paid by government constituted recklessness with regard to validity of claim and he was liable under False Claims Act (FCA). Al Munford, Inc. v. U.S., Fed.Cl.1995, 34 Fed.Cl. 62, vacated 86 F.3d 1178. United States 120.1

Assuming that common control existed between defense contractor and temporary staffing company, government failed to establish that contractor either knowingly or recklessly submitted false claims, in violation of False Claims Act (FCA), by passing through profits of company, as well as its own profits, in billing United States on cost plus fixed fee contracts, given evidence that relationship between contractor and company was repeatedly disclosed to government, that contractor investigated question of whether its issuance of purchase order to company would violate "common control" regulation and reasonably concluded that it did not, and that contractor repeatedly evaluated circumstances of its relationship to company with respect to common control issue. U.S. ex rel. Kholi v. General Atomics, S.D.Cal.2003, 2003 WL 21536816, Unreported. United States 122

Medicare insurer did not act knowingly, recklessly, or with deliberate ignorance in failing to assess required 10 percent late fees on claims filed by suppliers, and thus insurer's conduct could not support claim under False Claims Act (FCA); at most, insurer's failure in rare instances to assess penalties was caused by negligence or mistake, which was not actionable under FCA. U.S. ex rel. Watson v. Connecticut General Life Ins. Co., E.D.Pa.2003, 2003 WL 303142, Unreported, affirmed 87 Fed.Appx. 257, 2004 WL 234970. United States 120.1

26. Liability between government and claimant

Former § 231 of this title applied even where there was no direct liability running from government to claimant. Smith v. U.S., C.A.5 (Tex.) 1961, 287 F.2d 299. United States 120.1

27. Materiality of misrepresentation

Government contractor's alleged submission of reports under Vietnam Era Veterans Readjustment Assistance Act (VEVRAA) that contained fabricated numbers regarding its employment of covered veterans satisfied materiality requirement of provision of False Claims Act (FCA) establishing liability where party knowingly made, used, or caused to be made or used a false record or statement material to a false or fraudulent claim, despite contractor's contention that allegedly false statements in its reports were not material since government's funding decisions were not predicated on contents of reports; contractor allegedly submitted reports that gave impression that it was complying with VEVRAA reporting requirements, which were sufficiently important to Congress that it made their fulfillment a precondition to contractor payment, but contractor purportedly disregarded those requirements entirely. U.S. ex rel. Kirk v. Schindler Elevator Corp., C.A.2 (N.Y.) 2010, 601 F.3d 94, certiorari granted 131 S.Ct. 63, 177 L.Ed.2d 1152. United States 120.1

Omissions in hospital's Medicare and Medicaid reimbursement claims, which failed to disclose that illegal referrals had occurred or that kickbacks had been paid, were "material" for purposes of government's claims against hospital administrator under False Claims Act (FCA), given that Stark Amendment to Medicare Act barred payment of claims arising from medical services rendered to improperly referred patients. U.S. v. Rogan, C.A.7 (Ill.) 2008, 517 F.3d 449. United States 120.1

False certification by contractor to the Department of Energy (DOE) that no organizational conflicts of interest existed between contractor and subcontractor relating to a proposed government subcontract was "material" for purposes of claim brought by qui tam relator pursuant to the False Claims Act (FCA), notwithstanding fact that DOE continued to fund the subcontract even after it was informed about the alleged conflict. U.S. ex rel. Harrison v. Westinghouse Savannah River Co., C.A.4 (S.C.) 2003, 352 F.3d 908. United States 120.1

The submission to the United States of claim known to have been false in material aspect was covered by former § 231 of this title. U. S. v. Cooperative Grain & Supply Co., C.A.8 (Neb.) 1973, 476 F.2d 47. United States 120.1

Invoices of speech pathologists and Medicare and Medicaid providers to hospital and the resulting billings to Medicaid for speech pathology services (SPS) rendered by the pathologists and providers' aides or assistants that were not covered by or entitled to reimbursement from Medicaid satisfied the False Claims Act's (FCA) materiality requirement, where the number of units the pathologists and providers invoiced, which was directly affected by the amount of time the pathologist spent with

the patient, directly affected the interim and final reimbursements hospital requested and received. U.S. ex rel. Putnam v. Eastern Idaho Regional Medical Center, D.Idaho 2010, 696 F.Supp.2d 1190. United States 120.1

Alleged false representations made by manufacturer of surgical device used to patch large, complex hernias, pertaining to its ability to be used near infected wounds, were not material to claim for Medicare payment, as element of relator's False Claims Act (FCA) claim against manufacturer; under the prospective payment system, Medicare would have paid the same diagnoses related group if device was used on-label, off-label, or if an entirely different product were used, and thus the false representations regarding the device's approved uses were not used to satisfy a prerequisite to government payment. U.S. ex rel. Stephens v. Tissue Science Laboratories, Inc., N.D.Ga.2009, 664 F.Supp.2d 1310. United States 120.1

Alleged failure to deduct overpayment itself, in form that required Iowa Medicaid Enterprise (IME) to certify what it actually did with federal financial participation (FFP) dollars to administer Medicaid that were provided after it received and spent those dollars in given quarter in compliance with federal law, did not constitute "claim" under FCA; even if IME should have been deducting any overpayments from its FFP requests because of failure to recover reimbursement from tortfeasors that it should have been recovering, that failure itself was not request or demand for money, but that type of form conceivably could have been "statement material to a false or fraudulent claim." U.S. ex rel. Hixson v. Health Management Systems, Inc., S.D.Iowa 2009, 657 F.Supp.2d 1039, affirmed 613 F.3d 1186. United States 120.1

Applicant's misrepresentations in its proposal for funding from Air Force pursuant to Small Business Innovation Research (SBIR) program regarding its key personnel and its previous similar work for Army were sufficiently material to support claim under False Claims Act (FCA), where evaluator understood that proposal was unique and novel, and would not have recommended funding Air Force contracts if he had known of Army contracts. U.S. ex rel. Longhi v. Lithium Power Technologies, Inc., S.D.Tex.2007, 513 F.Supp.2d 866. United States 120.1

Section 8 housing owners' alleged false certification in housing assistance payment (HAP) vouchers that the property was in a "decent, safe, and sanitary" condition was not "material" for purposes of civil False Claims Act (FCA) claim since Department of Housing and Urban Development (HUD), as a matter of policy and practice, routinely made Section 8 housing assistance payments to owners of Section 8 property irrespective of whether the property was in a "decent, safe, and sanitary" condition, and HUD, in its authorization of housing assistance payments to the owners, did not consider the truth or falsity of the "decent, safe, and sanitary" certification. U.S. v. Southland Management Corp., Inc., S.D.Miss.2000, 95 F.Supp.2d 629, reversed 288 F.3d 665, rehearing en banc granted 307 F.3d 352, on rehearing 326 F.3d 669. United States 120.1

Fraud implies misrepresentation of material fact either express or implied. U. S. v. Klein, W.D.Pa.1964, 230 F.Supp. 426, affirmed 356 F.2d 983. Fraud 9

Even if Medicare insurer knowingly and wrongfully misrepresented its compliance with government regulations to government, such conduct could not form basis for claim against insurer under the False Claims Act (FCA), because conduct did not affect amount of funds that government allocated and paid to insurer; amount of funds allocated to insurer depended on its workload, not its compliance with regulatory directives, and there was no evidence that government would have assessed contractual penalty against insurer for non-compliance. U.S. ex rel. Watson v. Connecticut General Life Ins. Co., E.D.Pa.2003, 2003 WL 303142, Unreported, affirmed 87 Fed.Appx. 257, 2004 WL 234970. United States 120.1

28. Defenses

Attorney-client privilege applied with respect to communications between counsel and former corporate employee, in action brought against corporate defendants pursuant to False Claims Act (FCA), if communication sought to be elicited related to former employee's conduct or knowledge during her employment or if it concerned conversations with corporate counsel that occurred during her employment, but otherwise did not apply. U.S. ex rel. Hunt v. Merck-Medco Managed Care, LLC, E.D.Pa.2004, 340 F.Supp.2d 554. Privileged Communications And Confidentiality 123

Allegation that supplier presented invoices to government agency for payment which supplier knew at time of presentation were false stated claim under False Claims Act (FCA), regardless of whether agency failed to discover that tools supplied were unauthorized substitutes for those specified where there was no final inspection provision to impose duty on government in favor of supplier. U.S. v. Advance Tool Co., W.D.Mo.1995, 902 F.Supp. 1011, affirmed 86 F.3d 1159, certiorari denied 117 S.Ct. 1254, 520 U.S. 1120, 137 L.Ed.2d 334. United States 120.1

If contractor led General Services Administration (GSA) to believe that GSA was acquiring new paint pigment and GSA remained unaware of extent of debris contained in pigment referred to in termination for convenience settlement, it would be irrelevant under False Claims Act (FCA) whether material, once screened, was "just as good" as new pigment; FCA did not recognize "just as good" exception. Chemray Coatings Corp. v. U.S., Fed.Cl.1993, 29 Fed.Cl. 278. United States 120.1

29. Contract negotiation

Relator failed to show that contractor fraudulently induced government to award construction contract to it by reaffirming its bid during the period of the bid protest or by submitting request for equitable adjustment (REA) after the contract was awarded; contractor's REA reflected a contract dispute, not a false claim within the meaning of the False Claims Act. U.S. ex rel. Bettis v. Odebrecht Contractors of Cal., Inc., C.A.D.C.2005, 393 F.3d 1321, 364 U.S.App.D.C. 250. United States 120.1

Shipbuilder did not commit any fraud under the False Claims Act in connection with application for construction differential subsidy on American-built ships, merely by requesting an escalatable contract without a downward adjustment in indices chosen by United States Maritime Administration, i.e., a contract which specifically permitted it to earn additional profit if it held costs below amount that Maritime Administration found to be fair and reasonable. U.S. v. Davis, S.D.N.Y.1992, 803 F.Supp. 830, affirmed in part , reversed in part 19 F.3d 770. United States 120.1

30. Contract interpretation

Organizational conflict of interest provisions that actually had been incorporated into contract for advice and technical assistance through regulatory requirements were not minor, allowing for False Claims Act (FCA) liability under implied certification theory, where organizational conflict of interest obligations in contract were important to overall purpose of contract and contracting officers and specialists would not have awarded contract, or made payments under contract, if they had been aware of apparent or actual conflicts. U.S. v. Science Applications Intern. Corp., C.A.D.C.2010, 626 F.3d 1257. United States 120.1

Government's claims against employees of tribal business arm, that employees submitted false claims for brushing and road grading work performed under contract with Bureau of Indian Affairs (BIA), were not contract disputes about performance or interpretation, but rather stated claim under False Claims Act (FCA). U.S. v. Menominee Tribal Enterprises, E.D.Wis.2009, 601 F.Supp.2d 1061, reconsideration denied 2009 WL 1373952, entered 2009 WL 2877083. United States 120.1

At time that school district requested reimbursement from federal government of expenses incurred in implementing School Health and Related Services (SHARS) program, there was no definition of "time study" required to be made under "State Plan Amendment" implementing program, precluding claim that contractor retained to establish SHARS reimbursement rates violated False Claims Act (FCA) by submitting rates based on allegedly less rigorous "time survey." U.S. ex rel. Gudur v. Deloitte Consulting LLP, S.D.Tex.2007, 512 F.Supp.2d 920, affirmed 2008 WL 3244000. United States 120.1

Government contractor's submission of engineering change form to government in connection with redesign of generator set installed in United States Navy destroyers, stating that "recurring costs" of redesign "remain unchanged" from earlier model, could not constitute misrepresentation under False Claims Act, regardless of whether contractor's recurring costs had in fact decreased; "cost" of redesign, in engineering change form, referred only to cost to government, i.e. price, which in fact was unchanged due to parties' fixed-price contract. U.S. ex rel. Sanders v. Allison Engine Co., S.D.Ohio 2003, 364 F.Supp.2d

699. United States 120.1

Real estate broker's failure to advertise Resolution Trust Corporation (RTC) property in newspapers of general circulation, and the broker's failure to list the property in a listing service within three days after executing the listing agreement, were matters of contract interpretation and were thus not actionable under the False Claims Act (FCA); the listing agreement did not obligate the broker to list the property within any designated time frame, the manager of the sale unilaterally determined to dispose of the property by sealed bid, and the RTC never filled out a specific form that was a prerequisite to listing the property. U.S. v. Bald Eagle Realty, D.Utah 1998, 1 F.Supp.2d 1311. United States 120.1

Evidence was insufficient to establish that supplier and Army and Air Force Exchange Service (AAFES) had a contract with a "most favored customer" clause, requiring supplier to provide AAFES a net price for its products equal to, or better than, any price given to another customer, as required to support False Claims Act (FCA) claim for false billing based on alleged breach of that clause; draft contract stated that the contract was not effective until supplier and AAFES negotiated all "vendor-specific terms" such as accepted items, prices, and there was no evidence that the parties reached agreement on those terms. West v. Timex Corp., C.A.2 (Conn.) 2010, 361 Fed.Appx. 249, 2010 WL 227662, Unreported. United States 122

31. Sufficiency of compliance with contracts

Evidence in implied certification case was sufficient to permit jury to find that federal contractor had breached its obligations under contract that required conflict-free counseling and technical assistance both to avoid potential conflicts and to disclose any that arose during course of performance, in violation of False Claims Act (FCA). U.S. v. Science Applications Intern. Corp., C.A.D.C.2010, 626 F.3d 1257. United States 122

Plaintiff's allegation that defense contractor failed to comply strictly with contractual requirements in planning and reporting testing and that those making modifications had not authority to do so was matter of contract interpretation and was not allegation of false claims in violation of False Claims Act. U.S. ex rel. Butler v. Hughes Helicopters, Inc., C.A.9 (Cal.) 1995, 71 F.3d 321. United States 120.1

Deliberate mislabeling of aircraft engine bearings, coupled with fact that parts delivered to United States government agency did not actually meet specifications of contract compelled finding of liability under former § 231 of this title, though suppliers contended that entire aviation industry at the time in question considered the bearings contracted for and the bearings supplied to be interchangeable. U. S. v. Aerodex, Inc., C.A.5 (Fla.) 1972, 469 F.2d 1003. United States 121

Where federal government contract with dairyman provided for delivery of fresh milk, delivery of recombined milk was not in compliance with contract, though federal specifications allegedly would have permitted delivery of reconstituted milk. Faulk v. U.S., C.A.5 (Tex.) 1952, 198 F.2d 169. United States 73(22)

Relator bringing qui tam action under False Claims Act (FCA) failed to make showing that contractor hired to establish reimbursement rates to be paid by government to local schools, under School Health and Related Services (SHARS) program, did not follow requirements for rate setting laid down in Office of Management and Budget (OMB) circular; affidavit of relator's expert, claiming noncompliance, was contradicted by expert's deposition admission that circular was complied with, and in any event methodology being followed was clearly set forth, precluding any argument that government was being deceived. U.S. ex rel. Gudur v. Deloitte Consulting LLP, S.D.Tex.2007, 512 F.Supp.2d 920, affirmed 2008 WL 3244000. United States 122

Contracts entered into between federal government and company that manufactured explosive and pyrotechnic devices for use in products sold to federal agencies, which unequivocally stated that company had to comply with all applicable federal, state, and local laws, required company to comply with such laws as condition of payment, in determination of whether company was liable for submitting false claims to government under False Claims Act (FCA). U.S. ex rel. Holder v. Special De-

vices, Inc., C.D.Cal.2003, 296 F.Supp.2d 1167. United States 120.1

32. Changing conditions

Medicaid-provider pharmacy did not violate False Claims Act (FCA) by not voiding or adjusting claims for medications after those medications had been returned for redispensing; claim was not false or fraudulent at time of submission because pharmacy had no way of knowing if medication would be returned, changed circumstances, caused by later return of medication, did not render initial claim false or fraudulent, and there was no regulatory requirement of reversal of claim once medication had been returned. U.S. ex rel. Quinn v. Omnicare Inc., C.A.3 (N.J.) 2004, 382 F.3d 432. United States 120.1

Government contractor did not file false claim under False Claims Act (FCA), even though it billed government for full monthly contract price despite the fact that many of preventive maintenance services were never performed or completed; contract became outdated and did not accurately correspond to existing conditions, contractor billed full monthly prices required by contract, and Army deducted price for any work not performed, and Army was fully cognizant of billing situation. U.S. ex rel. Windsor v. DynCorp, Inc., E.D.Va.1995, 895 F.Supp. 844. United States 120.1

33. Persons liable--Generally

Former § 231 et seq. of this title penalized a person for his own acts, not for the acts of someone else. U. S. v. Bornstein, U.S.N.J.1976, 96 S.Ct. 523, 423 U.S. 303, 46 L.Ed.2d 514. United States 120.1

Each of the owners of farms on which contractor constructed conservation practices for which aid was sought from government was liable for the mistaken overpayments by government based on contractor's erroneous invoices setting forth the value of projects rather than their costs as the basis for payments, since farm owners had signed the applications, contractor purported to act on their behalf and owners received benefits as a result of transaction. U. S. v. Mead, C.A.9 (Cal.) 1970, 426 F.2d 118. United States 69(6)

In case of bribery of a federal agent the government has a right of action against both the payor of the bribes as well as the beneficiary. U.S. v. Cripps, E.D.Mich.1978, 460 F.Supp. 969. United States 126

Counsel retained to argue a cause pending in the Court of Claims [now United States Claims Court] was not within the purview of former § 231 et seq. of this title. U.S. ex rel. McManus v. Moore, D.C.Sup.1877, 10 D.C. 226. United States 122

34. ---- Direct contractual relationship, persons liable

Although person who induced fraudulent contractual claim against United States neither sought nor obtained any transfer of government funds or property to himself, the fraudulently induced contract may have created liability under former § 231 of this title when that contract later resulted in payment thereunder by government, whether to the wrongdoer or someone else. U. S. v. Veneziale, C.A.3 (N.J.) 1959, 268 F.2d 504. United States 120.1

Former § 231 of this title was intended to reach any person knowingly causing or assisting in causing government to pay fraudulent claims, regardless of whether the person had direct contractual relations with government, as well as those receiving money from government as result of their fraud. U.S. v. Samuel Dunkel & Co., S.D.N.Y.1945, 61 F.Supp. 697. United States 122

35. ---- Congressmen, persons liable

Members of Congress were intended to be within the scope of former § 231 of this title. U. S. ex rel. Hollander v. Clay, D.C.D.C.1976, 420 F.Supp. 853. United States 120.1

Suit brought against Congressman under former § 231 of this title, charging defendant with having submitted false travel vouchers to the clerk of the House of Representatives, was not barred by the political question doctrine, since there was no textually demonstrable commitment of a Congressman's liability under such former section to another branch of government. U. S. ex rel. Hollander v. Clay, D.C.D.C.1976, 420 F.Supp. 853. Constitutional Law 2580

36. ---- Conspirators, persons liable

Amendment to False Claims Act which permits imposition of civil penalty for submitting bid with constructive knowledge of falsity does not eliminate need for some action by defendant whereby claim is presented or caused to be presented, or need for proving that defendant is member of alleged conspiracy. U.S. v. Murphy, C.A.6 (Tenn.) 1991, 937 F.2d 1032. United States 122

As related business entities, government contractor and its wholly-owned subsidiaries lacked capacity to conspire with one another to violate the False Claims Act (FCA). U.S. ex rel. Brooks v. Lockheed Martin Corp., D.Md.2006, 423 F.Supp.2d 522, affirmed in part , dismissed in part 237 Fed.Appx. 802, 2007 WL 627372. Conspiracy 2

University employees acted in agreement to make loans to a third party for the purpose of making an investment in a Russian business, and therefore they violated the False Claims Act (FCA) conspiracy provision by causing submission, by the university, of false claims; employees were acting in violation of a condition of university's agreement with government, which required university's compliance with requirement that its employees who were involved in project in Russia not make investments there, and university filed certifications that it was in compliance with the conditions of its agreement. U.S. v. President and Fellows of Harvard College, D.Mass.2004, 323 F.Supp.2d 151. Conspiracy 9

Teacher who prepared allegedly false course description could not be held liable on conspiracy theory under False Claims Act (FCA), absent any indication of collaboration with other officers and employees in alleged plan to receive federal funds on basis of false applications that incorporated her course description. U.S. ex rel. Haskins v. Omega Institute, Inc., D.N.J.1998, 11 F.Supp.2d 555, decision clarified on reconsideration 25 F.Supp.2d 510. Conspiracy 9

Once liability for a conspiracy under former § 231 of this title was established, each conspirator was liable for each of the overt acts committed pursuant to the conspiracy irrespective of the fact that he did not personally commit the act; hence, defendant contractor was liable for each of the 72 repair contracts awarded by Department of Housing and Urban Development as a consequence of his fraud and for each of the 16 false invoices submitted pursuant to the conspiracy. U.S. v. Cripps, E.D.Mich.1978, 460 F.Supp. 969. Conspiracy 13

37. ---- Contractors or suppliers, persons liable

Contractor's initial false certification in Procurement Under Review (PUR) package to the Department of Energy (DOE) recommending that DOE approve subcontract to subcontractor tainted all of the following invoices, and thus contractor could be held liable on all 26 of the submissions by contractor seeking government funding for work performed by subcontractor under the subcontract, notwithstanding fact that DOE became aware of the potential conflict but continued to pay the invoices. U.S. ex rel. Harrison v. Westinghouse Savannah River Co., C.A.4 (S.C.) 2003, 352 F.3d 908. United States 120.1

Information about operational problems allegedly withheld by contractors while performing hazardous waste treatment and disposal services under contract with Environmental Protection Agency (EPA) was not relevant to EPA's decision to pay them, precluding liability under False Claims Act (FCA); EPA was informed of operational problems from at least three sources, but did not consider those problems to be contractual violations, and instead worked with the contractors to resolve problems as they arose. U.S. ex rel. Costner v. U.S., C.A.8 (Ark.) 2003, 317 F.3d 883, rehearing and rehearing en banc denied , certiorari denied 124 S.Ct. 225, 540 U.S. 875, 157 L.Ed.2d 137. United States 120.1

Evidence supported determination by Court of Federal Claims that contractor hired to provide floodlight sets to Air Force had knowingly submitted a false claim by making request for equitable adjustment based on original purchase orders, even though it had received 99% of purchase invoices, and stated in cover letter that it was relying on "actual increases experienced," so that contractor's claim for adjustment was forfeited pursuant to Special Plea in Fraud, and contractor was liable under False Claims Act (FCA) and Contract Disputes Act (CDA); contractor was aware of difference between "actual" and "projected" costs, but had improperly relied on projected costs in its claim. UMC Electronics Co. v. U.S., C.A.Fed.2001, 249 F.3d 1337. United States 75(4); United States 122

Even if doctrine that agency regulations are part of contract with governmental agency was applied, it did not insulate defendants from liability, under former § 231 of this title, for their own fraud. U. S. v. Aerodex, Inc., C.A.5 (Fla.) 1972, 469 F.2d 1003. United States 121

Subcontractor was civilly liable under False Claims Act (FCA) for knowingly making, using, or causing to be made or used, false record or statement to get false or fraudulent claim paid or approved by government, although federal government never actually paid or approved subcontractor's claim; subcontractor's criminal conviction established that he knowingly presented false records "to get a claim paid or approved," and approval or payment was not required for liability. U.S. ex rel. Virgin Islands Housing Authority v. Coastal General Const. Services Corp., D.Virgin Islands 2004, 299 F.Supp.2d 483. United States 122

Contractor in charge of Department of Housing and Urban Development (HUD) mortgage auction, and subcontractors who managed auction and applied revenue-optimization model to bids, did not engage in reckless disregard actionable under False Claims Act by failing to verify bid results submitted to HUD which turned out to be below optimum revenue due to mistaken instructions given subcontractor's employee by contractor's employee; contractor did not represent that it would specifically test results yielded by model, it was reasonable for contractor to rely on subcontractors' prestigious reputations, and auction was pioneer and massive effort. U.S. ex rel. Ervin and Associates, Inc. v. Hamilton Securities Group, D.D.C.2004, 298 F.Supp.2d 91. United States 120.1

Funds used by United States government to pay for military equipment that was resold to foreign government were funds of United States, and thus contractor was subject to liability under False Claims Act (FCA) for its allegedly fraudulent conduct, even though foreign government was required under Arms Export Control Act to cover cost of procurement contract; government paid more money than it otherwise would have paid, United States was likely to be required to reimburse foreign government for its loss, government suffered damage to integrity of contracting process, and it was possible that foreign government would have less money to spend on other defense needs as result of alleged fraud. U.S. ex rel Hayes v. CMC Electronics, Inc., D.N.J.2003, 297 F.Supp.2d 734. United States 120.1

Contractor could not be held liable under False Claims Act on theory that it submitted a bid that was intentionally undervalued with the goal of seeking subsequent modifications and adjustments to the contract price. U.S. ex rel. Bettis v. Odebrecht Contractors of California, Inc., D.D.C.2004, 297 F.Supp.2d 272, affirmed 393 F.3d 1321, 364 U.S.App.D.C. 250. United States 120.1

38. ---- Corporations, persons liable

Liability of corporation for violation under former § 231 et seq. of this title arose from conduct of employees other than those with substantial authority and broad responsibility. U. S. v. Hangar One, Inc., C.A.5 (Ala.) 1977, 563 F.2d 1155. Corporations 423

Medical equipment manufacturer's parent was not subject to liability under False Claims Act (FCA) based on manufacturer's alleged misrepresentation to government of discounts it gave other customers, even though manufacturer put parent's taxpayer identification number on all of its solicitation responses, parent advertised that it was responsible for all United States

legal and regulatory activities involving compliance for its subsidiaries, and parent promoted cross-selling among its various operating companies, absent allegation of parent's actual involvement in alleged fraud. U.S. ex rel. Thomas v. Siemens AG, E.D.Pa.2010, 708 F.Supp.2d 505. United States 120.1

Evidence at trial on government's False Claims Act (FCA) claims against contractor was sufficient to conclude that entities with which contractor had business relationship were subject to regulations of Nuclear Regulatory Commission (NRC), although NRC was statutorily excluded from regulating certain DOE activities and facilities; contractor's employees testified that entity with whom contractor entered into agreement regarding recycle project for DOE was subject to NRC's regulations concerning disposal of radioactive waste once waste left DOE facilities and that subsidiary of entity was NRC-licensed, and government witness testified that entity with which contractor pursued potential radioactive metal recycling opportunities had NRC-regulated facility. U.S. v. Science Applications Intern. Corp., D.D.C.2009, 653 F.Supp.2d 87, affirmed 626 F.3d 1257. United States 122

Pharmaceutical company's parent company could not be held liable for wrongful acts of pharmaceutical company in relator's qui tam action under False Claims Act, absent evidence which supported piercing corporate veil. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2008, 538 F.Supp.2d 367. Corporations 215

Genuine issue of material fact existed as to whether parent corporation could be held liable for its indirect subsidiary's alleged violations of False Claims Act (FCA) based upon its direct involvement in submitting false claims or causing them to be submitted to the government, precluding summary judgment in favor of parent corporation. U.S. ex rel. Hockett v. Columbia/HCA Healthcare Corp., D.D.C.2007, 498 F.Supp.2d 25, reconsideration denied 587 F.Supp.2d 757. Federal Civil Procedure 2498.4

Complaint stated valid basis for piercing the corporate veil and holding foundation liable for a non-profit corporation's alleged conduct; foundation was allegedly organized solely to provide financial support to non-profit corporation and was otherwise indistinct from non-profit corporation and upholding the corporate form would lead to injustice since corporation's ability to pay its obligations was dependent upon the foundation. U.S. ex rel. Wright v. Cleo Wallace Centers, D.Colo.2000, 132 F.Supp.2d 913. Corporations 1.4(2); Corporations 1.7(1)

Corporate employer could not be held vicariously liable under the False Claims Act (FCA) as a result of the misdeeds of a low-level employee who, acting within the scope of her employment, caused false claims to be filed with the Government unless Government could prove that employer authorized, ratified, or acted with knowledge of or reckless indifference to employee's misdeeds; for vicarious liability purposes, FCA provided for "punitive" damages where amounts well beyond the actual loss to Government are sought. U.S. v. Southern Maryland Home Health Services, D.Md.2000, 95 F.Supp.2d 465. United States 120.1

Corporate veil between dentist and his dental care companies would be pierced and judgment entered against those companies under False Claims Act where dentist had routinely and intentionally attempted to bill Medicare for oral cancer examinations which were conducted as routine part of standard dental exam; it was clear that dentist's main corporation was undercapitalized and that revenues were siphoned off from other companies. U.S. v. Lorenzo, E.D.Pa.1991, 768 F.Supp. 1127. Corporations 1.6(13)

The word "person", as used in former § 231 of this title, included corporations. U. S. ex rel. Marcus v. Hess, W.D.Pa.1941, 41 F.Supp. 197, reversed 127 F.2d 233, certiorari granted 63 S.Ct. 40, 317 U.S. 613, 87 L.Ed. 498, reversed 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

The word "person" did not include corporations, within the meaning of former § 231 of this title. U.S. v. Kansas Pac. Ry. Co., D.C.Kan.1877, 26 F.Cas. 680, No. 15506. United States 121

"Person," in context of False Claims Act (FCA), would not include municipal entities; "person" did not presumptively in-

clude municipal corporations until 1868, and FCA had not substantively altered "person" in FCA since 1863, and other legislative history suggested FCA was enacted with principal goal of stopping frauds perpetrated by private contractors. U.S. v. Erie County Medical Center, W.D.N.Y.2002, 2002 WL 31655004, Unreported. United States 120.1

39. ---- Corporate directors and officers, persons liable

Where vice-president of corporate supplier was in charge of division which reworked bearings and was also person who signed bid to supply new bearings to Navy and signed requisition for bearings to be reworked and orders for the reworking, and where also he gave false information to government agencies investigating, jury could have found he was individually liable under former § 231 of this title. U. S. v. Aerodex, Inc., C.A.5 (Fla.) 1972, 469 F.2d 1003. United States 122

Jury was not precluded from finding corporate vice-president liable under former § 231 of this title, for supplying reworked bearings in place of new, merely because his subordinate who was directly in charge of reworking and renumbering was not held also liable by the district court, where government failed to prove that subordinate knew, at his level of responsibility, that the reworking was improper in the particular case. U. S. v. Aerodex, Inc., C.A.5 (Fla.) 1972, 469 F.2d 1003. United States 122

Executive director of lessee of government housing project who filed quarterly reports with government claiming as expense cost of materials never furnished to housing project, resulting in federal government making disbursements to project to cover such costs or in authority deducting such costs from what otherwise would have been remitted to government as rental, was liable under former § 231 of this title although there was no direct liability running from government to director. Smith v. U.S., C.A.5 (Tex.) 1961, 287 F.2d 299. United States 122

Corporate officers and supervisors for home health agency were not "employers" of whistleblower in qui tam action, and thus were not subject to individual liability under False Claims Act (FCA), where they did not dominate and control agency in way that benefitted them personally. Palladino ex rel. U.S. v. VNA of Southern New Jersey, Inc., D.N.J.1999, 68 F.Supp.2d 455. United States 120.1

Bank and corporate officers who made false representations in order to obtain Small Business Administration loan for corporation would be held jointly and severally liable for $5,000 civil penalty, costs of lawsuit, and lost loan in amount of $500,000, tripled, with amount recovered by receiver deducted. U.S. v. Entin, S.D.Fla.1990, 750 F.Supp. 512. United States 122

Officer and principal stockholder of corporation which had government subcontract was liable, under former § 231 of this title, for money represented by checks which government made payable to corporation, instead of to prime contractor, and which officer, with knowledge, cashed and deposited in corporation's account. U. S. v. Scolnick, D.C.Mass.1963, 219 F.Supp. 408, affirmed 331 F.2d 598. United States 120.1

Father or corporation's officer and principal stockholder was not liable to United States on account of checks which had been made payable to corporation although no money was due, and which officer had deposited in corporation's account and withdrawn to reimburse himself, where it did not appear that father had participated in presentation of false claims or had knowledge of transactions, although he received payment from proceeds of a check. U. S. v. Scolnick, D.C.Mass.1963, 219 F.Supp. 408, affirmed 331 F.2d 598. United States 120.1

Both corporation and those working for it or running it may be liable under former § 231 of this title, but in order for individual to be liable, he must have been part of cause which resulted in false claim. U. S. v. Cherokee Implement Co., N.D.Iowa 1963, 216 F.Supp. 374. United States 122

Where corporate government contractor sued to recover cost and damage resulting by termination, for convenience of gov-

ernment, of contracts, and it appeared that president of corporation and owner of majority of its stock as well as vice president thereof and owner of almost entire balance of corporate stock committed fraud against United States by presenting to Navy and to court statements claiming corporation had spent certain sums in performance of contract which in fact had not been so expended but on the contrary had been expended for the personal benefit of its officers, fraud would be imputed to corporation whose claim against United States would be forfeited. Wagner Iron Works v. U.S., Ct.Cl.1959, 174 F.Supp. 956, 146 Ct.Cl. 334. United States 120.1

Officer of corporation could only have been held liable under former § 231 of this title, if he was a party to a conspiracy to defraud the government of the United States by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim. U.S. v. American Precision Products Corp., D.C.N.J.1953, 115 F.Supp. 823. Corporations 324; United States 120.1

Nominal officer of corporation was not liable in action by the United States under former § 231 of this title merely because he knew that corporation was attempting to get the United States government to advance more moneys to corporation than corporation was entitled to under contract with the United States. U.S. v. American Precision Products Corp., D.C.N.J.1953, 115 F.Supp. 823. Corporations 324; United States 120.1

40. ---- Employees, persons liable

Employees of tribal entity were "persons" under False Claims Act (FCA), as required to bring claim alleging that employees filed false claims for brushing and road grading work performed under contract with Bureau of Indian Affairs (BIA) in violation of FCA; suit was against employees in their individual capacities, rather than in their official capacities, recovery against employees was not tantamount to recovery against tribe, and judgment against employees would not impact sovereignty of tribe. U.S. v. Menominee Tribal Enterprises, E.D.Wis.2009, 601 F.Supp.2d 1061, reconsideration denied 2009 WL 1373952, entered 2009 WL 2877083. Indians 235; United States 122

Under False Claims Act (FCA), individual state employees are "persons" who may be sued if they are sufficiently involved in submission of false claim to the United States. U.S. ex rel. Burlbaw v. Regents of New Mexico State University, D.N.M.2004, 324 F.Supp.2d 1209. United States 122

University employee, who was in charge of project undertaken by a university division which received government grants, under Cooperative Agreements, to undertake project to assist Russia in developing capital markets and foreign investments, was not liable under False Claims Act (FCA), on basis that he violated provisions of those Agreements, which prohibited investment in Russia, even though his salary was paid out of government grants; employee did not take any actions to have claims submitted to the government. U.S. v. President and Fellows of Harvard College, D.Mass.2004, 323 F.Supp.2d 151. United States 122

Individual employee of subcontractor in charge of managing Department of Housing and Urban Development (HUD) mortgage auction did not show reckless disregard actionable under False Claims Act by failing to further pursue "suspicious" result from second subcontractor's application of revenue-optimization model to bids, beyond contacting trusted employee of prime contractor and receiving reasonable-sounding explanation for discrepancy; recalculating revenue optimization without aid of second subcontractor's algorithm would have required weeks or months at least, and results were time-sensitive. U.S. ex rel. Ervin and Associates, Inc. v. Hamilton Securities Group, D.D.C.2004, 298 F.Supp.2d 91. United States 120.1

41. ---- Employers, persons liable

Employer may not be held liable under False Claims Act unless one of its employees knowingly submitted false claims. U.S. ex rel. Milam v. Regents of University of California, D.Md.1995, 912 F.Supp. 868. United States 120.1

Employer could be held liable under False Claims Act for whistleblower retaliation as result of its termination of employee at behest of third party as result of employee's protected conduct affecting third party. Nguyen v. City of Cleveland, N.D.Ohio 2000, 121 F.Supp.2d 643. Labor And Employment 857

41a. ---- Municipalities, persons liable

Municipal corporations are "persons" amenable to qui tam actions under the False Claims Act (FCA), in light of manner in which term "person" was understood when the FCA was enacted in 1863, and notwithstanding Congress' amendment of damages provision of the FCA to make it more punitive; amendment could not be interpreted as repealing, sub silentio, municipal liability under the FCA based upon local governmental units' traditional immunity from punitive damages awards. Cook County, Ill. v. U.S. ex rel. Chandler, U.S.2003, 123 S.Ct. 1239, 538 U.S. 119, 155 L.Ed.2d 247. United States 122

41b. ---- Indian tribes, persons liable

Indian tribe was not "person" under False Claims Act (FCA), and thus tribe's business arm could not be sued under False Claims Act (FCA) for alleged false claims for brushing and road grading work performed under contract with Bureau of Indian Affairs (BIA); tribe was sovereign, and there was no affirmative evidence that Congress intended to allow Indian tribes to be sued under FCA. U.S. v. Menominee Tribal Enterprises, E.D.Wis.2009, 601 F.Supp.2d 1061, reconsideration denied 2009 WL 1373952, entered 2009 WL 2877083. Indians 235; United States 122

42. ---- Partners, persons liable

Where partner had knowledge that pine oil disinfectant sold by partnership to General Services Administration was vastly inferior to product, which it was purported to be in invoices submitted to government, and such partner directed such fraudulent activities, government was entitled to recover from such partner, individually, and as partner, twice the difference between amount paid by government and value of portion of disinfectant used, and to recover $2,000 for each false invoice. Henry v. U. S., C.A.5 (Ga.) 1970, 424 F.2d 677. United States 122

43. ---- Persons not in military or naval forces, persons liable

Former § 231 of this title applied to any person not in the military or naval forces. U. S. ex rel. Marcus v. Hess, W.D.Pa.1941, 41 F.Supp. 197, reversed 127 F.2d 233, certiorari granted 63 S.Ct. 40, 317 U.S. 613, 87 L.Ed. 498, reversed 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

A paymaster's clerk in the Army or in the Navy was a person "in the military or naval forces of the United States" within the meaning of former § 231 of this title. In re Thomas, N.D.Miss.1869, 23 F.Cas. 931, 1 Chi.Leg.N. 245, No. 13888. See, also, U.S. v. Bogart, D.C.N.Y.1869, 3 Ben. 257, 24 Fed.Cas. No. 14,616.

44. ---- State agencies and employees, persons liable

Laboratory, although wholly-owned corporation of state university, was not "arm of the state," due to its anticipated and actual financial independence, and thus was "person" against which suit could be brought by private relator under False Claims Act (FCA); state treasury was not legally liable for any judgment against laboratory, laboratory retained substantial autonomy in its operations, and laboratory generated operating funds and profit through its own commercial activity. U.S. ex rel. Sikkenga v. Regence Bluecross Blueshield of Utah, C.A.10 (Utah) 2006, 472 F.3d 702, on remand 2007 WL 2713913. United States 122

False Claims Act (FCA) claims against state agency employees in their official capacities are treated as claims against state agency, for which there is no FCA cause of action. U.S. ex rel. Adrian v. Regents of University of California, C.A.5 (La.)

2004, 363 F.3d 398. United States 120.1

Neither university research fund nor research foundation was a "person" subject to liability under the False Claims Act (FCA), where fund and foundation were entirely governed and run by university personnel, they operated from university offices, and their registered agent was the university counsel. U.S. v. Solinger, W.D.Ky.2006, 457 F.Supp.2d 743, issued 2006 WL 3085610, subsequent determination. United States 120.1

Laboratory, as wholly-owned corporation of University of Utah, a body politic and corporate under Utah law, was arm of the state and thus not a "person" against which suit could be brought by private relator under False Claims Act (FCA), even though it raised most of its own funding and potential judgment might not be paid directly from state treasury; lab was component of university health sciences center, which was state-assisted but derived self-support from its sub-units, lab was subject to supervision and management by university regents, it had tax exempt status, its revenues went to university, its financial records were blended with those of university, and any loss by lab would reduce total funds available to university and necessitate increased state outlays. U.S. ex rel. Sikkenga v. Regence BlueCross BlueShield of Utah, D.Utah 2004, 334 F.Supp.2d 1278, reversed and remanded 472 F.3d 702, on remand 2007 WL 2713913. United States 122

Research institution, which was department or division of university and did not have any legal status as corporation or other recognized legal entity, was not "person" against which False Claims Act (FCA) claim on behalf of the United States could be asserted; given state of common law when FCA was originally enacted, it was unlikely Congress would have understood term "person" to include non-legal entity, such as institution, which had no power to own property, enter into contracts, or sue or be sued. U.S. ex rel. Burlbaw v. Regents of New Mexico State University, D.N.M.2004, 324 F.Supp.2d 1209. United States 122

State prisoner did not state claim against prison or employees, under False Claims Act (FCA), by alleging that prison obtained federal funding for drug testing by falsely certifying that requirements for testing and disposal of samples were followed; prison and employees acting in official capacities were exempt from FCA, and there was no showing that prison employees in question were acting in their individual capacities. Alexander v. Gilmore, E.D.Va.2002, 202 F.Supp.2d 478. United States 122

45. ---- Vendors, persons liable

Where vendor caused purchasers to make application for bank loan wherein it was falsely represented that loan was wanted for home improvements when it was wanted and was used to buy vendor's real property, and fraudulent application became one of essential documents which induced the Federal Housing Administration [now Department of Housing and Urban Development] to guaranty payment of the bank loan, claim was grounded in fraud and in view of fact that government was compelled to pay an innocent third person upon default on the loan, government was entitled to assert a claim against vendor under former § 231 of this title. U. S. v. Veneziale, C.A.3 (N.J.) 1959, 268 F.2d 504. United States 120.1

Real estate vendors caused United States to pay out money, and thus were liable to United States under False Claims Act (FCA) for damages and civil penalties arising from their illegal provision of down payments for home mortgage loans insured by Department of Housing and Urban Development (HUD), where vendors admitted in criminal prosecution that they had defrauded HUD by making down payments for borrowers, that they falsely certified on HUD-1 Addendum that they had not provided down payments, and that HUD would not have insured loans if it knew that they had made down payments. U.S. v. Eghbal, C.D.Cal.2007, 475 F.Supp.2d 1008, affirmed 548 F.3d 1281, certiorari denied 130 S.Ct. 153, 175 L.Ed.2d 38. United States 120.1

46. ---- Miscellaneous persons liable

Under the Medicare Act, a Medicare Part B carrier was absolutely immune from liability on a claim under the qui tam provisions of the False Claims Act (FCA), asserting that the carrier had recklessly approved false claims for durable medical

equipment, despite an unsupported claim that the carrier had not designated either certifying officers or disbursing officers. U.S. ex rel. Feingold v. Palmetto Government Benefits Administrators, S.D.Fla.2007, 477 F.Supp.2d 1187, affirmed 278 Fed.Appx. 923, 2008 WL 2097615, rehearing and rehearing en banc denied 285 Fed.Appx. 743, 2008 WL 2977960, certiorari denied 129 S.Ct. 1001, 173 L.Ed.2d 293. United States 122

Home health aide service providers who violated Medicare cost reporting rule could be held liable, under False Claims Act (FCA), only for annual cost reports in which they falsely certified their compliance with rule; interim reimbursement claims, though based on improperly reported costs, contained no explicit falsehoods. Visiting Nurse Ass'n of Brooklyn v. Thompson, E.D.N.Y.2004, 378 F.Supp.2d 75. Health 535(4); United States 120.1

Where interim director of state employee's work department, who was also employee of consulting firm that contracted with employer, was acting as agent for state employer when he allegedly terminated employee in violation of Federal Claims Act (FCA) whistleblower provision, firm could not be held vicariously liable, even if such liability existed under the FCA for director's actions. Orell v. UMass Memorial Medical Center, Inc., D.Mass.2002, 203 F.Supp.2d 52. States 53

Physician who received Medicare payments for anesthesia services and his billing secretary who was responsible for preparing, computing, calculating, and submitting to Medicare the claims for the anesthesia services would be found jointly and severally liable for submitting false Medicare claims in violation of the False Claims Act. U.S. v. Cabrera-Diaz, D.Puerto Rico 2000, 106 F.Supp.2d 234. United States 122

Attorneys for bridge bank and for Federal Deposit Insurance Corporation (FDIC) were not liable for conspiracy under False Claims Act for alleged activities which occurred after "put" which was subject of alleged conspiracy had been paid; goal of any conspiracy to get "put" allowed or paid was achieved as of that date. U.S. ex rel. S. Prawer & Co. v. Verrill & Dana, D.Me.1997, 962 F.Supp. 206. Conspiracy 9

Cashier was grocery store's agent, for purposes of imposing civil fine, under False Claims Act, against store owner for redeeming food stamps which cashier had discounted and exchanged for cash. U.S. v. Truong, E.D.La.1994, 860 F.Supp. 1137. United States 122

Psychiatrist and his wife, who was responsible for overseeing psychiatrist's billing operation, would be presumed liable for Medicare and Medicaid bills submitted in excess of equivalent of twelve 45 to 50-minute submissions in single day, where bills were improperly submitted for time that was not spent providing patient services due to office staff's presumption that psychiatrist worked at least 45 minutes on matter whenever psychiatrist saw patient, both parties agreed that appropriate benchmark for excessive billing would be equivalent of 12 submissions, and there was unrefuted testimony that psychiatrist worked very long hours. U.S. v. Krizek, D.D.C.1994, 859 F.Supp. 5, supplemented 909 F.Supp. 32, affirmed in part and remanded 111 F.3d 934, 324 U.S.App.D.C. 175, on remand 7 F.Supp.2d 56. United States 120.1

Defendants who obtained Federal Housing Administration [now Department of Housing and Urban Development] mortgage insurance for third person's loan by misrepresenting third person's income could have been held liable under former § 231 of this title when Administration sustained loss in satisfying claim made by mortgage holder. U. S. v. Polly, W.D.N.C.1966, 255 F.Supp. 610. United States 120.1

47. State or local governments

False Claims Act (FCA) did not subject a State or state agency to liability under Act; state was not a "person" for purposes of qui tam liability under FCA. Vermont Agency of Natural Resources v. U.S. ex rel. Stevens, U.S.Vt.2000, 120 S.Ct. 1858, 529 U.S. 765, 146 L.Ed.2d 836. United States 120.1

Federal funds distributed in aid to states were as much in need of protection from fraudulent claims as any other federal

money, and former § 231 [now § 3729] of this title did not make extent of their safeguard dependent upon bookkeeping devices used for their distribution. U. S. ex rel. Marcus v. Hess, U.S.Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. United States 121

Municipalities are not amenable to qui tam suit under False Claims Act (FCA); treble damages mandated by Act are punitive, and Congress did not clearly manifest intent to abrogate local governmental common law immunity from punitive damage awards by including local governments within meaning of term "person." U.S. ex rel. Dunleavy v. County of Delaware, C.A.3 (Pa.) 2002, 279 F.3d 219, vacated 123 S.Ct. 1619, 538 U.S. 918, 155 L.Ed.2d 308. United States 122

County, which operated hospital where research on treatment of drug-dependent pregnant women was conducted, was not immune from punitive damages under False Claims Act (FCA), in qui tam action by former research project director alleging that county fraudulently obtained funds for project from federal government. U.S. ex rel. Chandler v. Cook County, Ill., C.A.7 (Ill.) 2002, 277 F.3d 969, mandate stayed 282 F.3d 448, certiorari granted 122 S.Ct. 2657, 536 U.S. 956, 153 L.Ed.2d 833, affirmed 123 S.Ct. 1239, 538 U.S. 119, 155 L.Ed.2d 247, on remand 2003 WL 22284199. United States 122

Relator failed to state a claim upon which relief could be granted against Iowa Department of Human Services (DHS) employee, who allegedly made false claims to federal government through state program for housing developmentally disabled persons that received Medicaid funding, since employee was not a "person" for purpose of the False Claims Act (FCA) and relator failed to specifically allege nature of employee's specific duties or powers or how employee acted outside those duties in order that he might be liable in an individual capacity. U.S. ex rel. Gaudineer & Comito, L.L.P. v. Iowa, C.A.8 (Iowa) 2001, 269 F.3d 932, rehearing and rehearing en banc denied , certiorari denied 122 S.Ct. 2593, 536 U.S. 925, 153 L.Ed.2d 781. United States 122

School board, as local governmental unit, was not "person" subject to liability under False Claims Act (FCA). U.S. ex rel. Garibaldi v. Orleans Parish School Bd., C.A.5 (La.) 2001, 244 F.3d 486, rehearing and rehearing en banc denied 264 F.3d 1143, certiorari denied 122 S.Ct. 808, 534 U.S. 1078, 151 L.Ed.2d 693, rehearing denied 122 S.Ct. 1198, 534 U.S. 1172, 152 L.Ed.2d 137. United States 122

"Person" who may be liable under False Claims Act does not include the states, because Congress did not affirmatively indicate intent to include states in that term, and serious constitutional question under Eleventh Amendment would be raised by interpretation of term to include states. U.S. ex rel. Long v. SCS Business & Technical Institute, Inc., C.A.D.C.1999, 173 F.3d 870, 335 U.S.App.D.C. 331, supplemented 173 F.3d 890, 335 U.S.App.D.C. 351, certiorari denied 120 S.Ct. 2194, 530 U.S. 1202, 147 L.Ed.2d 231. United States 120.1

A state is a "person" within meaning of the False Claims Act, and thus qui tam suit can be brought against a state under the Act. U.S. ex rel. Stevens v. State of Vt. Agency of Natural Resources, C.A.2 (Vt.) 1998, 162 F.3d 195, certiorari granted 119 S.Ct. 2391, 527 U.S. 1034, 144 L.Ed.2d 792, reversed 120 S.Ct. 1858, 529 U.S. 765, 146 L.Ed.2d 836. United States 122

States are "persons" subject to liability under the False Claims Act. U.S. ex rel. Zissler v. Regents of University of Minnesota, C.A.8 (Minn.) 1998, 154 F.3d 870. United States 122

Where alleged overcharge required Illinois to pay out an excessive portion of federal grant to contractors, thus impairing remainder of amount of federal grants, it was Illinois, rather than federal government, whose treasury funds had been reduced by the overcharges and in view of fact that federal contribution to highway construction in Illinois for year in question was fixed sum, United States could not have proceeded under former § 231 of this title against contractors which had allegedly been engaged in highway construction project bid-rigging conspiracy. U. S. v. Azzarelli Const. Co., C.A.7 (Ill.) 1981, 647 F.2d 757. United States 120.1

Municipalities were included in definition of "person" under the False Claims Act (FCA), and thus city could not be immune from the application of liability, including for punitive damages, in former city auditor's qui tam action against city and debris removal contractors claiming that city knowingly paid contractors for work they did not fully perform. U.S. ex rel. Giles v. Sardie, C.D.Cal.2000, 191 F.Supp.2d 1117. United States 122

City housing authority was a statutory "person" subject to liability in a private lawsuit under the False Claims Act (FCA). U.S. ex rel. Rosales v. San Francisco Housing Authority, N.D.Cal.2001, 173 F.Supp.2d 987. United States 122

City was not "person" subject to qui tam suit for alleged violation of False Claims Act (FCA) in connection with renovation and operation of wastewater treatment plant; FCA's imposition of treble damages was essentially punitive in nature, rather than compensatory, and policy considerations favored municipal immunity from punitive damages, since such award would burden taxpayers FCA was meant to protect. U.S. ex rel. Satalich v. City of Los Angeles, C.D.Cal.2001, 160 F.Supp.2d 1092. United States 120.1

States are "persons" within meaning of False Claims Act (FCA) and are thus subject to suit under FCA. U.S. ex rel. Lindsey v. Trend Community Mental Health S ervices, W.D.N.C.1999, 88 F.Supp.2d 475. United States 122

County was "person" within meaning of False Claims Act (FCA) section rendering liable "any person who" submits false claims to federal government. U.S. ex rel. Chandler v. Hektoen Institute for Medical Research, N.D.Ill.1999, 35 F.Supp.2d 1078, on reconsideration in part 118 F.Supp.2d 902, reversed 277 F.3d 969, mandate stayed 282 F.3d 448, certiorari granted 122 S.Ct. 2657, 536 U.S. 956, 153 L.Ed.2d 833, affirmed 123 S.Ct. 1239, 538 U.S. 119, 155 L.Ed.2d 247, on remand 2003 WL 22284199. United States 122

State, city, and state and municipal agencies did not qualify as "persons" that could be sued by federal government under False Claims Act for submitting false claims for federal reimbursement of foster care expenditures. U.S. ex rel. Graber v. City of New York, S.D.N.Y.1998, 8 F.Supp.2d 343. United States 122

Under principles of respondeat superior, acts of city employee in manipulating Section 235 subsidized mortgage housing program of municipal corporation could form the basis for municipal corporation's liability under False Claims Act, even though the corporation and officers denied awareness of employee's manipulation of program, and asserted that acts were not authorized or ratified by corporation, where they did not deny that administration of program by employee was within the scope of his duties as duly appointed Village Clerk, acts on which government based cause of action were performed by Clerk at Village Hall during business hours, and officers did not submit any evidence that Clerk's authority to administer program was contested by corporation or any of its officers, thus Clerk's acts were of the kind he was employed to perform, occurred within the authorized limits of time and space, and were intended, at least in part, to benefit municipal corporation. U.S. v. Incorporated Village of Island Park, E.D.N.Y.1995, 888 F.Supp. 419. Municipal Corporations 747(1)

Requisite "claim upon or against" government under former § 231 of this title included demands for payment presented to local government agencies, where same were in turn partially reimbursed by the United States. U. S. v. Jacobson, S.D.N.Y.1979, 467 F.Supp. 507. United States 120.1

Alleged false claims submitted to state medicaid programs were claims against United States within meaning of former § 231 of this title. U. S. ex rel. Davis v. Long's Drugs, Inc., S.D.Cal.1976, 411 F.Supp. 1144. United States 120.1

48. State sponsored institutions

Medical resident's qui tam action under False Claims Act (FCA) against state university school of medicine, in which United States government had not intervened, was barred by Eleventh Amendment, inasmuch as FCA did not unequivocally express congressional intent to abrogate states' sovereign immunity. U.S. v. Texas Tech University, C.A.5 (Tex.) 1999, 171 F.3d 279,

rehearing and suggestion for rehearing en banc denied, certiorari denied 120 S.Ct. 2194, 530 U.S. 1202, 147 L.Ed.2d 231, certiorari denied 120 S.Ct. 2194, 530 U.S. 1203, 147 L.Ed.2d 231. Federal Courts 269

City housing authority was "employer" subject to liability under whistleblower provision of False Claims Act (FCA) for retaliation against employee, who reported that authority filed false claims that it was in compliance with security procedures required by federal housing authority, which provided it funds; double damages award under provision was compensatory, rather than punitive, such that it could be recovered from local government entity, and legislative history of provision supported expansive view of employer to include city authority. Wilkins v. St. Louis Housing Authority, E.D.Mo.2001, 198 F.Supp.2d 1080, affirmed 314 F.3d 927. Municipal Corporations 192

City housing authority was not immune from an award of damages under the False Claims Act (FCA), on theory that treble damages and substantial fines authorized under the FCA constitute punitive damages from which municipal entities are immune; although there is a punitive and deterrent dimension to damage provisions of the FCA, their primary purpose is to compensate the government and the qui tam relator. U.S. ex rel. Rosales v. San Francisco Housing Authority, N.D.Cal.2001, 173 F.Supp.2d 987. United States 122

Massachusetts Housing Finance Agency (MHFA) was a person, rather than an "arm of the state," and thus could not be deemed a state agency eligible for sovereign immunity under Eleventh Amendment in False Claims Act (FCA) claim filed by limited partnership against MHFA, although MHFA was described as "public instrumentality" performing an "essentially public function," agency board members were appointed by governor, and agency was not separately incorporated, where MHFA was not subject to executive branch control, could sue and be sued, purchase and acquire property, and make contracts in its own name, and did not receive any direct appropriations of public funds. U.S. ex rel. K & R Ltd. Partnership v. Massachusetts Housing Finance Agency, D.D.C.2001, 154 F.Supp.2d 19, dismissed 2003 WL 21058272. Federal Courts 269

State university and its health care center, although state institutions, were "persons" for purposes of former employee's qui tam action under False Claims Act, and were therefore subject to suit thereunder. U.S. ex rel. Foulds v. Texas Tech University, N.D.Tex.1997, 980 F.Supp. 864, reversed 171 F.3d 279, rehearing and suggestion for rehearing en banc denied, certiorari denied 120 S.Ct. 2194, 530 U.S. 1202, 147 L.Ed.2d 231, certiorari denied 120 S.Ct. 2194, 530 U.S. 1203, 147 L.Ed.2d 231. United States 120.1

49. Federal government agencies or officials

The Federal Housing Administration is a part of the "government of the United States" for purposes of this section. U.S. v. McNinch, U.S.N.C.1958, 78 S.Ct. 950, 356 U.S. 595, 2 L.Ed.2d 1001. United States 120.1

The Commodity Credit Corporation, a wholly owned government corporation was a part of the "government of the United States" for purposes of former § 231 of this title, and therefore false claims against such Corporation were covered by former § 231 of this title. Rainwater v. U.S., U.S.Ark.1958, 78 S.Ct. 946, 356 U.S. 590, 2 L.Ed.2d 996. See, also, U.S. v. McNinch, N.C., S.C., Va.1958, 78 S.Ct. 950, 356 U.S. 595, 2 L.Ed.2d 1001; U.S. v. Robbins, D.C.Kan.1962, 207 F.Supp. 799. United States 120.1

National Railroad Passenger Corporation (Amtrak) is not government entity, the presentation of false claim to which is presentation to federal government, of the kind actionable under the False Claims Act. U.S. ex rel. Totten v. Bombardier Corp., C.A.D.C.2004, 380 F.3d 488, 363 U.S.App.D.C. 180, rehearing en banc denied , certiorari denied 125 S.Ct. 2257, 544 U.S. 1032, 161 L.Ed.2d 1059. United States 120.1

Actions under former § 231 et seq. of this title were limited to actions which involved false demands for either the payment of money or transfer of property that had been presented to an official of the United States for approval. Hansen v. National

Commission on Observance of Intern. Women's Year, C.A.9 (Idaho) 1980, 628 F.2d 533. United States 120.1

Contention that former § 231 of this title was inapplicable because defendant's false representations were made to and the consequent undeserved payments of money were made by private corporation which employed him were not sustained where it appeared that private corporation was operating an installation of United States government on a cost plus contract, under which United States paid or reimbursed the corporation for all operating costs, including sums allegedly obtained from corporation by defendant. U. S. v. Lagerbusch, C.A.3 (Pa.) 1966, 361 F.2d 449. United States 121

The former Reconstruction Finance Corporation and its subsidiary, the former Defense Supplies Corporation, acted merely as agencies of the government in payment of subsidies to livestock slaughterers, and any loss because of illegal procurement of subsidies by a slaughterer was the loss of the government, and it was entitled to bring action based thereon. U.S. v. Borin, C.A.5 (Tex.) 1954, 209 F.2d 145, certiorari denied 75 S.Ct. 33, 348 U.S. 821, 99 L.Ed. 647. War And National Emergency 129

Because statute authorizing National Railroad Passenger Corporation (Amtrak) declares that Amtrak "shall not be subject to title 31," False Claims Act (FCA), which is part of title 31, does not apply to Amtrak, and therefore Amtrak's receipt of government funds cannot bring Amtrak within reach of Act. U.S. ex rel. Totten v. Bombardier Corp., D.D.C.2001, 139 F.Supp.2d 50, reversed 286 F.3d 542, 351 U.S.App.D.C. 30, on remand 2003 WL 22769033. United States 120.1

50. Joint and several liability

Party who conspired to submit false claims to government was jointly and severally liable for damages assessed against co-conspirators under False Claims Act, although jury did not assess damages against that party individually. Kelsoe v. Federal Crop Ins. Corp., E.D.Tex.1988, 724 F.Supp. 448. Conspiracy 14

Applicant and his employer corporation, which received benefits from federally guaranteed loan proceeds, were jointly and severally liable for a $10,000 per violation forfeiture under False Claims Act, where applicant had submitted false financial statements in federal loan guarantee application and loan then defaulted. U.S. v. Hill, N.D.Fla.1987, 676 F.Supp. 1158. United States 122

For a particular false claim, defendants found responsible are jointly and severally liable for double damages sustained by reason of claim, and jointly and severally liable for single forfeiture. U. S. v. Globe Remodeling Co., D.C.Vt.1960, 196 F.Supp. 652. United States 120.1; United States 122

Where parties who had contracts with United States for sale of meat products presented and conspired to present false claims in connection with each of 98 contracts, parties were jointly and severally liable for forfeiture of $2,000 on each of the contracts in addition to double the amount of damage United States sustained. U. S. v. American Packing Corp., D.C.N.J.1954, 125 F.Supp. 788. United States 122

51. Limitation of liability clauses

Substantial public interest in not enforcing prefiling release, entered into without United States' knowledge or consent, of False Claims Act (FCA) qui tam claim outweighed costs imposed on federal contractor, for purposes of determining whether release was valid under federal common law; any increase in costs imposed on contractor could further FCA's goals of preventing fraud. U.S. v. Northrop Corp., C.A.9 (Cal.) 1995, 59 F.3d 953, certiorari denied 116 S.Ct. 2550, 518 U.S. 1018, 135 L.Ed.2d 1069. Release 20

Where, during a national emergency, a contract was entered into between government and munitions manufacturer on cost plus fixed fee basis under which manufacturer was to make small arms ammunition under government inspection and super-

vision, and with government funds and government material, provisions in the contract exempting the manufacturer from liability for any but wrongful acts of corporate directors and certain of its supervisory employees was not void and ineffective as being against public policy and good morals. U.S. v. U.S. Cartridge Co., C.A.8 (Mo.) 1952, 198 F.2d 456, certiorari denied 73 S.Ct. 645, 345 U.S. 910, 97 L.Ed. 1345. United States 66

52. Settlement

Prefiling release of former employee's subsequent qui tam action against former employer for alleged False Claims Act (FCA) violations was enforceable where, before execution of the release in settlement of state court litigation, the government was informed of employee's allegations about safety problems and had investigated them; thus, the public interest in having information brought forward that the government could not otherwise obtain was not implicated and did not override the general policy in favor of encouraging parties to settle. U.S. ex rel. Hall v. Teledyne Wah Chang Albany, C.A.9 (Wash.) 1997, 104 F.3d 230, amended on denial of rehearing. Release 20

No amount relating to either of the settlements with two of the defendants in a False Claims Act (FCA) suit could be deducted from the overall trebled compensatory damage total where no monetary payment had yet been received pursuant to the settlement agreements; receipt of those payments was contingent upon the resolution of the settling defendants' respective bankruptcy proceedings. U.S. ex rel. Miller v. Bill Harbert Intern. Const., Inc., D.D.C.2007, 501 F.Supp.2d 51. Damages 63

52a. Death of plaintiff

Relator's qui tam action brought pursuant to False Claims Act (FCA) was punitive, not remedial, in nature, and thus did not survive his death, absent allegations of personal or substantial harm to relator. U.S. ex rel. Harrington v. Sisters of Providence in Oregon, D.Or.2002, 209 F.Supp.2d 1085. Abatement And Revival 58(.5)

53. Abstention

Federal district court would abstain from hearing qui tam action under the False Claims Act based on pendency of Illinois State Court action arising out of same alleged fraudulent activity on behalf of government contractor, where federal complaint was not filed until almost three years after state court obtained jurisdiction, there had already been substantial progress in state court action, and there was no possibility that federal rights sought to be protected in False Claims Act suit would not be adequately protected in state court proceedings. U.S. ex rel. Hartigan v. Palumbo Bros., Inc., N.D.Ill.1992, 797 F.Supp. 624. Federal Courts 47.1

54. Estoppel

Government's representation that it would not proceed with civil claims against federal employee under False Claims Act (FCA) if it was shown that employee did not have significant assets did not preclude government from filing action under FCA to recover civil damages and penalties, absent evidence regarding parties' understanding of term “significant assets,” or showing that government made statement during plea negotiations during employee's prior criminal prosecution arising from same facts. U.S. v. Lamanna, W.D.N.Y.2000, 114 F.Supp.2d 193. Criminal Law 273.1(2); Estoppel 62.2(4)

Contractor was not ignorant of the facts, as required to assert estoppel against qui tam plaintiff, acting on behalf of United States in bringing False Claims Act suit; contractor was informed of procedures and regulations related to procurement and completion of project, and contractor's representative knew that submitting invoices without attached line items violated procedure. U.S. ex rel. Durcholz v. FKW Inc., S.D.Ind.1998, 997 F.Supp. 1143. Estoppel 62.2(4)

Defendant's criminal conviction for filing false claims to Environmental Protection Agency (EPA) and for conspiring to file

false claims to EPA collaterally estopped defendant from contesting issue of liability in civil action seeking to impose liability under False Claims Act; identical factual conduct and violation of law raised in civil action were distinctly put in issue and directly determined against defendant in his criminal trial. U.S. v. Peters, D.Neb.1996, 927 F.Supp. 363, affirmed 110 F.3d 616, certiorari denied 118 S.Ct. 162, 522 U.S. 860, 139 L.Ed.2d 106. Judgment 648

55. Res judicata

University employee's whistleblower and False Claims Act claims were barred by res judicata since they could and should have been asserted in her prior employment discrimination suit; whistleblower and False Claims Act claims asserted by employee, who alleged that her harassment and termination stemmed from her reporting of university pharmacy's submission of false claims to governmental health care programs, arose from the same operative facts as those upon which discrimination suit was based. Cole v. Board of Trustees of University of Illinois, C.A.7 (Ill.) 2007, 497 F.3d 770, certiorari denied 128 S.Ct. 1110, 552 U.S. 1142, 169 L.Ed.2d 810. Judgment 585(2)

District court did not reach merits of public employee's False Claims Act (FCA) action, and employee's subsequent §§ 1983 action encompassing same facts thus was not barred under doctrine of res judicata, even though district court stated that it was dismissing action for failure to state claim, where district court determined that individual defendants were employee's supervisors and not his “employers” within meaning of FCA, essentially finding that such defendants, in their individual capacities, were not the proper parties to be named in FCA suit. Wilkins v. Jakeway, C.A.6 (Ohio) 1999, 177 F.3d 560, withdrawn from bound volume , amended and superseded.

Qui tam claims against defense contractor, asserting that fluid used in flight data transmitters did not comply with specifications and that contractor submitted false test certifications for transmitters, both arose out of same transactional nucleus of fact, inasmuch as both wrongful acts arose out of same attempt to be paid for noncompliant transmitters, and material fact was that invoices for transmitters were false; therefore, res judicata barred first claim after government, as intervenor, settled second claim. U.S. ex rel. Barajas v. Northrop Corp., C.A.9 (Cal.) 1998, 147 F.3d 905. Compromise And Settlement 17(1)

Qui tam claims concerning different grant to medical college than that covered by government's complaint-in-intervention and settlement with medical college were not barred by res judicata, inasmuch as false claims were not part of same transactional nucleus of fact. U.S. ex rel. Sarafoglou v. Weill Medical College of Cornell University, S.D.N.Y.2006, 451 F.Supp.2d 613. Judgment 585(3)

56. Criminal proceedings

Civil action in which Small Business Administration (SBA) sought to recover its losses arising from loan transaction under False Claims Act was not punitive in nature, so as to bar, under res judicata principles, subsequent criminal prosecution arising from same transaction; although treble damages were recoverable under False Claims Act, civil case was compensatory rather than punitive. U.S. v. Brekke, C.A.8 (Minn.) 1996, 97 F.3d 1043, rehearing and suggestion for rehearing en banc denied, certiorari denied 117 S.Ct. 1281, 520 U.S. 1132, 137 L.Ed.2d 356. Criminal Law 43

Criminal convictions of defendant for filing false claims to Environmental Protection Agency (EPA) and for conspiring to file false claims to EPA did not present res judicata bar to False Claims Act suit against defendant regarding identical factual conduct. U.S. v. Peters, D.Neb.1996, 927 F.Supp. 363, affirmed 110 F.3d 616, certiorari denied 118 S.Ct. 162, 522 U.S. 860, 139 L.Ed.2d 106. Judgment 559

Where a defendant is convicted of a criminal offense based on his submission of false medicaid or medicare claims, such conviction forecloses all questions relevant to civil liability under the False Claims Act. U.S. v. Diamond, S.D.N.Y.1987, 657 F.Supp. 1204. Judgment 648

II. CLAIMS WITHIN SECTION

<Subdivision Index>

81. Claims within section generally

Term “claims” in former § 231 of this title should not have been read in its narrow sense to have included only a demand based on liability of United States to claimant. U. S. v. Neifert-White Co., U.S.Mont.1968, 88 S.Ct. 959, 390 U.S. 228, 19 L.Ed.2d 1061. United States 120.1

Request by Iowa Medicaid Enterprise (IME) for federal financial participation (FFP) dollars to administer Medicaid fell within definition of “claim” under False Claims Act (FCA). U.S. ex rel. Hixson v. Health Management Systems, Inc., S.D.Iowa 2009, 657 F.Supp.2d 1039, affirmed 613 F.3d 1186. United States 120.1

Fact that actual expenses sought by business arm of Indian tribe under contract with Bureau of Indian Affairs (BIA) to perform brushing and road grading work were owed by tribal business, regardless of actual number of miles cleared, did not insulate employees of tribal business from claims under False Claims Act (FCA); entitlement to actual expenses under contract did not mean allegedly false submissions were not false claims. U.S. v. Menominee Tribal Enterprises, E.D.Wis.2009, 601 F.Supp.2d 1061, reconsideration denied 2009 WL 1373952, entered 2009 WL 2877083. United States 120.1

Not all false statements made to the federal government were “claims” within the meaning of former § 231 of this title. U. S. v. Greenberg, S.D.N.Y.1965, 237 F.Supp. 439. United States 120.1

Test as to whether false claim is made against United States is whether there is demand for money or for some transfer of

public property or disbursement of public funds. U. S. v. Cherokee Implement Co., N.D.Iowa 1963, 216 F.Supp. 374. United States 121

82. Necessity of claim, claims within section

Presentment to government is not required as matter of law under sections of False Claims Act (FCA) prohibiting the making or use of a false record or statement in order to induce the government to pay or approve a claim or a conspiracy to defraud the government to pay or allow a false claim, so long as it can be shown that the claim was paid with government funds; evidence that claim has been "paid or approved" provides sufficient link to government, while evidence that claim was actually presented to government is not necessary. U.S. ex rel. Sanders v. Allison Engine Co., Inc., C.A.6 (Ohio) 2006, 471 F.3d 610, rehearing and rehearing en banc denied , certiorari granted 128 S.Ct. 491, 552 U.S. 989, 169 L.Ed.2d 337, vacated and remanded 128 S.Ct. 2123, 553 U.S. 662, 170 L.Ed.2d 1030. United States 122

Reverse false claims provision of False Claims Act does not require presentment to the United States government. U.S. ex rel. Bahrani v. Conagra, Inc., C.A.10 (Colo.) 2006, 465 F.3d 1189, certiorari denied 128 S.Ct. 388, 552 U.S. 950, 169 L.Ed.2d 264, on remand 2009 WL 751169. United States 120.1

There must have been claim presented upon or against government of the United States to have sustained civil liability under former § 231 of this title. U. S. v. Azzarelli Const. Co., C.A.7 (Ill.) 1981, 647 F.2d 757. United States 120.1

Informer's action will lie only in case where defendant presents claim against United States, or in rem against its property. U.S. ex rel. Kessler v. Mercur Corporation, C.C.A.2 (N.Y.) 1936, 83 F.2d 178, certiorari denied 57 S.Ct. 40, 299 U.S. 576, 81 L.Ed. 424. See, also, U.S. v. Cochran, C.A.Tex.1956, 235 F.2d 131, certiorari denied 77 S.Ct. 262, 352 U.S. 941, 1 L.Ed.2d 237; U.S. ex rel. Salzman v. Salant & Salant, D.C.N.Y.1938, 41 F.Supp. 196. United States 122

Government contractor did not present false compensation claim to officer or employee of United States government, as required for violation of False Claim Act (FCA), when contractor sought and obtained $3 million advance on contract to assist in development of new Iraq currency, from Coalition Provisional Authority (CPA), which governed Iraq after invasion; while bulk of personnel and financing for CPA came from United States, it was independent international agency. U.S. ex rel. DRC, Inc. v. Custer Battles, LLC, E.D.Va.2006, 444 F.Supp.2d 678, reversed 562 F.3d 295. United States 120.1

Contractor's demands for payment under contracts to provide security services in Iraq fulfilled False Claims Act's (FCA) presentment requirement, even though contractor submitted allegedly false or fraudulent contract bids or invoices to Coalition Provisional Authority's (CPA) contracting officers, and it was unclear whether CPA was itself instrumentality of United States, where contracting officers were also employees of United States Armed Forces, and United States maintained dominion, control, and possession of seized and vested funds until Army was finally directed by CPA contracting officers to make payments directly to contractor. U.S. ex rel. DRC, Inc. v. Custer Battles, LLC., E.D.Va.2005, 376 F.Supp.2d 617, reversed 562 F.3d 295. United States 120.1

Contractor engaged in fabrication of base and enclosure assemblies for generator sets installed in United States Navy destroyers did not make a false claim, and, thus, contractor was not liable for conspiracy under the False Claims Act. U.S. ex rel. Sanders v. Allison Engine Co., S.D.Ohio 2003, 364 F.Supp.2d 713. Conspiracy 13; United States 120.1

Evidence established that employer, a defense contractor that provided engineering services to the United States government, made no "claim" to the government with respect to either of the issues former employees claimed were related to their firing, thus precluding imposition of liability on the contractor under the False Claims Act (FCA); there was no allegation that a claim was ever made to the government for a payment to a worker while she was on maternity leave, or for another individual's alleged double salary and benefits. Maturi v. McLaughlin Research Corp., D.R.I.2004, 326 F.Supp.2d 313, affirmed 413 F.3d 166. Labor And Employment 777

Under former § 231 of this title, any kind of fraud or deceit in dealings with the government was not enough, but fraud must have been used in connection with making a claim against the government. Cahill v. Curtiss-Wright Corp., W.D.Ky.1944, 57 F.Supp. 614. See, also, U.S. v. Howell, C.A.Cal.1963, 318 F.2d 162. United States 121

83. Indirect presentation of claim, claims within section

Provision of False Claims Act imposing civil liability on any person who "knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government" demands that the defendant made a false record or statement for the purpose of getting "a false or fraudulent claim paid or approved by the Government," not proof that the defendant caused a false record or statement to be presented or submitted to the Government. Allison Engine Co., Inc. v. U.S. ex rel. Sanders, U.S.2008, 128 S.Ct. 2123, 553 U.S. 662, 170 L.Ed.2d 1030. United States 120.1

The fact that false claims were not presented directly to government, but made indirectly to it through government contractors, did not prevent recovery of forfeitures and double damages by United States from claimants under former § 231 of this title. Murray & Sorenson v. U.S., C.A.1 (R.I.) 1953, 207 F.2d 119. United States 122

Submission of false crop insurance claim to private insurer, which was a grantee of government funds, was not a presentment of a false claim to officer or employee of government, as required by FCA; insurance agent submitted allegedly false claims to private insurer, insurer made decision to pay claims, and insurer was later reimbursed through standard reinsurance agreement by government instrumentality. U.S. v. Hawley, N.D.Iowa 2008, 566 F.Supp.2d 918, reversed 619 F.3d 886, rehearing and rehearing en banc denied. United States 120.1

Given his knowledge of university's grant agreements with government and his position as director of project to assist Russia in developing capital markets and foreign investments, university employee who violated provisions prohibiting investment by employees in Russia had knowledge of the falsity of information in claims he caused to be presented to the government, and thus violated False Claims Act (FCA), even though he did not file or review forms submitted to government; employee approved invoices or expenses while he was violating the investment provisions and it was foreseeable that those invoices and reports would be submitted to the government. U.S. v. President and Fellows of Harvard College, D.Mass.2004, 323 F.Supp.2d 151. United States 122

False claim submitted to government contractor is submitted "upon or against the government" under False Claims Act. U.S. ex rel. Luther v. Consolidated Industries, Inc., N.D.Ala.1989, 720 F.Supp. 919. United States 120.1

84. Sufficiency of claim, claims within section

False Claims Act "false record or statement" claim against pharmacy owner, alleging routine submission to Illinois Department of Public Aid of claims for medications that had been recycled, repackaged, and previously paid for by Illinois Medicaid, required showing of at least one instance of two separate Medicaid charges for same pill; inference from fact that pharmacy served nursing homes, that 60% of residents of homes were on Medicaid, and that 10% to 20% of pharmacy's dispensed medications were returned unused by patients, was insufficient. U.S. ex rel. Crews v. NCS Healthcare of Illinois, Inc., C.A.7 (Ill.) 2006, 460 F.3d 853. United States 122

In deciding whether given false statement is claim or demand for payment under False Claims Act, court should look to see if, within payment scheme, statement has practical purpose and effect, and poses attendant risk, of inducing wrongful payment. U.S. v. Rivera, C.A.1 (Puerto Rico) 1995, 55 F.3d 703, 139 A.L.R. Fed. 813, on remand 956 F.Supp. 1046. United States 120.1

United States stated claim against drug manufacturer under False Claims Act (FCA) for antecedent violation of Anti-Kickback Statute for claims submitted through Medicare program, on allegations that manufacturer fraudulently published false average wholesale price and then marketed "spread" between reimbursement rate and provider's acquisition cost, Medicare program required health care providers to affirmatively certify that they had complied with Anti-Kickback Statute, and failure to comply with kickback laws was, in and of itself, false statement to government. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2007, 491 F.Supp.2d 12. United States 122

Scienter requirement of False Claims Act (FCA) was negated by Coast Guard directions to companies to fully bill for labor expenses for time not worked, for time attributable to facility closures and delays due to inclement weather, contract workers' participation in Coast Guard Day, and contract workers' attendance at seminars, and Coast Guard operations system center security director and project officer thus failed to state FCA claim against company that was prime contractor for computer programming and support services at center, subcontractors, and companies that provided technical and computer services at the center for submission of false time sheets and invoices. U.S. ex rel. Werner v. Fuentez Systems Concepts, Inc., N.D.W.Va.2004, 319 F.Supp.2d 682, affirmed 115 Fed.Appx. 127, 2004 WL 2830713. United States 120.1

Proof of loss submitted to Federal Emergency Management Agency (FEMA) for payment under standard flood insurance policy (SFIP) is "claim" within meaning of False Claims Act prohibiting knowingly false or fraudulent claim for payment or approval by United States; proof of loss is attempt to cause government to pay money. Plywood Property Associates v. National Flood Ins. Program, D.N.J.1996, 928 F.Supp. 500. United States 120.1

85. Certificates or certifications, claims within section

False Claims Act (FCA) contemplates theory of implied false certification; "implied false certification" occurs when entity has previously undertaken to expressly comply with law, rule, or regulation, and that obligation is implicated by submitting claim for payment to the government, even though a certification of compliance is not required in the process of submitting the claim. Ebeid ex rel. U.S. v. Lungwitz, C.A.9 (Ariz.) 2010, 616 F.3d 993, certiorari denied 131 S.Ct. 801, 178 L.Ed.2d 546. United States 120.1

Allegations by former employees of government contractor that they personally observed contractor violate its contractual obligations by improperly disposing of hazardous waste, that contractor was aware of the violations because employees documented and/or informed their superiors of the violations, that contractor submitted requests for payment under its contracts with the government, that none of the requests for payment disclosed any violations of contractor's obligations, that government paid each request for payment in full, and that if government had been aware of the violations, it might have refused or reduced payment to contractor stated implied false certification claim against contractor under the False Claims Act (FCA). U.S. ex rel. Lemmon v. Envirocare of Utah, Inc., C.A.10 (Utah) 2010, 614 F.3d 1163. United States 120.1

Assuming, without deciding, the viability of "implied certification" theory of False Claims Act (FCA) liability, former offshore drilling unit worker failed to state claim under FCA subsection governing liability for knowingly making false claim for payment based on alleged illegal dumping of oil, oil waste, solid waste, grease, paint, and other hazardous substances into the Gulf of Mexico at night, in violation of terms of oil and gas lease granted to defendants by the United States; environmental requirements that worker referenced were not prerequisites to continuation of lease, which provided that it would be "subject to cancellation" if lessee failed to comply with any of its terms, i.e., that cancellation was only an option and government could exercise "other remedies" available against lessee. U.S. ex rel. Marcy v. Rowan Companies, Inc., C.A.5 (La.) 2008, 520 F.3d 384. United States 120.1

Payment claims made by federal contractor for provision of counseling and technical assistance, knowing that it had provided conflicted advice, were impliedly false in violation of False Claims Act (FCA) under so-called "certification theory" of liability, or alternatively "legally false certification," if conflict-free services had been material condition of that contract; although conflict-free advice and technical assistance had not been express prerequisite to payment, regulatory requirements regarding organizational conflicts actually had been incorporated into contract. U.S. v. Science Applications Intern. Corp.,

C.A.D.C.2010, 626 F.3d 1257. United States 120.1

Allegations that hospital received federal funding and that, at various times, pharmaceuticals had been dispensed by hospital employees who were not licensed to do so under New Jersey law did not link hospital's alleged receipt of federal funds to compliance with New Jersey law regulating eligibility to dispense prescription drugs, as would support hospital employees' claim under false certification theory of False Claims Act, in qui tam action against hospital. Rodriguez v. Our Lady of Lourdes Medical Center, C.A.3 (N.J.) 2008, 552 F.3d 297, as amended. United States 122

Obligation of exporter of animal products to pay fees for in-lieu-of and replacement certificates when major or significant changes to original export certificate issued by United States Department of Agriculture (USDA) were necessary resulted from discovery of major or significant errors or omissions in original certificate necessitating new certificate, and thus arose from independent source, as required to be actionable under reverse false claims provision of False Claims Act. U.S. ex rel. Bahrani v. Conagra, Inc., C.A.10 (Colo.) 2006, 465 F.3d 1189, certiorari denied 128 S.Ct. 388, 552 U.S. 950, 169 L.Ed.2d 264, on remand 2009 WL 751169. United States 120.1

Pharmacy operator's conviction on federal charge of making false statement, consisting of false certification on Medicaid voucher that pharmacy had complied with federal regulations regarding storage and handling of controlled substances, did not render voucher a false claim actionable under False Claims Act; operator was not convicted of submitting false claim, and furthermore there was no showing that certification of compliance with regulations in question was prerequisite to Medicaid payment. U.S. ex rel. Crews v. NCS Healthcare of Illinois, Inc., C.A.7 (Ill.) 2006, 460 F.3d 853. United States 120.1

Subject in federally-funded acquired immune deficiency syndrome (AIDS) research study failed to allege that any particular certification of regulatory compliance was a condition of payment of government money, and, thus, subject failed to state a False Claims Act (FCA) claim premised upon an alleged false certification of compliance with statutory or regulatory requirements, in qui tam action alleging various acts of negligence and mismanagement by researcher, several of its participating medical professionals, and institutional review board for the study. U.S. ex rel. Gross v. AIDS Research Alliance-Chicago, C.A.7 (Ill.) 2005, 415 F.3d 601. United States 122

Even if pharmacy's Medicaid claim certified its compliance with New Jersey Board of Pharmacy regulations as condition of payment, there was no proof that pharmacy made claim to Medicaid for improperly recycled medication, in violation of those regulations, as required to support False Claims Act (FCA) liability under "certification theory"; although approximately 60 percent of pharmacy's business was Medicaid, there was no proof that improperly recycled medication was paid for by Medicaid or that it was paid for by one of the other sources of payment for the medications that pharmacy dispensed. U.S. ex rel. Quinn v. Omnicare Inc., C.A.3 (N.J.) 2004, 382 F.3d 432. United States 122

Owners of apartment complex did not make "false claims" under the False Claims Act as a matter of law in housing assistance payment (HAP) vouchers submitted to the Department of Housing and Urban Development (HUD) during corrective action period after HUD notified them that they failed to maintain the property in a decent, safe, and sanitary condition, notwithstanding that owners certified in vouchers that the property was decent, safe, and sanitary, because vouchers were claims for money to which the owners were entitled under terms of HAP contract until HUD notified them that they had failed to take the necessary corrective action and that HAP payments would be abated. U.S. v. Southland Management Corp., C.A.5 (Miss.) 2003, 326 F.3d 669. United States 120.1

A contractor's false certification that its workers have been paid the prevailing wage rate required by Davis-Bacon Act may give rise to liability under the False Claims Act (FCA). U.S. ex rel. Plumbers and Steamfitters Local Union No. 38 v. C.W. Roen Const. Co., C.A.9 (Cal.) 1999, 183 F.3d 1088, certiorari denied 120 S.Ct. 2195, 530 U.S. 1203, 147 L.Ed.2d 232, on remand 2002 WL 73230. United States 120.1

School district's filing of forms listing information relevant to federal funding for special education programs and acceptance of federal funds for such programs, despite its alleged noncompliance with Individuals with Disabilities Education Act

(IDEA), was not certification constituting "false claim" under False Claims Act (FCA), as forms did not contain any certification concerning regulatory compliance, and mere regulatory violations did not give rise to viable FCA action, especially since regulatory compliance was not sole basis for receiving funding. U.S. ex rel. Hopper v. Anton, C.A.9 (Cal.) 1996, 91 F.3d 1261, certiorari denied 117 S.Ct. 958, 519 U.S. 1115, 136 L.Ed.2d 844. United States 120.1

Forms which were supplied by government, filled in by contractor, and later certified by government indicating that goods conformed to contract were not invoices or representations by defense contractor and, thus, forms were not "claim" under False Claims Act. U.S. ex rel. Butler v. Hughes Helicopters, Inc., C.A.9 (Cal.) 1995, 71 F.3d 321. United States 120.1

Oklahoma Medicaid statute's active treatment regulations were not merely conditions of participation in the Oklahoma Medicaid program, as opposed to condition of payment for services for which hospital billed, as would support hospital employees' implied false certification claim under the False Claims Act (FCA) against hospital, where they were not labeled as conditions of participation in either federal or Oklahoma law, they contained a reimbursement provision applicable to the services provided, and they imposed requirements which, if government knew they were not being followed, might have caused it to refuse payment. U.S. ex rel. Sanchez-Smith v. AHS Tulsa Regional Medical Center, N.D.Okla.2010, 2010 WL 4702270. United States 120.1

Claims submitted by pharmacies, who were innocent third parties, were not "false or fraudulent," within the meaning of the False Claims Act (FCA), under a theory of implied certification when the drug manufacturer allegedly violated the anti-kickback statute (AKS); no cited case had stretched an implied certification theory to reach back to impose FCA liability on a payer of kickbacks where the person who submitted the claim was innocent of wrongdoing and where (a) the claim itself was not factually false, (b) the claim was not legally false due to an express certification of compliance with the AKS or (c) compliance with the federal statute was not an expressly stated precondition of payment. U.S. ex rel. Rost v. Pfizer, Inc., D.Mass.2010, 736 F.Supp.2d 367. United States 120.1

Relator's complaint, which alleged that information technology vendors violated False Claims Act (FCA) by misrepresenting and certifying falsely that their products complied with Buy American Act (BAA) and Trade Agreements Act (TAA) in order to list those products for sale on federal procurement website, failed to allege with sufficient particularity any actual false claims submitted to the government, and therefore, relator's complaint failed to state claim under FCA; there was no allegation that any of vendors sold to government any technology that came from non-designated country, nor was there any allegation that federal agencies acquired those specific products through federal procurement website. U.S. ex rel. Crennen v. Dell Marketing L.P., D.Mass.2010, 711 F.Supp.2d 157. Federal Civil Procedure 636

No statute or regulation expressly required compliance with anti-kickback statutes as condition of payment under Medicare and Medicaid programs, and thus complaints alleging that pharmaceutical manufacturer, pharmaceutical services company, group purchasing organization (GPO), and affiliated companies provided kickbacks to providers in order to induce them to submit claims for prescription drug failed to state claims under False Claims Act (FCA) pursuant to implied certification theory, even though exclusion from Medicare program was mandatory if provider was convicted of violating anti-kickback statute. U.S. ex rel. Westmoreland v. Amgen, Inc., D.Mass.2010, 707 F.Supp.2d 123, reconsideration denied 2010 WL 2204603. United States 122

County's certifications to Secretary of Housing and Urban Development (HUD) that it would affirmatively further fair housing and analyze impact of race on housing opportunities in administering community development block grants were false claims, as required element in asserting False Claims Act (FCA) violation; county's analysis of impediments to housing was devoted entirely to lack of affordable housing. U.S. ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, N.Y., S.D.N.Y.2009, 668 F.Supp.2d 548, motion to certify appeal denied 2009 WL 970866. United States 120.1

The UB-92 forms submitted by Medicare provider, which invoiced services for which it was billing, were not "false claims" under False Claims Act (FCA) based on express false certification theory, where there was no evidence identifying a single

patient who was held at provider's hospital longer than necessary in order to increase the billing rate. U.S. ex rel. Hockett v. Columbia/HCA Healthcare Corp., D.D.C.2007, 498 F.Supp.2d 25, reconsideration denied 587 F.Supp.2d 757. United States 120.1

Medical provider did not falsely imply that physician had performed certain hematology-oncology services that were not physician-only procedures by listing name of physician in particular field on form for Medicaid billing that requested name of attending physician, as required to support False Claims Act (FCA) claim based on submittal of forms seeking reimbursement for certain hospital and technical charges. U.S. ex rel. Woodruff v. Hawaii Pacific Health, D.Hawai'i 2008, 560 F.Supp.2d 988, affirmed 2010 WL 5072191. United States 120.1

Claim was stated that county violated False Claims Act (FCA), in connection with application for federal government block grants for housing, when advocacy group alleged that county certified that grant would be conducted and administered in accordance with Civil Rights Act and Fair Housing Act, when in fact county had not identified race as impediment to fair housing, as it was required to do, nor taken any action to overcome effect of race as housing impediment. U.S. ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York, S.D.N.Y.2007, 495 F.Supp.2d 375, motion to certify appeal denied 2007 WL 2402997. United States 122

Company's alleged implied false certification to federal government that it was in compliance with federal environmental, safety, and health law, as condition to government's payment of invoices to company for manufacturing explosive and pyrotechnic devices, was basis for company's liability under False Claims Act (FCA); even if company's affirmative certification was not required, company had allegedly withheld vital information regarding compliance with federal regulations, and FCA could be used to create liability if company's failure to abide by regulations amounted to material misrepresentations made to obtain a government benefit. U.S. ex rel. Holder v. Special Devices, Inc., C.D.Cal.2003, 296 F.Supp.2d 1167. United States 120.1

Employee's allegations that exporters of animal hides falsified or forged export certificates in violation of United States Department of Agriculture (USDA) regulations in order to avoid paying user fee necessary to obtain "in lieu of" certificates were actionable under False Claims Act (FCA). U.S. ex rel. Bahrani v. ConAgra, Inc., D.Colo.2002, 183 F.Supp.2d 1272. United States 120.1

Hospital operator's former officer, who claimed that operator did not ensure compliance with rule which required certification that 75% of the patient population at operator's rehabilition hospital met certain criteria, did not allege false statement or fraudulent course of conduct as required to state claim under the False Claims Act (FCA), but alleged only conduct that was negligent. U.S. ex rel. Mathews v. Healthsouth Corp., W.D.La.2001, 140 F.Supp.2d 706, reversed 54 Fed.Appx. 404, 2002 WL 31687686. United States 122

Physicians' alleged failure to meet professionally recognized standards of care in performing spirometry tests for which Medicare reimbursement was sought was not actionable under False Claims Act (FCA) under implied false certification theory, given absence of showing that Medicare reimbursements made to physicians for spirometry tests were conditioned upon physicians' compliance with statute requiring services to conform to relevant standard of care. U.S. ex rel. Mikes v. Straus, S.D.N.Y.1999, 84 F.Supp.2d 427, reconsideration denied 78 F.Supp.2d 223. United States 120.1

Allegedly prohibited financial relationships among healthcare providers and referring physicians falsified certifications that the Medicare services identified in the annual hospital cost reports complied with the laws and regulations dealing with the provision of healthcare services; thus, the allegedly false certifications violated the False Claims Act (FCA). U.S. ex rel. Thompson v. Columbia/HCA Healthcare Corp., S.D.Tex.1998, 20 F.Supp.2d 1017. United States 120.1

Former congressman's false certification to clerk of House of Representatives and House Committee on Administration that undetermined number of telephone toll calls were official constituted false "claim" within meaning of former § 231 of this title when effect of such certification was not to trigger payment of money by United States but to insulate congressman certi-

fier from having to reimburse United States for money expended by United States. U. S. v. Eilberg, E.D.Pa.1980, 507 F.Supp. 267. United States 120.1

United States failed to establish that self-certified small disadvantaged business (SDB) fraudulently certified its SDB status, obtained work to which it was not entitled, or filed claim that intentionally or recklessly misrepresented its status in violation of False Claims Act (FCA), Forfeiture of Fraudulent Claims Act (FFCA) or theories of common law fraud; all company's principals believed actual transfer of control to socially and economically disadvantaged individual occurred in connection with company's reorganization and that based upon counsel's assurances they would, after reorganization, collectively own fully qualified SDB, operating officials were subject to termination by individual, and individual owned 80% of company's stock and made decisions as president and chairperson of board of directors which were consistent with her level of expertise and experience in business and her understanding of requirements for maintenance of company's SDB status. H.B. Mac, Inc. v. U.S., Fed.Cl.1996, 36 Fed.Cl. 793, reversed 153 F.3d 1338. Fraud 28; United States 120.1

Progress payment vouchers submitted by company awarded contract for construction of government facility pursuant to Small Business Administration's (SBA) program for minority-owned businesses were "false claims" within meaning of False Claims Act, even though they did not overstate amount due; vouchers represented implied certification by company of its continuing adherence to requirements for participation in program, and, by deliberately withholding from SBA knowledge of its prohibited contractual arrangement with one of its subcontractors, company caused government to pay out funds in mistaken belief that it was furthering aims of program. Ab-Tech Const., Inc. v. U.S., Fed.Cl.1994, 31 Fed.Cl. 429, affirmed 57 F.3d 1084. United States 120.1

86. Financial loss to government, claims within section

Contractor that allegedly presented false claim to the National Railroad Passenger Corporation (Amtrak) to obtain payment for its allegedly defective railroad cars did so to get claim paid by Amtrak, and not by federal government, though government funded Amtrak's operations; accordingly, contractor's conduct was not actionable under section of the False Claims Act prohibiting any party from using false record or statement to get false claim "paid or approved by the Government." U.S. ex rel. Totten v. Bombardier Corp., C.A.D.C.2004, 380 F.3d 488, 363 U.S.App.D.C. 180, rehearing en banc denied , certiorari denied 125 S.Ct. 2257, 544 U.S. 1032, 161 L.Ed.2d 1059. United States 120.1

False Claims Act (FCA) was applicable to portion of qui tam plaintiffs' complaint alleging that contractors that performed hazardous waste treatment and disposal services at site of chemical plant knowingly submitted false claims for payment from federal Superfund administered by the Environmental Protection Agency (EPA). Costner v. URS Consultants, Inc., C.A.8 (Ark.) 1998, 153 F.3d 667, rehearing and suggestion for rehearing en banc denied. United States 120.1

Responsible official's allegations that he would not have accepted and paid for milestone products under software system design contract, which were worthless without contractually complying software, but for false progress reports and representations by contractor stated claim for damages under False Claims Act. U.S. ex rel. Schwedt v. Planning Research Corp., C.A.D.C.1995, 59 F.3d 196, 313 U.S.App.D.C. 200, certiorari denied 116 S.Ct. 754, 516 U.S. 1068, 133 L.Ed.2d 701, on remand 1996 WL 554504. United States 120.1

Claim was within purview of former § 231 of this title if it was grounded on fraud which might have resulted in financial loss to the government. Peterson v. Weinberger, C.A.5 (Tex.) 1975, 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96 S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. United States 120.1

Pharmacy benefit manager's (PBM) alleged billing of federal employees' health plan for services not rendered, fraudulently avoiding contractual penalties, fraudulently inducing physicians to authorize drug switches, and favoring one pharmaceutical manufacturer over other manufacturers had potential to cause financial loss to United States, and thus was actionable under False Claims Act (FCA), even though false claims would not result in immediate increase in government's contribution to

Federal Employee Health Benefits Program (FEHBP) used to pay plan, where government's contribution to FEHBP was statistically weighted average of past years' subscription costs, and PBM's scheme could have reduced amount of money available for FEHBP in future. U.S. v. Merck-Medco Managed Care, L.L.C., E.D.Pa.2004, 336 F.Supp.2d 430. United States 120.1

False Claims Act [31 U.S.C.A. § 3729 et seq.] applies both to situations where individual falsely convinces Government to pay out funds, or to pay out too much in funds, and to situations where individual fraudulently pays too little to the Government. U.S. v. Douglas, E.D.Va.1985, 626 F.Supp. 621. United States 120.1

Government suffered damages for purposes of False Claims Act claim against military contractor, where it would not have authorized payment if it had been aware that contractor had not complied with inspection requirements, it had to deadline items until they could be field tested, and it lost interest on premature contract payments. BMY Combat Systems Div. of Harsco Corp. v. U.S., Fed.Cl.1997, 38 Fed.Cl. 109. United States 120.1

Telecommunications companies' alleged use of false statements to avoid or decrease their own obligation to make payments to federal government for electromagnetic spectrum licenses on which they had successfully bid was not in nature of demand for payment or reimbursement from federal government, and did not qualify as "claim," as that term is used in the False Claims Act (FCA). U.S. ex rel. Finney v. Nextwave Telecom, Inc., S.D.N.Y.2006, 337 B.R. 479. United States 120.1

87. Money or property, claims within section

There was no possibility that physician employed by hospital could have filed a viable action under the False Claims Act (FCA) in protesting the hospital's application to be designated a center for a cancer study, and thus he was not entitled to the protection of the whistleblower provision of the FCA, because the application was not a "request or demand for money or property" as required to be a "claim" under the FCA, since, even if the application had been accepted, no money, either federal or private, would have been paid to the hospital, and the application was simply the first step in a process that ultimately might have led to the authorization of the payment of federal funds to the hospital. Dookeran v. Mercy Hospital of Pittsburgh, C.A.3 (Pa.) 2002, 281 F.3d 105. Labor And Employment 778

A claim within meaning of former § 231 of this title was a demand upon the government for payment of money or transfer of property. U. S. v. Howell, C.A.9 (Cal.) 1963, 318 F.2d 162. See, also, U.S. v. Marple Community Records, Inc., D.C.Pa.1971, 335 F.Supp. 95. United States 120.1

Document labeled "Bill of Exchange" that convict and associate mailed to Secretary of Treasury constituted "claim for payment" under False Claims Act (FCA), where document directed Secretary of the United States Treasury to "charge back" $100 million to an account bearing convict's Social Security number and provided that failure to respond would constituted a confirmation of adjustment of amount. U.S. v. Williams, M.D.Fla.2007, 476 F.Supp.2d 1368. United States 120.1

A quasi-municipal corporation did not make "false claim" to obtain federal mineral lease funds, within meaning of False Claims Act (FCA); mineral lease funds were received from federal government by the state, so that there was no relationship between federal government and quasi-municipal corporation with respect to funds, and federal law provided that state could disburse funds without any federal restrictions, so that quasi-municipal corporation could not falsely represent that it was in compliance with applicable federal regulations governing receipt of mineral lease funds, as there were no such federal regulations. U.S. ex rel. Erickson v. Uintah Special Services Dist., D.Utah 2005, 395 F.Supp.2d 1088. United States 120.1

Title to funds confiscated by United States pursuant to International Emergency Economic Powers Act (IEEPA) from United States bank accounts held in name of former Republic of Iraq vested in United States upon issuance of Executive Order seizing funds, and thus contractor's demand for payment from those funds constituted "claim" within meaning of False Claims Act (FCA), even though vesting order stated that vested property "should be used to assist the Iraqi people and to assist in the reconstruction of Iraq." U.S. ex rel. DRC, Inc. v. Custer Battles, LLC., E.D.Va.2005, 376 F.Supp.2d 617, reversed 562 F.3d

295. United States 120.1; War And National Emergency 29

Unsuccessful bidder for contract with Department of Justice (DOJ) failed to state "claim" under False Claims Act by alleging that successful bidder misrepresented information in its annual and interim reports to Securities and Exchange Commission (SEC); those reports were used by potential private investors, and thus there had been no request or demand upon government for money or property. U.S. ex rel. Alexander v. Dyncorp, Inc., D.D.C.1996, 924 F.Supp. 292. United States 122

A method of cheating the government which was established through mechanics other than a claim for money or property did not fall under former § 231 of this title or former §§ 232, 233, and 235 of this title [now §§ 3730 and 3731 of this title]. Grand Union Co. v. U. S., N.D.Ga.1980, 495 F.Supp. 331. United States 120.1

A "false claim" as used in former § 231 of this title which related to the presentation of false claims against the government was not confined to a claim for money or property but comprehended a claim for valuable services accompanied by the furnishing of medicine, drugs, food and the like to a veteran seeking hospitalization and were indisputably "property". U.S. v. Alperstein, S.D.Fla.1960, 183 F.Supp. 548, affirmed 291 F.2d 455. United States 120.1

A "claim" within former § 231 of this title was restricted to the conventional meaning of demand for money or property to which a right was asserted against the government founded upon the government's own liability. U. S. v. Farina, D.C.N.J.1957, 153 F.Supp. 819. See, also, U.S. v. Howell, C.A.Cal.1963, 318 F.2d 162. United States 120.1

A "claim", within former § 231 of this title, was not limited to one for money or property. U.S. ex rel. Rodriguez v. Weekly Publications, S.D.N.Y.1946, 68 F.Supp. 767. United States 122

88. Income tax, claims within section

Provision of False Claims Act excluding income tax matters from its scope barred relator's claim seeking damages arising from alleged false statements and claims made by seller of forward supply agreements in connection with "yield burning" scheme involving tax-free municipal bonds, even though relator did not seek to collect taxes, where seller's alleged fraud was failure to conform to Internal Revenue Service (IRS) rules for maintaining tax-exempt status of advance refunding bonds, and IRS had authority to recover precise amounts sought by relator. U.S. ex rel. Lissack v. Sakura Global Capital Markets, Inc., C.A.2 (N.Y.) 2004, 377 F.3d 145. United States 122

Employee allegedly terminated for threatening to expose employer's federal income tax deficiencies or evasions had no cause of action under whistleblower provisions of False Claims Act, since Act expressly excluded income tax matters from its scope. Almeida v. United Steelworkers of America Intern. Union, AFL-CIO, D.R.I.1999, 50 F.Supp.2d 115. Labor And Employment 777

89. Paying out by government, claims within section

Provision of False Claims Act imposing civil liability on any person who "knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government" requires that a defendant must intend that the government itself pay the claim, rather than just show that a false statement resulted in the use of government funds to pay a false or fraudulent claim. Allison Engine Co., Inc. v. U.S. ex rel. Sanders, U.S.2008, 128 S.Ct. 2123, 553 U.S. 662, 170 L.Ed.2d 1030. United States 120.1

Insurance agent's qui tam allegations that life insurance company and national bank schemed to sell military personnel life insurance in contravention of regulations governing such sales failed to state a claim under False Claims Act (FCA), where alleged fraud could not cause the government, as opposed to defrauded military personnel, to suffer any economic loss. U.S. ex rel. Sanders v. American-Amicable Life Ins. Co. of Texas, C.A.3 (Pa.) 2008, 545 F.3d 256. United States 122

False claim that is presented, not to federal government, but to federal grantee is not "presented...to an officer or employee of the United States Government," so as to be actionable under the False Claims Act, simply because payment will come out of funds that grantee received from federal government. U.S. ex rel. Totten v. Bombardier Corp., C.A.D.C.2004, 380 F.3d 488, 363 U.S.App.D.C. 180, rehearing en banc denied , certiorari denied 125 S.Ct. 2257, 544 U.S. 1032, 161 L.Ed.2d 1059. United States 120.1

False Claims Act (FCA) was inapplicable to extent that qui tam plaintiffs' complaint alleged that contractors that performed hazardous waste treatment and disposal services at site of chemical plant knowingly submitted false claims for payment from private trust fund; fund in question was underwritten by chemical company that was former owner of site, and no money in fund was provided by the United States government. Costner v. URS Consultants, Inc., C.A.8 (Ark.) 1998, 153 F.3d 667, rehearing and suggestion for rehearing en banc denied. United States 120.1

Government stated claim against body armor manufacturer's synthetic fiber supplier under version of false statements provision of False Claims Act (FCA) that proscribed making false statements to get false claim paid by United States where government alleged that supplier knew that bulletproof vests that manufacturer was selling to government degraded when exposed to sunlight, elevated temperatures, and humidity but did not disclose that information to government, and that supplier knowingly misrepresented and concealed facts, creating false record that in part caused manufacturer to submit false claim to government for payment. U.S. ex rel. Westrick v. Second Chance Body Armor, Inc., D.D.C.2010, 709 F.Supp.2d 52. United States 122

To sufficiently allege hospitals made false claims for Medicare funding, in violation of False Claims Act (FCA), qui tam relator was not required to allege that hospital's false record or statement was presented to the Government; liability for making false claims could be premised on a fraudulent course of conduct which caused the Government to pay a claim for money. U.S., ex rel. Baker v. Community Health Systems, Inc., D.N.M.2010, 709 F.Supp.2d 1084. United States 122

Qui tam relator did not allege that any of 11 products mislisted on General Services Administration (GSA) website were actually purchased by government through that procurement portal, precluding relator's False Claims Act claim under presentment theory as to those products; relator merely alleged that products were incorrectly listed on website as originating in United States and in compliance with Trade Agreements Act (TAA). U.S. ex rel. Folliard v. CDW Technology Services, Inc., D.D.C.2010, 722 F.Supp.2d 20. United States 122

United States government alleged that synthetic fiber supplier caused false or fraudulent claims for payment to be made or approved, as required to state claim under False Claims Act (FCA); complaint averred that supplier knowingly misrepresented and concealed facts as to deficiencies of fiber, creating false record that in part caused bulletproof vest manufacturer to submit false claims to government. U.S. ex rel. Westrick v. Second Chance Body Armor, Inc., D.D.C.2010, 685 F.Supp.2d 129, reconsideration denied 709 F.Supp.2d 52. United States 122

Evidence at trial on government's False Claims Act (FCA) claims against contractor was sufficient to conclude that contractor's organizational conflict of interest (OCI) representations were critical to government's decision to pay claims; numerous witnesses from both Nuclear Regulatory Commission (NRC) and contractor testified that OCI obligations in contracts with NRC were important to overall purpose of contract, NRC contracting officer testified that had she known of contractor's relationships with foreign nuclear company and Department of Energy's environmental management contractor, she would not have awarded either contract or would not have approved payments under contracts, and NRC contract specialists testified that they considered OCI representations before approving payment and that they would not have approved payment if contractor had apparent or actual OCIs. U.S. v. Science Applications Intern. Corp., D.D.C.2009, 653 F.Supp.2d 87, affirmed 626 F.3d 1257. United States 122

As the False Claims Act (FCA) extends to fraudulent attempts to cause the Government to pay out sums of money, it is not necessary that payment actually be made as a result of the fraudulent document. U.S. v. Williams, M.D.Fla.2007, 476

F.Supp.2d 1368. United States 120.1

To establish claim under False Claims Act (FCA) for causing false claim to be paid, plaintiff must prove that: (1) defendant made, used or caused to be made or used false record or statement to get claim against United States paid or approved; (2) claim was false or fraudulent; (3) defendant knew that record or statement and claim were false or fraudulent; and (4) claim was actually paid or approved. U.S. v. Aguillon, D.Del.2009, 628 F.Supp.2d 542. United States 120.1

Allegations that service corporation and two individual defendants billed for computer, software and remote telephone switch purchase, installation and upgrade projects that were performed by or primarily by another entity, that contract modification was made, contrary to industry standard, to allow defendants to separately bill government for testing after work was completed, and that defendants submitted false charges to government for labor expenses relating to switching cable operations to new plant when in fact charges were to purchase a mobile communications trailer, building material, laptop computer, monitor and docking station, were sufficient for employee terminated by service corporation to state claim that corporation and two individual defendants presented or caused to be presented to United States government false or fraudulent claims for payment, or used false record or statement to get false or fraudulent claim paid or approved by government, in violation of False Claims Act (FCA). U.S. ex rel. Poisson v. Red River Service Corp., W.D.Okla.2008, 621 F.Supp.2d 1153. Labor And Employment 778

Allegedly inaccurate Vietnam Era Veterans Readjustment Assistance Act (VEVRAA) reports did not give rise to a claim under provision of False Claims Act (FCA) creating liability for any person who knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the government; even assuming the reports constituted a "false record," those falsities did not get a false or fraudulent claim paid since the accuracy of the reports was not a condition to payment. U.S. ex rel. Kirk v. Schindler Elevator Corp., S.D.N.Y.2009, 606 F.Supp.2d 448, vacated 601 F.3d 94, certiorari granted 131 S.Ct. 63, 177 L.Ed.2d 1152. United States 120.1

Evidence that durable medical equipment company (DME) forwarded completed order forms and prescriptions to independent diagnostic testing facility (IDTF) alleged to have filed false Medicare claims in violation of False Claims Act, was insufficient to prove DME knowingly assisted in causing government to pay such fraudulent claims, where DME gave no suggestion or instruction to IDTF regarding its Medicare submissions, and in no way participated in such submissions. U.S. ex rel. Bane v. Breathe Easy Pulmonary Services, Inc., M.D.Fla.2009, 597 F.Supp.2d 1280. United States 122

Government's ultimate reimbursement of private crop insurer pursuant to standard reinsurance agreement did not demonstrate that agent who submitted allegedly false documents to private insurer to obtain crop insurance payments for ineligible individuals intended to get false claims paid by government, as required to violate FCA; claims themselves were never forward to or approved by government, nor was government's reimbursement of private insurer conditioned upon review of insurer's decision to pay claims. U.S. v. Hawley, N.D.Iowa 2008, 566 F.Supp.2d 918, reversed 619 F.3d 886, rehearing and rehearing en banc denied. United States 120.1

Insurance agent did not present, or knowingly assist another in presenting, a false or fraudulent claim for payment to an officer of employee of the United States government, as required for False Claims Act (FCA) civil liability, by signing and transmitting false crop insurance claim to private insurer, which paid claim, and was later reimbursed by the United States through the Federal Crop Insurance Corporation (FCIC), a government entity. U.S. v. Hawley, N.D.Iowa 2008, 544 F.Supp.2d 787, subsequent determination 566 F.Supp.2d 918, reversed 619 F.3d 886, rehearing and rehearing en banc denied. United States 120.1

Government contractor did not knowingly use false record or statement to obtain payment of false claim by government, as required for violation of False Claim Act, when contractor sought and obtained $3 million advance on contract to assist in development of new currency, from Coalition Provisional Authority (CPA), which governed Iraq after invasion; while bulk of personnel and financing for CPA came from United States, it was independent international agency. U.S. ex rel. DRC, Inc. v. Custer Battles, LLC, E.D.Va.2006, 444 F.Supp.2d 678, reversed 562 F.3d 295. United States 120.1

Unsuccessful bidders' allegedly false certifications of statutory/regulatory compliance made in connection with bids presented to Federal Communications Commission (FCC) for wireless telecommunications licenses did not give rise to actionable claims under False Claims Act (FCA) since such certifications were not made in connection with requests or demands for monetary compensation. U.S. ex rel. Taylor v. Gabelli, S.D.N.Y.2004, 345 F.Supp.2d 313, stay denied 345 F.Supp.2d 340. United States 120.1

The invoices sent by a health care provider to its patients' private health insurers are not cognizable as false claims under the False Claims Act (FCA), even if the government will reimburse provider for that which is subject of request for payment from the insurers, absent showing that any of the private insurers are provided with government funds or are reimbursed by the government. Cantrell v. New York University, S.D.N.Y.2004, 326 F.Supp.2d 468. United States 120.1

False Claims Act (FCA) applied to allegedly false cost and pricing data supplied to government, in connection with contract to provide Low Altitude Navigation and Targeting Infrared for Night (LANTIRN) pods, even though government was reselling pods to foreign governments, and contractor claimed that no government funds were being expended, as required under FCA. U.S. ex rel. Campbell v. Lockheed Martin Corp., M.D.Fla.2003, 282 F.Supp.2d 1324. United States 120.1

Unsuccessful bidder stated "claim" under False Claims Act by alleging that successful bidder had submitted false information to obtain revised wage determinations under contract with Department of Justice (DOJ), which would have had effect of causing government to pay out money that it would not otherwise have paid. U.S. ex rel. Alexander v. Dyncorp, Inc., D.D.C.1996, 924 F.Supp. 292. United States 122

Only action which had purpose and effect of causing the United States government to pay out money was clearly "claim" within purpose of former § 231 of this title. U. S. v. Lawson, D.C.N.J.1981, 522 F.Supp. 746. United States 120.1

Scope of former § 231 of this title was not meant to be limited to the particular evil of cheating the government by means of billing for worthless or nonexistent goods or at exorbitant prices and any actions which had the purpose and effect of causing the government to immediately pay out money were "claims" within the purpose of former § 231 of this title. U. S. v. Silver, E.D.N.Y.1974, 384 F.Supp. 617, affirmed 515 F.2d 505. United States 120.1

The United States was entitled to recover under former § 231 of this title for false claims, though no payments were made on the claims. U.S. v. American Precision Products Corp., D.C.N.J.1953, 115 F.Supp. 823. United States 122

False Claims Act does not apply to payments that allegedly were made wrongfully by federal government to another government agency. Wolf v. U.S., C.A.Fed.2005, 127 Fed.Appx. 499, 2005 WL 681996, Unreported, certiorari denied 126 S.Ct. 119, 546 U.S. 853, 163 L.Ed.2d 127, rehearing denied , rehearing denied 126 S.Ct. 720, 546 U.S. 1056, 163 L.Ed.2d 617. United States 120.1

90. Reverse claims, claims within section

Regulations of United States Department of Agriculture (USDA) did not create "obligation" to obtain in-lieu-of or replacement certificate and pay accompanying fee when minor changes to export certificate for animal products were required, within meaning of reverse false claims provision of False Claims Act, even though exporter's conduct in making such changes to certificate could subject it to potential fines and penalties for altering government certificate, but certain class of changes, those involving major or significant changes, did require issuance of in-lieu-of or replacement certificate, such that failure to obtain new certificate and pay resultant fee could amount to avoiding of obligation under Act's reverse false claims provision. U.S. ex rel. Bahrani v. Conagra, Inc., C.A.10 (Colo.) 2006, 465 F.3d 1189, certiorari denied 128 S.Ct. 388, 552 U.S. 950, 169 L.Ed.2d 264, on remand 2009 WL 751169. United States 120.1

Claim under False Claims Act (FCA) for using false record to avoid obligation requires plaintiff to prove "reverse false claim," that is, that defendant made or used, or caused someone else to make or use, false record in order to avoid or decrease obligation to federal government. U.S. ex rel. Schmidt v. Zimmer, Inc., C.A.3 (Pa.) 2004, 386 F.3d 235, on remand 2005 WL 1806502. United States 120.1

Mail courier service that took letters to Barbados and mailed them back into United States, thereby achieving significant postage cost savings for its customers, did not owe United States False Claims Act "obligation" to pay domestic postage, and thus, such remailing practice did not entitle government to recover from service under Act's "reverse false claims provision," which gives United States means to recover from someone who makes material misrepresentation to avoid paying some obligation owed to government. U.S. v. Q Intern. Courier, Inc., C.A.8 (Minn.) 1997, 131 F.3d 770, 162 A.L.R. Fed. 641. United States 120.1

Assistance agreement between bridge bank and Federal Deposit Insurance Corporation (FDIC), under which bridge bank could require FDIC to repurchase certain loans, did not create specific contractual "obligation to pay or transmit money" on part of bridge bank that survived repurchase of particular loan, and thus did not create obligation to repay that would support reverse false claim under False Claims Act; under assistance agreement, written concurrence from FDIC amounted to final approval of repurchase, and did not allow FDIC later to avoid repurchase upon concluding that it made incorrect decision, did not have sufficient information, or was defrauded. U.S. ex rel. S. Prawer & Co. v. Verrill & Dana, D.Me.1996, 946 F.Supp. 87, reconsideration denied 962 F.Supp. 206. United States 120.1

Under reverse false claims provision of False Claims Act, which penalizes making of false statement to conceal or avoid "obligation to pay or transmit money," money is not "owed" without specific contract remedy, judgment, or acknowledgment of indebtedness. U.S. ex rel. S. Prawer & Co. v. Verrill & Dana, D.Me.1996, 946 F.Supp. 87, reconsideration denied 962 F.Supp. 206. United States 120.1

91. Endorsement or negotiation of checks, claims within section

Presentation of a check for payment was a "claim " under False Claims Act where defendant directly received money deposited by Railroad Retirement Board in deceased's account by allegedly writing checks. U.S. v. Savaree, W.D.N.Y.1997, 19 F.Supp.2d 58. United States 120.1

Actions of president of manufacturer of ordnance parts, which was continuing in operation under former § 701 et seq. of Title 11, in presenting to the United States for collection of funds relating to his contract unauthorized photostatic copy of original letters from banks to which proceeds of government contracts had been assigned and in then forging endorsement of officers of the payee banks and depositing the checks into manufacturer's account at different bank, causing the checks to be presented to and honored by the United States Treasury constituted the presentation of "claims" against the government within the meaning of former § 231 of this title. U. S. v. Silver, E.D.N.Y.1974, 384 F.Supp. 617, affirmed 515 F.2d 505. United States 122

An endorsement or negotiation of a check effected a transfer of the instrument, but was not a demand for money or property, and was not actionable under former § 231 of this title. U. S. v. Fowler, E.D.N.Y.1968, 282 F.Supp. 1. Bills And Notes 195; Bills And Notes 220; United States 122

92. Emergency Feed Program applications, claims within section

False application for assistance under 1955 Emergency Feed Program was "claim" contemplated by former § 231 of this title. Sell v. U. S., C.A.10 (Colo.) 1964, 336 F.2d 467. United States 121

Application of ranching partners to Farmers Home Administration county committee for surplus feed was not "claim" within

former § 231 of this title. U. S. v. Robbins, D.C.Kan.1962, 207 F.Supp. 799. United States 120.1

93. Failure to remit commissions, claims within section

Alleged acts of defendants in submitting false accounts of their gross receipts from operation of dry cleaning and related services at military installations, and in failing to remit the proper portion as commissions from such operations to an Army and Air Force Exchange, did not constitute the making of a "claim" upon or against the government, within meaning of former § 231 of this title. U. S. v. Elliott, N.D.Cal.1962, 205 F.Supp. 581. United States 122

94. Federal housing applications, claims within section

An application for credit insurance under the Federal Housing Administration [now Department of Housing and Urban Development] program did not constitute a "claim" against the government, as that term was used in former § 231 of this title. U.S. v. McNinch, U.S.N.C.1958, 78 S.Ct. 950, 356 U.S. 595, 2 L.Ed.2d 1001. United States 120.1

Phrase "decent, safe, and sanitary," as applied in the context of assessing Section 8 housing conditions, was not too subjective to support a civil claim under the False Claims Act (FCA); phrase has a commonsense core of meaning and is capable, without additional definition, of being understood by a factfinder called upon to evaluate whether a certification of compliance with this standard is objectively true or false. U.S. v. Southland Management Corp., C.A.5 (Miss.) 2002, 288 F.3d 665, rehearing en banc granted 307 F.3d 352, on rehearing 326 F.3d 669. United States 122

The payment by the government under the terms of a Federal Housing Administration [now Department of Housing and Urban Development] guarantee or a mortgage constituted a "claim" within meaning of former § 231 of this title. U. S. v. Hibbs, C.A.3 (Pa.) 1977, 568 F.2d 347. United States 120.1

Lending institution's application to the Federal Housing Administration [now Department of Housing and Urban Development] for credit insurance on a home loan was not a claim against the government within meaning of former § 231 of this title. U.S. v. Ekelman & Associates, Inc., C.A.6 (Mich.) 1976, 532 F.2d 545. United States 120.1

Massachusetts Housing Finance Agency (MHFA), as mortgage lender, submitted claims, for purpose of relator's action under False Claims Act (FCA) alleging that MHFA submitted false claims for payment to Housing and Urban Development (HUD) under mortgage assistance program for owners of low-income housing projects, since MHFA requested money from government through forms submitted to government. U.S. ex rel. K & R Ltd. Partnership v. Massachusetts Housing Finance Agency, D.D.C.2006, 456 F.Supp.2d 46, affirmed 530 F.3d 980, 382 U.S.App.D.C. 67, rehearing en banc denied. United States 120.1

Persons making and using fraudulent Federal Housing Administration [now Department of Housing and Urban Development] credit application or completion certificate proximately caused presentation of claim for payment under guaranty obligation on loan. U. S. v. Globe Remodeling Co., D.C.Vt.1960, 196 F.Supp. 652. United States 120.1

Allegedly false applications for Federal Housing Administration [now Department of Housing and Urban Development] loans were not "claims" against United States, within former § 231 of this title, and United States could not have recovered on account thereof in a civil action, particularly where the loans were repaid. U. S. v. Tieger, D.C.N.J.1954, 138 F.Supp. 709, affirmed 234 F.2d 589, certiorari denied 77 S.Ct. 262, 352 U.S. 941, 1 L.Ed.2d 237. United States 120.1

95. Food stamp coupons, claims within section

In claim under this section, evidence which permitted the inference that check-out cashiers knowingly permitted Food and Nutrition Service agents to purchase ineligible nonfood items with food stamps presented substantial fact issue as to whether

the grocery store violated this section, precluding summary judgment. Grand Union Co. v. U.S., C.A.11 (Ga.) 1983, 696 F.2d 888. Federal Civil Procedure 2483

Evidence established that food store owner knowingly presented a false claim for payment to the Government, in violation of the False Claims Act, by redeeming food stamps which had been illegally accepted in exchange for cash; owner had taken the required Food Stamp Program Quiz, he accepted greater amount of stamps than the cash he gave, and was identified as person who made exchanges and redeemed the stamps. U.S. v. Tran, S.D.Tex.1998, 11 F.Supp.2d 938. United States 121

Presenting for redemption illegally obtained food stamps is a "claim," within meaning of False Claims Act, and violates the Act. U.S. v. Truong, E.D.La.1994, 860 F.Supp. 1137. United States 120.1

Food and Nutrition Service (FNS) established that grocery store owner made at most one false or fraudulent claim for payment on food stamps, damaging FNS in amount of $122.73, representing redemption of coupons for ineligible items, sales tax, and overcharge, and thus, FNS was entitled to recover three times such amount, along with civil penalty of $5,000, under the False Claims Act. Pena v. U.S. Dept. of Agriculture, Food and Nutrition Service, E.D.Ark.1992, 811 F.Supp. 419. United States 122

Allegations that corporation, through actions of its officers and employees, violated the False Claims Act by knowingly accepting, acquiring, possessing and presenting for redemption stolen food stamps and by knowingly making and using false records and statements to obtain the payment of false claims adequately alleged claims under the Act. Blusal Meats, Inc. v. U.S., S.D.N.Y.1986, 638 F.Supp. 824, affirmed 817 F.2d 1007. United States 120.1

Retail grocery store's fraudulent redemption of food stamp coupons constituted a "claim" within meaning of former § 231 et seq. of this title. Grand Union Co. v. U. S., N.D.Ga.1980, 495 F.Supp. 331. United States 120.1

96. Guaranties, claims within section

Without a finding that bank's negligent misrepresentation in certificate of acquisition or construction was sufficient to void government's obligation under contract of guaranty given by Farmers Home Administration in connection with loan to sauerkraut processor, bank could not be considered to have submitted "false claim" within meaning of False Claims Act formerly section 231 et seq. of this title. Brunswick Bank & Trust Co. v. U.S., C.A.Fed.1983, 707 F.2d 1355. United States 120.1

The obtaining of a guaranty of a loan was not the making of a "claim" within meaning of former § 231 of this title. U.S. v. McNinch, C.A.4 (N.C.) 1957, 242 F.2d 359, certiorari granted 78 S.Ct. 16, 355 U.S. 808, 2 L.Ed.2d 28, affirmed in part, reversed in part on other grounds 78 S.Ct. 950, 356 U.S. 595, 2 L.Ed.2d 1001. United States 122

Under former § 231 of this title, "claim" was used in its normal connotation as a demand for money or for some transfer of public property and did not include fraud in inducing United States to make a guarantor's promise, performance of which was conditioned upon event which never occurred. U. S. v. Tieger, C.A.3 (N.J.) 1956, 234 F.2d 589, certiorari denied 77 S.Ct. 262, 352 U.S. 941, 1 L.Ed.2d 237. United States 122

False Claims Act applies to fraudulent applications for government loan guarantees that result in Government's being called upon to disburse funds on those guarantees. U.S. v. Ettrick Wood Products, Inc., W.D.Wis.1988, 774 F.Supp. 544, adopted in part 683 F.Supp. 1262. United States 120.1

Applicant for federal loan guarantee who filed false statements did not seek to get a false claim against the Government paid, that is he did not seek to have holder of mortgage or note make demand on guaranteeing agency; rather, he seeks to get the guarantee, which by itself is not a "claim" under False Claims Act. U.S. v. Hill, N.D.Fla.1987, 676 F.Supp. 1158. United States 120.1

97. Loan applications, claims within section

The payment to a lender out of public funds of a sum to be applied by it on a veteran's loan constituted the making and payment of a claim. U.S. v. De Witt, C.A.5 (Tex.) 1959, 265 F.2d 393, certiorari denied 80 S.Ct. 121, 361 U.S. 866, 4 L.Ed.2d 105. United States 122

Homeowners association did not make false claim by agreeing that loan proceeds would be used to repair hurricane damage, as required for condominium owner's False Claims Act (FCA) claims against homeowners association, board members, management company and management company's operator; there was no evidence that board used loan money to repair roofs that were not damaged by hurricane, and board's decision to deposit money into reserve account did not preclude it from later spending money on hurricane repairs. U.S. ex rel. Crenshaw v. Degayner, M.D.Fla.2008, 622 F.Supp.2d 1258, reconsideration denied 2008 WL 4613084. United States 120.1

Where United States actually made loan by reason of false application, there may have been claim under former § 231 of this title. U. S. v. Cherokee Implement Co., N.D.Iowa 1963, 216 F.Supp. 374. United States 121

98. Offers, claims within section

An offer gave rise to no rights to make a demand of either money or property, nor was it, per se, a demand for either money or property; it was merely a calling upon another to enter into a contract and it could not have been deemed to be a "claim" within the intendment of former § 231 of this title. U. S. v. Farina, D.C.N.J.1957, 153 F.Supp. 819. Contracts 16; United States 120.1

99. Separate claims, claims within section

Psychiatrist submitted separate "claim," for purposes of computing civil penalties under False Claims Act, when he submitted each form listing codes identifying various services provided to single Medicare patient, not when he listed each such code, where form asked medical provider to supply, in addition to codes and other information, total charges for services provided to patient. U.S. v. Krizek, C.A.D.C.1997, 111 F.3d 934, 324 U.S.App.D.C. 175, on remand 7 F.Supp.2d 56. United States 122

Each document attached to applications made to government for funds did not constitute a separate false bill, receipt, voucher, roll, account, claim, certificate, affidavit or deposition within meaning of former § 231 of this title. U. S. v. Woodbury, C.A.9 (Or.) 1966, 359 F.2d 370. United States 120.1

Each separate financial report that state university hospital, which received Medicare funds in connection with its clinical trials for vaccines for malignant melanoma, submitted to the government for Medicare reimbursement that failed to report income from fees for services performed, which the university received from third parties, including patients' private health insurers, could potentially support a claim under the False Claims Act (FCA). Cantrell v. New York University, S.D.N.Y.2004, 326 F.Supp.2d 468. United States 120.1

Each individual false payment demand under a government contract which called for numerous payments constituted "false claim" under former § 231 of this title. Alsco-Harvard Fraud Litigation, D.C.D.C.1981, 523 F.Supp. 790. United States 120.1

Presentation of each social security check by defendant's depositories to the Treasurer of the United States constituted a "claim" within meaning of former § 231 of this title. U. S. v. Fowler, E.D.N.Y.1968, 282 F.Supp. 1. United States 120.1

In action by United States to recover under former § 231 of this title for presentation of fraudulent claims in connection with each of several contracts, wherein it appeared that there was an overall conspiracy affecting each of the contracts in question, incidents of fraud on individual contracts could have been shown by proof of acts with relation to those contracts which resulted in the presentation of separate and fraudulent claims. U. S. v. American Packing Corp., D.C.N.J.1954, 125 F.Supp. 788. United States 120.1

Each of 105 fraudulent vouchers upon which the government paid nearly $1,000,000 to defendants for wire and cable supplied to Army and Navy under three contracts was a separate claim. U.S. v. Collyer Insulated Wire Co., D.C.R.I.1950, 94 F.Supp. 493. United States 122

Severance of claim against individual physician was not warranted, in qui tam action against various physicians, including individual physician, alleging that physicians conspired to defraud the United States by getting false or fraudulent Medicare claims paid in violation of the False Claims Act; individual physician was alleged to have participated in conspiracy along with other physicians, which necessarily involved common questions of law and fact. U.S. ex rel. Finks v. Huda, S.D.Ill.2001, 205 F.R.D. 225. Federal Civil Procedure 81

99a. Referrals or kickbacks, claims within section

Allegations that owners of a medical services company routinely provided medical services for which they submitted claims for reimbursement to Medicare, that they violated the Anti-Kickback Statute by paying kickbacks to pharmacists and others which were camouflaged as rental payments or commissions, and that owners certified that they complied with the Anti-Kickback Statute, which was a condition of receiving reimbursement from the Medicare program, stated claim against owners under the False Claims Act. McNutt ex rel. U.S. v. Haleyville Medical Supplies, Inc., C.A.11 (Ala.) 2005, 423 F.3d 1256. United States 122

United States stated violation of Anti-Kickback Statute against drug manufacturer on allegations that manufacturer directly offered kickbacks to health care providers with improper intent to induce purchase of drugs. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2007, 491 F.Supp.2d 12. United States 75(6)

Relator failed to show that hospital allocated or paid portion of purchase price of physician practices for non-compete clause or goodwill in violation of Antikickback Statute (AKS) or Stark Act, in lawsuit under False Claims Act (FCA), since hospital paid fair market value in purchasing physician practices, and no part of purchase price was payment for anticipated referrals; there was nothing illegal per se about hospital acquiring physician's practice, existence of non-compete agreement, or entering into subsequent employment contract with that hospital. U.S. ex rel Perales v. St. Margaret's Hosp., C.D.Ill.2003, 243 F.Supp.2d 843. United States 122

100. Veterans' hospitalization applications, claims within section

Application for treatment at Veterans' Administration Hospital was not “claim” within meaning of former § 231 of this title. U. S. v. Schmidt, E.D.Wis.1962, 204 F.Supp. 540. United States 120.1

False claim by veteran for the purpose of obtaining free hospital services from the government knowing that he was not entitled to such free services constituted a “claim” against the government within former § 231 of this title. U.S. v. Alperstein, S.D.Fla.1960, 183 F.Supp. 548, affirmed 291 F.2d 455. United States 120.1

101. Miscellaneous claims within section

Claim by contractor hired to build winches for Department of Defense that gear subcontractor's breach of contractual quality assurance requirements for gears, through change in gear manufacturing process without notice after approval of initial batch

of gears, had created a risk of serious injury to persons connected with Department who used winches, and that government would have rejected gears produced had it known of change, alleged an "injury" to government sufficient to state claim under False Claims Act (FCA) in qui tam suit by contractor. Varljen v. Cleveland Gear Co., Inc., C.A.6 (Ohio) 2001, 250 F.3d 426. United States 122

Allegation that contractor knowingly submitted false progress reports stating that software delivered under design contract entered with Pension and Welfare Benefits Administration (PWBA) was complete, when in fact it was not, stated claim pursuant to False Claims Act's civil penalty provisions, though contractor did not submit bill for software; goal of receiving payment was implicit in submission of goods, and accompanying progress reports had purpose of getting claim approved. U.S. ex rel. Schwedt v. Planning Research Corp., C.A.D.C.1995, 59 F.3d 196, 313 U.S.App.D.C. 200, certiorari denied 116 S.Ct. 754, 516 U.S. 1068, 133 L.Ed.2d 701, on remand 1996 WL 554504. United States 122

Submissions of financial status reports (FSRs) did not constitute claims for payment under False Claims Act (FCA), for purposes of relator's action against researchers and institutions, alleging misrepresentation of DNA research findings when applying for National Institute of Health (NIH) grants; FSRs were budget reconciliation forms submitted to government sixty to ninety days after end of the preceding report period, and were accountings of how grantees spent funds received during report period. U.S. ex rel. Bauchwitz v. Holloman, E.D.Pa.2009, 671 F.Supp.2d 674. United States 120.1

Contractor providing security for Baghdad airport, pursuant to contract with Coalition Provisional Authority (CPA), did not violate False Claims Act (FCA) by promising to provide 138 security workers; request for proposals (RFP) did not call for specific number of workers, none was provided in proposal, reference to 138 security employees occurred when that number was selected for a contractor explanation of the pricing of its proposal, contractor initially provided over 138 security employees, precluding necessary finding that false statement was made with scienter, and staffing statement was not material to general airport contract. U.S. ex rel. DRC, Inc. v. Custer Battles, LLC, E.D.Va.2007, 472 F.Supp.2d 787, affirmed 562 F.3d 295. United States 120.1

Development Fund for Iraq (DFI) was not property of United States, and thus contractor's demand for payment from those funds did not constitute "claim" within meaning of False Claims Act (FCA), even though corpus of account was held at Federal Reserve Bank of New York, and United States provided portion of money held by DFI, where DFI was established through coordinated effort of United Nations and Coalition Provisional Authority (CPA) in Iraq to fund relief and reconstruction efforts in Iraq, DFI held funds from United Nations "Oil for Food" program, revenues from export sales, international donations, and repatriated Iraqi assets, DFI was recorded on books of Central Bank of Iraq, and CPA was required to consult with Iraqi interim administration before approving expenditures from DFI funds. U.S. ex rel. DRC, Inc. v. Custer Battles, LLC., E.D.Va.2005, 376 F.Supp.2d 617, reversed 562 F.3d 295. United States 120.1

Contractor's post-contract requests for equitable adjustment (REA) did not constitute false claims; REAs did not contain any misrepresentations, nor did contractor try to mislead the government. U.S. ex rel. Bettis v. Odebrecht Contractors of California, Inc., D.D.C.2004, 297 F.Supp.2d 272, affirmed 393 F.3d 1321, 364 U.S.App.D.C. 250. United States 120.1

Relator failed to show that amount of physician's compensation from hospital to relocate to area was determined in manner that took volume or value of referrals into account, in lawsuit under False Claims Act (FCA) alleging violation of Antikickback Statute (AKS) and Stark Act; even though physician technically maintained independent contractor status, compensation agreement essentially functioned like employment agreement and compensation agreement provided necessary exceptions and fixed level of compensation for term of agreement. U.S. ex rel Perales v. St. Margaret's Hosp., C.D.Ill.2003, 243 F.Supp.2d 843. United States 122

Alleged presentation for payment of proposals for purchase of technology by manufacturer of sensors and analytical technologies pertaining to radioactive materials, under defense department's "Russian Program," even though such technology was available in the United States, supported claim for liability under the False Claims Act. U.S. ex rel. Kozhukh v. Constellation Technology Corp., M.D.Fla.1999, 64 F.Supp.2d 1239. United States 120.1

Government contractor's failure to submit payroll reports, in and of itself, causes no economic loss to government and is not "claim" within meaning of False Claims Act (FCA). U.S. ex rel. Windsor v. DynCorp, Inc., E.D.Va.1995, 895 F.Supp. 844. United States 120.1

Complaint on behalf of United States alleging that government contracts expressly required compliance with environmental regulations and that government contractor knowingly failed to comply with regulations and falsely certified that it had complied, in order to induce payments under contracts, stated cause of action under the False Claims Act. U.S. ex rel. Fallon v. Accudyne Corp., W.D.Wis.1995, 880 F.Supp. 636. United States 122

Claims made against city board of education were "claims" against United States within meaning of False Claims Act, where city and its board of education had applied for funds from the Economic Development Administration, funds were granted and letters of credit were provided to board of education construction account, false requests for funds were paid by checks drawn on that account, and Government control of money remained through requirement that board of education comply with EDA regulations and specifications. U.S. v. Board of Educ. of City of Union City, D.N.J.1988, 697 F.Supp. 167. United States 121

Mobile home owner's action to secure payment from National Flood Insurance Program was a "claim" within the meaning of the False Claims Act, 31 U.S.C.A. § 3729. Thevenot v. National Flood Ins. Program, W.D.La.1985, 620 F.Supp. 391. United States 121

Sworn verification submitted by the Postmaster, who was alleged coconspirator in Post Office robbery, of financial condition of his Post Office after robbery did not constitute a "claim" within former § 231 of this title, despite contention that purpose of submitting such form was to relieve Postmaster of financial liability, since submission did not have purpose or effect of causing United States government to pay out money, but, rather, government was attempting to use allowance of damages and forfeiture under former § 231 of this title to recover from Postmaster twice the amount of government property lost from robbery plus $2,000 forfeiture amount. U. S. v. Lawson, D.C.N.J.1981, 522 F.Supp. 746. United States 120.1

Postmaster's approvals of private claims against United States government for private registry items lost as result of Post Office robbery was not a "claim" under former § 231 of this title which would have entitled government to damages recovery against Postmaster, who was allegedly coconspirator in the robbery, where, although Postmaster approved claims and passed them along, he acted only as a conduit for the claims which had already been presented to government for payment and at no time in connection with submission of the claims did Postmaster make any false, fictitious, or fraudulent representations of any material facts. U. S. v. Lawson, D.C.N.J.1981, 522 F.Supp. 746. United States 120.1

Defendants made no "claim" within former § 231 of this title when they applied for and sent newspapers by second-class postage. U. S. v. Marple Community Record, Inc., E.D.Pa.1971, 335 F.Supp. 95. United States 120.1

Where, after Veterans' Administration's approval of automobile purchase order contract for veteran, factory retail price was increased with approval of Office of Price Administration, and automobile seller's salesman delivered automobile without radio and seat covers ordered but added other items so that, for original sales price to be paid by government, veteran was getting his money's worth, but Administration was not notified of price change nor was its approval of the adjustment obtained, seller did not make a "false claim" for price of automobile under former § 231 of this title. U.S. v. Beaty Chevrolet Co., E.D.Tenn.1953, 116 F.Supp. 810. United States 120.1

III. FRAUDS WITHIN SECTION

<Subdivision Index>

131. Frauds within section generally

Former § 231 of this title was not designed to reach every kind of fraud practiced on the government. U.S. v. McNinch, U.S.N.C.1958, 78 S.Ct. 950, 356 U.S. 595, 2 L.Ed.2d 1001. See, also, Hagney v. U.S., 1978, 570 F.2d 924, 215 Ct.Cl. 412; U.S. v. Howell, C.A.Cal.1963, 318 F.2d 162; U.S. v. Silver, D.C.N.Y.1974, 384 F.Supp. 617, affirmed 515 F.2d 505; U.S. v. Marple Community Record, Inc., D.C.Pa.1971, 335 F.Supp. 95; Woodbury v. U.S., D.C.Or.1964, 232 F.Supp. 49, affirmed in part, reversed in part on other grounds 359 F.2d 370. United States 120.1

Former § 231 of this title interdicted material misrepresentations made to qualify for government privileges or services. U. S. ex rel. Weinberger v. Equifax, Inc., C.A.5 (Fla.) 1977, 557 F.2d 456, rehearing denied 561 F.2d 831, certiorari denied 98 S.Ct. 768, 434 U.S. 1035, 54 L.Ed.2d 782, rehearing denied 98 S.Ct. 1477, 435 U.S. 918, 55 L.Ed.2d 511. United States 120.1

Former § 231 of this title did not deal with or denounce fraud in general terms and was not read as having done so. U.S. v. Cochran, C.A.5 (Tex.) 1956, 235 F.2d 131, certiorari denied 77 S.Ct. 262, 352 U.S. 941, 1 L.Ed.2d 237. United States 120.1

It was not every attempted fraud against the United States that fell within purview of former § 231 of this title, but only those which came clearly within its terms. U.S. v. Cochran, C.A.5 (Tex.) 1956, 235 F.2d 131, certiorari denied 77 S.Ct. 262, 352 U.S. 941, 1 L.Ed.2d 237. United States 120.1

Former § 231 of this title was intended to reach all types of fraud, without qualification, that result in financial loss to the government. U. S. v. Fowler, E.D.N.Y.1968, 282 F.Supp. 1. United States 120.1

132. Common law, frauds within section

Remedy of recovery of money under common law doctrine of payment by mistake was available to United States and was independent of former § 231 of this title which related to filing of false claims. U. S. v. Mead, C.A.9 (Cal.) 1970, 426 F.2d 118. United States 69(6)

Former § 231 of this title was not in derogation of common law but merely provided another remedy which government could have invoked to protect itself from fraud. U. S. v. Mead, C.A.9 (Cal.) 1970, 426 F.2d 118. United States 120.1

Former § 231 of this title did not abrogate the right of the government to pursue its common law remedy for recovery of funds obtained by fraud of livestock slaughterers in obtaining subsidy payments. U.S. v. Borin, C.A.5 (Tex.) 1954, 209 F.2d 145, certiorari denied 75 S.Ct. 33, 348 U.S. 821, 99 L.Ed. 647. Fraud 31

The remedy provided by former § 231 of this title did not preclude United States as plaintiff from maintaining common law action to recover in tort for deceit. United States v. Silliman, C.C.A.3 (N.J.) 1948, 167 F.2d 607, certiorari denied 69 S.Ct. 48, 335 U.S. 825, 93 L.Ed. 379. United States 126

Requirements of common law fraud are: (1) there must be a material representation by defendant; (2) representation must be false; (3) it must be made with knowledge of its falsity; (4) it must be made with intention that plaintiff act on it, and (5) plaintiff must have acted on it and suffered an injury for which he sues. U.S. v. Cripps, E.D.Mich.1978, 460 F.Supp. 969. Fraud 3

133. Accounts, frauds within section

An account including items for services not actually rendered or moneys not actually paid is a false account. U.S. v. Russell, W.D.Tex.1884, 19 F. 591. United States 121

134. Appraisals, frauds within section

Where the United States made independent investigation prior to paying any money under lease of property, the United States did not rely on appraisals submitted by lessors and hence could not have recovered under former § 231 of this title on theory that lessors defrauded the United States in misrepresenting the value of property leased. U. S. v. Goldberg, E.D.Pa.1958, 158 F.Supp. 544. Fraud 21

135. Bankruptcy claims, frauds within section

Submission of inflated legal bills for approval by the United States Bankruptcy Court does not violate the False Claims Act,

at least absent assertion of a reverse false claim cause of action or allegation that the government was a creditor in any of the bankrupt estates. Hutchins v. Wilentz, Goldman & Spitzer, C.A.3 (N.J.) 2001, 253 F.3d 176, certiorari denied 122 S.Ct. 2360, 536 U.S. 906, 153 L.Ed.2d 182. United States 120.1

136. Bribery, frauds within section

Kickbacks can give rise to cause of action under False Claims Act (FCA). U.S. ex rel. Barrett v. Columbia/HCA Healthcare Corp., D.D.C.2003, 251 F.Supp.2d 28. United States 120.1

Government could not recover under the False Claims Act from person who bribed government official to influence the official's decisions regarding loan approvals. U.S. v. Shaw, S.D.Miss.1989, 725 F.Supp. 896. United States 120.1

137. Bid rigging, frauds within section

Bid-rigging scheme, in which contractors who are suppose to compete against each other to submit lowest bid, conspire to artificially fix the low bid and the bidder who will be awarded the contract, is a fraudulent course of conduct which can give rise to False Claims Act violations; claims for payment submitted under the rigged contract constitute false claims within the meaning of the Act. U.S. v. Incorporated Village of Island Park, E.D.N.Y.1995, 888 F.Supp. 419. United States 120.1

138. Certificates or certifications, frauds within section

Government contractors' payment requests' alleged certification that the payments requested were only for work performed in accordance with the specifications, terms, and conditions of the contract satisfied false statement requirement for express false certification claim under the False Claims Act (FCA). U.S. ex rel. Lemmon v. Envirocare of Utah, Inc., C.A.10 (Utah) 2010, 614 F.3d 1163. United States 120.1

Evidence was sufficient in implied certification case to have allowed jury to reasonably believe that federal contractor had knowingly submitted false claims for payment and made false statements of compliance with organizational conflict of interest requirements set forth in its contracts, in violation of False Claims Act (FCA); although evidence could have supported finding that any false certifications resulted from reasonable mistakes, evidence also supported contrary view, including conclusion that employees of contractor knew that contractor or its employees had relationships that placed it in conflicting role that might have biased its judgment. U.S. v. Science Applications Intern. Corp., C.A.D.C.2010, 626 F.3d 1257. United States 122

Pursuant to statute expressly stating that contractors had to submit required reports under Vietnam Era Veterans Readjustment Assistance Act (VEVRAA) to be paid, contractors requesting payment under covered contract implicitly certified compliance with reporting requirement, and therefore relator in qui tam action stated claim under False Claims Act (FCA) by alleging that government contractor submitted bids and won government contracts without having filed requisite reports regarding its employment of veterans. U.S. ex rel. Kirk v. Schindler Elevator Corp., C.A.2 (N.Y.) 2010, 601 F.3d 94, certiorari granted 131 S.Ct. 63, 177 L.Ed.2d 1152. United States 120.1

Falsely certifying compliance with the Stark or Anti-Kickback Acts in connection with a claim submitted to a federally funded insurance program is actionable under the False Claims Act (FCA). U.S. ex rel. Kosenske v. Carlisle HMA, Inc., C.A.3 (Pa.) 2009, 554 F.3d 88, on remand 2010 WL 1390661. United States 120.1

It was not merely the making of corrections to export certificates issued by United States Department of Agriculture (USDA) by exporter's employees that could be actionable under reverse false claims provision of False Claims Act, but rather the making of those corrections over signature and certification of USDA official who had not actually seen or approved those changes, and therefore exporter's liability under Act was not precluded on grounds that no false statements to government

were made. U.S. ex rel. Bahrani v. Conagra, Inc., C.A.10 (Colo.) 2006, 465 F.3d 1189, certiorari denied 128 S.Ct. 388, 552 U.S. 950, 169 L.Ed.2d 264, on remand 2009 WL 751169. United States 120.1

Section 8 housing owners' alleged false certifications in housing assistance payment (HAP) vouchers, submitted to United States Department of Housing and Urban Development (HUD), that their property was in a "decent, safe, and sanitary" condition were "material," as required to establish civil claim under the False Claims Act (FCA); HUD conditioned HAP payments upon certification of compliance with the "decent, safe, and sanitary" standard established in the HAP contract. U.S. v. Southland Management Corp., C.A.5 (Miss.) 2002, 288 F.3d 665, rehearing en banc granted 307 F.3d 352, on rehearing 326 F.3d 669. United States 120.1

Plaintiff's observations that leak detection system installed for local agency in connection with fuel storage tanks funded by the federal government was malfunctioning and that the tanks were operational despite not being certified fell far short of setting forth a prima facie case under the False Claims Act, as those observations did not show that the agency made a "false or fraudulent" statement to the federal government at the time of funding. Pfingston v. Ronan Engineering Co., C.A.9 (Cal.) 2002, 284 F.3d 999. United States 122

Physicians' Medicare forms, containing certification that services shown on form were medically necessary, did not contain express false certification upon which False Claims Act (FCA) action could be based, even if physicians failed to properly calibrate spirometers such that results of pulmonary function tests were unreliable, inasmuch as plaintiff challenged only quality of tests provided, not decision to order tests for patients. Mikes v. Straus, C.A.2 (N.Y.) 2001, 274 F.3d 687. United States 120.1

Allegation that government contractor submitted, to Department of Energy (DOE), subcontractor's allegedly false certification that there were no conflicts of interest between contractor and subcontractor, in seeking government approval of subcontract, supported claim under False Claims Act; where certification was prerequisite to approval of subcontract, each claim for payment would be submitted under contract which was fraudulently approved. Harrison v. Westinghouse Savannah River Co., C.A.4 (S.C.) 1999, 176 F.3d 776. United States 122

Government contractor that operated inventory tracking system at Army facility, which allegedly deleted certain inventory items from its computer database without authorization, did not violate False Claims Act section making it unlawful for any person who has possession, custody, or control of property or money used, or to be used, by government and, intending to defraud government or willfully to conceal property, delivers, or causes to be delivered, less property than amount for which person receives certificate or receipt, absent evidence that contractor received any type of certificate or receipt from government relating to return of property. U.S. ex rel. Aakhus v. Dyncorp, Inc., C.A.10 (N.M.) 1998, 136 F.3d 676. United States 122

Physician stated claim under False Claims Act (FCA) against health care provider and affiliated entities by alleging that they were required to certify in their annual cost reports that identified services were provided in compliance with laws and regulations regarding provision of healthcare services, as condition of their participation in Medicare program, and that they falsely certified as much when they submitted Medicare claims for services rendered in violation of Medicare anti-kickback statute and self-referral statutes, or Stark laws. U.S. ex rel. Thompson v. Columbia/HCA Healthcare Corp., C.A.5 (Tex.) 1997, 125 F.3d 899, rehearing denied, on remand 20 F.Supp.2d 1017. United States 122

School district's certification containing general assurances that district would generally comply with applicable federal law relating to special education programs did not support claim under False Claims Act (FCA), even if district failed to comply with federal regulations, as certification was not prerequisite to receiving federal funds under Individuals with Disabilities Education Act (IDEA), and evidence did not show that promise was false when made, in view of district's prior efforts to cure noncompliance with federal law. U.S. ex rel. Hopper v. Anton, C.A.9 (Cal.) 1996, 91 F.3d 1261, certiorari denied 117 S.Ct. 958, 519 U.S. 1115, 136 L.Ed.2d 844. United States 120.1

Medicare claims which were filed for services actually rendered by nursing home that was not a certified provider of services under the Health Insurance for the Aged Act, § 1395 et seq. of Title 42, and which contained certification that services had been rendered by physician were within purview of former § 231 of this title despite contentions that services had been performed by qualified people, that patients receiving services were entitled to them under medicare and that physician's certifications were not material to the claims. Peterson v. Weinberger, C.A.5 (Tex.) 1975, 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96 S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. United States 120.1

Although relator in qui tam action against medical device manufacturer for violations of False Claims Act (FCA) alleged that manufacturer paid unlawful remuneration to hospitals and physicians for their use of surgical-ablation device to treat atrial fibrillation, that physicians and hospitals accepted the remuneration, and that physicians and hospitals made reimbursement claims to Medicare, complaint failed to allege that manufacturer actually caused physicians or hospitals to make false certifications of compliance under anti-kickback statute, as required to state a claim under certification theory of FCA liability. U.S. ex rel. Bennett v. Medtronic, Inc., S.D.Tex.2010, 2010 WL 3909447. United States 122

Certifications and opinion letters prepared by accounting and consulting firm in connection with its audits of institutional cost reports (ICR) submitted by medical center in connection with Medicaid cost reports for its teaching hospital's campus were not false or fraudulent, and thus did not violate False Claims Act (FCA), absent allegation that firm did not perform audits it claimed to have performed, that it did not perform them in compliance with professional standards, or that audit did not present firm's professional opinion. U.S. ex rel. Pervez v. Beth Israel Medical Center, S.D.N.Y.2010, 736 F.Supp.2d 804. United States 120.1

Qui tam relator satisfied heightened pleading requirements for fraud elements of False Claims Act action, under presentment theory, by alleging that information technology services provider, pursuant to "solutions for enterprise-wide procurement" (SEWP) contract, knowingly falsely certified and listed 140 products as originating in United States, in compliance with Trade Agreements Act (TAA), and that government purchased products based on these misrepresentations, and by providing specific time frame for provider's false claims for payment from government and enough information for provider to identify which of its employees were responsible for misrepresentations. U.S. ex rel. Folliard v. CDW Technology Services, Inc., D.D.C.2010, 722 F.Supp.2d 20. Federal Civil Procedure 636

Evidence that lender's employees forged signatures on loan documents submitted to Department of Housing and Urban Development (HUD) and that lender then falsely certified to HUD that all loan documents were properly executed raised a genuine dispute of fact regarding whether lender's certifications, which lender claimed were true to the best of its knowledge and belief, were knowingly false, precluding summary judgment in favor of lender on False Claims Act (FCA) claims. U.S. ex rel. Fago v. M & T Mortg. Corp., D.D.C.2007, 518 F.Supp.2d 108. Federal Civil Procedure 2498.4

Medical providers did not file facially false claims implying that physician performed service provided by a nurse practitioner, for purpose of False Claims Act (FCA) claim, by reporting physician's name on Medicaid claims forms for in-hospital hematology-oncology services on line that asked for the identity of physician who performed surgery or to whom patient was referred for follow-up, if any, where procedures were not surgical in nature and were not physician-only procedures. U.S. ex rel. Woodruff v. Hawaii Pacific Health, D.Hawai'i 2008, 560 F.Supp.2d 988, affirmed 2010 WL 5072191. United States 120.1

Failure to show that contractor, setting reimbursement rates to be paid by government to schools implementing School Health and Related Services (SHARS) program, was required to certify compliance with particular regulations, precluded claim that contractor established false rates, leading to filing of claims violating False Claims Act (FCA). U.S. ex rel. Gudur v. Deloitte Consulting LLP, S.D.Tex.2007, 512 F.Supp.2d 920, affirmed 2008 WL 3244000. United States 122

Genuine issue of material fact existed as to whether government contractors received a certificate or receipt and delivered less money or property than the amount for which they received the certificate or receipt, precluding summary judgment for

contractors in qui tam action brought by an employee, alleging claim under the False Claims Act (FCA) for false claims holdbacks. U.S. ex rel. Vargas v. Lackmann Food Service, Inc., M.D.Fla.2007, 510 F.Supp.2d 957. Federal Civil Procedure 2498.4

Genuine issues of material fact existed as to whether government contractor certified that subcontracts between itself and other subsidiaries of its corporate parent would be "at cost," and whether contractor's accounting practices violated the governing federal regulations and cost accounting standards, precluding summary judgment in favor of relator on claim that contractor violated False Claims Act (FCA) by not complying with the language in its certified disclosure statement. U.S. ex rel. Oliver v. The Parsons Corp., C.D.Cal.2006, 498 F.Supp.2d 1260. Federal Civil Procedure 2498.4

Relator adequately pled the elements necessary to state a claims under False Claims Act (FCA) against successful bidders awarded wireless telecommunications licenses in Federal Communication Commission (FCC) auctions: relator averred that bidders and their owners (1) made or caused others to make statements in their applications claiming eligibility for federal bidding credits, (2) that such statements were false or fraudulent in contravention of the FCC's certification and disclosure requirements, (3) knew of their falsity, and (4) sought payment from the federal treasury through bidding credits. U.S. ex rel. Taylor v. Gabelli, S.D.N.Y.2004, 345 F.Supp.2d 313, stay denied 345 F.Supp.2d 340. United States 122

Nursing home owner did not violate False Claims Act (FCA) under false certification theory by allegedly falsifying patient records to reflect that patients were receiving routine care which had not been provided, and then submitting Medicare reimbursement claims to the government based on the altered records; qui tam plaintiff introduced no evidence to demonstrate that nursing home certified compliance with the applicable Medicare regulations as prerequisite to receiving federal payment. U.S. ex rel. Swan v. Covenant Care, Inc., E.D.Cal.2002, 279 F.Supp.2d 1212. United States 120.1

Government adequately stated False Claims Act (FCA) claim against general contractor and subcontractors based on allegations that they falsely certified in their Request for Equitable Adjustment (REA) that Government was liable for costs related to differing site conditions and that Government had superior knowledge about those site conditions. U.S. ex rel. Wilkins v. North American Const. Corp., S.D.Tex.2001, 173 F.Supp.2d 601. United States 122

In light of Department of Housing and Urban Development's (HUD) knowledge of the condition of the property, coupled with the proof of Section 8 housing owners' contemporaneous awareness of HUD's knowledge as a result of the communications between HUD and owners on the subject, there could be no reasonable finding that owners acted "knowingly," for purposes of civil False Claims Act (FCA) claim, in submitting false certification in housing assistance payment (HAP) vouchers that the property was in a "decent, safe, and sanitary" condition. U.S. v. Southland Management Corp., Inc., S.D.Miss.2000, 95 F.Supp.2d 629, reversed 288 F.3d 665, rehearing en banc granted 307 F.3d 352, on rehearing 326 F.3d 669. United States 120.1

City did not defraud government, in violation of False Claims Act, by false certification in request for release of community development block grant (CDBG) funds for sewage lagoon that city complied with National Environmental Policy Act (NEPA) and applicable regulations, when in fact city had not conducted required archaeological survey; survey was not required in every case, and city complied with NEPA and regulations by considering need for survey and determining survey was unnecessary in present case. Castenson v. City of Harcourt, N.D.Iowa 2000, 86 F.Supp.2d 866. United States 120.1

Former employee failed to show that physicians, in submitting Medicare claims seeking reimbursement for spirometry tests, acted with scienter required for liability under False Claims Act (FCA) when she alleged that she had informed physicians that spirometers used to perform tests were not being properly calibrated and that tests were being performed by inadequately trained personnel; allegations did not show actual knowledge that claims submitted were untrue, nor demonstrate that physicians did not investigate, or remained intentionally ignorant about, their entitlement to reimbursement. U.S. ex rel. Mikes v. Straus, S.D.N.Y.1999, 84 F.Supp.2d 427, reconsideration denied 78 F.Supp.2d 223. United States 120.1

Certifications on Housing Assistance Payment (HAP) vouchers, that apartment units subsidized by the United States Depart-

ment of Housing and Urban Development (HUD) were in a "decent, safe, and sanitary" condition, were not substantively "material" to the government's decision to make HAP payments and, thus, owner and manager of housing project did not violate the False Claims Act (FCA) by submitting false certifications. U.S. v. Intervest Corp., S.D.Miss.1999, 67 F.Supp.2d 637. United States 120.1

Where real estate salesman caused to be submitted to Federal Housing Administration [now Department of Housing and Urban Development] false certifications as to condition of properties to induce Administration to insure mortgages on properties and mortgagors subsequently defaulted, requiring United States to honor claims of mortgagee, "false claim," within purview of former § 231 of this title, was mortgagee's claim for reimbursement. U. S. v. Hibbs, E.D.Pa.1976, 420 F.Supp. 1365, vacated 568 F.2d 347. United States 120.1

Office manager of County Agricultural Stabilization and Conservation Committee, who used certain forms by which he certified over his signature that each voucher for lawful expenses of office was correct although he knew the certificates to be false was liable under former § 231 of this title for forfeiture of $2,000. U. S. v. Tate, E.D.Ky.1963, 218 F.Supp. 395. United States 122

Where certificate, which was part of invoice for automobile sold veteran, contained false statement in that radio and seat covers listed in invoice were not delivered because of increase in factory price of automobile, as authorized by former Office of Price Administration, presentation of invoice containing such certificate did not render automobile seller liable under former § 231 of this title, even in absence or showing that certificate was made with intent to defraud government. U.S. v. Beaty Chevrolet Co., E.D.Tenn.1953, 116 F.Supp. 810. United States 120.1

Contractor's progress payment application for performance and payment bonds and certifications on contracts for construction of government facilities were used by contractor to get fraudulent claims paid by government, and thus violated False Claims Act; contractor knowingly sought reimbursement of bond "costs" that included undisclosed rebates to its parent company. Morse Diesel Intern., Inc. v. U.S., Fed.Cl.2007, 74 Fed.Cl. 601, reconsideration granted in part 2007 WL 5177405. United States 120.1

Government did not prove by a preponderance of the evidence that contractor made a false statement when he indicated on fire suppression contracts with the Forest Service that he was furnishing the services of a particular type of commercial helicopter, precluding fraud counterclaims by the government under the Special Plea in Fraud statute, the False Claims Act, and the antifraud provision of the Contract Disputes Act. Crane Helicopter Ser., Inc. v. U.S., Fed.Cl.1999, 45 Fed.Cl. 410. United States 122

Independent pharmacy benefit manager, which provided mail order prescriptions to participants in the Department of Defense's TRICARE health program, did not falsely certify express compliance with Code of Federal Regulations provision requiring all prescriptions for controlled substances to be dated and signed and bear registration number of medical practitioner, in violation of False Claims Act (FCA), absent identification of any claim submitted by manager in which it represented falsely to government that it complied with regulation affecting its eligibility for payment under program. U.S. ex rel. Lobel v. Express Scripts, Inc., C.A.3 (Pa.) 2009, 351 Fed.Appx. 778, 2009 WL 3748805, Unreported. United States 120.1

139. Commodity Credit Corporation, claims upon or against, frauds within section

Where Commodity Credit Corporation arranged to have tobacco price support program carried out in the field by producer associations authorized by the Corporation to make advances to eligible producers, directly or through auction warehouses, of the tobacco support prices, for which the Corporation would make reimbursement, only funds at risk were "public moneys", and, therefore, tobacco growers' fraudulently induced claim to support price upon wrongful sale of tobacco under one grower's "within quota" card rather than under other's excess card came within reach of former § 231 of this title. U.S. v. Brown, C.A.4 (N.C.) 1960, 274 F.2d 107. United States 121

140. Competency or qualifications of applicants, frauds within section

City did not fraudulently represent to federal government, in connection with receipt of subsidy for public bus transportation, that it was in compliance with federal statute and regulations, at time it was launching pilot program of utilizing its general bus system to accommodate school children, which it could do so long as it did not violate statute prohibiting furnishing of school bus service on exclusive basis in competition with private bus companies; at that time all statements regarding public bus services for students were predictions, which could not be fraudulent unless made with present intent not to fulfill them, which was not established. U.S. ex rel. Lamers v. City of Green Bay, C.A.7 (Wis.) 1999, 168 F.3d 1013. United States 82(2)

Credit reporting company employed by government to provide information on prospective government employees and which did not offer quasi-military armed forces for hire was not an organization "similar" to organization referred to in § 3108 of Title 5, and credit reporting company did not violate former § 231 of this title on theory it misrepresented its qualifications for federal employment. U. S. ex rel. Weinberger v. Equifax, Inc., C.A.5 (Fla.) 1977, 557 F.2d 456, rehearing denied 561 F.2d 831, certiorari denied 98 S.Ct. 768, 434 U.S. 1035, 54 L.Ed.2d 782, rehearing denied 98 S.Ct. 1477, 435 U.S. 918, 55 L.Ed.2d 511. United States 36; United States 120.1

Mailing statements submitted by for-profit travel agency were false, as required for reverse false claim liability under False Claims Act (FCA), where agency indicated on statements that mailings were eligible for non-profit postal rate as mailings of non-profit organizations, when in fact they were cooperative mailings with travel agency. U.S. v. Raymond & Whitcomb Co., S.D.N.Y.1999, 53 F.Supp.2d 436. United States 120.1

Small Business Administration loan applicants were liable for violation of False Claims Act where their knowingly false representations regarding capitalization resulted in granting of loan which would not otherwise had been made, and loss to Government when corporation became insolvent. U.S. v. Entin, S.D.Fla.1990, 750 F.Supp. 512. United States 122

Where there were material misrepresentations which went directly to competency and qualification of an applicant to perform government work, and applicant would not have been hired or his employment continued but for such misrepresentation, applicant's claims for salary were false and fraudulent, within former § 231 of this title. U.S. v. Johnston, W.D.Okla.1956, 138 F.Supp. 525. United States 121

141. Conspiracy to defraud, frauds within section

Provision of False Claims Act, which makes liable any person who "conspires to defraud the government by getting a false or fraudulent claim allowed or paid," requires that it be established that conspirators agreed that the false record or statement would have a material effect on the Government's decision to pay the false or fraudulent claim, but it is not necessary to show that the conspirators intended the false record or statement to be presented directly to the Government. Allison Engine Co., Inc. v. U.S. ex rel. Sanders, U.S.2008, 128 S.Ct. 2123, 553 U.S. 662, 170 L.Ed.2d 1030. Conspiracy 9

Where contracts for electrical work on Public Works Administration projects were made with local governmental units rather than United States, but substantial portion of contractors' pay came from United States, contractors' conduct in conspiring to rig bidding on such projects was within former § 231 of this title. U. S. ex rel. Marcus v. Hess, U.S.Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163. United States 121; United States 122

Evidence was sufficient to support findings of an overarching conspiracy with a common purpose of limiting competition in bidding on projects in Egypt funded by United States Agency for International Development (USAID), that contractor willfully joined that conspiracy, and that contractor also committed substantive False Claims Act (FCA) violations; evidence showed that each defendant's actions facilitate the endeavors of other alleged co-conspirators or facilitated the venture as a whole, and the main conspirators worked with all the participants on multiple contracts. U.S. ex rel. Miller v. Bill Harbert

Intern. Const., Inc., C.A.D.C.2010, 608 F.3d 871, 391 U.S.App.D.C. 165, petition for certiorari filed 2010 WL 5490637. Conspiracy 47(6)

Unsuccessful bidder for subcontract on pond dredging project for naval surface warfare center failed to show existence of conspiratorial agreement between center's general contractor and civilian contracting specialist to withhold bid of unsuccessful bidder and award subcontract to higher bidder, in violation of False Claims Act (FCA), even if contractor's site manager failed to correct specialist's misrepresentation about unsuccessful bidder's proposal during meeting with center officials; manager's alleged silence in face of misstatement did not support inference of agreement, and only other evidence of agreement, that contractor followed specialist's instructions by selecting higher bidder and later submitting its proposal using excavation line-items despite higher bidder's performance by dredging, did not tend to show sharing of conspiratorial objective. U.S. ex rel. Durcholz v. FKW Inc., C.A.7 (Ind.) 1999, 189 F.3d 542. Conspiracy 19

Where there was no showing of an agreement or conspiracy on part of logger and his crews to deliberately cut and remove unmarked trees from sale area of national forest, where United States did not establish that there was a scheme or plan or an effort to defraud the government by cutting and removing unmarked trees from sale area and where logger had agreed to pay for each and every unmarked tree the logging crews cut and removed and the forest service agreed to bill him for each and every unmarked tree cut and removed, United States failed to carry its burden of proving fraud under former § 231 et seq. of this title as to unmarked trees. Hageny v. U. S., Ct.Cl.1978, 570 F.2d 924, 215 Ct.Cl. 412. United States 120.1

To have recovered forfeitures and double damages under former § 231 of this title for conspiracy to defraud United States by raising bid for sale of faucets to government naval base construction contractors, at their purchasing agent's secret suggestion above price which otherwise would have been submitted, United States need not have proved that it paid unreasonably high price for faucets. Murray & Sorenson v. U.S., C.A.1 (R.I.) 1953, 207 F.2d 119. United States 122

In action by United States against corporation, its secretary-treasurer and government naval base construction contractors' purchasing agent for forfeitures and double damages under former § 231 of this title, evidence supporting district court's conclusion that defendants had at least tacit understanding resulting in contractors' payment of higher price for faucets sold to them by corporation than would otherwise have been bid by corporation was sufficient to support court's finding of conspiracy among defendants to defraud United States in violation of said section. Murray & Sorenson v. U.S., C.A.1 (R.I.) 1953, 207 F.2d 119. United States 122

Where government official told union official quantity of hats needed and maximum price government would pay and union official procured hat manufacturers to allocate among themselves the desired quantity and to submit bids for respective shares at such maximum price, action could not be maintained for damages, penalties or forfeiture on ground that union official and manufacturers were guilty of conspiracy to secure payment of a false claim. U.S. ex rel. Weinstein v. Bressler, C.C.A.2 (N.Y.) 1947, 160 F.2d 403. United States 122

An officer who conspires with others to obtain money by false accounts is guilty of falsification, though he may be ignorant of the items of any particular account. U.S. v. Russell, W.D.Tex.1884, 19 F. 591. United States 121

Allegations that two individual defendants agreed with service corporation to get false or fraudulent claims related to computer, software and remote telephone switch purchase, installation and upgrade projects paid by the United States, or to make a false record or statement to get such claims, and that each defendant performed some act to effect object of conspiracy, were sufficient for employee terminated by service corporation to state claim that individuals and corporation conspired to violate False Claims Act (FCA). U.S. ex rel. Poisson v. Red River Service Corp., W.D.Okla.2008, 621 F.Supp.2d 1153. Labor And Employment 778

Alleged conspirators' agreement upon scheme in which crop insurance claims were submitted to private insurer to secure payment for ineligible individuals could not demonstrate requisite purpose to defraud government by getting government to pay false claim, as required for FCA conspiracy claim, even though insurer was reimbursed by government pursuant to stan-

dard reinsurance agreement; proof was required that conspirators agreed that false record would have material effect on government's decision, yet insurer alone made decision to pay claims and false claims themselves were never forwarded to or approved by government, nor was reimbursement conditioned upon review of claims. U.S. v. Hawley, N.D.Iowa 2008, 566 F.Supp.2d 918, reversed 619 F.3d 886, rehearing and rehearing en banc denied. Conspiracy 19

Genuine issue of material fact as to whether insurance agent knowingly participated in a scheme, involving both a meeting of the minds and concerted action, to allow ineligible persons to obtain and make claims against federal crop insurance, precluded summary judgment in favor of either government or insurance agent on False Claims Act (FCA) conspiracy claim. U.S. v. Hawley, N.D.Iowa 2008, 544 F.Supp.2d 787, subsequent determination 566 F.Supp.2d 918, reversed 619 F.3d 886, rehearing and rehearing en banc denied. Federal Civil Procedure 2491.7

Quasi-municipal corporation established by county pursuant to Utah law did not conspire with county to falsely federal obtain mineral lease funds while allowing county to obtain Federal Payment in Lieu of Taxes (PILT) funds without reduction, as would violate the False Claims Act (FCA); although corporation performed multiple special services but was designated as a single purpose service district, such designation was not a misrepresentation, as Utah law did not distinguish between single purpose service district and any other type of special service district, federal government did not impose any regulations on state's distribution of mineral lease funds, federal government permitted PILT funds to be paid to county for any governmental purpose, no demand or request was made for PILT funds, and corporation was created as completely separate entity from county so that no offset of PILT funds based on corporation's receipt of mineral lease funds was required. U.S. ex rel. Erickson v. Uintah Special Services Dist., D.Utah 2005, 395 F.Supp.2d 1088. United States 120.1

Hospital did not engage in conspiratorious conduct under False Claims Act (FCA) by instructing its nurses to follow foreign doctor's orders, but sign his supervising physician's name on all medical orders; argument presupposed that certifications sent to Medicare were fraudulent and that, because foreign doctor was not licensed in Texas, fraud was presumed, Court addressed these arguments already and found them lacking, there was no credible evidence that conspiratorial agreement to defraud government existed. U.S. ex rel. Riley v. St. Luke's Episcopal Hosp., S.D.Tex.2002, 200 F.Supp.2d 673, amended 2002 WL 32116882, reversed and remanded 355 F.3d 370. Conspiracy 47(6)

Government adequately stated False Claims Act (FCA) conspiracy claim against general contractor and subcontractors based on allegations that there was an agreement among them to defraud Government by falsely certifying, in Request for Equitable Adjustment (REA), that Government was liable for costs related to differing site conditions and that Government had superior knowledge about those site conditions. U.S. ex rel. Wilkins v. North American Const. Corp., S.D.Tex.2001, 173 F.Supp.2d 601. Conspiracy 18

Former nurse anesthetists at university hospital failed to identify any agreement between hospital, anesthesiologists at hospital, and national anesthesiologist associations to defraud government or engage in any act that could constitute an attempt to defraud government, as required to state claim for conspiracy in qui tam action under False Claims Act based on false Medicare claims allegedly submitted by hospital and anesthesiologists; activities alleged consisted entirely of lawful pursuits, such as convincing legislatures and the public that it is beneficial to have doctor anesthesiologists, rather than nurse anesthetists, treat patients. U.S. ex rel. Amin v. George Washington University, D.D.C.1998, 26 F.Supp.2d 162. United States 122

State investigator stated a claim for violation of the False Claims Act by the state; the investigator alleged that state officials did not prevent a proprietary school from presenting to the United States claims the state knew to be false, gave a description of the nature of the claims, named state officials involved and explained how they could advance themselves by participating in the conspiracy, alleged inaction in the face of knowledge of falsity of claims, which were communicated to them directly by the investigator, and alleged that the United States suffered damages as a result. U.S. ex rel. Long v. SCS Business & Technical Institute, D.D.C.1998, 999 F.Supp. 78, reversed 173 F.3d 870, 335 U.S.App.D.C. 331, supplemented 173 F.3d 890, 335 U.S.App.D.C. 351, certiorari denied 120 S.Ct. 2194, 530 U.S. 1202, 147 L.Ed.2d 231. United States 122

Contracting officer and contractor on government project involving clearing of sedimentation ponds at naval facility did not

conspire to defraud government, in violation of False Claims Act, because, even if officer engaged in fraudulent acts, there was no evidence that contractor's purpose was to defraud, and agreed upon acts were not fraudulent. U.S. ex rel. Durcholz v. FKW Inc., S.D.Ind.1998, 997 F.Supp. 1159, affirmed 189 F.3d 542. United States 120.1

In addition to civil penalty assessed under False Claims Act for each false claim submitted, Government was entitled to civil penalty for violation of Act's conspiracy clause; corollary to findings concerning false claims was conclusion that there was conspiracy to defraud Government by getting false or fraudulent claim allowed or paid. U.S. v. Macomb Contracting Corp., M.D.Tenn.1990, 763 F.Supp. 272. United States 122

Conviction of contractor on charges of conspiring to utilize collusive bidding scheme in connection with renovation and repair of residential properties which had been conveyed to Department of Housing and Urban Development by reason of foreclosure of insured mortgages established, for purposes of civil suit under former § 231 of this title, that contractor entered into an agreement to unlawfully influence the Department and that an overt act was committed in furtherance of the conspiracy. U.S. v. Cripps, E.D.Mich.1978, 460 F.Supp. 969. United States 120.1

Former § 231 of this title which imposed liability on any person who entered into any agreement or conspiracy to defraud the United States by obtaining payment of false claims proscribed the conspiracy itself, regardless of whether such conspiracy was ever effectuated and, therefore, liability did not require proof that any false or fraudulent claims were actually submitted to or paid by the government. U. S. v. Kates, E.D.Pa.1976, 419 F.Supp. 846. United States 122

In action by United States under former § 231 of this title to recover for false claims presented in connection with contracts for sale of meat products to government, evidence established that defendant had presented and conspired to present false claims. U. S. v. American Packing Corp., D.C.N.J.1954, 125 F.Supp. 788. United States 120.1

Where seller of butane gas for federal housing projects knowingly submitted claims for gas not delivered and manager of projects knowingly submitted to public housing authority reports including overcharges in items stating cost of gas, seller and manager thereby conspired to defraud the United States within former § 231 of this title. U.S. v. Gardner, N.D.Ala.1947, 73 F.Supp. 644. United States 122

142. Construction projects, frauds within section

Excavation contractor knowingly submitted false claim for construction of full-length of channel for government flood control project, in violation of False Claims Act (FCA), when it failed to construct 17.5 feet of 7000-foot channel, despite contractor's claim that it delivered essentially all of what it was to deliver; shortfall was not de minimis, particularly given government's concern with channel's structure in area of shortfall, which was designed to minimize channel's ecological impact. Commercial Contractors, Inc. v. U.S., C.A.Fed.1998, 154 F.3d 1357, rehearing denied. United States 120.1

Builder of subsidized housing was liable for double damages under former § 231 of this title where excess interest subsidies were paid as result of builder's falsification of construction costs. U. S. v. Ehrlich, C.A.9 (Cal.) 1981, 643 F.2d 634, certiorari denied 102 S.Ct. 474, 454 U.S. 940, 70 L.Ed.2d 247. United States 120.1

Evidence supported findings and conclusions that there had been no violation of former § 231 of this title with respect to contract to supply refrigerators and other equipment for prefabricated houses constructed for critical defense housing area. U. S. v. Woodbury, C.A.9 (Or.) 1966, 359 F.2d 370. United States 122

Substantial evidence supported findings of violation of former § 231 of this title in that applications for funds were false because of failure to list creditors who might be able to file liens under law of Alaska with respect to prefabricated houses constructed for critical defense housing area, and because applications falsely stated amounts due and owing under site construction contract. U. S. v. Woodbury, C.A.9 (Or.) 1966, 359 F.2d 370. United States 122

Contractor did not furnish inaccurate data regarding either its cost or cost to government, as would provide remedy to government under the False Claims Act on ground that price was increased because inaccurate data was furnished to government, where reduction in recurring costs that contractor negotiated with third-party did not result in increased cost to government. U.S. ex rel. Sanders v. Allison Engine Co., S.D.Ohio 2003, 364 F.Supp.2d 713. United States 120.1

Housing authority, as relator, and United States established claim against subcontractor under False Claims Act (FCA), although federal agency never actually paid false claims made by subcontractor; annual subsidy from federal agency represented 99 percent of housing authority's operation budget, and its capital improvement program under which housing authority modernized its public housing communities was one hundred percent funded by federal agency. U.S. ex rel. Virgin Islands Housing Authority v. Coastal General Const. Services Corp., D.Virgin Islands 2004, 299 F.Supp.2d 483. United States 122

Government failed to prove that road contractor's differing site condition claim concerning special rock fill violated the False Claims Act (FCA); contractor's estimate of amount of SRF that would be available was not so unreasonable as to rise to level of a false claim, and government failed to establish that claim was submitted with reckless disregard of its truth or falsity. Trafalgar House Const., Inc. v. U.S., Fed.Cl.2007, 77 Fed.Cl. 48, affirmed 274 Fed.Appx. 898, 2008 WL 1734471. United States 120.1

143. Educational costs, frauds within section

Evidence failed to establish that state university officials "knowingly" misrepresented university's eligibility as a minority institution to obtain Department of Defense (DoD) set-aside contract grants in violation of False Claims Act (FCA); university officials relied on Department of Defense (DoD) assurances that it was an eligible "minority institution" since it was on Department of Education's (DoE) annual list of minority institutions. U.S. ex rel. Burlbaw v. Orenduff, C.A.10 (N.M.) 2008, 548 F.3d 931. United States 122

In action by government for alleged overpayment to school which had filed false statements of costs with Veterans' Administration, evidence sustained finding that school filed false and fraudulent statements. U. S. v. Sytch, C.A.3 (N.J.) 1958, 257 F.2d 475. Armed Services 127

Failure to show that reimbursement rates established by contractor, to be paid to schools for expenses of School Health and Related Services (SHARS) program, were higher than actual costs incurred by schools, precluded claim that contractor violated False Claims Act (FCA) by causing schools to receive compensation to which they were not entitled. U.S. ex rel. Gudur v. Deloitte Consulting LLP, S.D.Tex.2007, 512 F.Supp.2d 920, affirmed 2008 WL 3244000. United States 122

College student's failure to observe any procedural requirements for bringing of qui tam action on behalf of United States government precluded suit claiming that college had violated false claims statute by claiming student loan funds in excess of its entitlement. White v. Apollo Group, W.D.Tex.2003, 241 F.Supp.2d 710, appeal dismissed 163 Fed.Appx. 255, 2005 WL 3694656, certiorari denied 127 S.Ct. 301, 549 U.S. 929, 166 L.Ed.2d 228, rehearing denied 127 S.Ct. 760, 549 U.S. 1091, 166 L.Ed.2d 587. United States 122

144. Endorsement or negotiation of checks, frauds within section

Evidence amply supported district court's findings that defendant perpetrated knowing fraud on United States constituting both violation of this section and common-law conversion, by cashing checks mistakenly issued by Bureau of Indian Affairs for timber proceeds from parcel defendant had previously sold to another, with result that Department of Interior paid new owner $55,425.80. U.S. v. McLeod, C.A.9 (Wash.) 1983, 721 F.2d 282. Fraud 58(1); Trover And Conversion 40(4)

Act of corporation's officer and principal stockholder in endorsing and depositing for collection a government check known to have been issued to corporation by mistake in payment of obligation already satisfied was presentation of "false claim" within meaning of former § 231 of this title which rendered officer liable to government notwithstanding lack of direct personal benefit. Scolnick v. U. S., C.A.1 (Mass.) 1964, 331 F.2d 598. United States 120.1

Fact that checks received by president of manufacturing firm were issued to proper payees for debts actually owed by the government to those payees did not preclude finding that claims presented to the government by the corporate president were "false" within the meaning of former § 231 of this title where the president of the corporation was wholly unauthorized to present and demand to receive any money from the checks and where the president forged the name of the payee of each check. U. S. v. Silver, E.D.N.Y.1974, 384 F.Supp. 617, affirmed 515 F.2d 505. United States 120.1

Action of physician in endorsing and depositing for collection checks issued in payment of medicare claims for which physician had not rendered services constituted the making of a false claim as to each check. Peterson v. Richardson, N.D.Tex.1973, 370 F.Supp. 1259, affirmed 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96 S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. United States 120.1

145. Estimates, frauds within section

Relator failed to show that contractor fraudulently induced government to award construction contract to it by submitting bid that did not conform with industry standards for accuracy, even if contractor failed to perform a detailed estimate of quantity of each work item required by contract in calculating cost estimates; disputed bid did not purport to be an opinion or an estimate, but rather was merely an offer to enter into a contract, and all that contractor represented was that it would perform work required at unit prices specified in bid in strict accordance with terms of solicitation. U.S. ex rel. Bettis v. Odebrecht Contractors of Cal., Inc., C.A.D.C.2005, 393 F.3d 1321, 364 U.S.App.D.C. 250. United States 120.1

Although cost estimate on which claim against government was based was knowingly prepared in a manner that differed from prior estimates there was no violation of former § 231 of this title where figures submitted were not shown to have been false and total figure accurately represented construction cost, although the distribution of total among various lines may have been somewhat misleading. McCarthy v. U. S., Ct.Cl.1982, 670 F.2d 996, 229 Ct.Cl. 361. United States 120.1

It was not logically impossible for government to prove requisite falsity in support of claim alleging that jet engine contractor violated False Claims Act (FCA) by falsely certifying that contract bid's cost estimates were based upon complete and current data and contractor's past experience in achieving certain predictions, despite contractor's contention that amounts certified had been estimated and that estimates, being inherently subjective, could not be fraudulent, given government's assertion that certified basis for estimates was not in fact used. U.S. v. United Technologies Corp., S.D.Ohio 2003, 255 F.Supp.2d 779. United States 122

Absence of any showing that contractor, hired to prepare reimbursement rates to be paid by federal government to schools covering expenses incurred in implementing School Health and Related Services (SHARS) program, fraudulently induced state to accept its rate-setting assistance, or that contractor created any false statements, precluded claim that contractor violated False Claims Act (FCA) by fraudulently inducing filing of false claims. U.S. ex rel. Gudur v. Deloitte Consulting LLP, S.D.Tex.2007, 512 F.Supp.2d 920, affirmed 2008 WL 3244000. United States 122

Question before court, in suit against shipbuilder for allegedly submitting fraudulent labor hour estimates to United States Maritime Administration in connection with application for construction differential subsidy on American-built ships, was reasonableness of labor estimates in light of data that existed at time estimates were submitted. U.S. v. Davis, S.D.N.Y.1992, 803 F.Supp. 830, affirmed in part , reversed in part 19 F.3d 770. United States 120.1

146. Failure to give information, frauds within section

In government's action against hospital administrator under False Claims Act (FCA), issue under materiality element was whether omissions in hospital's Medicare and Medicaid reimbursement claims, which failed to disclose that illegal referrals had occurred and that kickbacks were paid, could have influenced agency's decision, and therefore government did not have to provide testimony of agency decision-maker indicating that government was sure to enforce Stark Amendment to Medicare Act, which barred payment of claims arising from medical services rendered to improperly referred patients, to establish materiality. U.S. v. Rogan, C.A.7 (Ill.) 2008, 517 F.3d 449. United States 122

Government contractor that operated inventory tracking system at Army facility, which allegedly deleted certain inventory items from its computer database and submitted false record at end of its contract, did not violate False Claims Act section making it unlawful for any person to knowingly make, use, or cause to be made or used, false record or statement to conceal, avoid, or decrease obligation to pay or transmit money or property to government, where there was insufficient evidence establishing that items were deleted without authorization, and contractor's failure to include items would not affect its obligation to government absent evidence of willful misconduct or lack of good faith. U.S. ex rel. Aakhus v. Dyncorp, Inc., C.A.10 (N.M.) 1998, 136 F.3d 676. United States 122

Where contract allowed contractor a greater rental for equipment rented from third parties than it allowed for use of his own equipment in completion of a government project, suppression of truth by contractor that third party who had technical ownership of certain equipment would enjoy a substantial profit without actual risk or effort on his part because contractor and his representative had negotiated and financed the purchase of equipment in name of third party was itself a fraud on government. U. S. v. Grannis, C.A.4 (N.C.) 1949, 172 F.2d 507, certiorari denied 69 S.Ct. 1160, 337 U.S. 918, 93 L.Ed. 1727. United States 121

Evidence at trial on government's False Claims Act (FCA) claims against contractor was sufficient to conclude that contractor's representations to Nuclear Regulatory Commission (NRC) regarding its organizational conflicts of interest (OCIs) were not result of contractor's adoption of reasonable interpretation of ambiguous regulations, and thus disclosures were required by NRC's OCI regulations; contractor's employees testified that project on which they were working contemplated application of NRC's waste disposal regulations to entity's proposed activities, and that entity for whom contractor provided services during time period of NRC contracts had NRC license. U.S. v. Science Applications Intern. Corp., D.D.C.2009, 653 F.Supp.2d 87, affirmed 626 F.3d 1257. United States 122

Relator's allegations that medical clinic and hospital entered into agreement whereby hospital would give clinic financial support in exchange for clinic's referring large volumes of patients to hospital were not sufficient to state concealment claim against clinic and hospital under False Claims Act (FCA), absent allegation of obligation to pay money to government and fraudulent concealment of that obligation. U.S. ex rel. Repko v. Guthrie Clinic, P.C., M.D.Pa.2008, 557 F.Supp.2d 522. United States 122

Government contractor's failure to disclose an organizational conflict of interest constitutes a false claim under the False Claims Act (FCA) under implied certification theory. U.S. v. Science Applications Intern. Corp., D.D.C.2008, 555 F.Supp.2d 40. United States 120.1

Applicant's failure to list in proposals for funding from Air Force pursuant to Small Business Innovation Research (SBIR) program that it had was engaged in similar research for Army demonstrated scienter necessary to support claim under False Claims Act (FCA), even though projects were not identical, and applicant's principal had given two presentations to Air Force regarding his work for Army, where solicitation instructions directed applicants to disclose both “activities directly related to the proposed effort” and “previous work not directly related to the proposed effort but similar,” and applicant considered Air Force project to be further development of technology that it had used in Army contracts. U.S. ex rel. Longhi v. Lithium Power Technologies, Inc., S.D.Tex.2007, 513 F.Supp.2d 866. United States 120.1

Federal government's allegations, that company that had entered into contracts with Nuclear Regulatory Commission (NRC)

to provide technical assistance related to the recycling and reuse of radioactive material breached its obligations under the contracts to disclose organizational conflicts of interest (OCI) by engaging in relationships with certain organizations that created an appearance of bias in the technical assistance and support it provided the NRC, stated a claim against company under False Claims Act. U.S. v. Science Applications Intern. Corp., D.D.C.2007, 502 F.Supp.2d 75. United States 122

Government contractor's failure to list affiliated subcontractor among the companies with whom it engaged in inter-organizational transfers rendered its Cost Accounting Standards Board (CASB) disclosure statements "false" within meaning of False Claims Act (FCA). U.S. ex rel. Oliver v. The Parsons Corp., C.D.Cal.2006, 498 F.Supp.2d 1260. United States 120.1

Absence of any actionable violation of the federal False Claims Act (FCA) or the California False Claims Act warranted dismissal of qui tam action brought by relator whose company was an unsuccessful bidder for a California Department of Transportation project against successful bidder; successful bidder fully disclosed particulars concerning its bid before it was awarded the project and before it submitted any claim for payment, and governments were fully aware of the facts surrounding the claim when they paid it. U.S. v. Shasta Services, Inc., E.D.Cal.2006, 440 F.Supp.2d 1108. States 188; United States 122

Relators did not identify any evidence that contractor engaged in fabrication of base and enclosure assemblies for generator sets installed in United States Navy destroyers did not truthfully disclose all cost and pricing data requested, or any evidence that there were inflated production and labor costs, as would support relators' failure to fully and truthfully disclose claim in qui tam False Claims Act suit against contractor. U.S. ex rel. Sanders v. Allison Engine Co., S.D.Ohio 2003, 364 F.Supp.2d 713. United States 122

Contractor providing trucks to government did not submit expressly false claims, in violation of False Claims Act, by submitting forms seeking payment for completed trucks and progress payments on others, which did not mention that trucks did not meet specifications regarding corrosion; specifications compliance was not issue at this contracting stage, and forms accurately reflected number of units, and in case of progress payment degree of completion. U.S. ex rel. Stebner v. Stewart & Stevenson Services, Inc., S.D.Tex.2004, 305 F.Supp.2d 694. United States 120.1

Failure of a real estate broker to disclose his realty corporation's involvement in a bid for Resolution Trust Corporation (RTC) property was actionable under the False Claims Act (FCA); under the listing agreement, the corporation was required to disclose any conflicts or potential conflicts of interest that developed in its representation of the RTC in the sale of the property. U.S. v. Bald Eagle Realty, D.Utah 1998, 1 F.Supp.2d 1311. United States 120.1

Alleged failure of applicant for grant from federal government for scientific research to disclose that data previously cited in grant applications were erroneous did not violate False Claims Act where there was no evidence that applicant was not continuing studies or had changed research plan at time of application and applicant at time of application did not have sufficient information with respect to data cited as would require that it be submitted with application. U.S. ex rel. Milam v. Regents of University of California, D.Md.1995, 912 F.Supp. 868. United States 120.1

Aircraft manufacturer's alleged concealment of its supplier's findings that continuous intergranular carbide network (CICN) existed in gears of helicopters which were sold to government involved issues of concealment and misrepresentation, rather than matters of scientific dispute, and was proper basis for government's claim under False Claims Act (FCA). U.S. ex rel. Roby v. Boeing Co., S.D.Ohio 1998, 184 F.R.D. 107. United States 120.1

Telecommunications companies' failure to inform federal government, in course of litigation with it over electromagnetic spectrum licenses upon which they had successfully bid but failed to make required payments, of existence of federal statute which was arguably applicable to parties' dispute, and about which government had both constructive and actual knowledge, could not be regarded as "false statements," within the meaning of the False Claims Act (FCA). U.S. ex rel. Finney v. Nextwave Telecom, Inc., S.D.N.Y.2006, 337 B.R. 479. United States 120.1

147. Federal Housing Administration guaranties or mortgages, frauds within section

Evidence sustained finding that realtors had caused veterans to apply for Veterans' Administration guaranteed mortgages and Federal Housing Administration [now Department of Housing and Urban Development] insured loans and had caused the veterans to submit false information in support of the applications so that, when the mortgages went into default, government was entitled to recovery under former § 231 et seq. of this title. U.S. v. Ekelman & Associates, Inc., C.A.6 (Mich.) 1976, 532 F.2d 545. United States 120.1

Lending institution's claim for payment on guaranty obligation by Federal Housing Administration [now Department of Housing and Urban Development] was false claim, for purposes of former § 231 of this title, if guaranty obligation was induced by one or more false statements. U. S. v. Globe Remodeling Co., D.C.Vt.1960, 196 F.Supp. 652. United States 120.1

Claim for payment under Federal Housing Administration [now Department of Housing and Urban Development] guaranty obligation induced by fraud was a false claim, within scope of former § 231 of this title even if payment was made to presumably innocent lending institution. U. S. v. Globe Remodeling Co., D.C.Vt.1960, 196 F.Supp. 652. United States 120.1

147a. Department of Housing and Urban Development subsidized rents, frauds within section

Genuine issues of material fact as to whether landlord accepted side-rent from renters whose rent was subsidized by Department of Housing and Urban Development (HUD) precluded summary judgment in renters' action under False Claims Act. U.S. ex rel Sutton v. Reynolds, D.Or.2007, 564 F.Supp.2d 1183. Federal Civil Procedure 2498.4

148. Income tax returns, frauds within section

Former § 231 of this title did not authorize qui tam action to recover penalty and double damages sustained by United States by reason of false and fraudulent income tax returns. Olson v. Mellon, W.D.Pa.1933, 4 F.Supp. 947, affirmed 71 F.2d 1021, certiorari denied 55 S.Ct. 147, 293 U.S. 615, 79 L.Ed. 704, certiorari denied 55 S.Ct. 148, 293 U.S. 615, 79 L.Ed. 704. Internal Revenue 5246; Internal Revenue 2365

149. Inspections, frauds within section

In war fraud action by federal government against munitions manufacturer, evidence failed to support plaintiff's claim of defendant's violation of war contract by failure to maintain a satisfactory system of inspection of munitions manufactured under the contract, or that such failure constituted fraud leading to a false claim. U.S. v. U.S. Cartridge Co., E.D.Mo.1950, 95 F.Supp. 384, affirmed 198 F.2d 456, certiorari denied 73 S.Ct. 645, 345 U.S. 910, 97 L.Ed. 1345. United States 122

150. Invoices, frauds within section

Where dealer in grain storage bins, in selling bins to grain farmers, allegedly furnished false invoices which overstated purchase price of bins and which were used in support of applications to Commodity Credit Corporation for loans to farmers in amounts exceeding 80 percent of actual purchase price, the supplying of the false information constituted “false claims” within meaning of former § 231 of this title. U. S. v. Neifert-White Co., U.S.Mont.1968, 88 S.Ct. 959, 390 U.S. 228, 19 L.Ed.2d 1061. United States 120.1

Fighter jet engine contractor violated False Claims Act (FCA) by submitting, in response to an Air Force request for proposal seeking offers for multi-year jet engine contracts, three false statements designed to drive up the prices for split-award con-

tracts so as to discourage the Air Force from splitting up the work, and by subsequently submitting fraudulent invoices to the government; contractor's false statements had the potential to influence the government's decision to sign the contract and thus to pay the invoices under it, original contract set price windows for six years and obligated the Air Force to purchase a minimum number of engines in each year, and the Air Force considered the revisions it solicited on a stand alone basis, rather than reconsidering the entire contract. U.S. v. United Technologies Corp., C.A.6 (Ohio) 2010, 626 F.3d 313.

Invoices submitted by government photography contractor could be basis for False Claims Act (FCA) claim for knowing presentation of false or fraudulent claim for payment or approval, even if they only billed amount called for by fixed-price contract and did not contain any factual misrepresentations regarding monthly billings or contractor's request for equitable adjustment, in that invoices falsely impliedly certified that contractor had complied with contract provisions requiring recovery of silver from photography chemicals. Shaw v. AAA Engineering & Drafting, Inc., C.A.10 (Okla.) 2000, 213 F.3d 519. United States 120.1

Government contractor's alleged submission of false information to Department of Energy (DOE) in order to obtain DOE approval of contractor's proposal to hire subcontractor to conduct training related to in-tank precipitation process operations supported claim under False Claims Act, as each invoice for reimbursement of amounts paid out to subcontractor under such circumstances would constitute a claim under the Act. Harrison v. Westinghouse Savannah River Co., C.A.4 (S.C.) 1999, 176 F.3d 776. United States 120.1

Where wholesaler by bid incorporated into United States contract offered to furnish regulators of designated proprietary number but delivered regulators manufactured by wholesaler and bearing spurious proprietary labels and sent as part of claims for regulators so delivered invoices describing regulators by proprietary numbers and ordnance stock numbers, invoices meant that one of proprietary articles qualifying under ordnance stock number had been supplied and claims were false. U. S. v. National Wholesalers, C.A.9 (Cal.) 1956, 236 F.2d 944, certiorari denied 77 S.Ct. 719, 353 U.S. 930, 1 L.Ed.2d 724. United States 120.1

Markup of invoice by purported computer repair company to other repair company was fraudulent, for purposes of action brought by government against companies and owner alleging defendants violated the False Claims Act (FCA) by participating in a markup scheme inflating costs incurred by the government for repair of laptop computers; the two companies were owned by the same person, one company had no employees, paid no wages or salaries during its existence, used as its physical address other company's office space, used a post office box as its mailing address, and kept its records in owner's house or in his office at other company. U.S. v. Rachel, D.Md.2003, 289 F.Supp.2d 688. United States 120.1

Supplier of x-ray film to hospitals did not violate False Claims Act (FCA), by failing to note on invoices that accrued discounts affected purchase price and should be reported to government when seeking Medicaid and Medicare reimbursement for film expenses; notice was given as part of quarterly account statement issued by supplier and on checks representing payment of accrued amounts. U.S. ex rel. Walsh v. Eastman Kodak Co., D.Mass.2000, 98 F.Supp.2d 141. United States 120.1

Invoices requesting payment for tools supplied to government agency were false, for purposes of False Claims Act (FCA), where tools which could have legitimately met descriptions were not delivered. U.S. v. Advance Tool Co., W.D.Mo.1995, 902 F.Supp. 1011, affirmed 86 F.3d 1159, certiorari denied 117 S.Ct. 1254, 520 U.S. 1120, 137 L.Ed.2d 334. United States 120.1

Where warehouseman submitted its invoice for payment for storage of oats to Commodity Credit Corporation when it had no knowledge of falsity of its claim, although Corporation paid for storage charges on some 6,000 bushels of oats which warehouseman did not actually have in storage, warehouseman was not liable for double amount of excess payments as damages and $2,000 as forfeiture imposed by former § 231 of this title with respect to false claims. U. S. v. Farmers Seed & Feed Co., M.D.Ga.1959, 181 F.Supp. 475. United States 120.1

Genuine issue of material fact remained as to whether contractor knowingly falsified invoices with purpose of receiving payment from Department of State (DOS), Overseas Building Operations (OBO), by certifying that contractor had paid subcontractor on contract to construct embassy in Tajikistan, thus precluding summary judgment on government's claim, under False Claims Act (FCA), against contractor following termination of contract for alleged default. Liquidating Trustee Ester DuVal of KI Liquidation, Inc. v. U.S., Fed.Cl.2009, 89 Fed.Cl. 29. Federal Courts 1120

151. Leases, frauds within section

Where purchaser of agricultural land had received deed to property and subsequently entered into fictitious lease agreement with vendor, purchaser was properly found liable, under former § 231 of this title, for fraudulent violation of Cropland Adjustment Program. Baldridge v. Hadley, C.A.10 (N.M.) 1974, 491 F.2d 859, certiorari denied 94 S.Ct. 2608, 417 U.S. 910, 41 L.Ed.2d 214, rehearing denied 95 S.Ct. 159, 419 U.S. 886, 42 L.Ed.2d 130. United States 122

Although lease under which defendants operated cleaning facilities on military installations was between a bay area exchange and defendants, United States could bring an action to recover moneys allegedly wrongfully withheld by defendants by understanding their gross receipts of which they were to pay a specified percentage to the exchange. U. S. v. Howell, C.A.9 (Cal.) 1963, 318 F.2d 162. United States 126

Allegations that a lease arrangement between a manufacturer of orthotic and prosthetic devices and a group of referring physicians involved excessive rents in violation of the Stark Law, and that the certification of compliance with the Stark Law which the manufacturer submitted to the federal government in order to qualify for Medicare and Medicaid reimbursement was thereby rendered false, would, if proven, constitute a violation of the False Claims Act (FCA). Gublo v. NovaCare, Inc., D.Mass.1999, 62 F.Supp.2d 347. United States 120.1

152. Letters, frauds within section

Manufacturer of aerospace bearings did not violate False Claims Act by sending letter to government allegedly understating cleanliness problem in area where bearings were made; corrective action was taken on date that manufacturer became aware of problem, it was conceded that no knowingly false claim had been made prior to that date, and as government had paid for bearings made prior to discovery date there were no claims outstanding on date of letter to which Act applied. U.S. ex rel. Farrell v. SKF USA, Inc., W.D.N.Y.2002, 204 F.Supp.2d 576. United States 120.1

152a. Loans, frauds within section

Monthly claims for interest reduction payments made by Massachusetts Housing Finance Agency (MHFA), as mortgage lender, were not false, for purpose of relator's action under False Claims Act (FCA) alleging that MHFA submitted false claims for payment to Housing and Urban Development (HUD) under mortgage assistance program for owners of low-income housing projects, although MHFA modified its borrowing costs by refunding its old bonds and issuing new ones; bond issue did not affect HUD subsidies because subsidies were to be based in part on interest paid on mortgage loan, as established by mortgage note, and mortgage notes unambiguously established fixed, permanent interest rates. U.S. ex rel. K & R Ltd. Partnership v. Massachusetts Housing Finance Agency, D.D.C.2006, 456 F.Supp.2d 46, affirmed 530 F.3d 980, 382 U.S.App.D.C. 67, rehearing en banc denied. United States 120.1

Relator failed to show that loans made to physicians, who were in position to make referrals to hospital, were in violation of Antikickback Statute (AKS) or Stark Act, in lawsuit under False Claims Act (FCA), since each physician to whom loan was made was charged appropriate amount of interest and each loan was repaid in full. U.S. ex rel Perales v. St. Margaret's Hosp., C.D.Ill.2003, 243 F.Supp.2d 843. United States 122

153. Medical services, frauds within section

Medicare statutes and regulations did not expressly condition compliance with certification requirement as prerequisite to receiving government payments, and thus hospital's allegedly false certification that it was in compliance with Medicare statutes and regulations, contained in annual cost report, could not form basis for cause of action under False Claims Act (FCA); although government considered substantial compliance a condition of ongoing Medicare participation, it did not require perfect compliance as an absolute condition to receiving Medicare payments for services rendered. U.S. ex rel. Conner v. Salina Regional Health Center, Inc., C.A.10 (Kan.) 2008, 543 F.3d 1211. United States 120.1

Government established reliance element of its claims for violations of False Claims Act (FCA) against hospital administrator based on omissions in hospital's Medicare and Medicaid reimbursement claims, which did not indicate that illegal referrals had occurred or that kickbacks were paid in violation of Stark Amendment to Medicare Act, which barred payment of claims arising from medical services rendered to improperly referred patients, given that the truth would have revealed that reimbursement was illegal. U.S. v. Rogan, C.A.7 (Ill.) 2008, 517 F.3d 449. United States 120.1

Medicare provider's querying actions did not constitute presentation or knowing, making, or using of false record to get claim to government paid or approved, for purposes of False Claims Act (FCA); query was designed to improve accuracy and timeliness of Medicare claims processing by reducing payment errors and providing carriers with updated entitlement and eligibility data on beneficiaries. U.S. ex rel. Sikkenga v. Regence Bluecross Blueshield of Utah, C.A.10 (Utah) 2006, 472 F.3d 702, on remand 2007 WL 2713913. United States 120.1

Alleged failure of Medicaid-provider pharmacy to credit Illinois Department of Public Aid (IDPA) and Medicaid, for medications dispensed to Medicaid patients in nursing homes but returned unused, did not violate False Claim Act or state whistleblower reward statute; there was no evidence of any specific voucher that had been billed to Medicaid, for drugs that were returned, with no credit given, no federal regulation required adjustment of claims, and, while state regulation did preclude IDPA payment for unused and returned drugs, pharmacy's claims were not false when filed. U.S. ex rel. Crews v. NCS Healthcare of Illinois, Inc., C.A.7 (Ill.) 2006, 460 F.3d 853. States 188; United States 120.1

Complaint stated claim under False Claims Act (FCA) by alleging that Medicare provider certified its compliance with federal health care law knowing that certification to be false, and further stated FCA claim against seller of orthopedic implants for knowingly assisting in causing government to pay claims which were grounded in fraud, by alleging that seller created and pursued marketing scheme that it knew would, if successful, result in submission by provider and others similarly situated of compliance certifications required by Medicare that seller knew would be false. U.S. ex rel. Schmidt v. Zimmer, Inc., C.A.3 (Pa.) 2004, 386 F.3d 235, on remand 2005 WL 1806502. United States 122

Although pharmacy retained 50 percent of Medicaid payment when it received returned medications for recycling, such practice was not linked to actual submission of actual false claim, in violation of False Claims Act (FCA); there was no proof of single instance in which covered medication had been paid for by Medicaid, returned to pharmacy and redispensed and rebilled to Medicaid. U.S. ex rel. Quinn v. Omnicare Inc., C.A.3 (N.J.) 2004, 382 F.3d 432. United States 122

United States suffered sufficient pecuniary injury to give association of nurse anesthetists standing to pursue False Claims act suit against anesthesiologists and others for allegedly billing Medicare for “personal” direction or “medical direction” in cases that fell short of requirements for those designations, as government would have paid lower rate for same services if billed by hospitals as part of anesthetists' services, and in some cases, government paid personal performance rate to both anesthetist and anesthesiologist. Minnesota Ass'n of Nurse Anesthetists v. Allina Health System Corp., C.A.8 (Minn.) 2002, 276 F.3d 1032, rehearing and rehearing en banc denied , certiorari denied 123 S.Ct. 345, 537 U.S. 944, 154 L.Ed.2d 252. United States 122

Any claim by physicians for worthless services, in form of pulmonary function tests performed with spirometers that were not daily calibrated, was not made knowingly, and thus could not be basis for False Claims Act (FCA) claim, where spirometers' instruction manual, contrary to certain professional guidelines, indicated that daily calibration was not required, and phy-

sicians' former chief medical assistant testified that spirometers were sent out for periodic servicing. Mikes v. Straus, C.A.2 (N.Y.) 2001, 274 F.3d 687. United States 120.1

Owner and managing director of physical therapy clinic caused claims for Medicare payment to be submitted with false information, thereby satisfying causation element of government's claims under False Claims Act (FCA), when he directed clinic's Medicare billing service and office manager to substitute his father's provider identification number (PIN) for PIN of clinic's former licensed physical therapist, notwithstanding owner's contention that he did not "cause" false claims to be submitted because he did not tell service or office manager where to place father's PIN on claim forms. U.S. v. Mackby, C.A.9 (Cal.) 2001, 261 F.3d 821, on remand 221 F.Supp.2d 1106. United States 120.1

Former employee failed to state a claim against employer under the False Claims Act (FCA), based on allegation that employer refused to pay certain medical bills as ordered by workers' compensation board, and that employer "knew" that former employee would submit the bills to Medicare, as former employee did not allege that employer affirmatively instructed him to submit his medical bill claims to the government, and thus "caused" his claims to be submitted to the government. U.S. ex rel. Shaver v. Lucas Western Corp., C.A.8 (Ark.) 2001, 237 F.3d 932. United States 122

Laboratory's representation to government that laboratory, which sold blood plasma derivatives to federal agencies, had tested plasma in accordance with government requirements did not amount to false representation under False Claims Act, regardless of whether laboratory could have performed more effective testing, so long as laboratory in fact complied with such requirements. Luckey v. Baxter Healthcare Corp., C.A.7 (Ill.) 1999, 183 F.3d 730, certiorari denied 120 S.Ct. 562, 528 U.S. 1038, 145 L.Ed.2d 439. United States 120.1

Submission and approval of attendance records by Department of Veterans Affairs clinic's administrators and physicians for times that physicians were not actually present at clinic did not support liability under False Claims Act, absent evidence that administrators and physicians understood that their interpretation of affiliation agreement between clinic and university to permit some activities away from clinic was incorrect. U.S. ex rel. Hochman v. Nackman, C.A.9 (Cal.) 1998, 145 F.3d 1069. United States 121

Pacemaker manufacturer did not violate False Claims Act by advising patient to submit claims for cost associated with replacement of defective pacemaker to Medicare, even if manufacturer was liable for medical expenses, given that Medicare covered cost of medical services associated with replacing defective medical devices in absence of prior determination that payment from another source was expected promptly. U.S. ex rel. Glass v. Medtronic, Inc., C.A.8 (Minn.) 1992, 957 F.2d 605. United States 120.1

That company managing rehabilitation center did not gain from alleged Medicare fraud scheme did not negate company's participation in and responsibility for alleged fraud, in False Claims Act (FCA) suit related by former medical director of rehabilitation unit; complaint implicated rehabilitation center management company by naming specific employees of company who allegedly facilitated and participated in scheme to retain patients in hospital past their recommended discharge date. U.S. ex rel. McCready v. Columbia/HCA Healthcare Corp., D.D.C.2003, 251 F.Supp.2d 114. United States 122

That ambulatory surgery center was not required to file annual cost report or other document certifying compliance with Medicare statutes did not preclude determination that false certification of compliance was made in violation of False Claims Act (FCA), pursuant to implied certification theory, given that alleged violations of anti-kickback and self-referral laws would have affected government's decision to pay center's claims. U.S. ex rel. Barrett v. Columbia/HCA Healthcare Corp., D.D.C.2003, 251 F.Supp.2d 28. United States 120.1

Hospital did not submit a factually false Medicaid bill to the United States by billing for acute or residential services while failing to comply with Oklahoma Medicaid statute's active treatment requirements for each type of service, in violation of the False Claims Act (FCA); hospital did not knowingly use acute provider number for patients pre-authorized for residential care in order to receive a higher payment. U.S. ex rel. Sanchez-Smith v. AHS Tulsa Regional Medical Center,

N.D.Okla.2010, 2010 WL 4702270. United States 120.1

In qui tam action against medical device manufacturer, for violation of False Claims Act (FCA), relator failed to plead that manufacturer caused physicians or hospitals to submit "false" claims for reimbursement to government; general allegations that medical device manufacturer engaged in illegal off-label marketing of a surgical-ablation device to treat atrial fibrillation were insufficient to show that physicians' submission of Medicare claims for that use were false, since off-label use of device did not create inference that use of device was medically unnecessary or fraudulent. U.S. ex rel. Bennett v. Medtronic, Inc., S.D.Tex.2010, 2010 WL 3909447. United States 122

Although relator could not identify each particular instance of a knowingly false certification, complaint as a whole was sufficiently particular to strengthen the inference of fraud beyond possibility, and therefore was sufficient to state False Claims Act (FCA) claims against drug manufacturers for inducing providers to file false claims for Medicare reimbursement; relator provided factual and statistical evidence supporting the conclusion that since the manufacturers began giving kickbacks, providers involved in the kickback scheme had likely re-enrolled and made knowingly false statements on their re-enrollment forms, that over half of the revenue from the false claims came from reimbursement by Medicare and Medicaid, that the great majority of dialysis and kidney disease patients were covered by Medicare programs, that there were many situations where providers had to submit new enrollment forms, including cases of acquisition, merger, consolidation, changes of ownership, changes to basic Medicare information and enrollment with another fee-for-service contractor and factual details regarding specific providers and clinics that were offered kickbacks. U.S. ex rel. Westmoreland v. Amgen, Inc., D.Mass.2010, 738 F.Supp.2d 267. Federal Civil Procedure 636

Pharmaceutical companies did not engage in illegal off-label marketing of a growth hormone deficiency medication, so as to cause any violation of the False Claims Act, by marketing in contexts where patients were diagnosed with growth hormone deficiency (GHD) but the physician did not conduct two stimulation tests on the patient prior to making the diagnosis; the medication's Food and Drug Administration (FDA)-approved label does not indicate that two stimulation tests were required for a diagnosis of pediatric GHD or for the administration of the medication, and in any event, there was no evidence that the companies caused the submission of false Medicaid claims based on inappropriate testing. U.S. ex rel. Rost v. Pfizer, Inc., D.Mass.2010, 736 F.Supp.2d 367. United States 120.1

Qui tam relator sufficiently alleged causation element of False Claims Act (FCA) claim based on drug manufacturer's activities in creating a market for the outpatient "off-label" use of its protease inhibitor even though it had no credible evidence that the drug was effective in that context; accepting the proposition that a misleading promotion of the uses of a drug might foreseeably lead doctors to prescribe the drug for such uses, manufacturer's alleged conduct could have played a substantial role in causing the presentment of Medicaid or Medicare reimbursement claims by third-party providers. U.S. ex rel. Carpenter v. Abbott Laboratories, Inc., D.Mass.2010, 723 F.Supp.2d 395. United States 122

Statement in state Medicaid provider enrollment forms requiring health care providers to comply with "all applicable state and federal laws" was not sufficiently specific to support states' claims under False Claims Act (FCA) pursuant to express certification theory based on alleged conspiracy between pharmaceutical manufacturer, pharmaceutical services company, group purchasing organization (GPO), and affiliated companies to provide kickbacks to providers in order to induce them to submit claims for prescription drug, where forms contained no language stating that providers had to be in compliance with state or federal anti-kickback statutes. U.S. ex rel. Westmoreland v. Amgen, Inc., D.Mass.2010, 707 F.Supp.2d 123, reconsideration denied 2010 WL 2204603. United States 120.1

Hospital, which was invoiced by speech pathologists and Medicare and Medicaid providers for speech pathology services (SPS) rendered by their aides or assistants, and not covered by or entitled to reimbursement from Medicaid, subsequently billed Medicaid for those services, and, thus, hospital's billings and cost reports included "false claims" under the False Claims Act (FCA), even though hospital provided for billing on a per session basis, where the number of units the speech pathologists and Medicare and Medicaid providers invoiced, which was directly affected by the amount of time the pathologist spent with the patient, directly affected the interim reimbursements hospital sought and received and the costs it was re-

imbursed for during the reconciliation process. U.S. ex rel. Putnam v. Eastern Idaho Regional Medical Center, D.Idaho 2010, 696 F.Supp.2d 1190. United States 120.1

Failure of Medicaid third-party liability contractor for Iowa, to seek reimbursement from medical negligence defendants whose negligence required treatment covered by Medicaid, did not result in "false" claim in violation of False Claims Act, since federal regulations did not directly require state to seek reimbursement from medical negligence defendants per se, federal regulations only required state to seek reimbursement from those parties that were liable under existing state tort law, and existing state tort law did not require such conduct. U.S. ex rel. Hixson v. Health Management Systems, Inc., S.D.Iowa 2009, 657 F.Supp.2d 1039, affirmed 613 F.3d 1186. United States 120.1

Health care provider did not cause false claim to be paid, in violation of False Claims Act (FCA), as result of its billing for evaluation and management (E & M) services for patients at fraudulently higher billing rate than allowed under Medicare Part B, even though United States paid claims, where claims were down-coded by Medicare administrative contractor to current procedural terminology (CPT) codes with lower rate of reimbursement, and down-coded claims were not false at time they were paid. U.S. v. Aguillon, D.Del.2009, 628 F.Supp.2d 542. United States 120.1

Relator's general statements in complaint that hospital, relator's employer, falsified certifications that the Medicare services identified in the annual hospital costs reports complied with the laws and regulations dealing with the provision of healthcare services, and that certifications were prerequisites for payment under Medicare, were insufficient to allege with particularity a false certification theory of recovery under False Claims Act (FCA); relator failed to identify, for instance, when hospital falsified certifications and what the contents of those certifications were. U.S. ex rel. Smart v. Christus Health, S.D.Tex.2009, 626 F.Supp.2d 647. Federal Civil Procedure 636

Claims for Medicare and Medicaid reimbursement that were submitted by medical doctor's pain management clinic using code for neuromuscular junction test were false, for purposes of government's claims under False Claims Act (FCA), given doctor's concessions that code was not appropriate for any service that he performed and that he did not perform neuromuscular junction test with electrical stimulation device, and given admission of clinic's billing manager that he knowingly and intentionally submitted false claims using neuromuscular junction test code. U.S. v. Stevens, W.D.Ky.2008, 605 F.Supp.2d 863. United States 120.1

The UB-92 forms submitted by Medicare provider, which invoiced services for which it was billing, were not "false claims" under False Claims Act (FCA) based on implied false certification theory, where there was no regulation or law that specifically conditioned Medicare payment on compliance with a law, regulation, or other requirement that provider allegedly violated. U.S. ex rel. Hockett v. Columbia/HCA Healthcare Corp., D.D.C.2007, 498 F.Supp.2d 25, reconsideration denied 587 F.Supp.2d 757. United States 120.1

False Claims Act (FCA) was violated when Medicaid claim was presented to state government in violation of Anti-Kickback statute, even if there was no express certification of compliance with statute, since FCA was remedial statute that had to be broadly read and compliance with anti-kickback statute was prerequisite to payment in Medicare program. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2007, 491 F.Supp.2d 12. United States 120.1

Genuine issues of material fact as to whether claim for reimbursement by independent diagnostic testing facility (IDTF), which IDTF knew was contingent upon receipt of written authorization by patient's physician, was a false statement directly linked to government's decision to pay for diagnostic testing precluded summary judgment in qui tam action alleging IDTF violated False Claims Act. U.S. ex rel. Bane v. Breathe Easy Pulmonary Services, Inc., M.D.Fla.2009, 597 F.Supp.2d 1280. Federal Civil Procedure 2498.4

Relator's allegations that District of Columbia and the District of Columbia Public School System submitted a claim for Medicaid reimbursement without maintaining documentation adequate to support that claim, and that all of the documentation was in relator's possession, were sufficient to allege that District submitted a false claim in violation of False Claims Act

(FCA); although relator had prepared the supporting documentation on behalf of the District, the District did not have legal possession of it, given that another court had declared District's contract with relator void ab initio. U.S. ex rel. Davis v. District of Columbia, D.D.C.2008, 591 F.Supp.2d 30. United States 122

Genuine issue of material fact as to whether hospital intended false statements in bills sent to Medicaid to be used and be material to government's decision to pay or approve false claims precluded summary judgment in qui tam action against hospital on ground that relator could not satisfy False Claims Act's (FCA) "presentment" requirement. U.S. ex rel. Romano v. New York-Presbyterian Hosp., S.D.N.Y.2008, 571 F.Supp.2d 473. Federal Civil Procedure 2498.4

Allegations that 1393 claims submitted by Medicare provider over four-year period were fraudulent pled fraud with insufficient particularity; although complaint identified claims through incorporation of chart listing each claim by date, internal control number, referring physician, amount billed, and amount paid, complaint did not identify date of service, give example of tests performed, identify single patient, or explain why tests were medically unnecessary. U.S. ex rel. Serrano v. Oaks Diagnostics, Inc., C.D.Cal.2008, 568 F.Supp.2d 1136. Federal Civil Procedure 636

Action alleging that operator of diabetes treatment centers violated Anti-Kickback Statute (AKS) and Stark Law by making payments to physicians in return for patient referrals could properly be pursued under False Claims Act (FCA), despite operator's contention that offending provider could receive reimbursement for Medicare claims even if it violated AKS, where form for submission of claims to Medicare required certification that payment of claims was conditioned on compliance with AKS and Stark Law. U.S. ex rel. Pogue v. Diabetes Treatment Centers of America, D.D.C.2008, 565 F.Supp.2d 153, reconsideration denied 576 F.Supp.2d 128. United States 120.1

There was no evidence that lumbar puncture, bone marrow aspiration, bone marrow biopsy, central nervous system chemotherapy, and certain neonatal services were physician-only procedures, or that billing codes used by medical provider in billing Medicaid for services were codes reserved for physician services only, as required to support False Claims Act (FCA) claim that medical providers submitted false claims for hospital services performed by nurse practitioners. U.S. ex rel. Woodruff v. Hawaii Pacific Health, D.Hawai'i 2008, 560 F.Supp.2d 988, affirmed 2010 WL 5072191. United States 120.1

Former compliance officer for health care provider failed to plead fraud with particularity, as required under federal rules of civil procedure, for his False Claims Act (FCA) false-certification allegations regarding annual cost reports submitted for hospitals owned by provider, certifying compliance with the Stark Law and the Medicare and Medicaid Anti-Kickback Statute; while some of complaint's allegations were specific regarding how hospitals had violated the Stark Law and the Medicare and Medicaid Anti-Kickback Statute through patient referrals from physicians who had improper financial relationships with the hospitals, complaint did not specifically allege that referred patients were Medicare-eligible, nor did it provide anything more than scant detail regarding hospitals' submission of claims to the government for payment for services provided to referred patients. U.S. ex rel. Frazier v. IASIS Healthcare Corp., D.Ariz.2008, 554 F.Supp.2d 966, reversed and remanded 392 Fed.Appx. 535, 2010 WL 3190641. Federal Civil Procedure 636

Whether Medicare was or was not payor for any anesthesia claims was not material fact at issue tending to prove or disprove essential element of relators' claim in qui tam action that hospital submitted false claims to Medicare for anesthesia services, in violation of False Claims Act (FCA), since liability attached to knowing submission of false claim, but FCA did not require that Medicare actually pay claim. U.S. ex rel. El-Amin v. George Washington University, D.D.C.2007, 522 F.Supp.2d 135. United States 122

Qui tam relator, who was formerly employed by defendant hospital as an executive director in hospital's billing department, stated fraud claim, under both federal and Florida False Claims Act, with requisite particularity; even though relator had not supported all allegations in her complaint with specificity, relator had worked in hospital's billing department for one month and had personal experience with the billing process that provided the indicia of reliability to claim that fraudulent bills were submitted to Medicare and Medicaid, relator raised allegations regarding hospital's billing process, and relator submitted documentary exhibits to support contention that false claims were submitted. U.S. ex rel. Heater v. Holy Cross Hosp., Inc.,

S.D.Fla.2007, 510 F.Supp.2d 1027. Federal Civil Procedure 636

Government established with requisite particularity the probable validity of its claim for a debt against president and sole shareholder of Medicare provider, for purposes of government's claim under the Federal Debt Collection Procedures Act (FDCPA) for prejudgment remedies in connection with its claim against shareholder, i.e., attachment of real property shareholder owned individually, where special agent's affidavit describing health care fraud violations was sufficiently particularized, and special agent's sources of information were reliable, given that they had personal knowledge of the events about which they provided information. U.S. ex rel Doe v. DeGregorio, M.D.Fla.2007, 510 F.Supp.2d 877. United States 75.5

Medicare statutes and regulations did not expressly condition compliance with certification requirement as prerequisite to receiving government payments, and thus hospital's allegedly false certification that it was in compliance with Medicare statutes and regulations could not form basis for cause of action under False Claims Act (FCA), where agencies charged with enforcement of Medicare statutes and regulations chose not to impose sanctions or to deny funding, and professional organizations found that hospital met conditions of participation and accreditation. U.S. ex rel. Conner v. Salina Regional Health Center, Inc., D.Kan.2006, 459 F.Supp.2d 1081. United States 120.1

Government failed to demonstrate that Medicare services provider's claims for pulmonary rehabilitation services and simple pulmonary stress tests were false for purposes of False Claims Act (FCA) liability; government failed to prove that provider violated a controlling rule, regulation, or standard and failed dispute the overwhelming evidence that provider was following the instructions he received from his carrier in billing for pulmonary stress tests as part of his pulmonary rehabilitation program. U.S. v. Prabhu, D.Nev.2006, 442 F.Supp.2d 1008. United States 120.1

Genuine issues of material fact as to whether physicians who oversaw obstetric and gynecological OB/GYN care at hospital medical center were hospital employees and hospital had agreement with university about billing for midwife services precluded summary judgment for hospital in suit against it under False Claims Act. U.S. ex rel. Romano v. New York Presbyterian, S.D.N.Y.2006, 426 F.Supp.2d 174. Federal Civil Procedure 2498.4

Home health aide service providers who violated Medicare cost reporting rule made knowingly false submissions, within meaning of False Claims Act (FCA); dispute over rule's validity did not make their intentional noncompliance non-knowing. Visiting Nurse Ass'n of Brooklyn v. Thompson, E.D.N.Y.2004, 378 F.Supp.2d 75. United States 120.1

Relators and United States pled with sufficient particularity their claim that pharmacy benefit manager (PBM) violated False Claims Act (FCA) by billing for services not rendered, fraudulently avoiding contractual penalties, fraudulently inducing physicians to authorize drug switches, and favoring one pharmaceutical manufacturer over other manufacturers, even if complaints were poorly organized, where complaints specified general time frame over which PBM's conduct allegedly occurred, what contracts were involved, and what claims were false. U.S. v. Merck-Medco Managed Care, L.L.C., E.D.Pa.2004, 336 F.Supp.2d 430. Federal Civil Procedure 636

Government's allegations that private insurer improperly paid Medicare Secondary Payer (MSP) claims as the secondary payer when it should have paid them as primary payer, resulting in Medicare paying claims that insurer should have paid, were sufficient to allege "false or fraudulent" claim element of claim under False Claims Act (FCA). U.S. ex rel. Drescher v. Highmark, Inc., E.D.Pa.2004, 305 F.Supp.2d 451. United States 122

Nursing home owner did not violate False Claims Act (FCA) under worthless services theory by allegedly falsifying patient records to reflect that patients were receiving routine care which had not been provided, and then submitting Medicare reimbursement claims to the government based on the altered records; qui tam plaintiff did not allege that nursing home failed to provide any services to its patients, and only challenged level of care and amount of services which patients received as a result of alleged under-staffing. U.S. ex rel. Swan v. Covenant Care, Inc., E.D.Cal.2002, 279 F.Supp.2d 1212. United States 120.1

Physician, as relator, failed to show that any claim submitted by hospital to government for payment was rendered false by reason of referral relationship in violation of Antikickback Statute (AKS) and Stark Act, in lawsuit under False Claims Act (FCA); even though physician had been contractually required to make referrals to hospital and hospital expected physician to reimburse it for staff assigned to his office who continued to work there after expiration of his services agreement, all claims made by hospital under services agreement were beyond statute of limitations and any former taint in allegedly improper relationship did not continue beyond contract. U.S. ex rel Perales v. St. Margaret's Hosp., C.D.Ill.2003, 243 F.Supp.2d 843. United States 122

Even if hospital fraudulently obtained Joint Commission on Accreditation of Healthcare Organizations (JCAHO) certification, thus making it appear eligible to participate in Medicare, that conduct did not give rise to liability under False Claims Act (FCA); lack of proper JCAHO certification would not affect the government's decision to pay in the sense required by the False Claims Act. U.S. ex rel. Ortega v. Columbia Healthcare, Inc., D.D.C.2003, 240 F.Supp.2d 8. United States 120.1

Allegation that review board reduced coding of insurance claim submitted by health care provider and its subsidiary hospital to federal government on one occasion did not sufficiently assert that defendants, who participated in various federal healthcare programs, including Medicare, Medicaid, and TriCare, engaged in prohibited practice of upcoding, i.e., mislabeling diagnoses or treatments on claim forms to increase reported value of claim, in violation of the False Claims Act (FCA); there was nothing in complaint to suggest pattern of upcoding, or even that single incident was intentional. U.S. ex rel. Obert-Hong v. Advocate Health Care, N.D.Ill.2002, 211 F.Supp.2d 1045. United States 122

Foreign doctor's status, as foreign doctor, did not make claims submitted to Medicare in which he participated, fraudulent, and thus Hospital was not liable under False Claims Act (FCA) to United States for alleged fraud; Medicare claims were submitted for medical evaluations and procedures admittedly performed by foreign licensed doctor, while acting under supervision of Texas licensed physician, payments were made to hospital based on patient's diagnosis related group, regardless of who actually provided treatment, and, because hospital was paid fixed amount for inpatient services based on diagnosis related group assigned, none of alleged procedures by foreign doctor could have altered amount of money paid to Hospital for particular patient's care, and thus foreign doctor's participation was immaterial. U.S. ex rel. Riley v. St. Luke's Episcopal Hosp., S.D.Tex.2002, 200 F.Supp.2d 673, amended 2002 WL 32116882, reversed and remanded 355 F.3d 370. United States 120.1

Claimant failed to establish that organization submitting claims to Medicare for payment of home oxygen equipment violated False Claims Act; while there may have been minor violations of regulations, or honest mistakes in filling out forms, requests for equipment were reviewed and signed by physicians, and there was no evidence of any fraudulent request actually being paid by Medicare. U.S. ex rel. Phillips v. Pediatric Services of America, Inc., W.D.N.C.2001, 142 F.Supp.2d 717, motion denied 223 F.Supp.2d 763. United States 122

Hospital operator's former officer's allegation that operator failed to provide intensive rehabilitative services at least three hours per day, five days per week, as allegedly required by Medicare rules, did not support claim under False Claims Act (FCA), absent any statutory or regulatory definition of "intensive rehabilitative services." U.S. ex rel. Mathews v. Healthsouth Corp., W.D.La.2001, 140 F.Supp.2d 706, reversed 54 Fed.Appx. 404, 2002 WL 31687686. United States 122

Home health care agency and its officers violated False Claims Act (FCA) by obtaining Medicare reimbursement funds for cost of funding employee stock option plan (ESOP) with knowledge that ESOP had not been properly funded; funds used to set up ESOP had been withdrawn immediately after depositing them, stock was not transferred to ESOP until over two years later, by which time it had become worthless, and officers had made misleading representations during audit in effort to hide misconduct. U.S. ex rel. Augustine v. Century Health Services, Inc., M.D.Tenn.2000, 136 F.Supp.2d 876, affirmed 289 F.3d 409, rehearing and suggestion for rehearing en banc denied. United States 120.1

Federal government's allegation that nursing home sought Medicare and Medicaid payments for care of its residents when it

was so severely understaffed that it could not have possibly administered all of care that it was obligated to perform to obtain such payments, stated claim under False Claims Act (FCA). U.S. v. NHC Healthcare Corp., W.D.Mo.2000, 115 F.Supp.2d 1149. United States 122

Government stated claims under False Claims Act when it alleged that agreement under which testing laboratory performed routine dialysis blood tests at below-cost rate in exchange for referrals of nonroutine tests violated anti-kickback law, which prohibited offer or solicitation of remuneration in exchange for referrals of Medicare-payable services, and that agreement was intentionally concealed to induce government to make Medicare payments. U.S. ex rel. Kneepkins v. Gambro Healthcare, Inc., D.Mass.2000, 115 F.Supp.2d 35. United States 122

Fact that audit of anesthesiologist's Medicare claims revealed that 455 of the 461 sampled claims were overstated, falsely reported, unsupported, or undocumented demonstrated that physician and his billing secretary had either actual knowledge or constructive knowledge of the falsity within the meaning of the False Claims Act, in that they acted in reckless disregard of the truth, or certified information in support of the claims with neither personal knowledge of its accuracy nor reasonable investigative efforts. U.S. v. Cabrera-Diaz, D.Puerto Rico 2000, 106 F.Supp.2d 234. United States 120.1

Bills submitted by medical care provider to state health care program for services provided to program participants, including Medicaid participants, were not "false" within meaning of False Claims Act; although provider allegedly assessed program members co-payments in violation of state and federal law, bills did not assess copayment charges and did not expressly or implicitly promise compliance with law as condition of receiving payment. Lum v. Vision Service Plan, D.Hawai'i 2000, 104 F.Supp.2d 1237. United States 120.1

Plaintiff who brought action under the False Claims Act (FCA) alleging that physicians submitted false Medicare claim for venous ultrasound reports could not demonstrate the falsity of the claims under an implied false certification theory by proving that delivery of venous ultrasound services by physicians fell short of the requisite standard of care. U.S. ex rel. Swafford v. Borgess Medical Center, W.D.Mich.2000, 98 F.Supp.2d 822, affirmed 24 Fed.Appx. 491, 2001 WL 1609913, certiorari denied 122 S.Ct. 2292, 535 U.S. 1096, 152 L.Ed.2d 1051. United States 122

Even assuming that physicians submitted false Medicare claims for venous ultrasound reports because they did not review the underlying hard copy data from the ultrasound tests conducted by technicians, they were not liable under the False Claims Act (FCA), absent evidence that they acted either in deliberate indifference or reckless disregard of the truth of the claims. U.S. ex rel. Swafford v. Borgess Medical Center, W.D.Mich.2000, 98 F.Supp.2d 822, affirmed 24 Fed.Appx. 491, 2001 WL 1609913, certiorari denied 122 S.Ct. 2292, 535 U.S. 1096, 152 L.Ed.2d 1051. United States 120.1

Medicare service provider's allegedly improper calibration of its spirometers did not amount to false representation under False Claims Act; no government calibration standards existed and provider's certifications neither explicitly nor implicitly suggested that its spirometry machines had been calibrated in accordance with any such standards. U.S. ex rel. Mikes v. Straus, S.D.N.Y.1999, 78 F.Supp.2d 223. United States 120.1

Provider of coding and billing services for emergency physician groups seeking Medicaid or Medicare reimbursement was liable, under False Claims Act, for coding claims at levels that were not justified by supporting documentation and for coding claims in manner contrary to instruction of one payor as to services provided after hours or on Sundays or holidays. U.S. ex rel Trim v. McKean, W.D.Okla.1998, 31 F.Supp.2d 1308. United States 120.1

Relator failed to state claim under False Claims Act (FCA) when he alleged that providers of air ambulance services overcharged Medicare, Medicaid, and other federally supported programs by converting nautical miles flown to statute miles in billing government for air ambulance miles flown, given relator's failure to establish that claims were false by showing that providers were required or expected to submit claims in nautical miles, rather than statute miles. U.S. ex rel. Cox v. Iowa Health System, S.D.Iowa 1998, 29 F.Supp.2d 1022. United States 120.1

Claim for Federal Employees Compensation Act (FECA) benefits filed by army hospital clerical assistant for alleged on-the-job injury resulting in surgery for an incarcerated abdominal hernia was false claim, for which Government was entitled to recover civil penalty under False Claims Act; surgeon's letter substantiating employee's version of cause of injury was unreliable, location of hernia was inconsistent with any lifting injury, and employee knew there was no basis for claim when made. U.S. v. Bottini, W.D.La.1997, 19 F.Supp.2d 632, affirmed 159 F.3d 1357. United States 120.1

Medicare/Medicaid provider charged with violations of False Claims Act for submitting claims for both Medicare/Medicaid and non-Medicare/Medicaid patients for in excess of 24 hours of service in one calendar day, could only be found to have violated Act on days in which more than 24 hours of claims were submitted specifically for Medicare/Medicaid patients; mere proof that more than 24 hours were claimed for one given day, was not sufficient to establish that provider had knowingly or recklessly submitted false Medicare/Medicaid claims. U.S. v. Krizek, D.D.C.1998, 7 F.Supp.2d 56, remanded 192 F.3d 1024, 338 U.S.App.D.C. 187. United States 120.1

Even if medical services were necessary and actually rendered, allegations that health care provider submitted reimbursement requests to federal government although individual doctors had referred Medicare and Medicaid patients to provider in violation of federal anti-kickback and self-referral statutes stated prima facie case of False Claims Act violations. U.S. ex rel. Pogue v. American Healthcorp, Inc., M.D.Tenn.1996, 914 F.Supp. 1507, transferred to 238 F.Supp.2d 258. United States 122

Qui tam plaintiff could bring private cause of action under False Claims Act based on alleged kickbacks paid to physicians for referring patients for federally funded medical services in violation of Medicare fraud and abuse statute; it was possible plaintiff could show that kickbacks allegedly paid to physicians somehow tainted claims for Medicare reimbursement or rendered claims constructively false or fraudulent, thus creating connection between violation of fraud and abuse statute and False Claims Act. U.S. ex rel. Roy v. Anthony, S.D.Ohio 1994, 914 F.Supp. 1504. United States 122

Psychiatrist and his wife, who was responsible for overseeing psychiatrist's billing operation, acted with reckless disregard as to truth or falsity of Medicare and Medicaid submissions, and, as such, they would be deemed to have violated False Claims Act, where wife failed to establish how much time psychiatrist spent on particular matter and simply presumed that 45 to 50 minutes had been spent, and psychiatrist failed utterly in supervising office staff in making their submissions on his behalf. U.S. v. Krizek, D.D.C.1994, 859 F.Supp. 5, supplemented 909 F.Supp. 32, affirmed in part and remanded 111 F.3d 934, 324 U.S.App.D.C. 175, on remand 7 F.Supp.2d 56. United States 120.1

Government's allegations that physicians used false records which resulted in fraudulent claims to medicare/medicaid was sufficient to state claim for relief under False Claims Act, even if Government suffered no loss because level of reimbursement was fixed under medicaid. U.S. v. Kensington Hosp., E.D.Pa.1991, 760 F.Supp. 1120. United States 122

Where each physician had done nothing but submit perfectly appropriate medicaid claims after performing valuable and necessary medical services and there was no suggestion of any fraud, former § 231 of this title afforded no basis for qui tam or informer action brought against physicians. U. S. ex rel. Hughes v. Cook, S.D.Miss.1980, 498 F.Supp. 784. United States 122

Evidence that physician's signatures on medicare claims were forged and testimony by secretary to director of nursing home that the director instructed her to sign physician's name and include the physician's code number and evidence that nursing home had recently had direct payments from medicare carrier suspended showed that nursing home director violated former § 231 of this title by submitting the claims in question. Peterson v. Richardson, N.D.Tex.1973, 370 F.Supp. 1259, affirmed 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96 S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. United States 120.1

Relator's allegations of more than 200 false claims for off-label uses of human growth hormone not approved by Food and

Drug Administration (FDA), which were submitted to both Medicaid and other federal programs from citizens in Indiana, met heightened pleading standards for fraud claim against pharmaceutical companies, where claims included drug for which reimbursement was sought, medical diagnosis accompanying claim, diagnosis and reimbursement dates, and prescription dosage. U.S. ex rel. Rost v. Pfizer, Inc., D.Mass.2008, 253 F.R.D. 11. Federal Civil Procedure 636

Government's allegations that hospitals knowingly submitted claims for Medicare payment of non-covered services provided in connection with investigational cardiac devices that were not "reasonable and necessary" within meaning of Medicare manual provision were sufficient to state false or fraudulent element of claim under the False Claims Act (FCA); as pled, hospitals' claims were legally false under express or implied certification theory, as they expressly or impliedly certified compliance with Medicare provision. In re Cardiac Devices Qui Tam Litigation, D.Conn.2004, 221 F.R.D. 318. United States 122

While pharmaceutical providers operating in New Jersey had admittedly failed to credit Medicaid for pharmaceuticals ordered for Medicaid patients that were later returned to providers and resold in State of New Jersey, this failure did not, as matter of law, rise to level of False Claims Act violation, in absence of any clear federal or state statutory or regulatory authority to support contention that credits to Medicaid for returned or unused drugs were required. In re Genesis Health Ventures, Inc., Bkrtcy.D.Del.2002, 272 B.R. 558, subsequently affirmed 112 Fed.Appx. 140, 2004 WL 2296093. United States 120.1

United States failed to establish fraud, within meaning of False Claims Act, though debtors, whose company obtained Medicaid reimbursement for seat-lift chairs sold to customers, made additions to physicians' diagnoses in order to comply with technical reimbursement requirements, absent showing that debtors knew representations were false or that they made representations with purpose of defrauding Government. U.S. v. Stelweck, E.D.Pa.1989, 108 B.R. 488. United States 122

Independent pharmacy benefit manager, which provided mail order prescriptions to participants in the Department of Defense's TRICARE health program, did not falsely certify implied compliance with Code of Federal Regulations provision requiring all prescriptions for controlled substances be dated and signed and bear registration number of medical practitioner, in violation of False Claims Act (FCA); manager's submission of claims for prescriptions filled in violation of provision could not give rise to liability under FCA, as compliance with provision was not "condition of payment" under FCA. U.S. ex rel. Lobel v. Express Scripts, Inc., C.A.3 (Pa.) 2009, 351 Fed.Appx. 778, 2009 WL 3748805, Unreported. United States 120.1

New Jersey regulations that entitled Medicaid-provider pharmacy to recycle and redispense returned medications precluded relator's claim that pharmacy violated False Claims Act (FCA) by submitting successive claims for same medications, since regulation did not require pharmacies to credit Medicaid for recycled and redispensed medications and thus initial sale and subsequent sale of returned medication were separate transactions. In re Genesis Health Ventures, Inc., C.A.3 (Del.) 2004, 112 Fed.Appx. 140, 2004 WL 2296093, Unreported. United States 120.1

Former Medicare hearing officer for Medicare insurer failed to show that insurer inflated its claims count and fraudulently certified its compliance with the Medicare Carriers Manual (MCM) in order to ensure its full payment without penalties, its contract renewal, and its bonus eligibility, in violation of the False Claims Act (FCA). U.S. ex rel. Watson v. Connecticut General Life Ins. Co., C.A.3 (Pa.) 2004, 87 Fed.Appx. 257, 2004 WL 234970, Unreported. United States 122

Medicare insurer's policy of encouraging resubmissions of claims for benefits that were denied for being incomplete, rather than encouraging claimants to seek review, did not result in insurer knowingly presenting to government fraudulent claim for payment, which would be actionable under the False Claims Act (FCA); insurer's policy did not result in any claim for payment beyond what insurer would have received, policy was not manipulative or wrongful, and insurer believed policy was most efficient and cost-effective way to deal with such claims. U.S. ex rel. Watson v. Connecticut General Life Ins. Co., E.D.Pa.2003, 2003 WL 303142, Unreported, affirmed 87 Fed.Appx. 257, 2004 WL 234970. United States 120.1

154. Dental services, frauds within section

Insurance claim forms prepared by dentist so as to disguise routine dental check-up as "limited consultation" for oral cancer examination was "false claim" in violation of False Claims Act. U.S. v. Lorenzo, E.D.Pa.1991, 768 F.Supp. 1127. United States 120.1

155. Overcharging for goods and services, frauds within section

Former § 231 of this title was primarily directed against government contractors' billing for nonexistent or worthless goods or charging exorbitant prices for delivered goods. U. S. ex rel. Weinberger v. Equifax, Inc., C.A.5 (Fla.) 1977, 557 F.2d 456, rehearing denied 561 F.2d 831, certiorari denied 98 S.Ct. 768, 434 U.S. 1035, 54 L.Ed.2d 782, rehearing denied 98 S.Ct. 1477, 435 U.S. 918, 55 L.Ed.2d 511. United States 120.1

Relators pled with sufficient particularity claim that contractor and subcontractors violated False Claims Act (FCA) by improperly charging United States for nonconforming and substandard tooling used to manufacture and assemble airplanes for United States, even though they did not plead with particularity actual presentment of false claims to United States, where relators stated that their allegations made upon "information and belief" were based on their extensive experience with contractor, provided specific contract numbers for contracts, gave numerous examples of specific tools for which United States was improperly charged or overcharged, explained basis for concluding billing was improper, identified management level employees and tool engineers who were aware of or participated in fraudulent schemes alleged, and identified specific difficulties particular to case that hindered their ability to identify specific false claims submitted. U.S. ex rel. Howard v. Lockheed Martin Corp., S.D.Ohio 2007, 499 F.Supp.2d 972. Federal Civil Procedure 636

Wife of owner of computer repair companies acted at least in reckless disregard of the truth or falsity of information being submitted by one company to other and eventually to the Internal Revenue Service (IRS), for purposes of action brought by government alleging violations of the False Claims Act (FCA) arising from a fraudulent markup scheme inflating costs incurred by the government for repair of laptop computers, where wife served on the board of directors of computer repair company and had obligations with respect to the performance of those duties, was identified in documents as an incorporator, officer, and director of fraudulent company, and both wife and owner admitted that she allowed owner to use her name and her identity to conduct business for her. U.S. v. Rachel, D.Md.2003, 289 F.Supp.2d 688. United States 120.1

Former § 231 of this title was designed to apply to particular kind of cheating which was inhibiting war effort at time it was passed, that is, the practice of fraudulently overcharging government for goods supplied and services rendered. U. S. v. Marple Community Record, Inc., E.D.Pa.1971, 335 F.Supp. 95. United States 120.1

Evidence supported conclusion that contractor attempted to practice fraud against the United States in the proof, statement, and establishment of an equitable adjustment claim submitted to the contracting officer, by deliberately inflating its demand for increased material costs allegedly incurred as a result of government-caused delay; claim was inflated by including amounts provided for in purchase order price escalation clauses neither billed by vendors nor paid by contractor, on delivered and undelivered parts. UMC Electronics Co. v. U.S., Fed.Cl.1999, 43 Fed.Cl. 776, affirmed 249 F.3d 1337. United States 73(9)

156. Reports, frauds within section

Home health care agency and its officers submitted false claims, in violation of False Claims Act (FCA), by submitting cost reports to obtain Medicare reimbursement funds for contributions made to employee stock ownership plan (ESOP); even though cost reports were technically accurate on day they were filed, funds contributed to ESOP were withdrawn immediately after they were deposited, so that reports became inaccurate, officers never filed amended cost reports, although they had continuing duty to do so, and officers did not replace withdrawn amounts. U.S. ex rel. Augustine v. Century Health Services, Inc., C.A.6 (Tenn.) 2002, 289 F.3d 409, rehearing and suggestion for rehearing en banc denied. United States

120.1

Home health care agency and its officers acted knowingly, in violation of the False Claims Act (FCA), in submitting fraudulent cost reports to Medicare, seeking reimbursement for contributions made to employee stock ownership plan (ESOP), which were immediately withdrawn, and certifying their compliance with Medicare regulations, and in making misrepresentations to government auditor; officers testified that they were familiar with Medicare regulations requiring filing of amended cost reports to document their failure to timely replace the withdrawn funds, but they failed to submit amended reports, and evidence showed that officers intentionally misled auditor about ESOP funds. U.S. ex rel. Augustine v. Century Health Services, Inc., C.A.6 (Tenn.) 2002, 289 F.3d 409, rehearing and suggestion for rehearing en banc denied. United States 120.1

Evidence was insufficient to establish that statements made by university to National Institutes of Health (NIH) in its annual progress reports under grant for researching infectious cause of birth defects were false or material, as required to support doctoral candidate's qui tam action under False Claims Act; alleged false statements about amount of data that university had computerized, university's alleged inclusion of abstract of candidate's work without mentioning her name and its inclusion of abstract of another candidate's work which allegedly plagiarized candidate's work would not have affected multimillion dollar grant. U.S. ex rel. Berge v. Board of Trustees of the University of Alabama, C.A.4 (Md.) 1997, 104 F.3d 1453, 41 U.S.P.Q.2d 1481, certiorari denied 118 S.Ct. 301, 522 U.S. 916, 139 L.Ed.2d 232. United States 122

Progress reports, which were submitted by DNA researchers in connection with National Institute of Health (NIH) research grants, and which contained no false statements themselves, did not become false claims under False Claims Act (FCA) by virtue of their failure to correct alleged false statements in original grant application; certification language in progress reports that “the statements herein are true” referred only to accurate statements made in progress reports themselves, and not to alleged false statements in original grant application. U.S. ex rel. Bauchwitz v. Holloman, E.D.Pa.2009, 671 F.Supp.2d 674. United States 120.1

Genuine issue of material fact as to whether false crop insurance applications and acreage reports could have been submitted without agent's signature, and thus whether agent used or made false statements, or at least caused them to be made, precluded summary judgment in favor of agent on False Claims Act (FCA) claim. U.S. v. Hawley, N.D.Iowa 2008, 544 F.Supp.2d 787, subsequent determination 566 F.Supp.2d 918, reversed 619 F.3d 886, rehearing and rehearing en banc denied. Federal Civil Procedure 2498.4

False quarterly reports and false interim report fell within provision of False Claims Act prohibiting knowing use of false record or statement to get false claim, even though each individual report did not trigger separate payments, where release of funds from United States was predicated upon grant agreement which required periodic submission of accurate reports. U.S. v. Board of Educ. of City of Union City, D.N.J.1988, 697 F.Supp. 167. United States 121

False Claims Act, 31 U.S.C.A. § 3729 et seq., applied to Government's action against four filmmakers which arose after naval officer allegedly submitted false report which understated flight time in connection with making of film for which Navy was to be reimbursed. U.S. v. Douglas, E.D.Va.1985, 626 F.Supp. 621. United States 120.1

Evidence in government's action brought on allegations that defendant made and presented 34 payroll reports which falsely certified that wages were true and correct established that defendant helped in preparation and made or caused to be made such reports and that they were false. U. S. v. Greenberg, S.D.N.Y.1965, 237 F.Supp. 439. United States 122

Evidence in action under former § 231 of this title established that false payroll reports were presented to government by defendant personally or caused to be presented at his discretion, and that he caused the reports to be made falsely, knowing them to be false, to obtain payment on claims. U. S. v. Greenberg, S.D.N.Y.1965, 237 F.Supp. 439. United States 122

Where seller of butane gas for federal housing projects knowingly submitted claims for gas not delivered and manager of projects knowingly submitted reports to federal public housing authority including overcharges in items stating cost of gas, seller and manager thereby presented "false claims" to United States within former § 231 of this title. U.S. v. Gardner, N.D.Ala.1947, 73 F.Supp. 644. United States 121

Where seller of butane gas for federal housing projects knowingly submitted claims for gas not delivered and manager of projects knowingly submitted to federal public housing authority quarterly reports including such overcharges in items, stating cost of gas, seller and manager thereby made, used, or caused to be made or used false invoices, claims, and certificates, knowing them to contain fraudulent, fictitious statements or entries within former § 231 of this title. U.S. v. Gardner, N.D.Ala.1947, 73 F.Supp. 644. United States 121

157. Research grant applications, frauds within section

Act of tracing boundaries of entorhinal cortex (EC) was subjective and required exercise of scientific judgment, and thus, disagreements over such judgments were not proper basis for claim under False Claims Act (FCA) brought by relator, alleging hospitals and physicians improperly certified false statements contained in Program Project Grant Application to National Institute on Aging (NIA), an organization under National Institutes of Health (NIH); as experts disagreed over accuracy of physician's set of data, such disagreement did not yield resolution where one could not state with reasonable certainty that one conclusion was true and the other false. U.S. ex rel. Jones v. Brigham and Women's Hosp., D.Mass.2010, 2010 WL 4502079. United States 120.1

Former employees failed to state a viable False Claims Act (FCA) claim against employer, in support of their FCA retaliation claim, by alleging that through the actions of its president and executive director, employer knowingly made, used, or caused to be made or used, a false record or statement material to a false or fraudulent claim, by submitting fraudulent grant applications to the Small Business Administration (SBA), as employees offered no allegations regarding the content of the allegedly false grant applications submitted to the SBA, or any specific allegations regarding any false representations made by employer's president and executive director, to the employer or to the government, or that employer's president and executive director acted with the requisite intent. Boone v. MountainMade Foundation, D.D.C.2010, 684 F.Supp.2d 1.

Applicant's representation in proposals for Small Business Innovation Research (SBIR) program grant that it had "cooperative arrangements" with other local laboratories was made with scienter necessary to support claim under False Claims Act (FCA), even if it had discussed possible cooperation with laboratories, and did not claim to have reached agreements, where, at time proposals were submitted, no agreement or arrangement was in place with either laboratory beyond fee-for-service like any other member of public. U.S. ex rel. Longhi v. Lithium Power Technologies, Inc., S.D.Tex.2007, 513 F.Supp.2d 866. United States 120.1

Alleged failure of applicant for grant from federal government for scientific research to disclose that data previously cited in grant applications were false and that retractions of journal articles containing data were planned did not violate False Claims Act; one retraction was submitted but published, and federal agency making grant was informed of second retraction prior to date of application. U.S. ex rel. Milam v. Regents of University of California, D.Md.1995, 912 F.Supp. 868. United States 120.1

158. Reverse false claims, frauds within section

Former offshore drilling unit worker who alleged failure to comply with Clean Water Act requirement to report immediately upon becoming aware of relevant polluting discharge failed to state claim under "reverse false claims" provision of False Claims Act (FCA) governing liability for knowingly concealing obligation to pay; asserted obligation to pay was potential and contingent in nature. U.S. ex rel. Marcy v. Rowan Companies, Inc., C.A.5 (La.) 2008, 520 F.3d 384. United States 120.1

Discretion afforded to officials of United States Department of Agriculture (USDA) to determine whether to issue new certificates for export of animal products and to charge authorized fees, based on need to make significant or major changes to original certificate, did not render obligation to pay fees for in-lieu-of and replacement certificates contingent and thus outside scope of reverse false claims provision of False Claims Act. U.S. ex rel. Bahrani v. Conagra, Inc., C.A.10 (Colo.) 2006, 465 F.3d 1189, certiorari denied 128 S.Ct. 388, 552 U.S. 950, 169 L.Ed.2d 264, on remand 2009 WL 751169. United States 120.1

Chemical manufacturer did not violate "reverse false claim" provision of False Claims Act (FCA) by allegedly concealing polyvinyl chloride (PVC) emissions during open lid loss through false emissions records in order to avoid potential fine or monetary penalty; there was no "obligation to pay" within meaning of that provision. U.S. ex rel. Bain v. Georgia Gulf Corp., C.A.5 (La.) 2004, 386 F.3d 648, on subsequent appeal 208 Fed.Appx. 280, 2006 WL 3093637. United States 120.1

Failure of Medicaid-provider pharmacy to give Medicaid 100% credit for returned medications did not violate reverse false claim provision of False Claim Act (FCA), since there was no federal or New Jersey Medicaid statute or regulation which specifically required pharmacy to credit Medicaid and there was absence of any Medicaid or other regulation requiring provider pharmacies to credit at specific rate, and although pharmacy had obligation to monitor facility's crediting system, that obligation did not expressly include obligation to credit Medicaid for returned medications. U.S. ex rel. Quinn v. Omnicare Inc., C.A.3 (N.J.) 2004, 382 F.3d 432. United States 120.1

United States' allegations that aircraft maintenance government contractor knowingly misidentified aircraft wings on inventory schedule to avoid accounting for full value of wings were sufficient to state "reverse false claim" under False Claims Act, where complaint contained express references to contractor's obligation under its contracts to account for full value of government property. U.S. v. Pemco Aeroplex, Inc., C.A.11 (Ala.) 1999, 195 F.3d 1234. United States 122

The reverse false claims provision of the False Claims Act (FCA) did not encompass alleged conduct of importers in making false statements to avoid paying customs duties, fines, and taxes, where the claims were based on theory of contingent obligations and importers did not have a contract or lease with the government and did not ask for money or benefits from the government, and where the government had not brought a criminal or civil action against the defendants, and thus had no judgment against them. American Textile Mfrs. Institute, Inc. v. The Limited, Inc., C.A.6 (Ohio) 1999, 190 F.3d 729, rehearing and suggestion for rehearing en banc denied, certiorari denied 120 S.Ct. 1556, 529 U.S. 1054, 146 L.Ed.2d 461. United States 120.1

"Obligation," within meaning of provision of False Claims Act governing liability for "reverse false claims," under which a party makes a false claim to avoid obligation to pay money or property to the government, did not encompass potential or contingent obligations, and thus did not encompass chemical company's potential future obligation to pay customs inspection fees for its shipments, which it sought to avoid by participating in customs agency's Customs-Trade Partnership Against Terrorism (C-TPAT) program, for purposes of relator's qui tam action claiming that chemical company and warehousing company falsified documents relating to their participation in program; obligation to pay inspection fees was contingent upon whether or not customs agency chose to inspect shipments, and there was no way to determine the amount companies would have owed in the event inspections had taken place. Zelenka v. NFI Industries, Inc., D.N.J.2006, 436 F.Supp.2d 701, affirmed 260 Fed.Appx. 493, 2008 WL 131463. United States 120.1

Purchaser of crude oil from federal and Indian leases, which falsified records of oil amounts taken, could be held liable under False Claims Act, even if it paid entire purchase price to lessees, who in turn submitted royalty payments to federal government; Act covered indirect reverse false claims. U.S. ex rel. Koch v. Koch Industries, Inc., N.D.Okla.1999, 57 F.Supp.2d 1122. United States 120.1

Travel agency's wrongful use of non-profit postal rate for cooperative mailing between for-profit and non-profit organizations created obligation to United States sufficient for reverse false claims liability under False Claims Act (FCA), where agency signed Postal Service mailing statement indicating that signature of mailer certified that it would be liable for any revenue

deficiencies assessed on mailing, whether due to finding that mailing was cooperative or for other reasons. U.S. v. Raymond & Whitcomb Co., S.D.N.Y.1999, 53 F.Supp.2d 436. United States 120.1

Evidence did not support finding that transit system owned and operated by city had made false statements and representations to Federal Transit Administration (FTA) in order to avoid repayment of improperly received grant funds, in violation of False Claims Act (FCA), by falsely maintaining that system's plan to bus school children comported with federal requirements; city appeared to have been innocently mistaken regarding precise "tripper" service requirements, and city made attempts to comply after complaints were filed with FTA. U.S. ex rel. Lamers v. City of Green Bay, E.D.Wis.1998, 998 F.Supp. 971, affirmed 168 F.3d 1013. United States 122

Assistance agreement between bridge bank and Federal Deposit Insurance Corporation (FDIC), under which bridge bank could require FDIC to repurchase certain loans, did not create specific contractual "obligation to pay or transmit money" on part of bridge bank that survived repurchase of particular loan, and thus did not create obligation to repay that would support reverse false claim under False Claims Act. U.S. ex rel. S. Prawer & Co. v. Verrill & Dana, D.Me.1997, 962 F.Supp. 206. United States 120.1

Chapter 7 trustee did not violate the "reverse false claims provision" of the False Claims Act by allegedly failing to inform the United States that debtor had arranged financing to make up past due payments on estate property financed by the United States; trustee made no "statement" or "record" within meaning of the Act, trustee had no duty to inform the United States that debtors had a loan commitment, and, prior to public sale of the subject property, the United States was aware that debtor claimed that a loan commitment had been obtained. In re Krikava, Bkrtcy.D.Neb.1999, 236 B.R. 701. Bankruptcy 3009; Bankruptcy 3011; United States 120.1

159. Social security benefits, frauds within section

Evidence tended to show that defendant perpetrated a fraud upon the government in demanding and receiving checks for social security benefits for the months of January to September, 1964. U. S. v. Fowler, E.D.N.Y.1968, 282 F.Supp. 1. United States 122

160. Surplus Property Act violations, frauds within section

A violation of the Surplus Property Act of 1944, former § 1611 et seq. of the Appendix to Title 50, fell within the prohibition of former § 231 of this title although it did not involve a presentation of a false claim for money. U S v. Guzzone, E.D.N.Y.1958, 168 F.Supp. 711, modified on other grounds 273 F.2d 121. United States 121

161. Veterans' hospitalization applications, frauds within section

The United States had right to maintain action against veteran for hospitalization benefits received for nonservice connected disability on ground that veteran had received benefits after signing statement under oath that he was unable to defray necessary expenses when he was, in fact financially able to do so. U. S. v. Shanks, C.A.10 (Colo.) 1967, 384 F.2d 721. United States 120.1; United States 126

False statements of financial worth made in connection with sworn application by veteran for treatment of nonservice connected illness in veterans' hospital were false "claims", "certificates" or "affidavits" used for purpose of obtaining payment of claim upon the United States within meaning of former § 231 of this title. Alperstein v. U.S., C.A.5 (Fla.) 1961, 291 F.2d 455. United States 120.1

False statement of honorably discharged veteran of armed services of United States made for purpose of obtaining admission and free medical treatment in a Veterans' Administration hospital created no liability under former § 231 of this title. U.S. v.

Borth, C.A.10 (Kan.) 1959, 266 F.2d 521. United States 120.1

Application for treatment at Veterans' Administration hospital was not "false, fictitious or fraudulent," within meaning of former § 231 of this title, although applicant negatively answered question whether he was financially able to pay necessary expenses of hospital, where face of application disclosed insurance coverage which could not have been ignored by Administration officials, and applicant made full and complete disclosure of his assets. U. S. v. Schmidt, E.D.Wis.1962, 204 F.Supp. 540. United States 120.1

Veteran, who was admitted to Veterans' Administration hospital for surgical repair of hernia, which was not service-connected, after signing under oath an application with a false negative answer to question inquiring whether he was financially able to pay necessary expenses of hospital care, was guilty of making a false, fictitious, or fraudulent claim against the United States, though he stated in addendum that he had a net worth of some $50,000 with current assets of $10,000. U.S. v. Petrik, D.C.Kan.1956, 154 F.Supp. 598. United States 121

162. Veterans' loan guaranties, frauds within section

Evidence supported implied finding, in suit under former § 231 [now § 3729] of this title against home builder for making false claims to induce Veterans' Administration to grant loan guaranties and pay cash gratuities in connection with purchase of home by veteran, that builder learned of veteran's abandonment of intention to occupy before delivery of deed and mortgage and disbursement of funds by lender. Beckwith v. U. S., C.A.5 (Tex.) 1961, 293 F.2d 471. United States 120.1

163. Vouchers, frauds within section

Under False Claims Act (FCA), government could recover benefit of its bargain with military contractor, which was value that helicopter would have had if it had been of specified quality, for loss of military helicopter on contractor's failure to ensure quality of parts used for remanufacture of helicopter; even though only one part on helicopter was defective, part was "flight critical," necessary for flight, and contractor billed government for remanufactured helicopters as units, not as assemblages of assorted parts. U.S. ex rel. Roby v. Boeing Co., C.A.6 (Ohio) 2002, 302 F.3d 637, rehearing and suggestion for rehearing en banc denied, certiorari denied 123 S.Ct. 2641, 539 U.S. 969, 156 L.Ed.2d 675. United States 122

Even if government contractor's executive vice president violated criminal statute aimed at "revolving door" abuses by former government employees by representing contractor in matters related to contract, vouchers submitted to government by contractor did not make implicit certification that statute had not been violated, so as to provide basis for action under False Claims Act (FCA), absent requirement that contractor certify compliance with statute as condition of its contract. U.S. ex rel. Siewick v. Jamieson Science and Engineering, Inc., C.A.D.C.2000, 214 F.3d 1372, 341 U.S.App.D.C. 459. United States 120.1

Evidence in action under former § 231 of this title supported findings that defendants had caused to be submitted false vouchers wherein work of some employees was charged as direct labor, whereas in fact such work was indirect labor for which no charge was to be made. U.S. v. Ueber, C.A.6 (Mich.) 1962, 303 F.2d 462. United States 122

In action for penalty under former § 231 of this title against wholesaler who bid to furnish 6,600 regulators of designated proprietary number and who furnished regulators of its own manufacture and only 250 regulators of such proprietary number, proof did not establish that two vouchers for 128 regulators were false. U. S. v. National Wholesalers, C.A.9 (Cal.) 1956, 236 F.2d 944, certiorari denied 77 S.Ct. 719, 353 U.S. 930, 1 L.Ed.2d 724. United States 122

If knowledge of munitions manufacturer's employees involved in acts depriving Ordnance Department of inspection of ammunition could have been imputed to manufacturer and those who presented vouchers on manufacturer's behalf for payment of the ammunition, the presentation of pay vouchers therefor represented a "false claim," within former § 231 of this title.

U.S. v. U.S. Cartridge Co., E.D.Mo.1950, 95 F.Supp. 384, affirmed 198 F.2d 456, certiorari denied 73 S.Ct. 645, 345 U.S. 910, 97 L.Ed. 1345. United States 122

164. Miscellaneous frauds within section

Government photography contractor submitted work orders to government quality assurance evaluator at least in part to justify contractor's request for equitable adjustment payment, and, thus, work orders could be basis for liability under False Claims Act (FCA), notwithstanding that production quantities recorded on work orders did not determine exact amount of equitable adjustment settlement; government contracting officers testified that they relied on work orders in deciding to grant equitable adjustment. Shaw v. AAA Engineering & Drafting, Inc., C.A.10 (Okla.) 2000, 213 F.3d 519. United States 120.1

Allegation that government contractor lied about scope of subcontract for provision of training related to in-tank precipitation process operations, in order to get Department of Energy (DOE) to approve a sole-source extension of subcontract for $880,000, and that contractor submitted claims for work that was beyond scope of contract, did not support claim under False Claims Act, as alleged lie was immaterial to sole-source extension, and DOE was aware of terms of contract. Harrison v. Westinghouse Savannah River Co., C.A.4 (S.C.) 1999, 176 F.3d 776. United States 122

Government contractor's interpretation of excavation contract for flood control project as permitting payment based on volume of earth moved as computed from contract drawings, regardless of whether it actually excavated up to lines in drawings, was so unreasonable as to defeat contractor's assertion, in action under Contract Disputes Act (CDA), False Claims Act (FCA), and Forfeiture of Fraudulent Claims Act (FFCA), that it pressed its claims based on good faith belief of entitlement, given clear and unambiguous language of excavation contract regarding excavation required and basis for compensation. Commercial Contractors, Inc. v. U.S., C.A.Fed.1998, 154 F.3d 1357, rehearing denied. United States 120.1

Government contractor knowingly presented false claims to government, for payment under contracts to supply United States Army with jeep brake-shoe kits, within meaning of False Claims Act, because contractor had at least reckless disregard for falsity of such claims in view of its failure to test brake shoes in accordance with contractual requirements. U.S. ex rel. Compton v. Midwest Specialties, Inc., C.A.6 (Ohio) 1998, 142 F.3d 296. United States 120.1

Former employee, of seller of digital telecommunications switches to the military, failed to show that seller violated False Claims Act when it sold switch to government, despite contention that seller knew switch was defective when it sold switch, where switch was installed, it had bugs, bugs were fixed, and then seller billed the Army and was paid. U.S. ex rel. Anderson v. Northern Telecom, Inc., C.A.9 (Wash.) 1995, 52 F.3d 810, as amended , certiorari denied 116 S.Ct. 700, 516 U.S. 1043, 133 L.Ed.2d 657. United States 122

In civil action by the government for recovery of double damages and forfeitures under provisions of former § 231 of this title evidence sustained finding that government failed to establish defendants through fraud delivered substandard meat to the Army, or that defendants presented false claims for payments. U.S. v. Cherkasky Meat Co., C.A.3 (Pa.) 1958, 259 F.2d 89. United States 122

Qui tam relator supported existence of false claim element of his False Claims Act claim, under presentment theory, by alleging that information technology services provider falsely listed 140 products as compliant with Trade Agreements Act (TAA) on website related to “solutions for enterprise-wide procurement” (SEWP) contract with National Aeronautics and Space Administration (NASA), that those products were purchased by government, and thus that those products were tied to provider's alleged false claims for payment from government. U.S. ex rel. Folliard v. CDW Technology Services, Inc., D.D.C.2010, 722 F.Supp.2d 20. United States 122

Contractor providing trucks to government did not violate False Claims Act (FCA) by submitting payment claims for completed trucks and progress payment requests for other trucks, which were impliedly false due to failure to mention alleged

nonconformity of trucks to corrosion specifications; contractor was under no obligation to disclose nonconformance or deficiencies in submitting documents. U.S. ex rel. Stebner v. Stewart & Stevenson Services, Inc., S.D.Tex.2004, 305 F.Supp.2d 694. United States 120.1

Manufacturer's alleged mischarging of employee time under multiple contracts with Department of Defense, and presentation of mischarged time to Department for payment or approval, supported claim of liability under False Claims Act. U.S. ex rel. Kozhukh v. Constellation Technology Corp., M.D.Fla.1999, 64 F.Supp.2d 1239. United States 120.1

Army hospital clerical assistant's violation of regulations governing right to benefits under Federal Employees Compensation Act (FECA), by not returning to full employment at a time when he was fully capable of doing so, did not convert claim for abdominal injury after falling in his office, which was valid when presented, to a false claim under False Claims Act. U.S. v. Bottini, W.D.La.1997, 19 F.Supp.2d 632, affirmed 159 F.3d 1357. United States 120.1

Contracting officer's alleged fraudulent conduct in approving delivery order for project that involved clearing of two sedimentation ponds at naval facility, despite knowledge that unsuccessful bidder for subcontract had submitted lower bid than successful bidder, was material to government's decision to approve and pay on delivery order, for purpose of unsuccessful bidder's action against officer under False Claims Act. U.S. ex rel. Durcholz v. FKW Inc., S.D.Ind.1998, 997 F.Supp. 1159, affirmed 189 F.3d 542. United States 122

Submission of false and fraudulent claims to a city redevelopment authority could have violated former § 231 of this title. U. S. v. Kates, E.D.Pa.1976, 419 F.Supp. 846. United States 121

Fraud associated with obligation owed by individual to government was not within purview of former § 231 of this title. U. S. v. Marple Community Record, Inc., E.D.Pa.1971, 335 F.Supp. 95. United States 120.1

Extraction from United States of money or property not rightfully due was within purview of former § 231 of this title. U. S. v. Marple Community Record, Inc., E.D.Pa.1971, 335 F.Supp. 95. United States 120.1

In action by United States against government contractor under former § 231 of this title and for commonlaw fraud, evidence established that contractor made false claims upon United States knowing such claims to be false, fictitious and fraudulent, used false bills, receipts, etc., knowing them to contain fraudulent and fictitious statements, intentionally made false statements to United States which were material and upon which United States relied, negligently made misrepresentations to United States which were material and upon which United States relied, and overcharged United States by making statements containing misrepresentations which were material and upon which United States relied. U. S. v. Foster Wheeler Corp., S.D.N.Y.1970, 316 F.Supp. 963, modified on other grounds 447 F.2d 100. United States 120.1

Former § 232 of this title was not intended to apply where there was no collusive bidding in obtaining government contracts, nor any conspiracy between successful bidder and government officials, nor any failure of performance. U.S. ex rel. Edelstein v. Brussell Sewing Mach. Co., S.D.N.Y.1943, 51 F.Supp. 760. United States 122

Liability under the False Claims Act (FCA) could not be based on practice of filing false statements with the United States Customs Service concerning country of origin of apparel imports, on theory that fines and penalties which could be assessed for such mismarketing constituted "obligations" owed by importers to the government, and that when entry documents were falsified, importers attempted to avoid obligation owed to the government; obligation to pay marking duties occurred only if importer failed to take corrective action and Customs then proceeded to levy duties. U.S. ex rel. American Textile Mfrs. Institute, Inc. v. The Limited, Inc., S.D.Ohio 1998, 179 F.R.D. 541, affirmed 190 F.3d 729, rehearing and suggestion for rehearing en banc denied, certiorari denied 120 S.Ct. 1556, 529 U.S. 1054, 146 L.Ed.2d 461. United States 120.1

Medicare insurer's policy of encouraging resubmission of incomplete claims for benefits was not wrongful or otherwise

fraudulent or in violation of any Medicare regulations, which would be actionable under the False Claims Act (FCA). U.S. ex rel. Watson v. Connecticut General Life Ins. Co., C.A.3 (Pa.) 2004, 87 Fed.Appx. 257, 2004 WL 234970, Unreported. United States 120.1

IV. REMEDIES OR RELIEF

<Subdivision Index>

191. Election of remedies, remedies or relief

Where basis for both administrative proceedings and civil action for recovery of subsidy payments made pursuant to farm support program was that payee had made false statements to United States concerning eligibility requirements under program, doctrine of election of remedies had no application. U.S. v. Thomas, C.A.5 (Tex.) 1983, 709 F.2d 968. Election Of Remedies 1

United States should have been permitted to elect whether to proceed first with civil action under former § 231 of this title or with criminal prosecution based on same transaction in absence of showing of prejudice to defendants in respective actions or of a want of diligence on the part of United States in prosecution of the suit with which it elected to proceed. U.S. v. Baker-Lockwood Mfg. Co., C.C.A.8 (Mo.) 1943, 138 F.2d 48. Criminal Law 43

192. Exclusive nature of remedy, remedies or relief

The right of the United States to sue for recovery of money obtained from it by means of a fraudulent claim was one existing at common law, and the remedy given by former § 231 of this title was cumulative, and not exclusive. Pooler v. U.S., C.C.A.1 (Me.) 1904, 127 F. 519, 62 C.C.A. 317. United States 126

193. Alternative remedies, remedies or relief

A plaintiff may have set forth alternative legal bases for recovery; and it was permissible for government to proceed under § 489(b) of Title 40, as well as under former § 231 of this title, against defendants who had pleaded guilty to indictment charging them with conspiring to violate former § 231 of this title by causing veterans to file false statements in applications for veterans' priority certificates in connection with purchase of surplus trucks from War Assets Administration. United States v. Guzzone, C.A.2 (N.Y.) 1959, 273 F.2d 121. Federal Civil Procedure 82.1

Alternative legal remedies were not adequate, and thus they did not preclude equitable relief sought by government to recover Medicare reimbursement overpayments made to home health services provider (HHA), since Medicare provider agreements created statutory rights, not contractual rights, showing of wrongful conduct was required to establish guilt under Anti-Kickback Act or liability under False Claims Act, government was not required to pursue administrative action before seeking overpayment action, and judicial economy and legislative intent would not have been served by requiring government to pursue its legal remedies. U.S. ex rel. Roberts v. Aging Care Home Health, Inc., W.D.La.2007, 474 F.Supp.2d 810. Health 535(1)

Government may have set forth alternative legal grounds for recovery and used the remedy under former § 231 of this title in conjunction with other theories. U. S. v. Krietemeyer, S.D.Ill.1980, 506 F.Supp. 289. Federal Civil Procedure 82.1

Where government contended that defendant dairy had entered into conspiracy with other dairies in restraint of trade and commerce in dairy products in violation of Sherman Antitrust Act, §§ 1 to 7 of Title 15, and that conspiracy resulted in government having to pay higher prices for dairy products for certain of its institutions, government's remedy was not restricted to § 15a of Title 15 permitting government to recover for actual damage proximately caused it by violation of Sherman Antitrust Act, but was entitled, alternatively, to seek recovery of forfeitures and double damages authorized by former § 231 of this title. U. S. v. Beatrice Foods Co., D.C.Utah 1971, 330 F.Supp. 577. United States 122

194. Damages, remedies or relief--Generally

Damages instruction, requiring jury to limit its calculation of damages to government's payments under contract that did not have any ascertainable market price, incorrectly required jury to essentially assume that contractor's service had no value even in face of possible evidence to the contrary; instead, jury had to be instructed to calculate government's damages by determining amount of money that government had paid due to contractor's false claims over and above what services contractor actually delivered were worth to government. U.S. v. Science Applications Intern. Corp., C.A.D.C.2010, 626 F.3d 1257. United States 122

Damages award based on full contract price of brake shoes supplied by government contractor was proper, in action under False Claims Act alleging that contractor sought payment for required brake shoes without performing required production testing, because government received no value under contract. U.S. ex rel. Compton v. Midwest Specialties, Inc., C.A.6 (Ohio) 1998, 142 F.3d 296. United States 122

In view of failure to dispute value of sight drafts paid to persons represented to be eligible to receive payments under farm support program, United States was entitled to recover double damages, based upon face amount of drafts, under sections 3729-3731 of this title in civil action brought to recover subsidy payments made pursuant to farm support program as result of submission of false or fraudulent statements concerning eligibility to participate in program. U.S. v. Thomas, C.A.5 (Tex.) 1983, 709 F.2d 968. United States 120.1

In terminated employee's suit under District of Columbia Whistleblower Protection Act (WPA), federal False Claims Act (FCA) and District of Columbia False Claims Act (DCFCA), jury in rendering special verdict intended to provide employee with only one award of back pay and one award of compensatory damages, rather than three separate awards for each, and judgment would be amended to reflect that intent. Kakeh v. United Planning Organization, Inc., D.D.C.2009, 655 F.Supp.2d 107, appeal dismissed 2010 WL 2160004. Federal Civil Procedure 2240

Jury's assessment of $46,538.40 in damages against contractor's vice president, for claim in amount of $77,564 for conspiring to rig bids on construction contracts in Egypt funded by United States, in violation of False Claims Act (FCA), was not excessive to point of shocking conscience, as required for remittitur, when considered in relation to jury's overall damages award of $3.4 million on contract, since jury was not required to find that premium paid by government on contract was distributed evenly across all 56 false claims, and vice president by his own wrong had prevented precise computation of difference between what government paid and what would have been paid without bid-rigging agreement. Miller v. Holzmann, D.D.C.2008, 563 F.Supp.2d 54, affirmed in part, vacated in part and remanded 608 F.3d 871, 391 U.S.App.D.C. 165, petition for certiorari filed 2010 WL 5490637. Federal Civil Procedure 2377; United States 122

Treble damages would be assessed under False Claims Act against anesthesiologist and his billing secretary for submitting false Medicare claims. U.S. v. Cabrera-Diaz, D.Puerto Rico 2000, 106 F.Supp.2d 234. United States 122

Under the 1986 amendments to False Claims Act, violator was liable to treble rather than double damages, absent any indication that violator cooperated fully with investigation or voluntarily furnished information about violations. U.S. v. Macomb

Contracting Corp., M.D.Tenn.1990, 763 F.Supp. 272. United States 122

195. ---- Actual damages, remedies or relief

Having been found to have violated False Claims Act (FCA) based on filing of 1,812 Medicare and Medicaid reimbursement claims that omitted material information, hospital administrator could be required to repay to government entire amount that hospital received on those claims, regardless of whether patients for whom claims were submitted received some, or even all, of medical care reflected in claim forms, whether government would have paid for patients' care had they obtained it elsewhere, or whether private insurers would have paid hospital for patients' care had hospital not billed United States. U.S. v. Rogan, C.A.7 (Ill.) 2008, 517 F.3d 449. United States 122

False claim was actionable under former § 231 of this title even though United States had suffered no measurable damages from claim. U. S. v. Hughes, C.A.7 (Ind.) 1978, 585 F.2d 284. United States 120.1

The United States could have recovered from one who had violated former § 231 of this title only the damages that it had actually suffered after having entered into transaction, plus the statutory penalties. U. S. v. Cooperative Grain & Supply Co., C.A.8 (Neb.) 1973, 476 F.2d 47. United States 120.1; United States 122

Even if forfeiture under former § 231 of this title depended upon showing of actual suffering of damage by government and a fair ratio of forfeiture to damage, finding that government had not suffered any "legally recoverable damages" due to action of defendants did not purport to exclude all injury and clearly judge meant no more than that no calculable damage was shown. Toepleman v. U.S., C.A.4 (N.C.) 1959, 263 F.2d 697, certiorari denied 79 S.Ct. 1119, 359 U.S. 989, 3 L.Ed.2d 978. United States 122

Relator, who alleged that District of Columbia and the District of Columbia Public School System submitted a claim for Medicaid reimbursement without maintaining documentation adequate to support that claim, failed to allege that the false claim had caused damage to the government, as required to obtain treble damages under the False Claims Act (FCA); relator alleged that the District was entitled to receive $60 million in Medicaid reimbursement, and that the District submitted a $60 million cost claim. U.S. ex rel. Davis v. District of Columbia, D.D.C.2008, 591 F.Supp.2d 30. United States 122

Government's damages from false billing by university physicians of Medicaid program for services provided by certified nurse midwives satisfied any statutory requirement of damages as element of claim for penalty against hospital under False Claims Act, even though university reached settlement allegedly satisfying United States' claim; for all the time between payment of the allegedly fraudulent bills and the ultimate restoration of its funds through an extended legal proceeding, the government had suffered damages. U.S. ex rel. Romano v. New York Presbyterian, S.D.N.Y.2006, 426 F.Supp.2d 174. United States 122

Government received benefit of bargain, in acquiring trucks from contractor, precluding claim that contractor violated False Claims Act (FCA) by requesting payment without disclosing in invoices that there was alleged noncompliance with specifications regarding corrosion; corrosion issue had been addressed, albeit not at level sought by qui tam plaintiff, and government was satisfied by specific ten year warranty of noncorrosion. U.S. ex rel. Stebner v. Stewart & Stevenson Services, Inc., S.D.Tex.2004, 305 F.Supp.2d 694. United States 120.1

Proof of damage as result of alleged false claim is not a necessary element in establishing liability, under False Claims Act, for knowingly presenting, or causing to be presented, to an officer or employee of the United States Government, a false or fraudulent claim for payment or approval or for knowingly making, using, or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the government, as focus of inquiry was to the claim and the conduct of the claimant, rather than its effect on the government. U.S. ex rel Trim v. McKean, W.D.Okla.1998, 31 F.Supp.2d 1308. United States 122

Plaintiff need not allege actual damages to recover under False Claims Act. U.S. ex rel. Pogue v. American Healthcorp, Inc., M.D.Tenn.1996, 914 F.Supp. 1507, transferred to 238 F.Supp.2d 258. United States 122

Actual injury is not required for claim under False Claims Act. U.S. v. Kensington Hosp., E.D.Pa.1991, 760 F.Supp. 1120. United States 122

Under former § 231 of this title, the government was entitled to a judgment in an amount reflecting only the actually defective or inferior wire and cable delivered to the government by persons making such false claims. U.S. v. Collyer Insulated Wire Co., D.C.R.I.1950, 94 F.Supp. 493. United States 122

Federal government's damages in action under the False Claims Act would be calculated, for purpose of estimating government's claim in government contractor's Chapter 11 proceeding, on dollar-for-dollar basis in light of undisclosed contingency reserve included in contractor's "best estimate" of cost of completing contract, without any reduction for negotiation concessions made by contractor. In re Bicoastal Corp., Bkrtcy.M.D.Fla.1991, 124 B.R. 598. Bankruptcy 2829; United States 122

196. ---- Bankruptcy claims, damages, remedies or relief

United States was not entitled to treble its allowed claim against debtor-public contractor due to contractor's fraud in overcharging on public contracts pursuant to False Claims Act. In re Bicoastal Corp., Bkrtcy.M.D.Fla.1991, 134 B.R. 50. United States 122

197. ---- Consequential damages, remedies or relief

Language of former § 231 of this title did not include consequential damages resulting from delivery of defective goods. U. S. v. Aerodex, Inc., C.A.5 (Fla.) 1972, 469 F.2d 1003. United States 122

Consequential damages were not recoverable under the False Claims Act (FCA). U.S. ex rel. Roby v. Boeing Co., S.D.Ohio 1999, 79 F.Supp.2d 877. United States 122

198. ---- Punitive damages, remedies or relief

Federal False Claims Act (FCA) and District of Columbia False Claims Act (DCFCA) created mandatory duty to award employee twice the amount of back pay awarded by jury. Kakeh v. United Planning Organization, Inc., D.D.C.2009, 655 F.Supp.2d 107, appeal dismissed 2010 WL 2160004. Labor And Employment 866

Section 8 housing tenant was not entitled to award of damages for landlord's alleged violation of the Connecticut Unfair Trade Practices Act (CUTPA), where penalties imposed against landlord under the False Claims Act (FCA), for improperly demanding additional rent payments from tenant, served purpose of punitive damages, actual damages requested would be duplicative of those already awarded, and award of attorney fees would be duplicative of those awarded. Coleman v. Hernandez, D.Conn.2007, 490 F.Supp.2d 278. Antitrust And Trade Regulation 389(2); Antitrust And Trade Regulation 397

The punitive nature of the civil penalties and damages awarded under the False Claims Act (FCA) did not cause Massachusetts Housing Finance Agency (MHFA) to be immune from those damages in qui tam action under FCA, where MHFA would pay damages, rather than the Commonwealth, and MHFA charter did not attempt to limit damages awarded against MHFA for intentional violations of the law, such as were alleged. U.S. ex rel. K & R Ltd. Partnership v. Massachusetts Hous-

ing Finance Agency, D.D.C.2001, 154 F.Supp.2d 19, dismissed 2003 WL 21058272. United States 120.1

Damages available under False Claims Act include exemplary damages, which municipal defendants would be immune from paying in absence of contrary congressional intent, considering that available damages exceeded actual damages suffered by federal government and that Act had punitive as well as remedial purpose. U.S. ex rel. Graber v. City of New York, S.D.N.Y.1998, 8 F.Supp.2d 343. Municipal Corporations 743; United States 122

Although government set exemplary damages for losses resulting from contractor's bribery of federal agent, such damages would not be awarded where it was too difficult to separate the proportion of the cost of litigation relating to the bribery and the proportion resulting from the balance of the litigation. U.S. v. Cripps, E.D.Mich.1978, 460 F.Supp. 969. United States 75(5)

Due process balancing test for award of punitive damages was not applicable to determination of treble damages under the False Claims Act, because potentially subjective punitive damages are not at issue; Congress, not a jury, has prescribed in the Act a civil penalty range and mandated the imposition of treble damages. Morse Diesel Intern., Inc. v. U.S., Fed.Cl.2007, 79 Fed.Cl. 116, reconsideration denied 81 Fed.Cl. 311. Constitutional Law 4426; United States 122

199. ---- Nominal damages, remedies or relief

Under former § 231 of this title, mere establishment of the existence of a conspiracy to defraud the United States government without proof of damages, entitled the United States to recover the $2,000 forfeiture provided for in former § 231 of this title and also seemed to allow the recovery of double damages, even if the latter were only nominal in amount. U. S. v. Kates, E.D.Pa.1976, 419 F.Supp. 846. United States 122

Where wire and cable supplied to Army and Navy by defendants making false claims against government were of some value and some of wire and cable was used but any assessment of substantial damages would be speculative and guesswork, double nominal damages would be assessed. U.S. v. Collyer Insulated Wire Co., D.C.R.I.1950, 94 F.Supp. 493. United States 122

200. ---- Apportionment, damages, remedies or relief

Recovery in action brought by the state of Colorado in the name of the United States as a qui tam plaintiff under the False Claims Act to recover against a care center and its shareholders for allegedly filing false cost reports with the Colorado Department of Social Services for medicaid reimbursement required an allocation of damages in accord with the shared funding of the program which paid the fraudulent claims and, hence, required an award which allowed the qui tam plaintiff to recover for itself its share of the fraudulent overpayment, not doubled, and the United States to recover its amount doubled. U.S. ex rel. Woodard v. Country View Care Center, Inc., C.A.10 (Colo.) 1986, 797 F.2d 888. United States 122

Relator in qui tam action was entitled to 25% of proceeds of judgment, since it was original source of information and it spent great deal of time and resources detecting and investigating the fraud. U.S. ex rel. Virgin Islands Housing Authority v. Coastal General Const. Services Corp., D.Virgin Islands 2004, 299 F.Supp.2d 483. United States 122

Relator deserved close to maximum statutory share, 24%, of proceeds from $85.7 million settlement of qui tam False Claims Act suit against hospital management company, where relator's initial allegations and knowledge of hospital cost accounting formed foundation for recovery, relator and his counsel contributed decisively to nearly every aspect of case from initial investigation through conclusion of long and complex mediation, including overcoming government's initial reluctance to intervene, government possessed no awareness of company's allegedly fraudulent practices prior to relator's complaint, and relator bore oppressive personal burden in initiating and sustaining case. U.S. ex rel. Alderson v. Quorum Health Group, Inc., M.D.Fla.2001, 171 F.Supp.2d 1323. United States 122

Proceeds from Medicare/Medicaid fraud lawsuit, commenced as qui tam action with prosecution assumed by government, from which qui tam relator was to receive compensation under False Claims Act, included amounts defendants agreed to pay to government under terms of settlement agreement rather than amount of judgments entered against defendants, which could be enforced if payment obligations under agreement were not honored. U.S. ex rel. Fox v. Northwest Nephrology Associates, P.S., E.D.Wash.2000, 87 F.Supp.2d 1103. United States 122

Proof of the extent and duration of each defendant's participation in a conspiracy to defraud the United States was relevant to question of amount of damages each conspirator must pay but had no bearing on issue of liability. U. S. v. Kates, E.D.Pa.1976, 419 F.Supp. 846. Conspiracy 19

201. ---- Causation, damages, remedies or relief

Jury could award False Claims Act (FCA) damages for any loss in value to Nuclear Regulatory Commission (NRC) attributable to federal contractor's failure to provide completely impartial conflict-free services required by NRC contracts, no matter how technically proficient contractor's performance had been, on basis that value of that performance to NRC had been compromised by appearance of bias created by contractor's failure to live up to its contractual conflict of interest obligations. U.S. v. Science Applications Intern. Corp., C.A.D.C.2010, 626 F.3d 1257. United States 122

Before United States could have recovered double damages pursuant to former § 231 of this title, United States must have demonstrated element of causation between false statements and loss and thus, in context of federal housing case, United States must have shown that false statements in application were the cause of subsequent mortgage defaults. U. S. v. Miller, C.A.5 (La.) 1981, 645 F.2d 473. United States 120.1

In action under former § 231 of this title against real estate salesman alleging that false certification submitted by salesman induced Federal Housing Administration [now Department of Housing and Urban Development] to insure certain mortgages upon which mortgagors defaulted, requiring United States to honor claims of mortgagee, government was not entitled, as damages, to recover amount of statutory forfeitures and double amount of damages alleged, since damages were sustained by United States because of defaults by mortgagors and to some extent were increased by unexpected diminution of property value caused by lead paint injunction and neither of those events were caused by or related to the false certifications. U. S. v. Hibbs, C.A.3 (Pa.) 1977, 568 F.2d 347. United States 120.1

In order to have recovered damages under former § 231 of this title based on claimed false certifications by real estate broker to Federal Housing Administration [now Department of Housing and Urban Development], the United States was required to show that the government had paid a claim based upon a certificate containing false information which had resulted in damages sustained ‘by reason of‘ the doing or committing the act. U. S. v. Hibbs, C.A.3 (Pa.) 1977, 568 F.2d 347. United States 120.1

Absent evidence showing that the presence of the non-genuine signatures on various documents submitted to Department of Housing and Urban Development (HUD) by home mortgage lender to obtain insurance was in any way related to the actual reason that various borrowers defaulted, lender was not liable under False Claims Act (FCA) for actual damages to the government flowing from the lender's false submissions. U.S. ex rel. Fago v. M & T Mortg. Corp., D.D.C.2007, 518 F.Supp.2d 108. United States 122

Insurance agent could cause damages to government, as required for liability under False Claims Act (FCA) for making or using false documents to obtain payment or approval of a false crop insurance claim on behalf of persons not eligible for insurance, even if government would have sustained identical losses, had persons with true interest in crops applied for insurance and obtained the payments for crop damage. U.S. v. Hawley, N.D.Iowa 2008, 544 F.Supp.2d 787, subsequent determination 566 F.Supp.2d 918, reversed 619 F.3d 886, rehearing and rehearing en banc denied. United States 120.1

Government established probable validity of its claim that sole shareholder of Medicare provider individually caused false Medicare claims to be submitted, for purposes of government's claim under the Federal Debt Collection Procedures Act (FDCPA) for prejudgment remedies in connection with its claim against shareholder, i.e., attachment of real property shareholder owned individually, where two confidential witnesses singled shareholder out individually as having participated in alleged fraudulent coding of Medicare submission forms, and audit supported those witnesses' assertions. U.S. ex rel Doe v. DeGregorio, M.D.Fla.2007, 510 F.Supp.2d 877. United States 75.5

Government sufficiently alleged chain of causation between private insurer's violations of the Medicare Secondary Payer (MSP) rules and providers' submission of claims to Medicare for payment to state claim under False Claims Act (FCA); government alleged that insurer incorrectly denied claims or paid claims as secondary payer when it should have paid as the primary payer as result of its violations of MSP rules, that claims were then returned to providers which originally submitted them, and that the providers then submitted the claims to Medicare for payment. U.S. ex rel. Drescher v. Highmark, Inc., E.D.Pa.2004, 305 F.Supp.2d 451. United States 122

Small Business Administration (SBA) was not entitled to recover amounts paid to lender under loan guaranty agreement based on claim that misrepresentation by lender, that specified limits on amount of proceeds from loan which could be applied to satisfaction of prior debt had not been exceeded, violated False Claims Act; Act required that misrepresentation cause loss, and default of borrower which triggered payment of guaranty occurred because of destruction of business by fire. U.S. v. First Nat. Bank of Cicero, N.D.Ill.1990, 736 F.Supp. 891, reversed on other grounds 957 F.2d 1362. United States 53(8)

Medicare insurer's alleged actions of engaging in deceptive practices to ensure that it received a favorable contractor performance evaluation (CPE) from government did not support claim under False Claims Act, absent showing that insurer caused or attempted to cause through its actions a claim for payment to be presented to government that it would not have paid had CPE been deficient. U.S. ex rel. Watson v. Connecticut General Life Ins. Co., E.D.Pa.2003, 2003 WL 303142, Unreported, affirmed 87 Fed.Appx. 257, 2004 WL 234970. United States 120.1

202. ---- Deductions, damages, remedies or relief

In computing double damages which were authorized by former § 231 et seq. of this title, the government's actual damages were doubled before any subtractions were made for compensatory payments previously received by the government from any source; thus, in computing double damages to be assessed against subcontractor, which made three shipments of falsely branded electron tubes to prime contractor which caused prime contractor to submit false claims to United States for radio kits, government's damages under former § 231 et seq. of this title were required to have been calculated by doubling the amount of its original loss and only then deducting the prime contractor's damage payment from that doubled amount. U. S. v. Bornstein, U.S.N.J.1976, 96 S.Ct. 523, 423 U.S. 303, 46 L.Ed.2d 514. United States 120.1

Amount of damages to which United States was entitled in civil action to recover subsidy payments made pursuant to farm support program as result of submission of false or fraudulent statements concerning eligibility to participate in program would not be reduced by benefit to Government from increased production resulting from payee's farm operations. U.S. v. Thomas, C.A.5 (Tex.) 1983, 709 F.2d 968. United States 120.1

In calculating amount of damages under False Claims Act (FCA), credit for payment made on fraudulently obtained federally insured mortgages would be applied once actual damages had been trebled. U.S. v. Stella Perez, D.Puerto Rico 1993, 839 F.Supp. 92, reversed 55 F.3d 703, 139 A.L.R. Fed. 813, on remand 956 F.Supp. 1046. United States 122

Where contractor who utilized collusive bidding scheme to obtain repair contracts on residential property conveyed to Department of Housing and Urban Development by foreclosure of insured mortgages admitted a 10 percent profit and admitted amount by which contracts were inflated, that is, profits he allowed collusive bidders to retain, the United States was entitled

to recover double the amount of all such profits and the contractor was entitled to reduce his double damages by amount government had recovered from the other contractors. U.S. v. Cripps, E.D.Mich.1978, 460 F.Supp. 969. United States 120.1

In computing double damages authorized by former § 231 of this title, total gross damages were doubled before subtraction was made for compensatory payments. U. S. v. Canada, S.D.Ind.1977, 425 F.Supp. 91. United States 120.1

In determining damages of United States under former § 231 of this title, credit due defendant should have been first deducted from single damages as finally determined and remainder should have been doubled for purpose of determining amount of damages to which United States was entitled. U. S. v. Klein, W.D.Pa.1964, 230 F.Supp. 426, affirmed 356 F.2d 983. United States 122

Amounts government had recovered after initial loss on false claim by insured lending institution were subtracted after, not before, doubling initial loss to establish recovery. U. S. v. Globe Remodeling Co., D.C.Vt.1960, 196 F.Supp. 652. United States 120.1

203. ---- Measure, damages, remedies or relief

Under former § 231 et seq. of this title government's actual damages, as result of shipments of falsely branded electron tubes to prime contractor by subcontractor which caused prime contractor to submit false claims to United States for radio kits, were equal to difference between market value of the tubes it received and retained and the market value that the tubes would have had if they had been of the specified quality. U. S. v. Bornstein, U.S.N.J.1976, 96 S.Ct. 523, 423 U.S. 303, 46 L.Ed.2d 514. United States 120.1

In calculating fighter jet engine contractor's liability for violating False Claims Act (FCA) in connection with multi-year jet engine contracts with the Air Force, district court improperly subtracted the full amount of contractor's warranty price reductions from the court's estimate of the government's damages without calculating the value of the new warranties; district court was required to account for the diminished value of the new warranties. U.S. v. United Technologies Corp., C.A.6 (Ohio) 2010, 626 F.3d 313. United States 122

Government was entitled to statutory penalty of $5,000 and $147,000 in treble damages for contractor's violation of False Claims Act, even though government sought only $98,000 in damages, treble damages were three times amount of difference between amount of original invoice and amount of altered invoice which was submitted by contractor to government. Young-Montenay, Inc. v. U.S., C.A.Fed.1994, 15 F.3d 1040. United States 122

Damages recoverable under former § 231 of this title from general contractor, who was convicted of bid rigging in connection with various contracts to refurbish properties acquired by Department of Housing and Urban Development, were measured by difference between the amount the government actually paid in reliance on the false claims and the amount it would have paid had there been fair, open and competitive bidding; such amount was not merely the difference between the amount paid out by the government and the actual cost of performance to the successful bidder, especially in face of contractor's assertion that industry-wide profits figures would have demonstrated that his profit margin was neither unusual nor excessive. Brown v. U. S., Ct.Cl.1975, 524 F.2d 693, 207 Ct.Cl. 768. United States 120.1

Where government contractor agreed to supply new bearings to Navy and invoiced government accordingly, and reworked bearings were supplied, claims for $27,000 for new bearings were false, and measure of damages under former § 231 of this title was twice $27,000 plus $2,000 penalty for each invoice, though it cost government $160,919.18 to remove and replace the reworked bearings from aircraft engines. U. S. v. Aerodex, Inc., C.A.5 (Fla.) 1972, 469 F.2d 1003. United States 122

Ordinarily measure of government's damages under former § 231 of this title was the amount paid out by reason of false statements over and above what it would have paid if claims had been truthful. U. S. v. Woodbury, C.A.9 (Or.) 1966, 359

F.2d 370. United States 120.1

Where dairyman delivered recombined milk in violation of his contract with the United States for delivery of fresh milk and presented claims for payment for delivery of fresh milk, damages would not be limited to difference between value of milk delivered and value of that contracted to be delivered, but would be based on percentage of milk which was unused. Faulk v. U.S., C.A.5 (Tex.) 1952, 198 F.2d 169. United States 122

Where dairyman had defrauded federal government by delivering reconstituted milk in place of fresh milk and charging for fresh milk, fact that government was unable to prove with absolute mathematical accuracy the amount of milk unconsumed by the troops, the measure of damages being based upon percentage of unused milk, did not preclude recovery of double damages. Faulk v. U.S., C.A.5 (Tex.) 1952, 198 F.2d 169. United States 122

Under the False Claims Act (FCA), amount of damages sustained by government based on landlord's false statements, i.e., improper demand of additional rent payments from Section 8 housing tenant, was treble the total of improper rental subsidy payments made to landlord on six occasions, plus civil penalty of $5,500 for each of the six violations. Coleman v. Hernandez, D.Conn.2007, 490 F.Supp.2d 278. United States 122

Supplier who made false claims for payment to government agency would not have damages limited to amount government paid for tool where government failed to present sufficient evidence concerning fair market value of tools. U.S. v. Advance Tool Co., W.D.Mo.1995, 902 F.Supp. 1011, affirmed 86 F.3d 1159, certiorari denied 117 S.Ct. 1254, 520 U.S. 1120, 137 L.Ed.2d 334. United States 120.1

Measure of damages under former § 231 of this title in cases involving collusive bidding was the difference between what the government actually paid the contractor and what it would have paid for the same work in the competitive market. U.S. v. Cripps, E.D.Mich.1978, 460 F.Supp. 969. United States 120.1

In action by United States, under former § 231 of this title, to recover for false claims presented in connection with contract for sale of meat products to government, damage to government was difference between value of what government was entitled to receive under the contracts, and the value of what it actually received. U. S. v. American Packing Corp., D.C.N.J.1954, 125 F.Supp. 788. United States 120.1

In action by United States, under former § 231 of this title, to recover for false claims presented in connection with 98 contracts for sale of meat products to government, wherein United States' loss on each contract was almost incapable of determination, the sum total of all the improper material furnished in fulfilling contract could have been used in measuring the amount of loss. U. S. v. American Packing Corp., D.C.N.J.1954, 125 F.Supp. 788. United States 120.1

In action by United States under former § 231 of this title, to recover for false claims presented in connection with contracts for sale of meat products, damage to United States was calculated upon price differential between lowest market quotation for grades of meat which would have met the contract requirement and highest market quotation for types of meat actually furnished. U. S. v. American Packing Corp., D.C.N.J.1954, 125 F.Supp. 788. United States 120.1

Damages suffered by the United States from falsity or fraud of corporations were under former § 231 of this title, irrespective of mitigation, difference between what United States advanced in reliance on such false claims and what the United States would have advanced if the false items had not been included in the claims. U.S. v. American Precision Products Corp., D.C.N.J.1953, 115 F.Supp. 823. United States 120.1

In determining damage in action for forfeitures and double damages under this section for allegedly making false claims against government for meat products sold, sum total of all improper material furnished in fulfilling contracts could be used in measuring amount of government's loss rather than individual losses suffered by government in each contract. U.S. v.

American Packing Corp., D.C.N.J.1953, 113 F.Supp. 223. United States 122

204. ---- Mitigation, damages, remedies or relief

Employee of city housing authority, who prevailed on his retaliation action against authority under whistleblower provision of False Claims Act (FCA), was not prevented from recovering back pay based on his alleged failure to mitigate damages, as authority did not allege failure to mitigate damages as affirmative defense and issue was not presented to jury. Wilkins v. St. Louis Housing Authority, E.D.Mo.2001, 198 F.Supp.2d 1080, affirmed 314 F.3d 927. Municipal Corporations 192

Defendant, who was sued by United States under former § 231 of this title, was not entitled to mitigation of damages because of payments made to United States by third party in settlement of claim of United States for damages. U. S. v. Klein, W.D.Pa.1964, 230 F.Supp. 426, affirmed 356 F.2d 983. Damages 59

Bankruptcy dividend received by United States from manufacturers was not credited in mitigation of damages in action under former § 231 of this title. U.S. v. American Precision Products Corp., D.C.N.J.1953, 115 F.Supp. 823. United States 120.1

Damages of the United States under former § 231 of this title were not mitigated by goods which the United States never received. U.S. v. American Precision Products Corp., D.C.N.J.1953, 115 F.Supp. 823. United States 120.1

205. ---- Multiple violations, damages, remedies or relief

Under former § 231 of this title, lump sum in damages, including $2,000 forfeit, should have been assessed for each separate Public Works Administration project in connection with which defendants conspired to rig bidding, since incidence of the fraud on each additional project was clearly individualized. U. S. ex rel. Marcus v. Hess, U.S.Pa.1943, 63 S.Ct. 379, 317 U.S. 537, 87 L.Ed. 443, rehearing denied 63 S.Ct. 756, 318 U.S. 799, 87 L.Ed. 1163.

Award of treble damages was warranted in qui tam False Claims Act (FCA) multi-claim suit alleging that group health insurer had caused insureds to file large numbers of false claims for Social Security Disability Insurance (SSDI). U.S. ex rel. Loughren v. Unumprovident Corp., D.Mass.2009, 604 F.Supp.2d 269, vacated 613 F.3d 300. United States 122

Amount of actual damages sustained by the government, to be trebled pursuant to the False Claims Act (FCA) in a suit against a technology company regarding a scheme to defraud the government in contracts solicited under the federal Small Business Innovation Research Program (SBIR), was the amount paid out on the four contracts at issue, i.e., $1,657,455, despite claim that the government had gotten what it paid for and was therefore not damaged; batteries developed through the SBIR funding belong to the company, not the government, and in any event, the value of the program lay not in innovation, but in innovation by eligible small businesses for whom the funding was intended, which was precisely what the company denied to the government. U.S. ex rel. Longhi v. Lithium Power Technologies, Inc., S.D.Tex.2008, 530 F.Supp.2d 888, affirmed 575 F.3d 458, certiorari denied 130 S.Ct. 2092, 176 L.Ed.2d 722. United States 122

Nigeria's alleged repayment of loans made to it by United States Export-Import Bank's for the purchase of defendant manufacturer's industrial pumps did not nullify government's damages, arising out of manufacturer's alleged violations of False Claims Act (FCA) by failing to disclose improper commissions paid to Nigerian sales agent on supplier's certificates sent by manufacturer to Bank; compliance with the supplier's certificates was critical to eligibility for Bank financing rendering manufacturer liable for the full loan amount for the harm imposed upon Bank, and, even though Nigeria had repaid the loans at issue, Nigeria had failed to repay other Bank loans totaling over $973 million, $618 million of which had eventually been forgiven. U.S. ex rel. Purcell v. MWI Corp., D.D.C.2007, 520 F.Supp.2d 158. United States 122

School board which, through outside contractor, charged rates to federal programs for federal unemployment insurance in

violation of False Claims Act (FCA) was liable, not for number of contracts it entered into with outside contractor or number of times it agreed to participate in improper rate system, but number of times it made claims to government that were false. U.S. ex rel. Garibaldi v. Orleans Parish School Bd., E.D.La.1999, 46 F.Supp.2d 546, vacated 244 F.3d 486, rehearing and rehearing en banc denied 264 F.3d 1143, certiorari denied 122 S.Ct. 808, 534 U.S. 1078, 151 L.Ed.2d 693, rehearing denied 122 S.Ct. 1198, 534 U.S. 1172, 152 L.Ed.2d 137, reentered 2003 WL 22174241. United States 122

206. ---- Tax deductibility, damages, remedies or relief

Amount paid by taxpayer in settlement of suit under former § 231 of this title and characterized as common law contractual damages in settlement offer accepted by United States was deductible as ordinary and necessary business expense under § 162(a) of Title 26 or as loss under § 165 of Title 26, and allowance of such deduction did not frustrate public policy since payments were compensatory and remedial, not penal. Grossman & Sons, Inc. v. C.I.R., Tax Ct.1967, 48 T.C. 15.

Taxpayer sufficiently substantiated attorney fees that were paid to his attorneys from qui tam payment that taxpayer was awarded pursuant to Federal False Claims Act action, and thus, taxpayer could deduct those fees as miscellaneous itemized deduction; taxpayer offered as proof of payment his testimony and corroborating document that contained his contingency fee arrangement with his attorneys. Campbell v. C.I.R., U.S.Tax Ct.2010, 2010 WL 199929, Unreported. Internal Revenue 3377

207. Back pay, remedies or relief

Plaintiff who brought whistleblower suit under False Claims Act (FCA) alleging that she had been terminated from employment in retaliation for her reports of alleged Medicare fraud by her employer did not sustain damages sufficient to support recovery of double back pay, where plaintiff started job with a new employer on day after her termination, with an equal if not better salary and benefits package. Hammond v. Northland Counseling Center, Inc., C.A.8 (Minn.) 2000, 218 F.3d 886. Labor And Employment 866

Former employee, who prevailed in her action against employer under whistleblower-protection provision of False Claims Act, could recover both double back pay and compensation for emotional distress, despite employer's contention that this constituted duplicative recovery. Neal v. Honeywell, Inc., C.A.7 (Ill.) 1999, 191 F.3d 827. Labor And Employment 866

Back pay awarded to employee of city housing authority, who prevailed on his retaliation claim against employer under whistleblower provision of False Claims Act (FCA), would be doubled, pursuant to FCA, after deduction of mitigating income; deduction of mitigating income before doubling of award avoided windfall to employee of doubling amount he did not lose, as well as fully compensated employee under FCA. Wilkins v. St. Louis Housing Authority, E.D.Mo.2001, 198 F.Supp.2d 1080, affirmed 314 F.3d 927. Municipal Corporations 192

Employee of city housing authority, who prevailed on retaliation claim under whistleblower provision of False Claims Act (FCA) against authority, was only entitled to $ 10,000 in front pay to compensate employee for lost wages from date of jury's finding of back pay to date employee reasonably should have been able to find replacement employment; it was not likely employee would have remained in position until he retired, and employee did not mitigate damages by looking for work in the private sector, in other fields, or in other locations. Wilkins v. St. Louis Housing Authority, E.D.Mo.2001, 198 F.Supp.2d 1080, affirmed 314 F.3d 927. Municipal Corporations 192

208. Emotional distress, remedies or relief

Award of $200,000 for emotional distress was not excessive in former employee's action against employer for retaliatory discharge and harassment in violation of whistleblower-protection provision of False Claims Act, where manager's threats to physically injure whoever the whistleblower was took former employee's case out of the ordinary. Neal v. Honeywell, Inc.,

C.A.7 (Ill.) 1999, 191 F.3d 827. Labor And Employment 867

209. Fees and costs, remedies or relief

Relator in qui tam action brought pursuant the False Claims Act (FCA) was not entitled to personal expenses incurred during litigation, including travel expenses and reimbursement for time away from his business. U.S. ex rel. Harrison v. Westinghouse Savannah River Co., C.A.4 (S.C.) 2003, 352 F.3d 908. United States 122

Award of attorney fees against the plaintiff under the False Claims Act is reserved for rare and special circumstances. Pfingston v. Ronan Engineering Co., C.A.9 (Cal.) 2002, 284 F.3d 999. United States 122

Government contractor that was defendant in qui tam action under False Claims Act could not challenge relators' entitlement to more than nominal attorneys' fees and costs following settlement in which contractor agreed to pay such fees and costs, on grounds that relators would have lost had they litigated to judgment count that was not taken over by attorney general; contractor did not appeal from judgment on settlement and had no business invoking defenses it could have raised had case been litigated to judgment, as it could not demand benefits of favorable outcome in litigation without taking risk of loss. U.S. ex rel. Fallon v. Accudyne Corp., C.A.7 (Wis.) 1996, 97 F.3d 937. United States 122

District court did not abuse its discretion in awarding costs to military contractor which prevailed in False Claims Act (FCA) litigation where contractor committed no impropriety or misconduct and where magistrate, whose findings district court adopted, reduced requested award by 75% after careful analysis. U.S. ex rel. Lindenthal v. General Dynamics Corp., C.A.9 (Cal.) 1995, 61 F.3d 1402, certiorari denied 116 S.Ct. 1319, 517 U.S. 1104, 134 L.Ed.2d 472. United States 122

For purposes of determining amount which United States was entitled to recover under former § 231 et seq. of this title which followed default on Federal Housing Administration [now Department of Housing and Urban Development] insured and Veteran's Administration guaranteed mortgages which had been obtained through presentation of false information, government was entitled to the reasonable expenses incurred in preserving the property following default. U.S. v. Ekelman & Associates, Inc., C.A.6 (Mich.) 1976, 532 F.2d 545. United States 120.1

Assessment of attorneys' fees against trustee of foundation of which qui tam plaintiff was “instrumentality” was justified where trustee knew from 13 previous lawsuits brought in his individual capacity that mandamus relief which he sought could not be granted, and 14th lawsuit filed in official capacity was based on identical facts and brought against substantially same defendants. Public Interest Bounty Hunters v. Board of Governors of Federal Reserve System, N.D.Ga.1982, 548 F.Supp. 157. Mandamus 190

Where qui tam action was dismissed for lack of jurisdiction on ground that action was based upon evidence or information in possession of the United States at time action was brought, court had no authority to allow relator compensation for his services in drawing complaint and other services in connection with the action. U.S. ex rel. McLaughlin v. American Chain & Cable Co., S.D.N.Y.1945, 62 F.Supp. 302. Federal Civil Procedure 2728

Government contractor was not entitled to recover statutory costs after prevailing in employee's False Claims Act (FCA) suit, in light of chilling effect taxing of costs would have on future FCA actions; case was close and difficult, employee acted in good faith and with propriety, and subcontractors involved in project had been found liable for dumping toxic waste during construction as result of employee's other FCA suits. U.S. ex rel. Pickens v. GLR Constructors, Inc., S.D.Ohio 2000, 196 F.R.D. 69. United States 122

Costs of inspection and repair incurred by the government as a result of a contractor's false representation that a product passed inspection pursuant to the contract are recoverable as single damages under the False Claims Act (FCA). BMY--Combat Systems Div. of Harsco Corp. v. U.S., Fed.Cl.1998, 44 Fed.Cl. 141. United States 122

210. Penalties, remedies or relief--Generally

In addition to treble damages, the False Claims Act requires court to award not less than $5,000 and not more than $10,000 for each false claim or statement submitted to the government, even if no damages were caused by the false submissions. In re Schimmels, C.A.9 (Nev.) 1996, 85 F.3d 416. United States 122

In action by the United States, based upon false claims, the United States was entitled to recover a forfeiture of $2,000 for each false claim made and in addition double the amount of damages sustained by reason of such false claims. U. S. v. Grannis, C.A.4 (N.C.) 1949, 172 F.2d 507, certiorari denied 69 S.Ct. 1160, 337 U.S. 918, 93 L.Ed. 1727. United States 122

211. ---- Actual damages, penalties, remedies or relief

No damages need be shown in order to recover civil penalty under False Claims Act. U.S. ex rel. Hagood v. Sonoma County Water Agency, C.A.9 (Cal.) 1991, 929 F.2d 1416, on remand. United States 122

Former § 231 of this title permitted recovery of the forfeiture without the proving of actual damages. U. S. v. Rohleder, C.C.A.3 (Pa.) 1946, 157 F.2d 126.

Imposition of $5,000 civil penalty against subcontractor under False Claims Act (FCA) for each false claim submitted to federal agency was within court's broad discretion, although that penalty was minimum that could have been imposed; United States suffered no actual damages, United States did not document any of its detection, investigation, and litigation costs, subcontractor was punished by incarceration on his conviction in collateral criminal matter, and subcontractor had inability to pay. U.S. ex rel. Virgin Islands Housing Authority v. Coastal General Const. Services Corp., D.Virgin Islands 2004, 299 F.Supp.2d 483. United States 122

Under former § 231 of this title, United States was entitled to recover $2,000 forfeiture even in absence of proof of actual damages because of expense incurred in efforts to protect its funds and property. U. S. v. Hibbs, E.D.Pa.1976, 420 F.Supp. 1365, vacated 568 F.2d 347. United States 122

Fact that United States suffered no actual damages from actions of president of ordance parts contractor in taking checks, which were made payable to banks for distribution to the contractor, which was continuing in operation under former § 701 et seq. of Title 11, and two of its subcontractors, and forging the names of the payees and depositing the checks to the contractor's account did not preclude finding that president was subject to forfeiture provisions of former § 231 of this title as, even though the subcontractors were eventually made whole, government was exposed to potential double liability. U. S. v. Silver, E.D.N.Y.1974, 384 F.Supp. 617, affirmed 515 F.2d 505. United States 122

Forfeiture under former § 231 of this title was in nature of punitive damages and should not have been precluded by finding that no actual damages have as yet been suffered by government. U. S. v. Fox Lake State Bank, N.D.Ill.1963, 225 F.Supp. 723. United States 120.1

It was not necessary that United States suffered actual damage before forfeitures under former § 231 of this title could have been collected. U. S. v. Cherokee Implement Co., N.D.Iowa 1963, 216 F.Supp. 374. United States 122

Subcontractor, who was required to submit weekly payrolls for work performed on National Guard Armory, and who submitted to United States two false payrolls, was liable to United States, which sustained no actual damages, for two forfeitures of $2,000 each under former § 231 of this title. U. S. v. Sanders, E.D.Ark.1961, 194 F.Supp. 955. United States 122

Where corporate government contractor sued for costs and damages resulting from termination of government contract and

United States counterclaimed pursuant to former § 231 of this section which provided that everybody knowingly making a false claim against United States should have forfeited $2,000 and paid double the damages sustained, since United States neither alleged nor proved damages, its recovery upon showing of fraud was limited to $2,000. Wagner Iron Works v. U.S., Ct.Cl.1959, 174 F.Supp. 956, 146 Ct.Cl. 334. United States 122

The forfeiture imposed for fraudulent claims under former § 231 of this title amounted to a congressional declaration of liquidated damages, and could have been awarded without allegation or proof of specific damage. U.S. v. Johnston, W.D.Okla.1956, 138 F.Supp. 525. United States 122

212. ---- Injury, penalties, remedies or relief

Former § 231 of this title permitted recovery of forfeiture even though government was not injured by assertion of claim. U. S. v. Tieger, C.A.3 (N.J.) 1956, 234 F.2d 589, certiorari denied 77 S.Ct. 262, 352 U.S. 941, 1 L.Ed.2d 237.

Former employers properly invoked defense that United States suffered no injury, in former employee's False Claims Act (FCA) qui tam action; even if it was not necessary for employee to demonstrate monetary damages, she was still required to prove that United States was injured by filing that occurred with knowledge of false or fraudulent claim. U.S. ex rel. Mikes v. Straus, S.D.N.Y.1996, 931 F.Supp. 248, motion to certify appeal denied 939 F.Supp. 301. United States 122

Alleged kick-back scheme, whereby bids for provision of housing in connection with relief effort were inflated to assure that defendant officials would receive kick-back, caused injury to funds or property of United States sufficient to support cause of action under False Claims Act [31 U.S.C.A. §§ 3729-3731]; federal Government had significant role in administration of disaster program, funds were characterized as "federal" funds, and state had duty to return to Federal Government any of funds advanced to state which were in excess of actual expenditures. U.S. v. Killough, M.D.Ala.1986, 625 F.Supp. 1399. United States 120.1

213. ---- Amount, penalties, remedies or relief

On proof by United States of making by defendant of claim on United States, having known it to be false, United States was entitled, without proof of damage, to recover $2,000 forfeiture under former § 231 of this title. Fleming v. U.S., C.A.10 (N.M.) 1964, 336 F.2d 475, certiorari denied 85 S.Ct. 889, 380 U.S. 907, 13 L.Ed.2d 795. United States 122

To the government, a false claim, successful or not, in always costly, and government could have protected itself against such costs though damages was not explicitly or nicely ascertainable; and former § 231 of this title, which assessed cost of a single false claim at $2,000, even when applied to a multiple offender, was not unreasonable when balanced against expense of constant Treasury vigil necessitated by such false claims. Toepleman v. U.S., C.A.4 (N.C.) 1959, 263 F.2d 697, certiorari denied 79 S.Ct. 1119, 359 U.S. 989, 3 L.Ed.2d 978. United States 94

Sole shareholder of Medicare provider failed to show that government seized more than was allegedly owed for his and provider's violations of the False Claims Act (FCA), as required to quash writs of attachment issued as to real property he owned individually, pursuant to the Federal Debt Collection Procedure Act (FDCPA), where evidence showed that value of encumbered assets was less than government sought to recover. U.S. ex rel Doe v. DeGregorio, M.D.Fla.2007, 510 F.Supp.2d 877. United States 75.5

Appropriate civil penalty in a False Claims Act (FCA) suit was $10,000 for each false claim; breadth of the conspiracy at issue was intricate, far-reaching, and involved a deliberate attempt to rig bids, and imposing a minimum penalty would have served as little deterrent to would-be bid-riggers on future contracts in countries in which the successful completion of construction projects, within budget, would be vital to the restoration of the country's infrastructure. U.S. ex rel. Miller v. Bill Harbert Intern. Const., Inc., D.D.C.2007, 501 F.Supp.2d 51. United States 122

Each of 10 fraudulent subcontracting bills submitted to housing authority was false payment demand upon government under False Claims Act, and, therefore, each warranted separate, individual, civil penalty of $5,000, although there was only one claim. U.S. ex rel. Virgin Islands Housing Authority v. Coastal General Const. Services Corp., D.Virgin Islands 2004, 299 F.Supp.2d 483. United States 122

Civil penalties would not be assessed under False Claims Act against anesthesiologist and his billing secretary for submitting false Medicare claims on ground that if court were to impose civil penalties of between $5,000 and $10,000 for each one of the 455 false claims, as suggested in the Act, in addition to the treble damages that had been imposed, total would be an excessive fine of between $2,275,000 and $4,550,000. U.S. v. Cabrera-Diaz, D.Puerto Rico 2000, 106 F.Supp.2d 234. United States 122

Total of $1,575,036 in damages and penalties for illegal redemption of food stamps in violation of False Claims Act was not grossly disproportional to gravity of defendant's alleged offense, and thus did not violate the Excessive Fines Clause; Government was willing to limit its request to the minimum amount authorized by the False Claims Act, which would result in treble damages of $255,036 and a $5,000 penalty per each of the 264 false claims. U.S. v. Byrd, E.D.N.C.2000, 100 F.Supp.2d 342. Agriculture 2.6(5)

Defendant's four civil penalties under False Claims Act would be assessed at statutory minimum of $5,000 each, even though government incurred investigative costs of $92,042.21, and even though restitution ordered in criminal proceeding did not account for costs of detection, investigation and prosecution; given treble damages awarded in favor of government, government was already receiving over $200,000 in excess of what it had proven it lost. U.S. v. Peters, D.Neb.1996, 927 F.Supp. 363, affirmed 110 F.3d 616, certiorari denied 118 S.Ct. 162, 522 U.S. 860, 139 L.Ed.2d 106. United States 122

Double jeopardy clause did not bar imposition, under False Claims Act, of minimum civil penalty of $5,000 for each of four violations, and treble the relatively large amount of actual damages, i.e., $153,476 despite defendant's criminal convictions based on same conduct; damages and civil penalties to which government was entitled under Act, $480,428, could not be said to bear no rational relation to remedial goal of making government whole for its proven losses of $245,518.21. U.S. v. Peters, D.Neb.1996, 927 F.Supp. 363, affirmed 110 F.3d 616, certiorari denied 118 S.Ct. 162, 522 U.S. 860, 139 L.Ed.2d 106. Double Jeopardy 25

Fine of $5,000 for each of defendant's 23 violations of False Claims Act was not excessive; defendant had committed fraudulent acts in connection with Minority Business Development Agency (MBDA) grants by utilizing employees, whose salaries were funded by federal grant monies, in private matters for defendant's firm. U.S. v. Boutte, E.D.Tex.1995, 907 F.Supp. 239, affirmed 108 F.3d 332. United States 122

Civil penalty of $290,000 for False Claim Act violations that resulted in actual damages of $1,630 was constitutionally excessive, and would be reduced to $35,000. U.S. ex rel. Smith v. Gilbert Realty Co., Inc., E.D.Mich.1993, 840 F.Supp. 71. Fines 1.3; United States 122

Imposing civil penalty of $2,000 against contractor eight times for each false certification presented penalized contractor solely for its own wrongful acts and was permissible under False Claims Act. U.S. v. Zan Mach. Co., Inc., E.D.N.Y.1992, 803 F.Supp. 620. United States 122

Civil penalty in amount of $5,000 for each of 32 claims would be imposed upon defense contractor's shareholders for submitting false claims to Government, where Government did not present any reason why higher fine of $10,000 per claim was appropriate. U.S. v. Fliegler, E.D.N.Y.1990, 756 F.Supp. 688. United States 122

Where physician was found to have submitted 39 false medicare claims, court was mandated to impose $2,000 forfeiture for

each claim, despite asserted lack of relationship between the $549.04 that physician acquired from filing of the false claims and the total $78,000 forfeiture penalty; declining to follow *Peterson v. Weinberger*, 508 F.2d 45 (5th Cir.); *United States v. Greenberg*, 237 F.Supp. 439 (S.D.N.Y.). U.S. v. Diamond, S.D.N.Y.1987, 657 F.Supp. 1204. United States 122

Mobile home owner was liable to the United States for $2,000 penalty and cost of litigation for violating the False Claims Act in submitting claim for flood loss under the National Flood Insurance Program, even though the government did not pay any money for the claim. Thevenot v. National Flood Ins. Program, W.D.La.1985, 620 F.Supp. 391. United States 122

Where contractor unlawfully claimed $1,635,544 for false reimbursement on bond premiums and obtained $688,678 for false indemnity payments to its parent company, it was liable for civil penalty of $50,000 and treble damages of $6,972,666 under the False Claims Act, for a total of $7,022,666, notwithstanding contractor's claim that the alleged fraud on the contracts was not pervasive was limited to only a few mid-level employees, as key executives knowingly defrauded the government on six separate occasions involving four significant federal contracts. Morse Diesel Intern., Inc. v. U.S., Fed.Cl.2007, 79 Fed.Cl. 116, reconsideration denied 81 Fed.Cl. 311. United States 122

Government established that contractor violated the False Claims Act (FCA) by presenting a false claim for payment and knowingly using false records or statements to support the claim, rendering it liable for statutory penalty of $10,000. Daewoo Engineering and Const. Co., Ltd. v. U.S., Fed.Cl.2006, 73 Fed.Cl. 547, affirmed 557 F.3d 1332, rehearing and rehearing en banc denied , certiorari denied 130 S.Ct. 490, 175 L.Ed.2d 346. United States 122

Government contractor who submitted four false certifications that subcontractors had been paid was liable under the False Claims Act (FCA) for civil penalties of $5,000 per claim, notwithstanding contractor's contentions that the four submissions should have been treated as a single violation for civil penalty purposes, and that total penalty amount was excessive in light of actual damages; each certification was a separate and independent act, and penalties were not excessive in light of fact that contract was potentially worth $3.4 million. Lamb Engineering & Const. Co. v. U.S., Fed.Cl.2003, 58 Fed.Cl. 106. United States 122

Contractor's submission of equitable adjustment claim for increased material costs, based on costs that were never billed by vendors, warranted imposition of civil penalty of $10,000.00 under the False Claims Act. UMC Electronics Co. v. U.S., Fed.Cl.1999, 43 Fed.Cl. 776, affirmed 249 F.3d 1337. United States 122

United States was entitled to recover from contractor following default termination $5,000 as civil penalty under False Claims Act, along with $600,000, three times damages it suffered as result of contractor's fraud. Daff v. U.S., Fed.Cl.1994, 31 Fed.Cl. 682, affirmed 78 F.3d 1566, rehearing denied , in banc suggestion declined. United States 75(5); United States 122

214. ---- Multiple violations, penalties, remedies or relief

Number of forfeitures under former § 231 et seq. of this title was not necessarily measured by number of contracts involved in a case. U. S. v. Bornstein, U.S.N.J.1976, 96 S.Ct. 523, 423 U.S. 303, 46 L.Ed.2d 514. United States 122

Former § 231 et seq. of this title permitted recovery of multiple forfeitures and gave the United States a cause of action against a subcontractor who caused a prime contractor to submit a false claim to the government. U. S. v. Bornstein, U.S.N.J.1976, 96 S.Ct. 523, 423 U.S. 303, 46 L.Ed.2d 514. United States 122

Subcontractor, which made three shipments of falsely branded electron tubes to prime contractor which caused prime contractor to submit false claims to the United States for radio kits, was liable, under former § 231 et seq. of this title, for three $2,000 forfeitures representing the three separate shipments, and subcontractor was not liable for a forfeiture for each of 35 false claims presented by prime contractor to government, even though each of the 35 invoices included claims for payment

for falsely marked tubes. U. S. v. Bornstein, U.S.N.J.1976, 96 S.Ct. 523, 423 U.S. 303, 46 L.Ed.2d 514. United States 122

Builder of subsidized housing was liable, under former § 231 of this title, for one forfeiture for each monthly voucher submitted to Department of Housing and Urban Development by mortgagee, even though builder did only one act of inflating construction costs to cause false claims to be filed, where builder knew false claim would be submitted by mortgagee each month, builder could have prevented filing of additional claims, and builder, had he submitted the claims himself, would have been liable for one forfeiture for each monthly voucher. U. S. v. Ehrlich, C.A.9 (Cal.) 1981, 643 F.2d 634, certiorari denied 102 S.Ct. 474, 454 U.S. 940, 70 L.Ed.2d 247. United States 122

The $2,000 penalty provided for under former § 231 of this title was recoverable for each of the 14 purchase orders that were subject of general contractor's bid rigging in connection with various contracts to refurbish properties by the Department of Housing and Urban Development; penalty was not to be levied only against each "project" rather than against each purchase order, especially since contractor was paid by the Department, not for each house he worked on, but for each purchase order submitted for processing. Brown v. U. S., Ct.Cl.1975, 524 F.2d 693, 207 Ct.Cl. 768. United States 122

Award to United States of $100,000 under former § 231 of this title for filing of false medicare claims was within district court's discretion, despite contention that since district court found that 120 false claims had been filed, it should have assessed a $2,000 forfeiture for each false claim, or a total of $240,000. Peterson v. Weinberger, C.A.5 (Tex.) 1975, 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96 S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. United States 120.1

Government cannot recover forfeiture more than once for same false claim submitted by government contractor. Acme Process Equipment Co. v. U. S., Ct.Cl.1965, 347 F.2d 509, 171 Ct.Cl. 324, certiorari granted 86 S.Ct. 1367, 384 U.S. 917, 16 L.Ed.2d 438, reversed on other grounds 87 S.Ct. 350, 385 U.S. 138, 17 L.Ed.2d 249, rehearing denied 87 S.Ct. 738, 385 U.S. 1032, 17 L.Ed.2d 680. United States 122

Where defendant, who operated feed mill, and who was certified dealer under Emergency Feed Program, caused 15 purchase orders to be presented to county committee for purpose of obtaining dealers' certificates, knowing that statements contained therein that feed had actually been delivered to buyers were false, defendant was liable for $2,000 forfeitures for 15 violations of former § 231 of this title and for double damages suffered by United States as result of filing of one of the purchase orders, though defendant intended to deliver later to the buyers feed not designated surplus feed grain. Fleming v. U.S., C.A.10 (N.M.) 1964, 336 F.2d 475, certiorari denied 85 S.Ct. 889, 380 U.S. 907, 13 L.Ed.2d 795. United States 122

If the two prime contractors submitted to United States 54 vouchers based on 422 invoices, which were submitted by subcontractor and contained false claims for direct labor, assessment of a $2,000 forfeiture against subcontractor for each of the 54 vouchers, rather than one forfeiture for each subcontract, was proper. U.S. v. Ueber, C.A.6 (Mich.) 1962, 299 F.2d 310. United States 122

Where contractor presented to government ten vouchers covering fictitious claims for the rental of 130 automobiles and trucks, to which vouchers were attached schedules for each of the automobiles and trucks, which schedules contained false statements as to ownership and valuation of vehicles, government was entitled to recover a forfeiture of $2,000 for each of the ten vouchers, but was not entitled to recover in addition such forfeiture for each of the schedules for the 130 automobiles and trucks. U. S. v. Grannis, C.A.4 (N.C.) 1949, 172 F.2d 507, certiorari denied 69 S.Ct. 1160, 337 U.S. 918, 93 L.Ed. 1727. United States 122

In government's action to recover forfeitures under former § 231 of this title for submitting false claims for materials supplied on a Navy shipbuilding project by subcontractor who submitted false bids in connection with 90 purchase orders under 16 subcontracts, government could have recovered forfeiture of $2,000 on each of the 16 subcontracts, but not on each of the 90 purchase orders, where the fraud was with respect to the contracts, and the purchase orders were merely part of such con-

tracts. U. S. v. Rohleder, C.C.A.3 (Pa.) 1946, 157 F.2d 126. United States 122

Assessment of fullest amount of civil penalties allowed by False Claims Act (FCA) was warranted in qui tam multi-claim suit alleging that group health insurer had caused insureds to file large numbers of false claims for Social Security Disability Insurance (SSDI). U.S. ex rel. Loughren v. Unumprovident Corp., D.Mass.2009, 604 F.Supp.2d 269, vacated 613 F.3d 300. United States 122

For purposes of calculating the civil penalty portion of a damages award in a False Claims Act (FCA) suit against a technology company regarding a scheme to defraud the government in contracts solicited under the federal Small Business Innovation Research Program (SBIR), the court would assess one forfeiture for each of the four contracts at issue, rather than for each of 54 vouchers submitted under the contracts, but would assess the maximum amount for each forfeiture because the defendants' fraud was systematic and knowing. U.S. ex rel. Longhi v. Lithium Power Technologies, Inc., S.D.Tex.2008, 530 F.Supp.2d 888, affirmed 575 F.3d 458, certiorari denied 130 S.Ct. 2092, 176 L.Ed.2d 722. United States 122

Home health care agency and its officers, who violated False Claims Act (FCA) by obtaining Medicare reimbursement funds for cost of funding employee stock option plan (ESOP) with knowledge that ESOP had not been properly funded, were jointly and severably liable for treble amount of fraudulently obtained funds plus $5,000 penalty for each of 20 false cost reports submitted. U.S. ex rel. Augustine v. Century Health Services, Inc., M.D.Tenn.2000, 136 F.Supp.2d 876, affirmed 289 F.3d 409, rehearing and suggestion for rehearing en banc denied. United States 122

Purchaser of crude oil from federal and Indian leases, which falsified records of oil amounts taken, was not subject to False Claims Act penalty for each false record entry, nor for each monthly, multiple-lease royalty report, but rather for each lease as it was falsely reported on monthly. U.S. ex rel. Koch v. Koch Industries, Inc., N.D.Okla.1999, 57 F.Supp.2d 1122. United States 120.1

Civil penalty of $5,000 was appropriate, under False Claims Act (FCA), for each of 20 instances of false claims submitted for payment where no particular reason for applying higher penalty was presented. U.S. v. Stella Perez, D.Puerto Rico 1993, 839 F.Supp. 92, reversed 55 F.3d 703, 139 A.L.R. Fed. 813, on remand 956 F.Supp. 1046. United States 122

Even though provision of False Claims Act mandating $2,000 penalty on each false claim was remedial in nature, imposition of $130,000 sanction against defendant guilty of 65 claims of medicare fraud violated double jeopardy's protections against multiple punishments, where defendant had already been convicted of criminal charges and sentenced to two years and $5,000 penalty for same acts, and penalty bore no rational relationship to Government's loss of $585. U.S. v. Halper, S.D.N.Y.1987, 664 F.Supp. 852, probable jurisdiction noted 108 S.Ct. 2818, 486 U.S. 1053, 100 L.Ed.2d 920, vacated on other grounds 109 S.Ct. 1892, 490 U.S. 435, 104 L.Ed.2d 487. Double Jeopardy 139.1

Government was entitled to recover, from defendants found liable under False Claims Act for submitting false claims to Government, twice amount of Government's damages, postjudgment interest, and civil penalties of $2,000 for conspiracy and $2,000 for each of three false loan applications, without regard to claim that portion of disbursements made as result of false claims was “returned” for use in certain contract work; defendants' liability arose from submission of false documents to Small Business Administration, Administration's reliance on false documents in disbursing funds, and loans' never being repaid. U.S. v. Uzzell, D.D.C.1986, 648 F.Supp. 1362. United States 122

Government in action under former § 231 of this title was entitled to recover $2,000 for each of 18 false invoices, as statutory forfeitures. U. S. v. Jacobson, S.D.N.Y.1979, 467 F.Supp. 507. United States 120.1

Under former § 231 of this title the government was entitled to recover one forfeiture of contractor's conspiracy which utilized conclusive bidding scheme in obtaining repair contract on residential property conveyed to Department of Housing and Urban Development by reason of foreclosure of insured mortgages as well as one forfeiture for each false claim. U.S. v.

Cripps, E.D.Mich.1978, 460 F.Supp. 969. United States 120.1

Upon finding that defendant was liable under former § 231 of this title on count which involved two false claims, government was entitled to two forfeiture payments. U. S. v. Canada, S.D.Ind.1977, 425 F.Supp. 91. United States 122

Where real estate salesman caused to be submitted to Federal Housing Administration [now Department of Housing and Urban Development] false certificates as to condition of property for purpose of inducing Administration to insure mortgages on properties and mortgagors subsequently defaulted on mortgages, requiring United States to honor claims of mortgagee, United States was entitled only to one $2,000 forfeiture for each defaulted property, even though several false representations were made in various certifications submitted to government to induce it to issue its mortgage insurance commitment on each property. U. S. v. Hibbs, E.D.Pa.1976, 420 F.Supp. 1365, vacated on other grounds 568 F.2d 347. United States 122

Each presentation of a check by person who had forged names of payers on 12 government checks constituted a separate claim within the meaning of former § 231 of this title thus entitling the United States to 12 forfeitures totalling $24,000. U. S. v. Silver, E.D.N.Y.1974, 384 F.Supp. 617, affirmed 515 F.2d 505. United States 122

Physician and nursing home director who submitted 120 false claims for medicare payments were liable for $2,000 forfeiture for each of 50 of the false claims plus double damages for all 120 false claims. Peterson v. Richardson, N.D.Tex.1973, 370 F.Supp. 1259, affirmed 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96 S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. United States 120.1

In view of government's position in suit under former § 231 of this title that number of forfeitures was within discretion of court, in view of prior settlement of action brought by defendant against government, fact that defendant had already been convicted in criminal prosecution, and concession that government had not proved out-of-pocket damages, only three forfeitures based on three contracts involved, rather than eight forfeitures based on eight dates of certifications of false payrolls or 34 forfeitures based on 34 false payrolls, would have been decreed. U. S. v. Greenberg, S.D.N.Y.1965, 237 F.Supp. 439. United States 122

In action for forfeitures and double damages under former § 231 of this title for allegedly making false claims against government for meat products sold, forfeitures could properly have been assessed in each individual count if government properly proved that defendants had violated any or all of three classes of infractions set forth in complaint. U.S. v. American Packing Corp., D.C.N.J.1953, 113 F.Supp. 223. United States 122

Where seller of butane gas for federal housing projects knowingly submitted claims for gas not delivered and manager of projects submitted to public housing authority nine quarterly reports including overcharges in items stating cost of gas, United States was entitled to recover forfeiture under former § 231 of this title for each of nine violations of former § 231 of this title in addition to double amount of damages sustained. U.S. v. Gardner, N.D.Ala.1947, 73 F.Supp. 644. United States 122

215. Indemnification, remedies or relief

Neither contribution nor indemnity is available in qui tam action under False Claims Act, even if qui tam plaintiff participated in wrongdoing; Act was not intended to ameliorate liability of wrongdoers by providing remedy against qui tam plaintiff who has “unclean hands.” Mortgages, Inc. v. U.S. Dist. Court for Dist. of Nev. (Las Vegas), C.A.9 (Nev.) 1991, 934 F.2d 209. Equity 65(1)

Arbitrator's determination that air carrier was contractually obliged to indemnify broker for any damages assessed against it in United States' action under False Claims Act (FCA) alleging that air carrier and broker had overcharged for freight transportation services was based on good faith assessment of law presented to him, and thus arbitration award was not subject to

vacation based on arbitrator's manifest disregard of federal case law allegedly prohibiting broker from obtaining indemnification for FCA-related damages unless and until it was found free of FCA liability, where arbitrator acknowledged case law cited by carrier, but relied on the case law propounded by broker, concluding that FCA defendant "may maintain a claim for independent damages that is not dependent on a finding that the defendant is liable." U.S. ex rel. Watkins v. AIT Worldwide Logistics, Inc., E.D.Va.2006, 441 F.Supp.2d 762. Alternative Dispute Resolution 329

False Claims Act (FCA) did not provide an implied right of action for indemnification or contribution. U.S. v. Dynamics Research Corp., D.Mass.2006, 441 F.Supp.2d 259. Contribution 5(6.1); Indemnity 64

If defendants and third-party plaintiffs were liable under former § 231 of this title, they were not entitled to indemnification from the third-party defendant, even if it could have been proven that he too would have been jointly and severally liable under former § 231 of this title. U. S. v. Kennedy, C.D.Cal.1977, 431 F.Supp. 877. Indemnity 64

216. Interest, remedies or relief

Prejudgment interest may not be awarded in addition to double damages and penalties under this section. U.S. v. McLeod, C.A.9 (Wash.) 1983, 721 F.2d 282. Interest 39(2.55)

Physician from whom funds due under medicare were withheld as offset against false claims under investigation was not entitled to interest for period that sums were withheld prior to payment of the sums to the physician upon his posting of bond to indemnify government for any amount which might ultimately be found due the government. Peterson v. Weinberger, C.A.5 (Tex.) 1975, 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96 S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. United States 110

United States was not entitled to award of interest on amount of fraudulent medicare claims from date payment was made on the claims in addition to the double damages plus specified sum which the United States recovered under former § 231 of this title. Peterson v. Weinberger, C.A.5 (Tex.) 1975, 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96 S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. United States 120.1

Prejudgment interest should not have been assessed on amount recovered under former § 231 of this title. Peterson v. Weinberger, C.A.5 (Tex.) 1975, 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96 S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. United States 120.1

Interest could properly have been recovered as item of "damage" under former § 231 of this title. U. S. v. Cooperative Grain & Supply Co., C.A.8 (Neb.) 1973, 476 F.2d 47. United States 120.1

Since recovery specified in former § 231 of this title, namely, double damages plus a specified sum, was chosen to make sure that government was made completely whole, it was error to assess prejudgment interest in favor of government on the amount found to be recoverable. U. S. v. Foster Wheeler Corp., C.A.2 (N.Y.) 1971, 447 F.2d 100. Interest 39(2.20)

Interest was not allowed government on judgment for penalty and double damages under former § 231 of this title. U. S. v. Globe Remodeling Co., D.C.Vt.1960, 196 F.Supp. 652. United States 120.1; United States 122

Interest value of premature contract payments made by the government pursuant to fraudulent invoices submitted by contractor was recoverable as single damages under the False Claims Act (FCA). BMY--Combat Systems Div. of Harsco Corp. v. U.S., Fed.Cl.1998, 44 Fed.Cl. 141. United States 122

217. Injunctions, remedies or relief

Physician failed to establish that he would suffer irreparable harm if terminated by hospital, as required to support his claim for preliminary injunction barring hospital from firing him in his lawsuit alleging that he was terminated in violation of the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the False Claims Act; lost income, damaged reputation, and inability to find another job was not irreparable harm. Bedrossian v. Northwestern Memorial Hosp., C.A.7 (Ill.) 2005, 409 F.3d 840. Injunction 138.69

Government established a likelihood of success in showing that defendant physician knowingly and willfully submitted false claims to Medicare to obtain reimbursement to which he was not entitled in violation of three different fraud statutes, and was therefore entitled to preliminary injunction under statute authorizing injunctions against fraud. U.S. v. Sriram, N.D.Ill.2001, 147 F.Supp.2d 914. Injunction 138.24

Even if Government could use a civil violation under False Claims Act as the basis for an asset freeze under statute authorizing injunctions against fraud, statute did not permit the amount frozen to include a sum that accounted for trebled damages and civil penalties. U.S. v. Sriram, N.D.Ill.2001, 147 F.Supp.2d 914. Injunction 138.31

218. Rescission or termination of contract, remedies or relief

Relator could not seek disgorgement of all $9 million that the government paid to contractor for subcontracted work in qui tam action brought under the False Claims Act (FCA); although contractor ran afoul of the fair bidding requirements, there was no evidence adduced at trial suggesting that subcontractor failed to perform the work that it was required to perform under the subcontract or that the government did not receive the benefit of the work performed, and relator presented no evidence that the government did not get what it paid for or that another firm could have performed the work for less. U.S. ex rel. Harrison v. Westinghouse Savannah River Co., C.A.4 (S.C.) 2003, 352 F.3d 908. United States 122

Where contractor, without knowledge of management, received payment on fraudulent claim, and after fraud became known, government agents with apparent knowledge of Assistant Secretary of Army conducted proceedings justifying conclusion that resumption of production would have been authorized, in reliance on which contract restaffed and kept plant in operating condition, supplemental agreement untouched by issue of fraud resulted, and government's attempted termination thereafter on basis of former § 231 of this title was wrongful and not justified by its prior reservation of right to cancel for fraud. Carrier Corp. v. U. S., Ct.Cl.1964, 328 F.2d 328, 164 Ct.Cl. 666. United States 72.1(2)

If contracts entered into by federal government for purchase of rubber tires were induced by fraud consisting of bidders submitting collusive bids, government, on discovery of the fraud, would have choice of either rescinding the contracts, restore what had been received, and recover what had been paid, or of enforcing the contracts and recovering damages resulting from the fraud, but the government could not have both remedies. Mandel v. Cooper Corporation, S.D.N.Y.1941, 42 F.Supp. 317. United States 75(2)

219. Setoffs, remedies or relief

In determining amount which contractor was entitled to recover under contract entered into with Department of Housing and Urban Development, Court of Claims [now United States Claims Court] adopted assessment contained in official housing and urban development audit report prepared by special team which had examined contractor's record; amount already paid to contractor, together with $10,000 to which government was entitled as result of contractor's five violations of former § 231 of this title, was subtracted from total audit figure to arrive at amount of contractor's ultimate recovery. Miller v. U. S., Ct.Cl.1977, 550 F.2d 17, 213 Ct.Cl. 59. United States 74(13)

Contractors' settlement payments for claims of conspiracy to rig bids on three construction contracts in Egypt funded by United States, in violation of False Claims Act (FCA), and judgment assessing damages against nonsettling contractor's vice president for conspiracy claim, represented “common damages,” as required for set-off of vice president's damages by simple pro tanto partial credit against overall liability of $13.7 million for which settling contractors shared joint and several liabil-

ity, since settlement payments were not allocated among three contracts, but rather, were structured as undivided lump sums. Miller v. Holzmann, D.D.C.2008, 563 F.Supp.2d 54, affirmed in part, vacated in part and remanded 608 F.3d 871, 391 U.S.App.D.C. 165, petition for certiorari filed 2010 WL 5490637. Damages 63

Non-settling defendant in a False Claims Act (FCA) suit was not entitled to an offset of his liability by the amount of plaintiffs' settlements with other defendants; the non-settling defendant had no claim to pay less than this proportionate share of the total loss, regardless of the amount offset by the settling defendants. U.S. ex rel. Miller v. Bill Harbert Intern. Const., Inc., D.D.C.2007, 501 F.Supp.2d 51. Damages 63

Since Department of Health, Education, and Welfare [now Department of Health and Human Services] had right to withhold medicare payments as an offset for any final judgment rendered against physician under former § 231 [now § 3729] of this title and since suspension of physician's payments was not malicious nor unreasonable, United States was not liable for the conduct of its employees in suspending the physician's payments. Peterson v. Richardson, N.D.Tex.1973, 370 F.Supp. 1259, affirmed 508 F.2d 45, rehearing denied 511 F.2d 1192, certiorari denied 96 S.Ct. 50, 423 U.S. 830, 46 L.Ed.2d 47, rehearing denied 96 S.Ct. 406, 423 U.S. 991, 46 L.Ed.2d 311. United States 78(12)

Where school knowingly submitted false vouchers to Veterans' Administration, including overcharges for training rendered to veterans, each of vouchers submitted to Administration constituted separate violation of former § 231 of this title which prohibited presentation of false claims and conspiracy to defraud United States in payment of false claims, which authorized setoff up to $2,000 against claim of school's assignee suing to recover on unpaid vouchers for each of fraudulent vouchers submitted. First Nat. Bank of Birmingham v. U.S., N.D.Ala.1953, 117 F.Supp. 486. United States 120.1

Where management agreement between Chapter 11 debtors and purchaser of their health care facilities provided that purchaser was entitled to payment from debtors only for Medicaid/Medicare payments that they "received," and not for any such payments that they were "owed," from operating these facilities during transition period, purchaser had no claim to compel payment of Medicaid/Medicare payments which debtors earned but which, as result of agreement between debtors and the United States to have these Medicaid/Medicare payments offset based on government's claims against debtors under the False Claims Act, were never received. In re Integrated Health Services, Inc., Bkrtcy.D.Del.2003, 303 B.R. 577. Bankruptcy 2921

220. Complaint, remedies or relief--Generally

False Claims Act (FCA) relator's allegation that claims which defendant submitted to government were false because her health care businesses "were engaged in the unlawful corporate practice of medicine" did not allege fraud with requisite particularity; complaint did not refer to any statute, rule, regulation, or contract that conditioned payment on compliance with state law governing corporate practice of medicine, but rather, baldly asserted that had defendant "not concealed or failed to disclose information affecting the right to payment, the United States would not have paid the claims." Ebeid ex rel. U.S. v. Lungwitz, C.A.9 (Ariz.) 2010, 616 F.3d 993, certiorari denied 131 S.Ct. 801, 178 L.Ed.2d 546. Federal Civil Procedure 636

Allegations by former employees of government contractor that they personally observed named employees and supervisors of contractor violate specific contractual obligations by improperly disposing of hazardous waste, that certain contractual obligations were violated on certain dates, that employees documented and/or informed named superiors of the violations, that contractor submitted requests for payment of certain sums to government on certain dates without disclosing the contractual violations, and that the government paid those amounts on certain dates satisfied pleading with particularity requirement for False Claims Act (FCA) claims against contractor. U.S. ex rel. Lemmon v. Envirocare of Utah, Inc., C.A.10 (Utah) 2010, 614 F.3d 1163. Federal Civil Procedure 636

Relators in qui tam action under False Claims Act (FCA) against provider of prescription drug benefits under federal health insurance plans did not allege fraud with requisite particularity in asserting claim based upon provider's alleged noncompli-

ance with requirements of cost-saving program involving replacement of prescribed drugs with less expensive alternatives, given absence of information showing that provider had actual knowledge that health plans were being billed for cost savings on prescriptions which were altered without requisite doctor approval, or that provider otherwise ignored or disregarded situation; at best, alleged scheme involved breach of contract dispute between provider, plans, and government. U.S. ex rel. Fowler v. Caremark RX, L.L.C., C.A.7 (Ill.) 2007, 496 F.3d 730, rehearing and suggestion for rehearing en banc denied, certiorari denied 128 S.Ct. 1246, 552 U.S. 1183, 170 L.Ed.2d 66. Federal Civil Procedure 636

Qui tam relator failed to plead with sufficient particularity claim that defendants defrauded medicaid program, in violation of False Claims Act (FCA); although relator cited particular patients, dates, and corresponding medical records for services he contended were not eligible for government reimbursement, the complaint failed to allege any discrete incident of fraudulent submission of reimbursement claim by any defendant, and it did not state that relator had firsthand knowledge of the submission of any false claims. U.S. ex rel. Atkins v. McInteer, C.A.11 (Ala.) 2006, 470 F.3d 1350. Federal Civil Procedure 636

Subject in federally-funded acquired immune deficiency syndrome (AIDS) research study failed to plead with requisite particularity that fraudulent statement's purpose was to coax a payment of money from the government, as would support False Claims Act (FCA) claim premised upon an alleged false certification of compliance with statutory or regulatory requirements, in qui tam action alleging various acts of negligence and mismanagement by researcher, several of its participating medical professionals, and institutional review board for the study, where alleged false statements, identified only by a categorical and essentially undecipherable listing of various “forms, written reports and study results” the defendants filed with the government at some point during course of the study, shed no light on nature or content of individual forms or why any particular false statement would have caused government to keep funding study, much less when any payments occurred or how much money was involved. U.S. ex rel. Gross v. AIDS Research Alliance-Chicago, C.A.7 (Ill.) 2005, 415 F.3d 601. Federal Civil Procedure 636

Allegations in qui tam complaint against chief executive officer (CEO) of home health care agency, that defendant was CEO of agency, failed to state claim under False Claims Act (FCA), Virginia Fraud Against Taxpayers Act, and District of Columbia Procurement Reform Amendment Act. U.S. ex rel. DeCesare v. Americare In Home Nursing, E.D.Va.2010, 2010 WL 5313315. United States 122

Relator's allegations that manufacturers of non-invasive bone growth stimulator falsely certified that they would abide by Medicare laws, regulations, and program instructions required for Medicare participation, knowing that they would not inform patients of the rental option as required by Supplier Standard Regulation Number 5, stated claims that manufacturers made false claims for payment and false statements to get a false claim paid, in violation of the False Claims Act (FCA); although Regulation Number 5 was not explicitly listed in the manufacturers' certification, it was an applicable condition of participation by Medicare and was explicitly labeled as a condition of participation in the regulations. U.S. ex rel. Bierman v. Orthofix Intern., N.V., D.Mass.2010, 2010 WL 4973635, as amended. United States 120.1

Federal government's allegations that contractor made multiple affirmative false or fraudulent statements were sufficiently detailed and plausible to state False Claims Act (FCA) and common law fraud claims relating to contractor's discounting policies and practices throughout performance of contract to provide software products; government alleged that contractor gave its commercial customers discounts that were significantly higher than the discounts disclosed to government during initial contract negotiations, that contractor used non-standard discounts much more frequently than it initially admitted, and that contractor never informed government of the difference between its pre-contract disclosures and its actual commercial discounts, but rather made affirmative false statements regarding its commercial pricing with the intent to induce government to enter into contract modifications and to continue to accept discounts as originally disclosed. U.S. ex rel. Frascella v. Oracle Corp., E.D.Va.2010, 2010 WL 4623793. United States 122

Relator's complaint, which alleged that government contractor's fraudulent practices of submitting false claims to the government were continued by subcontractor's employees, failed to state False Claims Act (FCA) claim against subcontractor

with sufficient particularity; relator failed to allege the date of any fraud perpetrated by subcontractor or any other information regarding specific fraudulent claims submitted or prepared by subcontractor. U.S. ex rel. Bender v. North American Telecommunications, Inc., D.D.C.2010, 2010 WL 4365531. Federal Civil Procedure 636

Relator did not plead circumstances constituting fraud or mistake with particularity in qui tam action against medical device manufacturer alleging violations of federal False Claims Act (FCA) on claim that manufacturer had submitted so-called "fitting fees" for payment in which doctors did not perform fittings, where there was no allegation that false statement, such as verification that doctor had performed fitting, had been made, there was no detail as to which employees or doctors had been involved in scheme or time period during which scheme had been perpetrated, and there was no detail as to how manufacturer allegedly had been "encouraging and assisting" doctors to commit fraud. U.S. ex rel. Bierman v. Orthofix Intern., N.V., D.Mass.2010, 2010 WL 4358380. Federal Civil Procedure 636

Relator's allegations in qui tam action that defendants engaged in scheme where they falsely inflated the credentials of their consultants when submitting bids on federally funded road and bridge projects, and intended that those consultants would be paid at a higher rate than they were qualified to receive in order to induce payments from the federal government through Pennsylvania Department of Transportation (PennDOT) were sufficient to state a cause of action under False Claims Act (FCA). U.S. Dept. of Transp. ex rel. Arnold v. CMC Engineering, W.D.Pa.2010, 2010 WL 3942488. United States 122

Relator in qui tam action against medical device manufacturer, which alleged manufacturer violated False Claims Act (FCA) by engaging in illegal off-label marketing of a surgical-ablation device to treat atrial fibrillation, was not entitled to plead fraud under relaxed standard of particularity; even though information relator needed to prove fraud was in possession of doctors, hospitals and government agencies, relator could obtain it through discovery, and relator did not provide a representative sample or even an instance of submission as required to support relaxed standard where fraud had occurred over an extended period of time and had consisted of numerous acts. U.S. ex rel. Bennett v. Medtronic, Inc., S.D.Tex.2010, 2010 WL 3909447. Federal Civil Procedure 636

Relator's allegations were sufficient to state a claim that drug manufacturers gave kickbacks in the form of overfill to Medicare providers, and thus caused them falsely and expressly to certify compliance with the anti-kickback statute in violation of False Claims Act (FCA); relator alleged that manufacturers gave excess drug to providers for which the providers did not pay, that manufacturers advocated that providers bill Medicare for the free doses, and that manufacturers induced providers to purchase drug and make false certifications of compliance with the anti-kickback statute. U.S. ex rel. Westmoreland v. Amgen, Inc., D.Mass.2010, 738 F.Supp.2d 267. United States 120.1

Relator's conclusory allegation that accounting and consulting firm hired by medical center to audit institutional cost reports (ICR) it submitted in connection with Medicaid cost reports for its teaching hospital's campus knew or should have known that ICRs incorrectly claimed capital costs for center's faculty practice plan (FPP) as reimbursable were not sufficient to plead scienter required to establish claim under False Claims Act (FCA), where relator did not allege any facts supporting his assertion that firm did not perform audits as claimed, identify any auditing procedures that firm should have employed but did not employ, or provide any reason for inferring that firm deliberately chose not to perform audits as certified or to perform them inadequately. U.S. ex rel. Pervez v. Beth Israel Medical Center, S.D.N.Y.2010, 736 F.Supp.2d 804. United States 122

Qui tam relator did not satisfy particularized pleading requirements in asserting False Claims Act (FCA) claim based on drug manufacturer's alleged kickbacks to encourage doctors to write "off-label" prescriptions for its protease inhibitor; relator did not allege the particulars of the payments, such as who made them, when the alleged payments were made, or any facts to support that manufacturer knowingly and willfully issued payments for the purpose of getting a false claim paid by the government nor did relator offer any particulars as to names, dates, amounts, or the incentives doctors were alleged to have been offered. U.S. ex rel. Carpenter v. Abbott Laboratories, Inc., D.Mass.2010, 723 F.Supp.2d 395. Federal Civil Procedure 636

Rule of procedure requiring that claims of fraud be pled with particularity did not require relator to identify, in his False

Claims Act (FCA) complaint, a specific false claim actually submitted to the Government by third parties; the relator claimed that the defendant was defrauding Medicare and Medicaid by bribing doctors to prescribe a drug for off-label use, thus placing the defendant on notice of the precise misconduct with which it was charged. U.S. ex rel. Underwood v. Genentech, Inc., E.D.Pa.2010, 720 F.Supp.2d 671. Federal Civil Procedure 636

Qui tam relator's complaint, alleging hospitals self-funded counties' contributions to Medicaid funding program from which the hospitals would be paid, in violation of False Claims Act (FCA), pled fraud with sufficient particularity; complaint listed numerous forms submitted by state to federal government for Medicaid payments, complaint targeted each hospital regarding dates and amounts of donations, complaint provided dates and amounts of the county's "match," and the resulting SCP fund payment to hospitals, and complaint indicated the funding requests submitted by each hospital, with the dates of each request. U.S., ex rel. Baker v. Community Health Systems, Inc., D.N.M.2010, 709 F.Supp.2d 1084. Federal Civil Procedure 636

Allegations that medical device manufacturer provided doctors a kick-back in violation of the Anti-Kickback Statute in order to increase the use of its products and that manufacturer's executives were aware that reimbursement would be sought from government health programs for many of the surgeries performed were insufficient to state a claim under the False Claims Act based on claims submitted by hospitals for reimbursement for devices used in surgeries, absent allegations that hospitals certified that entire transactions complied with the Anti-Kickback statute, that the hospitals themselves received kickbacks, or that they knew or should have known about the kickbacks received by the doctors. U.S. ex rel. Hutcheson v. Blackstone Medical, Inc., D.Mass.2010, 694 F.Supp.2d 48. United States 122

It is not enough for a False Claims Act (FCA) complaint to refer generally to "management" while providing a list of names without explaining the role individual defendants played in the alleged fraud. U.S. ex rel. Bender v. North American Telecommunications, Inc., D.D.C.2010, 686 F.Supp.2d 46. Federal Civil Procedure 636

United States government alleged that synthetic fiber supplier presented it with false claims, as required to state claim under False Claims Act (FCA); although supplier never warranted materials and bulletproof vest manufacturer submitted actual claims for payment, government averred that supplier engaged in activity in concert with manufacturer that induced presentment. U.S. ex rel. Westrick v. Second Chance Body Armor, Inc., D.D.C.2010, 685 F.Supp.2d 129, reconsideration denied 709 F.Supp.2d 52. United States 122

Former District of Columbia Metropolitan Police Department (MPD) employee failed to allege in her amended complaint that she attempted to stop false claim against government, as required to state claim for retaliation under False Claims Act. Owens v. District of Columbia, D.D.C.2009, 631 F.Supp.2d 48. District Of Columbia 7

United States' claim that health care provider billed Medicare for "nonexistent or worthless goods, or charged exorbitant prices" was sufficient to allege potential economic harm to government, as required to state claim under False Claims Act (FCA) for presenting false claim for payment, even if provider's claims were not actually paid. U.S. v. Aguillon, D.Del.2009, 628 F.Supp.2d 542. United States 122

Paragraph of False Claims Act (FCA) complaint would not be dismissed due to government failure to plead fraud with sufficient particularity where government's interrogatory answers and subsequent opposition briefs adequately supplemented the paragraph; allowing the government to supplement its allegations in paragraph would further judicial economy. U.S. v. Science Applications Intern. Corp., D.D.C.2008, 555 F.Supp.2d 40. Federal Civil Procedure 636

Although complaint alleged particularized details about drug manufacturer's underlying scheme to induce doctors to prescribe drug by granting them a variety of kickbacks, including rebates and other off-invoice discounts, educational grants, and the like, complaint failed to allege False Claims Act (FCA) claim with sufficient particularity where there were no particularized allegations regarding the false claims that were actually submitted to the federal government. U.S. ex rel. Duxbury v. Ortho Biotech Products, L.P., D.Mass.2008, 551 F.Supp.2d 100, affirmed in part , reversed in part 579 F.3d 13, certiorari denied 130 S.Ct. 3454, 177 L.Ed.2d 1054, on remand 2010 WL 3810858. Federal Civil Procedure 636

Relator's allegations in qui tam action against pharmaceutical company under False Claims Act of discount, cash bribe, premix bag, and improper fees, grants, and gifts were sufficiently particular to state claim under False Claims Act for pharmaceutical company's regional office and for years in which relator worked; relator identified particular time when a particular sales representative allegedly discounted drug price for a specific hospital on condition that hospital no longer stock competing drug for physicians requesting the drug. In re Pharmaceutical Industry Average Wholesale Price Litigation, D.Mass.2008, 538 F.Supp.2d 367. Federal Civil Procedure 636

Private investigator asserting a qui tam claim that a Medicare Part B carrier recklessly approved false claims for durable medical equipment in violation of the False Claims Act (FCA) failed to plead fraud with the requisite particularity; the investigator had no firsthand knowledge of any fraudulent conduct on the part of the carrier, and it was insufficient that he had reason to believe fraudulent practices were industry wide. U.S. ex rel. Feingold v. Palmetto Government Benefits Administrators, S.D.Fla.2007, 477 F.Supp.2d 1187, affirmed 278 Fed.Appx. 923, 2008 WL 2097615, rehearing and rehearing en banc denied 285 Fed.Appx. 743, 2008 WL 2977960, certiorari denied 129 S.Ct. 1001, 173 L.Ed.2d 293. Federal Civil Procedure 636

Allegation in suit under False Claims Act (FCA) that subcontractor knowingly caused the submission of false claims to the government arguably encompassed an assertion that subcontractor knew, through its officers or employees, that false claims were presented to the government relating to subcontractor's work. U.S. ex rel Smith v. Boeing Co., D.Kan.2007, 505 F.Supp.2d 974. United States 122

Qui tam relator satisfied federal procedure rule requirements for stating claim of fraud with particularity, when relator alleged that county fraudulently certified to United States, in connection with receipt of block grants for housing programs, that county had considered race as impediment to fair housing and taken steps to address problem, with knowledge that it had considered income rather than race. U.S. ex rel. Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York, S.D.N.Y.2007, 495 F.Supp.2d 375, motion to certify appeal denied 2007 WL 2402997. Federal Civil Procedure 636

Complaint alleged violation of the False Claims Act (FCA) with particularity sufficient to satisfy rule requiring that allegations of fraud be pled with particularity, where it alleged time, place, specific content of misrepresentations, and identities of parties to the misrepresentation. U.S. v. Sequel Contractors, Inc., C.D.Cal.2005, 402 F.Supp.2d 1142. Federal Civil Procedure 636

Complaint of qui tam relator, when read in conjunction with disclosures submitted to the government, satisfied heightened pleading requirements of False Claims Act (FCA) action against drug manufacturer, which allegedly engaged in fraudulent scheme to increase submission of off-label prescriptions of drug for payment by Medicaid; complaint and disclosures detailed both general framework of purported Medicaid fraud and provided more specific information on individuals, locations, precise statements alleged to be false and time-frames involved. U.S. ex rel. Franklin v. Parke-Davis, Div. of Warner- Lambert Co., D.Mass.2001, 147 F.Supp.2d 39, motion to amend denied 2002 WL 32128635. Federal Civil Procedure 636

Qui tam plaintiff failed to allege with particularity fraud claims against corporations who allegedly made false statements to Customs Service upon arrival at United States airports that employees did not have goods subject to import duties, although plaintiff mentioned two specific incidents, as plaintiff failed to provide date on which statements were made, and failed to identify individuals making statements. U.S. ex rel. Vallejo v. Investronica, Inc., W.D.N.Y.1998, 2 F.Supp.2d 330. Federal Civil Procedure 636

Rule requiring that fraud actions be pled with particularity applies to False Claims Act, even after 1986 amendments to Act. U.S. ex rel. Stinson, Lyons, Gerlin & Bustamante, P.A. v. Blue Cross Blue Shield of Georgia, Inc., S.D.Ga.1990, 755 F.Supp. 1055. Federal Civil Procedure 636

Complaint, which alleged that the defendants defrauded housing authority by making false claims but which failed to allege that fraudulent claims were made against the United States and that the Treasury of United States had been harmed, failed to state a claim under Federal False Claims Act section allowing Government to recover civil penalties and damages from persons making false claims against the Government. U.S. ex rel. Simmons v. Smith, S.D.Ala.1985, 629 F.Supp. 124. United States 120.1; United States 122

Qui tam relator failed to satisfy heightened pleading requirements for fraud element of False Claims Act (FCA) action, under presentment theory, since he failed to identify a single false claim that information technology services provider submitted to government for payment; although relatoralleged that provider "knowingly submitted, and caused to be submitted, false or fraudulent claims for payment and reimbursement by the United States Government," pursuant to Solutions for Enterprise-Wide Procurement (SEWP) contract, and that the United States paid these false claims, he failed to plead any factssupporting bald recitation of statute, nor did he identify who made the false claims, when those claims were made, or any additional details about content of claims. U.S. ex rel. Folliard v. Hewlett-Packard Co., D.D.C.2011, 2011 WL 109570. Federal Civil Procedure 636

Nurse's complaint failed to plead fraud with sufficient particularity to state claim under False Claims Act; nurse alleged that health care provider directed surgical nurses to designate on operative report all surgeries as "major" even if such surgeries would previously have been designated "minor," and that operative reports were used to prepare DRG forms which were used to prepare patients' Medicaid and Medicare bills but did not allege directive's effect on the DRG form and patients' bills. Wisz v. C/HCA Development, Inc., N.D.Ill.1998, 181 F.R.D. 385. Federal Civil Procedure 636

221. ---- Conspiracy, complaint, remedies or relief

Relator's allegations in qui tam complaint that he attended meeting along with executive of home health care agency where plan was discussed to dole out Medicare referrals in exchange for fees charged by volume, and to limit number of providers that could participate in plan, that practices ran afoul of the Anti-Kickback Statute, and that plans discussed at meeting were implemented, stated False Claims Act (FCA) conspiracy claim against home health care agency. U.S. ex rel. DeCesare v. Americare In Home Nursing, E.D.Va.2010, 2010 WL 5313315. Conspiracy 18

Qui tam relator failed to allege that information technology services provider conspired to defraud government, precluding relator's False Claims Act conspiracy claim against provider, arising from alleged misrepresentations as to products purchased by government. U.S. ex rel. Folliard v. CDW Technology Services, Inc., D.D.C.2010, 722 F.Supp.2d 20. Conspiracy 18

United States government alleged that synthetic fiber supplier conspired with bulletproof vest manufacturer to present false claims for payment, as required to state claim under False Claims Act (FCA); complaint averred that supplier made $6 million dollar "rebate" payment to manufacturer for continued use of fiber, and that supplier retracted its earlier data showing dramatic drop in fiber strength when exposed to adverse conditions. U.S. ex rel. Westrick v. Second Chance Body Armor, Inc., D.D.C.2010, 685 F.Supp.2d 129, reconsideration denied 709 F.Supp.2d 52. Conspiracy 18

Relator's allegations that District of Columbia and the District of Columbia Public School System conspired with others to defraud the United States Government by inducing the United States Government to pay or approve false or fraudulent Medicare claims and that by reason of the payments or approvals, the United States Government had been damaged, and continued to be damaged, in substantial amount, were insufficient to allege that the United States has suffered damage as a result of the alleged false claim, as required to state conspiracy claim under the False Claims Act (FCA); relator contended that the government owed the District $60 million and that the government paid the District $60 million. U.S. ex rel. Davis v. District of Columbia, D.D.C.2008, 591 F.Supp.2d 30. Conspiracy 18

Relator's allegations that medical clinic and hospital entered into an agreement whereby hospital would give clinic financial support in exchange for clinic's referring large volumes of patients to hospital were sufficient to state conspiracy claim

against clinic and hospital under False Claims Act (FCA). U.S. ex rel. Repko v. Guthrie Clinic, P.C., M.D.Pa.2008, 557 F.Supp.2d 522. Conspiracy 9

Government stated claim against federal employee alleged to have violated False Claims Act by conspiring to make or present false or fraudulent claims for payment to United States in connection with employee's alleged approval of budgets containing inflated rates for consulting services; complaint alleged that employee conspired with consultant and Director of Office of Small Disadvantaged Business to collect inflated payments, described in detail actions allegedly undertaken to ensure that consulting services would be included in budget of bank administering loan program, and contained specific allegations of damages of approximately $120,000. U.S. v. Bouchey, D.D.C.1994, 860 F.Supp. 890. Conspiracy 18

Law firm could not maintain claim under False Claims Act that insurer conspired to defraud government by getting false or fraudulent claim paid or allowed; complaint was void of any allegations of agreement. U.S. ex rel. Stinson, Lyons, Gerlin & Bustamante, P.A. v. Provident Life & Acc. Ins. Co., S.D.Fla.1989, 721 F.Supp. 1247. United States 122

Government's allegation that corporation, through its officers and employees, knowingly accepted, acquired, possessed, and presented for redemption stolen food stamps did not state a claim for conspiracy under the False Claims Act. Blusal Meats, Inc. v. U.S., S.D.N.Y.1986, 638 F.Supp. 824, affirmed 817 F.2d 1007. Conspiracy 18

222. Counterclaims, remedies or relief

Under former § 231 of this title, government which sustained damages of $48,000 during period 1948 to 1950 which arose out of false statement for costs filed by school with Veterans' Administration was entitled to have that amount doubled and school's counterclaim for period in 1951 for more than $17,000 would not have been considered in connection with doubling of damages. U. S. v. Sytch, C.A.3 (N.J.) 1958, 257 F.2d 475. United States 120.1

Government contractors stated recoupment counterclaim against government in its False Claims Act (FCA) and common-law suit seeking damages and civil penalties for alleged fraudulent invoices; counterclaim, alleging breach of contract, arose from same transaction as government's claims since it relied on same contract, sought same kind of relief via offset of government's recovery, and did not exceed amount sought by government. U.S. v. Intrados/International Management Group, D.D.C.2003, 277 F.Supp.2d 55. United States 130(7)

Former employers' counterclaim for punitive damages in employee's False Claims Act (FCA) qui tam action, based on employee's alleged extortion attempt and misuse of judicial system, would be dismissed for public policy reasons; allowing such counterclaims might chill would-be relators from bringing FCA claims. U.S. ex rel. Mikes v. Straus, S.D.N.Y.1996, 931 F.Supp. 248, motion to certify appeal denied 939 F.Supp. 301. United States 122

United States claims court has jurisdiction over counterclaims made by government under False Claims Act. BMY-Combat Systems Div. of Harsco Corp. v. U.S., Cl.Ct.1992, 26 Cl.Ct. 846. Federal Courts 1087

223. Removal, remedies or relief

Related federal qui tam action that was unsealed, which had been brought under False Claims Act (FCA) against pharmaceutical companies, did not constitute “order or other paper,” to permit removal, within meaning of statute that governed procedure for removal, where federal action was not within state court litigation that had been removed and had been brought under state tort laws to recover Medicare Part B co-payments from pharmaceutical companies, federal action did not resolve matter of law that was controlling in state case, and there was no express authorization for removal from superior court. Hawaii v. Abbott Laboratories, Inc., D.Hawai'i 2006, 469 F.Supp.2d 842. Removal Of Cases 79(1)

Federal government's service of unsealed qui tam complaint under False Claims Act (FCA) did not provide ground for defen-

dant to remove parallel state court false claim action to federal court, pursuant to the "other paper or order" requirement, even though both actions involved same defendant, and arguably involved similar factual situations and legal issues. Hawaii v. Abbott Laboratories, Inc., D.Hawai'i 2006, 469 F.Supp.2d 835, appeal denied 469 F.Supp.2d 842. Removal Of Cases 79(1)

Related federal qui tam action that was unsealed, which had been brought under False Claims Act (FCA) against pharmaceutical companies, did not constitute "order or other paper," to permit removal, within meaning of statute that governed procedure for removal, where federal action was not within state court litigation that had been removed and had been brought under state tort laws to recover Medicare Part B co-payments from pharmaceutical companies, federal action did not resolve matter of law that was controlling in state case, and there was no express authorization for removal from superior court. Hawaii v. Abbott Laboratories, Inc., D.Hawai'i 2006, 469 F.Supp.2d 842. Removal Of Cases 79(1)

Plaintiff's allegation of federal False Claims Act (FCA) violation as an element of her state civil conspiracy claim did not present a sufficiently compelling federal question which would fundamentally alter state-law nature of her claim and did not permit defendants to remove her action to federal court; there was no compelling federal interest presented in plaintiff's fundamentally state law civil conspiracy claim, because that federal interest was protected through other means--*i.e.,* detailed requirements imposed on FCA qui tam litigants. Young v. Matagorda County Hosp. Dist., S.D.Tex.1997, 986 F.Supp. 1064. Removal Of Cases 25(1)

224. Venue, remedies or relief

Transfer from Massachusetts to Rhode Island was warranted in qui tam action under False Claims Act (FCA) alleging that Rhode Island city, its mayor, and other city officials made misrepresentations to United States Department of Housing and Urban Development (HUD) in order to obtain HUD funds, even though allegedly false claims were mailed to HUD officials in Massachusetts, where all other relevant events occurred in Rhode Island, relator did not identify any witnesses from Massachusetts he definitely intended to call at trial, relator and all individual defendant resided in Rhode Island, United States did not intervene in case and expressed no preference as to where case was litigated, and judges of District of Rhode Island were fully capable of deciding issues presented by case. U.S. ex rel. Ondis v. City of Woonsocket, Rhode Island, D.Mass.2007, 480 F.Supp.2d 434, transferred to 2008 WL 282274. Federal Courts 106.5

Venue for action against medicare provider and its president for submitting false claims for new seat lift chairs in violation of False Claims Act and in violation of Department of Health and Human Services (HHS) regulations was in Western Division, not Eastern Division, of Southern District of Ohio; even though provider had developed considerable business presence outside of Western Division, all defendants, both corporate and personal, were residents of county in Western Division. U.S. v. Fesman, S.D.Ohio 1991, 781 F.Supp. 511. Federal Courts 92

225. Discovery, remedies or relief

District court was not required to permit discovery before granting county's motion to dismiss qui tam action brought under the False Claims Act (FCA) for lack of subject matter jurisdiction, since court treated motion as a facial attack and considered only the complaint and the attached exhibits, and court did not decide any issues of disputed fact, but rather accepted all of relators' allegations in the complaint as true. McElmurray v. Consolidated Government of Augusta-Richmond County, C.A.11 (Ga.) 2007, 501 F.3d 1244, rehearing and rehearing en banc denied 255 Fed.Appx. 504, 2007 WL 4302139. Federal Civil Procedure 1269.1; Federal Courts 30; Federal Courts 32; Federal Courts 34

Even though the law usually does not allow a qui tam relator to save an inadequately pled False Claims Act (FCA) complaint by adding amendments based on discovery obtained from the defendant, there is no authority barring such amendments based on discovery obtained from the Government, even if the Government obtained the evidence from the defendant; requiring courts to bar amendments based on evidence obtained indirectly from the qui tam defendant could effectively preclude any discovery-based amendments, thus significantly impugning private enforcement of the FCA. U.S. ex rel. Underwood v.

Genentech, Inc., E.D.Pa.2010, 720 F.Supp.2d 671. United States 122

In order to meet required strong showing of particularized need, government attorney seeking disclosure of materials produced during grand jury investigation of corporation's alleged False Claims Act (FCA) violations was required to submit petition addressing factors, including but not limited to, whether grand jury investigation of corporation was ongoing, whether grand jury investigation was undertaken in good faith, and not as pretext to collect information for use in civil investigation, which civil division attorneys would receive any disclosed materials, whether disclosed materials would be shared with private parties, including private plaintiffs in qui tam actions, and whether government sought to disclose all materials produced to grand jury or more limited subset of them. In re Grand Jury Matter, D.Mass.2008, 553 F.Supp.2d 11, ordered unsealed 553 F.Supp.2d 14. Grand Jury 41.50(5)

Self-critical analysis privilege did not exist in qui tam action brought under False Claims Act, as Congress considered competing interests in enacting the Act, and provided its own version of privilege through statutory provisions exempting information from disclosure. U.S. ex rel. Falsetti v. Southern Bell Tel. and Tel. Co., N.D.Fla.1996, 915 F.Supp. 308. Privileged Communications And Confidentiality 418

In relator's qui tam action against his former employer, a corporation that sold industrial pumps to Nigeria, in which government intervened, employer did not make showing of substantial need sufficient to overcome government's work product and joint-prosecution privileges, for purpose of its motion to compel production of notes government took during interviews with relator, where employer already had relator's statement of material evidence, which it claimed contained same subject matter as the interview notes, and it did not provide District Court with any way to conclude that it did not have information it sought. U.S. ex rel. Purcell v. MWI Corp., D.D.C.2006, 238 F.R.D. 321. Federal Civil Procedure 1604(1); Privileged Communications And Confidentiality 122

Discovery was warranted as to sales and marketing of human growth hormone in pharmaceutical companies' marketing region that included Indiana, where relator bringing fraud action against pharmaceutical companies alleged that off-label claims that were approved by Indiana's Drug Utilization Review Board were the result of illegal kickbacks and that companies engaged in marketing practices that caused submission of false claims by doctors. U.S. ex rel. Rost v. Pfizer, Inc., D.Mass.2008, 253 F.R.D. 11. Federal Civil Procedure 1272.1

Exit interview documents created by direct endorser of federally-insured mortgages in connection with internal fraud investigation were not protected by work product doctrine from discovery in qui tam action under False Claims Act, where all documents were created prior to filing of lawsuit, almost all were created before relator began working for endorser, and documents stated that they were “strictly for use by the Human Resources Department to assist in evaluating current policies and practices and identifying potential areas for improvement.” U.S. ex rel. Fago v. M & T Mortg. Corp., D.D.C.2006, 238 F.R.D. 3, reconsideration denied 242 F.R.D. 16. Federal Civil Procedure 1604(1)

Due to defendant's complete failure to produce or even identify by category additional medical records prior to the close of discovery in suit alleging submission of false Medicare claims in violation of the False Claims Act, defendant would be deprived of the use of such documents pursuant to the terms of the sampling order providing for discovery by randomly selected sample chosen from master list of each category of claims submitted to Medicare, and precluding use of any claims documents not produced during the sampling process. Hill v. Morehouse Medical Associates, Inc., N.D.Ga.2006, 236 F.R.D. 590. Federal Civil Procedure 1636.1

In action brought against corporate defendants under False Claims Act, stemming from allegedly improper use of Minority Small Business Development Program, documents relating to accounting, financial statements and other financial history of defendants would be properly discoverable, subject to temporal limitation regarding defendants' actual participation in program and exclusion of documents referring to capital contributions or investments made by shareholders, acquisition of assets from individual defendants, state and federal tax returns and documents submitted to Internal Revenue Service (IRS) relating to request for ruling; financial structure and status of various corporations involved related to government's claim that corpo-

rations were manipulated to have Section 8(a) corporation serve as "front" for non-Section 8(a) corporations. U.S. ex rel. Fisher v. Network Software Associates, D.D.C.2003, 217 F.R.D. 240. Federal Civil Procedure 1588

Given broad scope of discovery, government was entitled to limited inquiry regarding any additional amount of compensation sought by subcontractors for work beyond scope of subcontract, whether or not contractor sought damages for such amounts from government, on government's counterclaims for fraud, violation of the anti-fraud provision of the Contract Disputes Act, and violation of the False Claims Act, mindful of the limits of attorney/client and work product privileges, and whether any results might be relevant or admissible were questions reserved for trial. Hernandez, Kroone and Associates, Inc. v. U.S., Fed.Cl.2010, 95 Fed.Cl. 395. Federal Courts 1112

226. Limitations, remedies or relief

Government's action under False Claims Act (FCA) commenced, for limitations purposes, on date its complaints-in-intervention were filed in relator's qui tam suit. U.S. v. The Baylor University Medical Center, C.A.2 (Conn.) 2006, 469 F.3d 263. Limitation Of Actions 124

Private mortgage lender's interest in federal reimbursement in connection with default on federally insured loan became "claim" for purposes of False Claims Act and its statute of limitations when lender filled out HUD form requiring it to furnish detailed information about loan and default and informing lender about method through which it could obtain payment once mortgage was assigned; therefore, government's civil action under Act against those allegedly involved in diverting loan proceeds was time barred when not brought within six years of date lender filed form. U.S. v. Rivera, C.A.1 (Puerto Rico) 1995, 55 F.3d 703, 139 A.L.R. Fed. 813, on remand 956 F.Supp. 1046. Limitation Of Actions 58(1)

Limitations period under False Claims Act (FCA) accrues upon initial application for payment by claimant, rather than government's subsequent payment of claim. U.S. ex rel. Bauchwitz v. Holloman, E.D.Pa.2009, 671 F.Supp.2d 674. Limitation Of Actions 58(1)

31 U.S.C.A. § 3729, 31 USCA § 3729

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