This material from BRIEFING PAPERS has been reproduced with the permission of the publisher, West Group. Further use without the permission of the publisher is prohibited. For additional information or to subscribe, call 1-800-344-5009 or visit westgroup.com/fedpub.

BRIEFING PAPERS® SECOND SERIES

PRACTICAL TIGHT-KNIT BRIEFINGS INCLUDING ACTION GUIDELINES ON GOVERNMENT CONTRACT TOPICS

THE CIVIL FALSE CLAIMS ACT

By Robert K. Huffman, Marcia G. Madsen, and Cameron S. Hamrick

The Federal Government purchases an enormous array of products and services each year.[1] These purchases involve companies and individuals from all sectors of the economy that submit countless claims for payment of public funds. Each claim to the Government seeking payment creates the possibility of a fraud allegation. Perhaps the most significant weapon in the Government's considerable arsenal for oversight of the contracting process is the civil False Claims Act (FCA),[2] which provides, among other things, for the recovery of multiple damages and civil penalties from persons who knowingly present or cause to be presented a false or fraudulent claim to the Government for payment. From the Government's perspective, "knowingly" could include acting in "deliberate ignorance" or "reckless disregard" of the voluminous, complex, and often arcane statutes and regulations that govern a contractor's relationship with the Government.

Given the sheer volume of business conducted by the Federal Government, it is inevitable that some false claims for payment will be submitted to the Government. However, even experienced contractors that attempt to conduct their business with the Government in good faith may risk liability under the FCA. The civil FCA does not require proof of a specific intent to deceive the Government but imposes liability on anyone who submits a claim with "deliberate ignorance" or "reckless disregard" of the falsity of the claim. Moreover, in addition to the army of Government investigators and lawyers charged with enforcing possible FCA violations, the Act permits certain private individuals, known as "relators," to sue on behalf of the Government under the Act's "qui tam" provisions. Most important, as a Government contractor, you should recognize that you can face liability under the FCA for conduct that bears little resemblance to traditional common-law fraud. For example, you could be sued for submitting an allegedly "false" claim that is based on your erroneous interpretation of a complex Government contracting regulation.

This BRIEFING PAPER provides an overview of the civil FCA, including its *history*, the *elements of the offense*, the *penalties* and *damages* it imposes, the basic jurisdictional and other requirements

IN BRIEF

History
- Origin & Evolution Of The FCA
- 1986 Amendments

Elements Of FCA Liability
- "Claim"
- "False Or Fraudulent"
- "Knowing" & "Knowingly"
- Vicarious Liability
- Materiality

Penalties & Damages
- Penalties
- Damages

Qui Tam Lawsuits
- "Public Disclosure"
- "Based Upon"
- "Original Source" Exception
- Complaint & Government Intervention
- Limitations On Related Actions
- Relator's Share Of Proceeds

Protections For Whistleblowers

Common Questions

Robert K. Huffman, Marcia G. Madsen, and Cameron S. Hamrick are partners in the Washington, D.C. office of the law firm of Mayer, Brown & Platt.

 © COPYRIGHT 2001 ALL RIGHTS RESERVED 1-787-373-3

of *qui tam lawsuits*, and the special *protections* in the FCA for certain employees ("*whistleblowers*") from retaliation by their employers. The PAPER concludes with a list of *common questions* regarding some of the issues that have proven to be especially troublesome for Government contractors in the application of the FCA and provides practical tips and observations that may help you decrease the risk of being investigated or sued for alleged violations of the Act.

History

■ Origin & Evolution Of The FCA

Congress passed the False Claims Act during the Civil War to control fraud in defense contracts.[3] Testimony before Congress revealed how the Government had been billed by contractors for nonexistent or worthless goods, charged exorbitant prices, and generally robbed in purchasing the necessities of war, and Congress wanted to stop this plundering of the public treasury.[4]

In addition to providing stiff civil and criminal penalties for fraud, the original Act contained "qui tam" provisions that permitted any person to sue the perpetrators of the fraud on behalf of the Government and promised successful qui tam plaintiffs one-half of the damages and forfeitures recovered.[5] "Qui tam" is short for "qui tam pro domino rege quam se ipso in hac parte sequitur," a Latin phrase meaning "who pursues this action on the King's behalf as well as his own."[6] Qui tam actions have historical roots extending far back in American and English law, although the FCA is one of only four qui tam statutes that remain.[7] Qui tam suits are designed to provide monetary incentives to private citizens to institute legal proceedings to redress frauds on the Government and thus to supplement the Government's own enforcement activities.[8]

Since its passage in 1863, the FCA has contained several different qui tam provisions.[9] While the original Act required qui tam plaintiffs to bear their own litigation costs to discourage frivolous suits,[10] it contained no significant jurisdictional limitations and did not preclude plaintiffs from suing based on information already in the Government's possession.[11] FCA qui tam actions increased notably during the New Deal and World War II, and this rise in litigation revealed that the provisions then in effect were too susceptible to abuse by "parasitic" relators.[12] Qui tam suits were often brought based on public or quasi-public information available in criminal indictments, and the issuance of a criminal FCA indictment could cause a rush to the courthouse by private plaintiffs to file a qui tam action.[13] Following a U.S. Supreme Court decision holding that such suits were not barred by the statute, Congress amended the FCA in 1943 to preclude suits based on information in the Government's possession, regardless of whether the Government was using the information to prosecute the alleged fraud.[14]

■ 1986 Amendments

Congress has frequently altered its course in amending the FCA qui tam provisions, seeking a "golden mean" between providing adequate incentives to persons who have genuinely valuable information to file qui tam lawsuits and discouraging lawsuits by opportunistic plaintiffs who have

BRIEFING PAPERS

A THOMSON COMPANY

West Group has created this publication to provide you with accurate and authoritative information concerning the subject matter covered. However, this publication was not necessarily prepared by persons licensed to practice law in a particular jurisdiction. West Group is not engaged in rendering legal or other professional advice, and this publication is not a substitute for the advice of an attorney. If you require legal or other expert advice, you should seek the services of a competent attorney or other professional.

BRIEFING PAPERS® (ISSN 0007-0025) is published monthly except January (two issues) and copyrighted © 2001 ■ Valerie L. Gross, Editor ■ 2001 calendar-year subscription $904 (includes annual accredited "Government Contracts Year In Review Conference") ■ Periodicals postage paid at St. Paul, MN ■ Published by West Group / 901 15th Street, NW / Washington, DC 20005 ■ http://www.westgroup.com/fedpub.com ■ Postmaster: Send address changes to Briefing Papers / PO Box 64526 / St. Paul, MN 55164-0526

BRIEFING PAPERS® is a registered trademark used herein under license. All rights reserved. Reproduction, storage in a retrieval system, or transmission of this publication or any portion of it in any form or by any means, electronic, mechanical, photocopying, xerography, facsimile, recording, or otherwise, without the written permission of West Group is prohibited, except that the publisher grants permission to reproduce portions of this publication (not the entire issue) provided that a $2.50 per page per copy fee is paid directly to Copyright Clearance Center (CCC), 222 Rosewood Drive, Danvers, MA 01923. (978)750-8400. Fee Code: (0007-0025)/97/$0+$2.50.

no significant information of their own.[15] As part of this process, Congress substantially amended the FCA's qui tam provisions, as well as other important aspects of the Act, in 1986.[16] The purpose of the amendments was to "enhance the Government's ability to recover losses sustained as a result of fraud against the Government."[17] The amendments increased the civil penalty for each violation of the Act from $2,000 to between $5,000 and $10,000,[18] increased the amount of damages for which a defendant may be liable from double to treble the damages sustained by the Government,[19] eliminated any requirement for the Government or qui tam plaintiff to prove that the defendant specifically intended to defraud the Government,[20] enhanced the qui tam relator's share of any proceeds recovered,[21] and provided protections for "whistleblowers" (employees who conduct investigations or take other actions in furtherance of possible qui tam actions) against retaliation by their employers.[22] The amendments also significantly altered the jurisdictional requirements for qui tam actions, eliminating the bar against actions based on information in the Government's possession but establishing new requirements precluding actions based on certain public disclosures unless the relator is an "original source" of the information.[23]

Since the 1986 amendments, the number of qui tam actions has increased significantly, surpassing 3,000 qui tam cases.[24] In the years following the 1986 amendments, a large percentage of qui tam actions involved alleged defense contractor fraud. However, in recent years, relators have focused more on the healthcare industry. Of the approximately $4 billion in qui tam recoveries for Fiscal Year 1987 through FY 2000, 57% involved allegations of healthcare fraud, while only 29% involved allegations of defense contractor fraud.[25] In total for that period, the Government recovered over $6.96 billion in civil FCA proceeds.[26]

The FCA's extraordinary qui tam provisions permitting private persons to sue others on behalf of the United States have been challenged by defendants as unconstitutional on various grounds but have (to date) survived these challenges.[27] The U.S. Supreme Court has resolved at least one of these constitutional issues, holding that a relator has the requisite standing under Article III of the U.S. Constitution to sue on the Government's behalf, even in cases where the Government has chosen not to intervene.[28]

Elements Of FCA Liability

The FCA provides liability for seven types of acts by a "person." The Supreme Court recently held that the term "person" does not include states (at least in qui tam cases where the Government does not intervene),[29] and lower courts have extended this holding to exclude other governmental entities, such as school boards.[30]

Most FCA allegations involve the provision imposing liability on any person who "knowingly presents, or causes to be presented, to an officer or employee of the United States Government…a false or fraudulent claim for payment or approval."[31] This provision covers not only persons who actually submit false claims but those who "cause" such claims to be presented. Thus, you may be liable under the FCA for instructing others (such as a billing service) to include false information on a claim.[32]

The other types of conduct covered by the FCA include (1) knowingly making, using, or causing to be made or used a false record or statement to get a false claim paid or approved, (2) conspiring to defraud the Government by getting a false or fraudulent claim allowed or paid, (3) delivering, or causing to be delivered, property to the Government in inaccurate quantities, (4) accepting inaccurate receipts for property with intent to defraud the Government, (5) knowingly obtaining public property from a Government employee who may not lawfully sell or pledge the property, and (6) knowingly making, using, or causing 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 (also known as a "reverse" false claim).[33] The key elements of FCA liability are discussed below.

■ "Claim"

The 1986 amendments to the FCA added a broad definition of "claim," stating that the term includes the following:[34]

> 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.

Congress added this definition in part to ensure that the Act reaches fraud perpetrated on federal grantees, including states and other recipients of federal funds.[35]

Each separate submission to the Government seeking payment is a "claim" for purposes of the FCA, even if the submissions are made pursuant to a single contract.[36] However, whether a defendant has made one false claim or many is a fact-bound inquiry focusing on the defendant's conduct. In one case, the court held that each submission of a specific Medicare form—and not each separate code on the form identifying services—constituted a "claim," in part because liability turned on the defendant's conduct in making the request or demand and not on how the Government chose to process the claim.[37]

Courts have found traditional requests for payment, such as progress payment vouchers, to be "claims" for purposes of the FCA.[38] (However, one court concluded that a DD Form 250, "Material Inspection and Receiving Report," that was not used as an invoice was not a "claim" for purposes of FCA liability.[39]) Liability can also arise for claims submitted to the Government *indirectly*, such as Medicare claims filed with intermediaries.[40]

■ "False Or Fraudulent"

One of the basic elements required to establish liability under certain FCA provisions is that the claim, statement, or record at issue was "false or fraudulent." This element involves a fact-specific reasonableness determination.[41] However, determining falsity is often difficult. The FCA does not define the terms "false" or "fraudulent," and courts have had to interpret the meaning of these important terms.[42] Of course, whether a claim was "false" or "fraudulent" and whether it was "knowingly" so are ultimately questions for the jury to decide in cases where a jury is requested by either side.

The simplest type of false claim is one for work that was not performed. But a claim may be false even when the work described in the claim was actually performed. For example, a Medicare claim may be false where the services billed were actually provided but the provider falsely certified that the services were "physician-directed" to avoid payment limits governing non-physician-directed services.[43] Also, several cases have involved allegations that the submission of an invoice to the Government was a certification of compliance with certain laws and that a knowing violation of those laws created liability under the FCA. Thus, the alleged falsity did not focus on the actual product or service provided. This theory is not limited to express certifications of compliance but has been extended to *implied* certifications. One of the first such cases held that a subcontractor's submission of progress payment vouchers impliedly certified its continuing adherence to the requirements for participation in the Small Business Administration's § 8(a) program, and that the vouchers were fraudulent where the subcontractor had intentionally withheld from the Government information vital to the integrity of that program. The court reached this decision despite determining that the Government received what it paid for—a processing facility built in accordance with the contract drawings and specifications.[44]

Cases that followed this decision have not always been consistent. As one court noted, the language of the FCA and its legislative history created confusion among courts regarding the Act's applicability to claims that are not false but were derived through fraudulent conduct.[45] In recent years, several FCA actions have been based on the theory that claims were false because of alleged failures to comply with a number of legal requirements, including agency conflict-of-interest regulations,[46] a state education code,[47] a "revolving door" statute,[48] and Medicare statutes.[49] The Medicare program has been particularly fertile ground for such allegations, and the Government has attempted to extend the scope

of the theory by arguing that a healthcare provider impliedly certifies compliance with *applicable standards of care* in all cases where it submits a Medicare request for reimbursement.[50] A recent case summarizing the state of this theory noted that a false certification of compliance with a statute or regulation cannot serve as the basis for an action under the FCA *unless payment was conditioned on that certification*,[51] but not all cases have adopted this reasoning.[52]

In addition to risks relating to certification of your compliance with statutes, regulations, and contractual requirements, you may face allegations that you submitted a false claim where the claim is based on a disputed interpretation of such requirements. In a case involving allegations that a contractor violated the FCA by not complying with complex accounting regulations, the court held that the issue of falsity turned not on the reasonableness of the contractor's interpretation of the regulations but on the interpretation of the regulations ultimately adopted by the court.[53] The court observed, however, that the reasonableness of the contractor's interpretation may be relevant to the FCA's *knowing* element.[54] As another court noted, a contractor that is aware of and takes advantage of a disputed legal issue does not *knowingly* commit fraud.[55] Disagreements concerning *scientific* methodology, however, do not give rise to FCA liability.[56]

■ "Knowing" & "Knowingly"

Another key element in proving an FCA violation is establishing that the defendant "knowingly" performed the alleged acts. The 1986 amendments to the FCA defined "knowing" and "knowingly" as follows:[57]

> 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.

By eliminating any requirement to demonstrate a specific intent to defraud, Congress made it easier for the Government and for qui tam relators to establish liability under the Act. While the FCA still requires a showing of the defendant's "knowing presentation of what is known to be false,"[58] the level of proof of scienter required under the Act is less than that required to prove common-law fraud.[59] Furthermore, the "knowing" standard covers not just those who endeavor to defraud the Government, but also those who act in "deliberate ignorance" or "reckless disregard" of obvious warning signs that a claim or statement may be false.[60]

There has been a substantial amount of litigation since 1986 concerning the definition of "knowing," particularly with respect to the "reckless disregard" standard. The reckless disregard standard has been characterized as the "loosest" of the three knowledge standards[61] and as an extension of gross negligence.[62] This standard may require some investigation by the defendant into the truth or falsity of a particular action, such as executing a certificate[63] or filing a claim with a Contracting Officer.[64] In one case, a doctor's utter failure to review claims prepared by his wife and submitted on his behalf was one factor supporting a finding that he had acted with reckless disregard of the truth or falsity of the claims.[65] Also, the *clarity* of a claim's falsity may support a finding that it was submitted with reckless disregard.[66]

Notwithstanding the liberal scienter standard established by the 1986 FCA amendments, you may have a variety of defenses available to show that your action was not "knowing." Innocent mistake and negligence are defenses to FCA allegations.[67] For example, alleged engineering miscalculations and lack of engineering insight have been held to show no more than innocent mistake.[68] Also, acting on advice of counsel may be a defense to an FCA claim.[69]

Other defenses addressing the "knowing" element have been treated inconsistently by the courts. For example, several contractors have argued that they did not possess the required knowledge because the *Government* was aware of the relevant facts concerning the alleged false claim or statement at the time it was made. The

knowledge of Government officials may be highly relevant to demonstrating that a claim was not submitted in deliberate ignorance or reckless disregard of the truth,[70] yet the statutory basis for an FCA claim is the *defendant's* knowledge, which is not automatically exonerated by any overlapping knowledge of Government officials.[71] The defense of Government knowledge therefore must be decided on a case-by-case basis.[72] However, the greater the Government's knowledge of the alleged falsity and involvement with the contractor in discussing the allegedly false information, the greater the likelihood that any contractor claim based on that information will not be construed as "knowingly" false. For example, where the Army knew of inaccuracies in a contractor's test report, and the discrepancy was the subject of dialogue between the Government and the contractor, the report was not a *knowing* false statement by the contractor.[73] Some courts have characterized Government knowledge as negating the *fraud or falsity* required by the FCA,[74] which highlights that it is often difficult if not impossible in various types of FCA actions to discuss falsity without implicating the knowledge requirement.[75]

Another defense to an allegation that you knowingly submitted a false claim is that your claim was based on your interpretation of the contract. If a court concludes that your interpretation of the contract is reasonable or plausible, the court may hold that you are not liable absent "some specific evidence of knowledge that the claim is false or of intent to deceive."[76] However, you are nonetheless at risk that a court will find your interpretation unreasonable or frivolous.[77] At least one court has cautioned that contractors should verify certain contract interpretations with the relevant Government contracting authority before submitting a claim or risk FCA liability.[78]

■ Vicarious Liability

The Government and qui tam relators may face additional issues in establishing that an *organization* (instead of an individual) is liable under the FCA. In FCA suits against contractors, the Government or relators may claim that misconduct or deceit by one employee of a contractor's organization should be imputed to the contractor itself. This theory is based on the legal doctrine of "respondeat superior" or vicarious liability. There is a split among the courts on the exact elements needed when applying this doctrine in the FCA context. To hold a company liable for an employee's conduct, the employee must have been acting within the scope of the employee's employment or acting under what is known as "apparent authority."[79] In addition, some courts require proof that the employee's misconduct or deceit *benefited* the contractor's organization,[80] while other courts do not require such a finding.[81] In 1999, the U.S. Supreme Court (in a non-FCA case) held that an employee's knowledge or acts cannot be imputed to the employer for purposes of awarding punitive damages unless the employer is culpable in some degree.[82] At least one court has applied the Supreme Court's holding to an FCA action, refusing to impute FCA liability to a contractor for misconduct of a nonmanagerial employee because the contractor did not know of the acts, did not ratify them, and had not been proven to be reckless in its hiring or supervision of the employee.[83]

The Government and relators also may attempt to prove an organization's knowledge by aggregating the "collective knowledge" of the employees of the organization. In one case, the Government argued that to establish corporate knowledge, it only needed to show that one employee had knowledge of the company conduct (possession of more accurate, complete, or current cost or pricing data) and another employee knew of the duty to collect that information and report such data accurately and completely to the Government. However, the court held that the facts of the case did not warrant use of the collective corporate knowledge doctrine to impute liability to the contractor under the FCA.[84]

■ Materiality

A "hidden" FCA element is materiality. The FCA does not expressly require a showing that the alleged false claims or statements were *material*, yet many courts have construed the Act as requiring a showing of materiality.[85] A few courts have declined to find that materiality is an ele-

ment to be proven under the statute on the ground that the word is not found in the statute.[86] However, absent a materiality requirement, you could face liability for mere clerical errors or technicalities.[87] The determination of materiality (when enforced), although a mixed question of fact and law, is generally a question for the court and not the jury.[88] Materiality depends on whether the false statement or claim has a natural tendency to influence, or is capable of influencing, agency action.[89] Under this standard, conduct or statements are "material" under the FCA if the Government's funding decisions "would have been influenced" by them.[90] The U.S. Supreme Court—looking to language from the *Restatement of Torts*—has also defined materiality as depending on whether the maker or recipient of the information would regard the information as important.[91]

The materiality defense can be potent. For example, one U.S. District Court granted summary judgment to a defendant alleged to have submitted vouchers to the Government that falsely certified the condition of the property at issue on the ground that the certifications were immaterial to the defendant's right to be paid.[92] The court credited deposition testimony of an agency official who stated that she continually authorized payment of the vouchers despite knowing that the certifications about the condition of the property were false. In another case, a U.S. Court of Appeals overturned a jury verdict awarding $1.66 million in damages and penalties in a qui tam case brought by a doctoral candidate who had performed research with three internationally recognized scientists at the University of Alabama. The jury found that the University had made false statements to the National Institutes of Health in seeking funding for the research program conducted by the three scientists by failing appropriately to characterize or reference the work of the doctoral candidate. The court determined that none of the alleged false statements would have been material to NIH's decision whether to fund the University's research: "Assuming arguendo that all of [the] allegations were true and [the University] had made these false statements, it is hard to imagine that NIH's decision-making would have been influenced by them."[93]

Penalties & Damages

The FCA imposes two types of monetary liability—civil penalties and damages. The Act provides that any person found in a civil action to have violated the FCA is liable to the Government for a penalty of not less than $5,000 and not more than $10,000 (or $5,500 and $11,000 for violations occurring after September 29, 1999[94]) for *each* violation of the Act, plus three times the amount of damages that the Government sustains because of the violation.[95] To encourage violators to cooperate in the investigation, the Act also provides that the court may assess a *reduced* penalty of double, as opposed to treble, damages if, before commencement of any civil, criminal, or administrative action, the alleged violator (a) furnishes to the Government all information that person has about the violation (within 30 days of receiving the information), (b) cooperates fully with any Government investigation, and (c) did not have actual knowledge of the existence of an investigation into the alleged violation.[96]

In addition, the Act states that violators shall be liable to the Government for the costs of any civil action brought to recover any penalty or damages.[97]

■ Penalties

As noted above, persons who submit a false claim in violation of the FCA are liable for a civil penalty of between $5,500 and $11,000 for each false claim submitted. The specific amount assessed for each claim is within the discretion of the court.[98] Persons submitting false claims are liable for civil penalties regardless of whether the submission actually damaged the Government. Even if the Government rejects the claim, its very submission by the contractor is a basis for liability under the FCA.[99] At least one court has observed that the penalties provided by the Act are intended to address the broad range of ancillary harms that the Government may have suffered because of the defendant's deception, such as the administrative burdens and expenses that accompany agency investigations and litigation.[100]

The legislative history of the 1986 amendments to the FCA indicates that civil penalties

are automatic and mandatory for each false claim. Therefore, the number of civil penalties assessed or whether even to assess such penalties is not discretionary—up to a point. Because each false claim is considered a separate offense, the submission of multiple false claims can lead to enormous fines. Therefore, courts may have some discretion to limit the number of penalties when the penalties are deemed "excessive."[101] A recent decision noted that the Act's civil penalty has a punitive purpose, in part because the penalty may be assessed even if the Government suffered no damages, and therefore FCA penalties are subject to the prohibition against excessive fines in the U.S. Constitution's Eighth Amendment. Under this analysis, the court will determine whether the required penalty is so grossly disproportionate to the gravity of the offense as to violate the Eighth Amendment.[102] In one case, a court determined that penalties amounting to $290,000 were excessive where the actual damages to the Government were less than $2,000.[103]

■ Damages

A threshold issue concerning damages is whether the Government and qui tam relators have to establish damages as an element of any action under the FCA. There is a split of authority on this issue, although the trend appears to be that no such showing is required.[104] Cases reaching this conclusion have noted that the focus is on the claim and the claimant's conduct rather than on the effect of the false claim on the Government.[105] For example, one court noted that the failure to deliver an item to the Government that complies with the contract's specifications but is nevertheless as good as the specified product can result in FCA "injury" to the Government.[106] Similarly, another court observed that the FCA was intended to govern not only fraudulent acts that create a loss to the Government but also those that cause the Government to make payments it did not intend to make.[107]

The FCA does not specify how to calculate damages and states only that the Government should be awarded damages it "sustains because of" a covered act.[108] There is no set formula for measuring damages under the Act,[109] and the method of calculating damages should be considered on a case-by-case basis.[110] The specific measurement used has been greatly influenced by the nature of the fraud and the type of Government transaction affected by it.[111] Ordinarily, the measurement of damages is the amount that the Government paid by reason of the false statements or claims over and above what it would have paid if the claim had been truthful.[112] In one case using this method—which involved delivery of gyroscopes that did not meet contract requirements—the court rejected the defendant's argument that the market value of the gyroscopes should be considered in calculating damages where the Government paid full price for them and established that they lacked value.[113] Most courts have held that damages under the FCA do not include consequential damages, but several courts have held that FCA damages may include various types of out-of-pocket expenses, such as costs of inspection and repair incurred by the Government as a result of a false representation that a product passed inspection.[114]

There is some indication that the FCA treble damages are meant, at least in part, as compensation to make the Government "whole."[115] However, in a 2000 decision, the U.S. Supreme Court stated that FCA damages are essentially punitive in nature, noting in particular that treble damages are meant to punish past, and deter future, unlawful conduct.[116] In a subsequent decision, a U.S. Court of Appeals held that the FCA's treble damages provision is, at least combined with the Act's penalty provision, not solely remedial and therefore is subject to review under the U.S. Constitution's Eighth Amendment prohibition against excessive fines.[117]

Qui Tam Lawsuits

The FCA authorizes two types of civil actions for false claims. The first is an action brought by the Attorney General (the "United States").[118] The second—discussed in this section of the BRIEFING PAPER—is a qui tam action by a private person (relator) "for the United States Government" and "in the name of the Government."[119] In any civil action brought under the FCA, whether by the Government or a relator, all

the essential elements of the action, including damages, must be proved by a preponderance of the evidence.[120]

The 1986 FCA amendments established jurisdictional rules that bar certain types of qui tam actions. Specifically, the Act bars actions that are "based upon" a "public disclosure" of certain types of "allegations or transactions" unless the relator is an "original source" of the information on which the fraud allegations are based.[121] The "public disclosure" bar has proven to be possibly the most effective defense to qui tam lawsuits because so many suits are filed *after* there have been public disclosures concerning some or all of the allegations or transactions. Because of the importance of the provision, there have been numerous cases concerning its interpretation and application, and numerous differences in the law have emerged in different courts. Courts are, however, in general agreement that three distinct questions must be asked in determining whether the "public disclosure" provision bars a qui tam action: (1) whether there has been a "public disclosure," (2) whether the qui tam suit was "based upon" the public disclosure, and (3) whether the relator is an "original source."[122] These and other aspects of qui tam actions are discussed below.

■ "Public Disclosure"

The FCA provides that a "public disclosure" of the allegations in a qui tam action includes disclosure in (a) a criminal, civil, or administrative hearing, (b) a congressional, administrative, or General Accounting Office report, hearing, audit, or investigation, or (c) the news media.[123] In considering whether a particular disclosure constitutes a triggering "public disclosure," courts have generally construed these categories broadly. For example, one court held that the term "'hearing' was intended to apply in a broad context of legal proceedings," including formal hearings and any documents filed with the court clerk's office.[124] It is now "a firmly established principle" that documents filed with a court during civil litigation constitute "public disclosures."[125] Some courts have held that a disclosure is sufficiently "public" to trigger the public disclosure bar if it is made to even one "stranger to the fraud."[126]

Courts disagree whether information *potentially* available to the public—as opposed to actually received by the public—is a "public disclosure." Several courts have held that information exchanged during civil discovery that is not filed with a court is nonetheless publicly disclosed.[127] The U.S. Court of Appeals for the Sixth Circuit has similarly held that a Government agency's records that by regulation are available to any member of the public (even if not disseminated to anyone) constitute "public disclosures."[128] In contrast, the District of Columbia Circuit has held that discovery material not filed with a court is only theoretically "public" and does not constitute a public disclosure.[129]

■ "Based Upon"

The U.S. Courts of Appeals are split on when a qui tam action is "based upon" a public disclosure. Most courts hold that an action is "based upon" a public disclosure if the allegations in the qui tam complaint are the same as or substantially similar to the information that has been publicly disclosed, regardless of whether the relator learned about the allegations from the public disclosure.[130] But a minority of courts hold the view that "based upon" means "derived from," and that the public disclosure bar is only triggered if the relator actually learns of the allegations in his complaint from the public disclosure.[131]

In determining whether a complaint is "based upon" public disclosures, courts also inquire into the relationship between the allegations in the complaint and the content of the public disclosures. The courts generally agree that a complaint need not be identical to the public disclosure for the public disclosure bar to apply. The Seventh Circuit recently explained that "[i]f the public disclosure from which the information is actually derived is essential to a qui tam claim, then the claim is based upon the public disclosure for the purposes of the jurisdictional bar."[132] Similarly, the Tenth Circuit held that a qui tam complaint is barred if it is "based in any part upon publicly disclosed allegations or transactions."[133] However, the Ninth Circuit held in one case that a prior civil suit alleging only that certain nursing home operators provided sub-

standard care did not bar a subsequent FCA qui tam suit alleging Medicare fraud because the prior suit did not allege fraud or that the defendants sought payment from the Government for the alleged substandard care.[134]

■ "Original Source" Exception

Even if the public disclosure bar applies, a court will still have jurisdiction over a qui tam suit if the relator constitutes an "original source" of the information. The FCA defines an "original source" as a person who has (1) "direct and independent knowledge of the information on which the allegations are based" and (2) "voluntarily provided the information to the Government before filing an action" under the FCA.[135] The legislative history of the FCA suggests that in creating the exception for "original sources," Congress intended to cover "individuals who are either close observers or otherwise involved in the fraudulent activity."[136]

"Direct" knowledge under the FCA has been defined as knowledge "marked by absence of an intervening agency" or "unmediated by anything but [the relator's] own labor," and "independent" knowledge has been defined as "knowledge that is not dependent on public disclosure."[137] Using this test, a number of courts have determined that relators lacked the requisite "direct and independent" knowledge to be considered original sources. The Ninth Circuit, for example, found that relators who learned of an alleged fraud from the defendant's employee and disclosed what they had learned to a newspaper did not have "direct" knowledge because "[t]hey did not see the fraud with their own eyes or obtain their knowledge of it through their own labor unmediated by anything else."[138] However, the Tenth Circuit has held that an "original source" under the FCA need only have direct knowledge of the conduct that allegedly made the contractor's claim false; knowledge that the defendant actually submitted a false claim to the Government is not required.[139]

An original source must also have voluntarily provided the information to the Government before filing a lawsuit based on the information.[140] One court stressed that this requirement is not satisfied by informing the Government at the time of filing the action or by complying with the Act's separate requirement to serve the Government, at the time of filing, with a copy of the complaint "and written disclosure of substantially all material evidence and information the person possesses."[141]

Two additional tests have been applied by some (but not all) courts in determining whether a relator is an "original source." First, some courts have held that the original source exception does not apply unless the relator "voluntarily" provided the "information to the Government prior to [any] public disclosures."[142] Second, some courts have imposed the requirement that the relator must "play some part" in making the public disclosure.[143] However, several other courts have rejected this requirement.[144]

■ Complaint & Government Intervention

The relator must provide the Government with a copy of the complaint and written disclosure of substantially all material evidence and information the relator possesses at the time the complaint is filed. The qui tam complaint is filed *in camera* and remains under seal for at least 60 days, which means that no one other than the court and the Government has access to the complaint. The FCA authorizes the court to extend this 60-day period at the Government's request, which the Government invariably makes and the court typically grants. During this time, the Government may investigate the claim and decide whether to intervene in the action.[145] Congress intended these procedures to permit the Government to investigate allegations without "tipping off" defendants, while also protecting the defendants from injuries to their reputations from potentially baseless public accusations.[146] If the Government chooses to intervene in the lawsuit, it has the primary responsibility for prosecuting the action, but the relator has the right to continue participating as a party in the litigation subject to certain limitations.[147] If the Government chooses not to intervene in the action, the relator has the right to conduct the action.[148]

It is the Government's practice to have all qui tam complaints filed by relators reviewed by criminal prosecutors to determine whether the conduct alleged in the complaint warrants criminal prosecution or investigation under the criminal FCA or other criminal fraud statutes.[149] This means that *every* qui tam suit carries with it the potential for a *parallel criminal proceeding*. Such parallel proceedings create special risks and problems for defendants in the qui tam action, including the risk that voluntary disclosures or other statements made to the civil DOJ authorities may be used against the defendant in the parallel criminal proceeding.[150]

The FCA and cases construing it have established the relator's and the Government's respective rights in qui tam actions. When the Government intervenes in a qui tam action, the relator's right to participate is subject to certain significant limitations. In such actions, the Government may (1) dismiss the action, even over the relator's objections, if the Government gives proper notice and the court provides the relator an opportunity for a hearing, and (2) settle the action notwithstanding the relator's objections if the court determines, after a hearing, that the settlement is fair, adequate, and reasonable under the circumstances. Also, the court may impose limitations on the relator's participation in the litigation (such as limiting the number of witnesses the person may call) where the Government demonstrates that unrestricted participation by the relator would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment.[151]

Where the Government chooses not to intervene in a qui tam action, however, the relator has the right to conduct the litigation. Even so, the Government may request that it be served copies of all pleadings and be supplied copies of all deposition transcripts. Also, the court may permit the Government to intervene at a later date on a showing of "good cause."[152]

■ Limitations On Related Actions

If a defendant has previously been subjected to a qui tam lawsuit brought under the FCA, subsequently filed cases may be subject to dismissal on that basis. The FCA provides that when a person brings a qui tam action, "no person other than the Government may intervene or bring a related action based on the facts underlying the pending action."[153]

This provision has not been frequently addressed by the courts. However, the U.S. Court of Appeals for the Third Circuit analyzed this provision and held that "if a later allegation states all the essential facts of a previously-filed claim, the two are related," and the statute bars the later claim "even if that claim incorporates somewhat different details."[154] The court considered, but ultimately rejected, the contention that a subsequent action should be barred only if it is based on facts "identical" to those alleged in the earlier action. Under this "essential facts" standard, the Third Circuit affirmed the District Court's dismissal of all but one of the claims in a later-filed case, finding that the allegations in earlier-filed cases "encompassed" or "overlapped with" the allegations in the later case.[155] A District Court subsequently applied the same analysis to dismiss a qui tam suit whose claims were "encompassed" within an earlier-filed qui tam suit.[156]

The FCA also bars any qui tam action that is "based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party."[157] The leading case applying this provision held that the inquiry should be whether the qui tam case was "parasitic"—that is, "whether the qui tam case is receiving 'support, advantage, or the like' from the 'host' case (in which the government is a party) 'without giving any useful or proper return' to the government (or at least having the potential to do so)."[158] Using this test, the court found that the qui tam lawsuit was not parasitic because the prior Government proceeding was asserted against parties other than the defendants in the qui tam action, and the Government could not have sued the qui tam defendants for fraud in the prior proceeding. Other courts applying this test have dismissed subsequent qui tam actions that were inappropriately "parasitic."[159]

■ Relator's Share Of Proceeds

A successful relator's share of the proceeds recovered from a defendant varies according to whether the Government intervenes in the qui tam action. If the Government intervenes, the relator can receive at least 15% but not more than 25% of the proceeds or settlement, depending on the extent to which the relator substantially contributed to the prosecution of the action.[160] Where the action is one in which the court finds liability based primarily on disclosures brought to light by means other than the information provided by the relator, the court may award appropriate recovery to the relator, but no more than 10% of the proceeds.[161] In addition, the relator can receive expenses, plus reasonable attorney fees and costs.[162]

If the Government does not intervene in the action, the relator can receive an amount the court decides is reasonable for collecting the civil penalty and damages on behalf of the Government—not less than 25% and not more than 30% of the proceeds (plus reasonable expenses and attorney fees and costs).[163] The Department of Justice has taken the position in settlement negotiations that the relator is entitled to the maximum 30% recovery only if the relator actually takes the case to trial.

Whether or not the Government intervenes in the action, if the court finds the qui tam action was brought by a person who planned and initiated the FCA violation on which the action was brought, then the court may *reduce* the share of the proceeds the relator would otherwise receive, considering such things as the relator's role in litigating the matter and any relevant information pertaining to the violation itself. If the relator is convicted of criminal conduct arising from the relator's role in the FCA violation, the relator will be dismissed from the civil action and will not receive any share of the proceeds.[164]

Protections For Whistleblowers

The FCA protects employees from retaliation by their employers for conduct in furtherance of an FCA action.[165] The so-called "whistleblower" or "anti-retaliation" provision in the statute prohibits an employer from taking certain actions against an employee "because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action" under the FCA.[166] The prohibited actions are discharging, demoting, suspending, threatening, or harassing the employee or discriminating against the employee in the terms and conditions of employment. The relief offered by the whistleblower provision is expressly limited to "employees" and thus does not permit actions by independent contractors or partners.[167]

Employees who can establish an employer's liability under this section are entitled to "all relief necessary to make the employee whole," which includes reinstatement "with the same seniority status such employee would have had but for the discrimination," two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney fees.[168] An employee can maintain a retaliation claim under the FCA even if no FCA action is ultimately filed against the employer.[169]

An important aspect of any retaliation claim involves establishing that an employer acted against the employee *because of* the employee's lawful acts in furtherance of an FCA suit. The legislative history of the 1986 FCA amendments demonstrates that a whistleblower must show that the employer had knowledge that the employee engaged in "protected activity."[170] In one case, the court held that the employee did not establish the requisite knowledge of his employer where there was no evidence that the employee expressed any concerns about possible fraudulent overcharging to his superiors other than concerns typically raised as part of a contract administrator's job. Without such knowledge, the court found, the employer could not possess the retaliatory intent necessary to establish a violation of the statute.[171]

Common Questions

As the primary statute in the Government's war on procurement and healthcare fraud, the

civil FCA provides federal investigators and attorneys, as well as numerous private whistleblowers, with an array of potent weapons to use against contractors. Therefore, if you conduct business with the Government, you face some risk of being investigated or sued for alleged violations of the Act—even if you do not intentionally attempt to defraud the Government. This risk increases with each claim for payment you submit to the Government or upper-tier contractor, and with each statement or certification you make in support of such claims. This risk also increases significantly if you do not have procedures in place for ensuring that all claims, statements, and certifications made to the Government or upper-tier contractor are accurate. As discussed above, the costs of FCA violations can be enormous—treble damages, penalties for each false claim, and litigation expenses, as well as substantial disruptions to your business and unfavorable publicity.

One of the most important steps you can take to diminish your risk of having to deal with an FCA investigation or court action is understanding the Act's various provisions, as interpreted by the courts. To supplement the information in this BRIEFING PAPER, some of the most of common questions that arise concerning the civil FCA are set forth below.

(1) *What makes a claim "false"?*—The FCA does not define what makes a claim "false." A claim that contains erroneous information on its face (i.e., inflated costs or backdates) is an obvious example of a false claim. However, a claim may also be false even if it does not include incorrect information on its face if it is submitted for payment for work not done, for defective work, for supplies or services delivered other than those called for by the contract ("product substitution"), or for work for which the contractor was not entitled to be paid under the contract (for example, for reimbursement for unallowable costs in a cost-reimbursement contract or for unnecessary medical services under a Medicare provider contract).

Some courts have also held that a claim may be "false" if the contractor has failed to comply with all applicable statutory, regulatory, or contractual requirements or if the contractor has followed an erroneous interpretation of those requirements, even one that it reasonably believed to be correct but which the court (or jury) later found to be incorrect. Such "false" claims are often based on the theory that by submitting a claim to the Government for payment, the contractor is expressly or implicitly certifying that it has complied with applicable requirements or that if it has failed to comply with those requirements, the contractor is claiming more than the contract entitles it to be paid. However, even in the absence of an express or implied certification, the Government or relator may argue that the Government does not bargain for performance that does not comply with applicable statutory, regulatory or contractual requirements and that a claim for full payment for such performance is thus a "false" claim.

(2) *When does a person act "knowingly" under the FCA?*—Submitting a false claim to the Government as the result of a mistake or mere negligence does not violate the FCA. Only when a person acts "knowingly" does he violate the Act. This does not mean that the Government or qui tam relator must show that you had a specific intent to defraud the Government. Instead, the FCA provides that a person acts "knowingly" where he had *actual knowledge* of the falsity of information or acted in *deliberate ignorance* or *reckless disregard* of the truth of falsity of the information submitted to the Government. "Deliberate ignorance" and "reckless disregard" have been held to included an aggravated form of gross negligence.

(3) *What is a "reverse" false claim?*— As distinguished from a false claim seeking payment of money, a "reverse" false claim involves a material misrepresentation or omission to *avoid* paying money owed to the Government. Both types of claims violate the FCA. Congress added the "reverse" false claim provision to the Act in 1986. Under this provision, any person who "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 under the Act.[172] It has been held that a

prerequisite to an action alleging a "reverse" false claim is that the pertinent obligation to pay money to the Government must have arisen before the defendant made the false claim or statement.[173]

(4) *Can you be liable for submitting a "false" claim based on your interpretation of an ambiguous regulation when your interpretation turns out to be wrong?*—At least one court has found that a person's submission of a claim based on a wrong interpretation of a regulation may be enough to find that the claim was "false."[174] However, the same court noted that if that wrong interpretation is a *good faith* interpretation, the person cannot be found to have "knowingly" submitted the false claim and cannot be liable under the FCA.[175] To avoid the risk of violating the FCA, you should verify your interpretations with the relevant Government contracting authority before submitting a claim.

(5) *When can a company or person be vicariously liable for an FCA violation? Does management have to be involved in the "wrongdoing" for a company to be liable?*—To hold a company liable for an employee's conduct, the employee must have been acting within the scope of the employee's employment or under what is known as "apparent authority." Some courts hold that the qui tam relator or Government must also show that the employee's misconduct or deceit benefited the company. At least one court, applying recent Supreme Court precedent, refused to impute the FCA's intent element to the company for the acts of a nonmanagerial employee because the company did not know of the acts, did not ratify them, and had not been proven to be reckless in its hiring or supervision of the employee.[176]

(6) *What is a qui tam relator and who can be a relator?*—A relator is an entity other than the U.S. Government who sues in the name of and on behalf of the United States as well as itself. A relator can be one or more private individuals, a corporation, a partnership, or a state or local governmental body. Some courts have held, however, that a Government employee (such as an auditor) with responsibilities that include detecting or reporting fraud cannot satisfy the FCA's "original source" requirement for actions based on publicly disclosed information.[177]

(7) *Who and what determine whether the Government intervenes in a qui tam lawsuit?*—The DOJ decides whether the Government will intervene in a qui tam case following an investigation while the complaint remains under seal. (The DOJ normally seeks and obtains several extensions of the statutory 60-day investigation period and may also provide a copy of the complaint to the defendant during the investigation to obtain the defendant's input and discuss settlement.) The decision whether to intervene is normally made by the head of the Fraud Section of the DOJ Civil Division or an assistant ("reviewer") on the recommendation of the DOJ trial attorney assigned to the investigation, unless the matter has been assigned to a U.S. Attorney's Office pursuant to DOJ guidelines. The agency affected by the alleged FCA violations may also recommend whether or not the Government should intervene. The DOJ will sometimes intervene only as to part of the relator's allegations or defer its intervention decision until some later date in the proceeding (for example, after preliminary motions or discovery).

(8) *If the Government does not intervene in a qui tam lawsuit, does the relator represent the Government for purposes of the suit?*—If the Government declines to intervene, the relator is authorized to prosecute the action in the name and on behalf of the United States. This does not mean that the relator "replaces" the DOJ as the Government's lawyers, however. The DOJ continues to monitor the suit on behalf of the Government and can intervene at a later date on a showing of good cause. Furthermore, the relator must usually go through the DOJ or agency counsel to deal with current and former Government witnesses and cannot block a defendant's efforts to contact or interview such witnesses on the ground that the relator is the Government's representative in the suit. Some agencies, such as the Department of Defense and its Armed Services constituents, restrict a defendant's ability to contact former and current Government employees without the agency's prior approval; defendants in such circumstances

must work through agency counsel or seek the intervention of the court.

(9) *Can a defendant settle a qui tam case with the Government if the relator does not want to settle or settle with the relator if the Government does not want to settle? When is the best time to try to settle a qui tam case?*—A defendant may settle the case with the Government over the relator's objections if the court determines, after a hearing, that the settlement is fair, adequate, and reasonable under the circumstances. Where the Government does not intervene and the relator proceeds alone, courts have split on the issue of whether the defendant and the relator may settle the case without the DOJ's concurrence.

The best time for a defendant to attempt to settle a qui tam case is *before* the Government decides to intervene. The DOJ will obtain a "partial unsealing" of a qui tam complaint and provide a copy to the defendant so that the defendant can respond to the allegations and assist the DOJ in deciding whether to intervene or settle. Note that most FCA cases that are not dismissed eventually settle.

GUIDELINES

These *Guidelines* outline some steps you can take to diminish the risk of having to deal with an FCA investigation or court action. They are not, however, a substitute for professional representation in any specific situation.

1. *Educate* and *train* your managers and employees to prepare and submit to the Government *accurate* claims for payment, as well as statements and certifications in support of such claims, as part of any transaction involving federal funds, including requests for payment under federal subcontracts and grants.

2. Institute a *written compliance program* within your organization. The program should include procedures to ensure the accuracy of claims, statements, and certifications submitted to the Government under federal contracts and programs. The compliance program should also set forth procedures and guidelines for *employees* to follow in complying with all applicable laws and regulations.

3. Remember that the Government and qui tam relators often base FCA allegations on various types of *contractor certifications*. Therefore, you should be careful in executing any certification, no matter how trivial. Check with counsel if you have any doubt or concern regarding the *accuracy* of a certification.

4. Provide your managers and employees an opportunity to inform you of compliance issues through an anonymous forum, such as a *company hotline*. This may allow you to address compliance issues *before* they escalate into violations.

5. Remember that you can choose to *voluntarily disclose* to the Government evidence of a violation of the Act. While this step does not guarantee that you will avoid liability under the FCA, it limits the scope of any liability. The Act provides for a *reduced penalty* if, before the institution of any legal proceeding, the alleged violator *furnishes all information* that that person has about the violation *within 30 days* of receiving the information, *cooperates fully* with any Government investigation, and *did not have actual knowledge* of the existence of an investigation into the alleged violation. You should make a voluntary disclosure to the Government only on advice of counsel and after performing an adequate internal investigation, in part due to suspension and debarment or exclusion issues. Also, a disclosure aimed only at diminishing exposure under the civil FCA, without considering *possible criminal exposure*, could have detrimental consequences.

6. Be aware that because the FCA's qui tam provisions *protect employees* from *retaliation* or *discrimination* by their employers, issues regarding an employee's termination or promotion can spawn additional claims against your organization. Therefore, it is imperative that you maintain contemporaneous, reliable, and accurate *employment records* that properly document job performance and other issues that may be relevant to an employee's current employment status. Also, it may be prudent to seek advice of counsel before taking employment actions against certain employees.

★ REFERENCES ★

1/ In FY 2000, the Government awarded contracts totaling over $223 billion. See <http://www.census.gov/govs/cffr/00cffus.htm>.

2/ 31 U.S.C. §§ 3729–3733.

3/ United States ex rel. Fine v. Chevron, U.S.A., Inc., 39 F.3d 957, 959 (9th Cir. 1994), 36 GC ¶ 650 (Note).

4/ United States v. McNinch, 356 U.S. 595, 599 (1958).

5/ United States ex rel. Springfield Terminal Ry. Co. v. Quinn, 14 F.3d 645, 649 (D.C. Cir. 1994), 36 GC ¶ 127; see also United States ex rel. Fine, 39 F.3d at 959.

6/ Vermont Agency of Natural Res. v. United States ex rel. Stevens, 529 U.S. 765, 769 n.1 (2000), 42 GC ¶ 204.

7/ See id. at 774–78 & n.1.

8/ United States ex rel. Springfield Terminal Ry. Co., 14 F.3d at 649.

9/ United States ex rel. Prawer & Co. v. Fleet Bank, 24 F.3d 320, 324 (1st Cir. 1994).

10/ United States ex rel. Springfield Terminal Ry. Co., 14 F.3d at 649.

11/ United States ex rel. Prawer & Co., 24 F.3d at 324.

12/ Id.

13/ United States ex rel. Newsham v. Lockheed Missiles & Space Co., 722 F. Supp. 607, 609 n.3 (N.D. Cal. 1989).

14/ United States ex rel. Fine v. Chevron, U.S.A., Inc., 39 F.3d 957, 959–60 (9th Cir. 1994), 36 GC ¶ 650 (Note).

15/ United States ex rel. Springfield Terminal Ry. Co., 14 F.3d at 649.

16/ See generally Louis D. Victorino, Robert L. Ivey & Kevin R. Sullivan, "'Qui Tam' Lawsuits," Briefing Papers No. 89-10 (Sept. 1989), 8 Briefing Papers Coll. 427.

17/ S. Rep. No. 99-345 (1986), reprinted in 1986 U.S.C.C.A.N. 5266.

18/ 31 U.S.C. § 3729(a).

19/ Id.

20/ See id. § 3729(b).

21/ Id. § 3730(d).

22/ Id. § 3730(h).

23/ See id. § 3730(e).

24/ Press Release, DOJ, Justice Department Recovers Over $3 Billion in Whistle-blowers False Claims Act Awards and Settlements (Feb. 24, 2000) (available at <http://www.usdoj.gov/opa/pr/2000/February/079civ.htm>).

25/ Jack A. Meyer & Stephanie E. Anthony, New Directions for Policy, Reducing Health Care Fraud: An Assessment of the Impact of the False Claims Act 34 (Sept. 2001) (available at <http://www.taf.org>); see 43 GC ¶ 416.

26/ Meyr & Anthony, supra note 25, at 32.

27/ E.g., Riley v. St. Luke's Episcopal Hosp., 252 F.3d 749 (5th Cir. 2001), 43 GC ¶ 221; United States ex rel. Berge v. Board of Trs., 104 F.3d 1453 (4th Cir.), cert. denied, 118 S. Ct. 301 (1997); United States ex rel. Taxpayers Against Fraud v. General Elec. Co., 41 F.3d 1032 (6th Cir. 1994).

28/ Vermont Agency of Natural Res. v. United States ex rel. Stevens, 529 U.S. 765 (2000), 42 GC ¶ 204.

29/ Id.

30/ See e.g., United States ex rel. Garibaldi v. Orleans Parish Sch. Bd., 244 F.3d 486 (5th Cir.), 43 GC ¶ 139, petition for cert. filed (U.S. Sept. 20, 2001) (No. 01-510).

31/ 31 U.S.C. § 3729(a)(1).

32/ United States v. Mackby, 243 F.3d 1159 (9th Cir. 2001), 43 GC ¶ 139.

33/ 31 U.S.C. § 3729(a)(2)–(a)(7).

34/ Id. § 3729(c).

35/ S. Rep. No. 99-345, at 20, reprinted in 1986 U.S.C.C.A.N. 5266, 5285.

36/ Ab-Tech Constr., Inc. v. United States, 31 Fed. Cl. 429, 435 (1994), 36 GC ¶ 384.

37/ United States v. Krizek, 111 F.3d 934, 940 (D.C. Cir. 1997), 39 GC ¶ 388 (Note).

38/ Ab-Tech Constr., Inc., 31 Fed. Cl. 429.

39/ United States ex rel. Butler v. Hughes Helicopters, Inc., 71 F.3d 321, 330 (9th Cir. 1995), 37 GC ¶ 628.

40/ S. Rep. No. 99-345, at 9, reprinted in 1986 U.S.C.C.A.N. 5266, 5274 (citing Peterson v. Weinberger, 508 F.2d 45 (5th Cir. 1975)); see also United States ex rel. Aflatooni v. Kitsap Physicians Servs., 163 F.3d 516 (9th Cir. 1999).

41/ Crane Helicopter Serv., Inc. v. United States, 45 Fed. Cl. 410, 434–35 (1999).

42/ Id. at 434.

43/ United States v. Mackby, 261 F.3d 821, 826–27 (9th Cir. 2001), 43 GC ¶ 139.

44/ Ab-Tech Constr., Inc., 31 Fed. Cl. at 433–34.

45/ United States ex rel. Pogue v. American Healthcorp, Inc., 914 F. Supp. 1507, 1512 (M.D. Tenn. 1996).

46/ Harrison v. Westinghouse Savannah River Co., 176 F.3d 776 (4th Cir. 1999), 41 GC ¶ 317.

47/ United States ex rel. Hopper v. Anton, 91 F.3d 1261 (9th Cir. 1996).

48/ United States ex rel. Siewick v. Jamieson Sci. & Eng'g, Inc., 214 F.3d 1372 (D.C. Cir. 2000), 42 GC ¶ 286.

49/ United States ex rel. Pogue, 914 F. Supp. 1507.

50/ United States ex rel. Mikes v. Straus, 84 F. Supp. 2d 427, 434 (S.D.N.Y. 1999).

51/ United States ex rel. Siewick, 214 F.3d at 1376; see also United States ex rel. Thompson v. Columbia/HCA Health-care, 20 F. Supp. 2d 1017, 1046–47 (S.D. Tex. 1998).

52/ Shaw v. AAA Eng'g & Drafting, Inc., 213 F.3d 519 (10th Cir. 2000).

53/ United States ex rel. Oliver v. Parsons Co., 195 F.3d 457 (9th Cir. 1999), cert. denied, 530 U.S. 1228 (2000).

54/ Id. at 463.

55/ Crane Helicopter Serv., Inc. v. United States, 45 Fed. Cl. 410, 434 (1999).

56/ See United States ex rel. Milam v. Regents of the Univ. of Cal., 912 F. Supp. 868, 886 (D. Md. 1995).

57/ 31 U.S.C. § 3729(b).

58/ Hagood v. Sonoma County Water Agency, 81 F.3d 1465, 1478 (9th Cir. 1996), 38 GC ¶ 357 (Note).

59/ Wang ex rel. United States v. FMC Corp., 975 F.2d 1412, 1420 (9th Cir. 1992), 34 GC ¶ 732.

60/ UMC Elecs. Co. v. United States, 43 Fed. Cl. 776, 793 (1999), 41 GC ¶ 340, aff'd, 249 F.3d 1337 (Fed. Cir. 2001), 43 GC ¶ 220.

61/ United States ex rel. Siewick v. Jamieson Sci. & Eng'g, Inc., 214 F.3d 1372, 1378 (D.C. Cir. 2000), 42 GC ¶ 286.

62/ United States v. Krizek, 111 F.3d 934, 942 (D.C. Cir. 1997), 39 GC ¶ 388 (Note).

63/ See United States v. Raymond & Whitcomb Co., 53 F. Supp. 2d 436, 447 (S.D.N.Y. 1999), 41 GC ¶ 451 (Note).

64/ UMC Elecs. Co., 43 Fed. Cl. at 794.

65/ Krizek, 111 F.3d at 942.

66/ See Raymond & Whitcomb Co., 53 F. Supp. 2d at 447.

67/ United States ex rel. Hagood v. Sonoma County Water Agency, 929 F.2d 1416, 1421 (9th Cir. 1991), 34 GC ¶ 58 (Note).

68/ Wang ex rel. United States v. FMC Corp., 975 F.2d 1412, 1420–21 (9th Cir. 1992).

69/ United States ex rel. Bidani v. Lewis, No. 97 C 6502, 2001 WL 32868, at *6 (N.D. Ill. Jan. 12, 2001), 43 GC ¶ 102.

70/ United States ex rel. Hagood, 929 F.2d at 1421.

71/ United States ex rel. Kreindler & Kreindler v. United Techs. Corp., 985 F.2d 1148, 1156 (2d Cir. 1993), 35 GC ¶ 358.

72/ United States ex rel. Butler v. Hughes Helicopters, Inc., 71 F.3d 321, 326 (9th Cir. 1995), 37 GC ¶ 628.

73/ Id. at 328.

74/ United States ex rel. Durcholz v. FKW Inc., 189 F.3d 542, 545 (7th Cir. 1999).

75/ See United States ex rel. Lamers v. City of Green Bay, 168 F.3d 1013, 1018 (7th Cir. 1999).

76/ Commercial Contractors, Inc. v. United States, 154 F.3d 1357, 1366 (Fed. Cir. 1998), 40 GC ¶ 471; see also United States ex rel. Norbeck v. Basin Elec. Power Coop., 248 F.3d 781, 805 (8th Cir. 2001), 43 GC ¶ 208.

77/ Commercial Contractors, Inc., 154 F.3d at 1366; see also United States v. Aerodex, Inc., 469 F.2d 1003, 1008 (5th Cir. 1972); United States ex rel. Compton v. Midwest Specialties, Inc., 142 F.3d 296, 303 (6th Cir. 1998).

78/ Commercial Contractors, Inc., 154 F.3d at 1366.

79/ See, e.g., United States v. O'Connell, 890 F.2d 563 (1st Cir. 1989); United States v. Hangar One, Inc., 563 F.2d 1155 (5th Cir. 1977), 20 GC ¶ 173; United States v. Incorporated Village of Island Park, 888 F. Supp. 419 (E.D.N.Y. 1995); Grand Union Co. v. United States, 696 F.2d 888 (11th Cir. 1983).

80/ See, e.g., Hangar One, Inc., 563 F.2d at 1158; Village of Island Park, 888 F. Supp. at 437; Grand Union Co., 696 F.2d 888; United States v. Ridglea State Bank, 357 F.2d 495, 500 (5th Cir. 1966).

81/ See, e.g., O'Connell, 890 F.2d at 567–69; see also Village of Island Park, 888 F. Supp. at 437.

82/ Kolstad v. American Dental Ass'n, 527 U.S. 526, 543 (1999).

83/ United States v. Southern Md. Home Health Servs., Inc., 95 F. Supp. 2d 465, 468 (D. Md. 2000).

84/ United States v. United Techs. Corp., 51 F. Supp. 2d 167 (D. Conn. 1999).

85/ See United States ex rel. Wilkins v. North Am. Constr. Corp., 101 F. Supp. 2d 500, 515–17 (S.D. Tex. 2000).

86/ See United States ex rel. Roby v. Boeing Co., 184 F.R.D. 107, 112 (S.D. Ohio 1998).

87/ Tyger Constr. Co. v. United States, 28 Fed. Cl. 35, 55 (1993), 35 GC ¶ 250.

88/ United States ex rel. Berge v. Board of Trs., 104 F.3d 1453, 1460 (4th Cir. 1997).

89/ Id. at 1459–60.

90/ See, e.g., United States ex rel. Lamers v. City of Green Bay, 998 F. Supp. 871, 991–92 (E.D. Wis. 1998), aff'd, 168 F.3d 1013 (7th Cir. 1999); United States ex rel. Durcholz v. FKW Inc., 997 F. Supp. 1159, 1167 (S.D. Ind. 1998), aff'd, 189 F.3d 542 (7th Cir. 1999).

91/ Neder v. United States, 527 U.S. 1 (1999); see United States ex rel. Cantekin v. University of Pittsburgh, 192 F.3d 402, 416 (3d Cir. 1999), cert. denied, 531 U.S. 880 (2000).

92/ United States v. Intervest Corp., 67 F. Supp. 2d 637 (S.D. Miss. 1999).

93/ United States ex rel. Berge, 104 F.3d at 1462.

94/ 64 Fed. Reg. 47099 (Aug. 30, 1999).

95/ 31 U.S.C. § 3729(a).

96/ Id.; see United States v. Heart Trace of Nashua, Inc., No. 99-155-M, 2001 WL 276966, at *2 (D.N.H. Mar. 16, 2001) (unpublished).

97/ 31 U.S.C. § 3729(a).

98/ BMY-Combat Sys. Div. of Harsco Corp. v. United States, 44 Fed. Cl. 141, 150–51 (1998).

99/ United States ex rel. Schwedt v. Planning Research Corp., 59 F.3d 196, 199 (D.C. Cir. 1995), 37 GC ¶ 530; see also Bly-Magee v. California, 236 F.3d 1014 (9th Cir. 2001), 43 GC ¶ 28.

100/ Ab-Tech Constr., Inc. v. United States, 31 Fed. Cl. 429, 434–35 (1994), 36 GC ¶ 384.

101/ United States v. Cabrera-Diaz, 106 F. Supp. 2d 234, 242 (D.P.R. 2000).

102/ United States v. Mackby, 261 F.3d 821, 829 (9th Cir. 2001), 43 GC ¶ 343; see also United States ex rel. Garibaldi v. Orleans Parish Sch. Bd., 244 F.3d 486, 564–65 (5th Cir.), petition for cert. filed (U.S. Sept. 20, 2001) (No. 01-510); Cabrera-Diaz, 106 F. Supp. 2d at 234.

103/ United States ex rel. Smith v. Gilbert Realty Co., 840 F. Supp. 71, 74–75 (E.D. Mich. 1993).

104/ Compare, e.g., Hutchins v. Wilentz, Golman & Spitzer, 253 F.3d 176 (3d Cir. 2001), 43 GC ¶ 260, and Varljen v. Cleveland Gear Co., 250 F.3d 426, 430 (6th Cir. 2001), 43 GC ¶ 260 (Note).

105/ United States ex rel. Trim v. McKean, 31 F. Supp. 2d 1308, 1316 (W.D. Okla. 1998).

106/ Varljen, 250 F.3d at 430.

107/ United States ex rel. Pogue v. American Healthcorp, Inc., 914 F. Supp. 1507, 1513 (M.D. Tenn. 1998).

108/ 31 U.S.C. § 3729(a); BMY-Combat Sys. Div. of Harsco Corp. v. United States, 44 Fed. Cl. 141, 147 (1998).

109/ United States v. Cabrera-Diaz, 106 F. Supp. 2d 234, 239 (D.P.R. 2000).

110/ See BMY-Combat Sys., 44 Fed. Cl. at 147.

111/ Cabrera-Diaz, 106 F. Supp. 2d at 239.

112/ BMY-Combat Sys., 44 Fed. Cl. at 147; see also United States ex rel. Oliver v. Gyro House, No. 99-16787 et al., 2001 WL 312378 (9th Cir. Mar. 29, 2001) (unpublished); Cabrera-Diaz, 106 F. Supp. 2d at 239–40; United States v. Peters, 927 F. Supp. 363, 368 (D. Neb. 1996).

113/ United States ex rel. Oliver, 2001 WL 312378, at *2.

114/ BMY-Combat Sys., 44 Fed. Cl. at 148–49.

115/ See id. at 147; Peters, 927 F. Supp. at 368.

116/ Vermont Agency of Natural Res. v. United States ex rel. Stevens, 529 U.S. 765, 785–86 (2000), 42 GC ¶ 204.

117/ United States v. Mackby, 261 F.3d 821, 830–31 (9th Cir. 2001), 43 GC ¶ 343.

118/ 31 U.S.C. § 3730(a).

119/ Id. § 3730(b).

120/ Id. § 3731(c).

121/ 31 U.S.C. § 3730(e)(4).

122/ E.g., United States ex rel. Fine v. Advanced Scis., Inc., 99 F.3d 1000, 1004 (10th Cir. 1996).

123/ 31 U.S.C. § 3730(e)(4)(A); see, e.g., United States ex rel. Dunleavy v. County of Delaware, 123 F.3d 734, 744–46 (3d Cir. 1997).

124/ 31 U.S.C. § 3730 (e)(4)(A). See United States ex rel. Springfield Terminal Ry. Co. v. Quinn, 14 F.3d 645, 652 (D.C. Cir. 1994), 36 GC ¶ 127.

125/ United States ex rel. Hagood v. Sonoma County Water Agency, 929 F.2d 1416, 1474 n.13 (9th Cir. 1991), 34 GC ¶ 58 (Note); see also United States ex rel. Fine, 99 F.3d at 1004–05; United States & Mathews v. Bank of Farmington, 166 F.3d 853, 862 (7th Cir. 1999).

126/ See United States ex rel. Fine, 99 F.3d at 1004; United States ex rel. Doe v. Doe Corp., 960 F.2d 318, 322–23 (2d Cir. 1992), 34 GC ¶ 381; United States ex rel. Stinson, Lyons, Gerlin & Bustamante, P.A. v. Prudential Ins. Co., 944 F.2d 1149, 1155–56 (3d Cir. 1991).

127/ E.g., United States ex rel. Stinson, 944 F.2d at 1158; United States ex rel. Kreindler & Kreindler v. United Techs. Corp., 985 F.2d 1148, 1158 (2d Cir. 1993), 35 GC ¶ 358.

128/ United States ex rel. Branhan v. Mercy Health Sys. of Southwest Ohio, 188 F.3d 510 (table), 1999 WL 618018 (6th Cir. Aug. 5, 1999) (unpublished).

129/ United States ex rel. Springfield Terminal Ry., 14 F.3d at 652; see also United States & Mathews, 166 F.3d at 860, 865; United States ex rel. Ramseyer v. Century Healthcare Corp., 90 F.3d 1514, 1519–20 (10th Cir. 1996); United States ex rel. Schumer v. Hughes Aircraft Co., 63 F.3d 1512 (9th Cir. 1995), 37 GC ¶ 609, vacated, 520 U.S. 939 (1997).

130/ See, e.g., United States ex rel. Biddle v. Board of Trs., 161 F.3d 533, 539–40 (9th Cir. 1998), 40 GC ¶ 401, cert. denied, 526 U.S. 1066 (1999); United States ex rel. Mistick PBT v. Housing Auth. of Pittsburgh, 186 F.3d 376 (3d Cir. 1999), 41 GC ¶ 378; United States ex rel. Findley v. FPC-Boron Employees' Club, 105 F.3d 675, 683 (D.C. Cir. 1997); United States ex rel. Fine v. MK-Ferguson Co., 99 F.3d 1538, 1546 (10th Cir. 1996); Federal Recovery Servs., Inc. v. United States, 72 F.3d 447, 451 (5th Cir. 1995); Cooper ex rel. United States v. Blue Cross & Blue Shield of Fla., Inc., 19 F.3d 562, 567 (11th Cir. 1994), 37 GC ¶ 353; United States ex rel. Doe, 960 F.2d 318.

131/ United States ex rel. Siller v. Becton Dickinson & Co., 21 F.3d 1339, 1348 (4th Cir. 1994); United States & Mathews, 166 F.3d at 863.

132/ United States & Mathews, 166 F.3d at 863.

133/ United States ex rel. Precision Co. v. Koch Indus., Inc., 971 F.2d 548, 553 (10th Cir. 1992); see also United States ex rel. Findley, 105 F.3d at 682; United States ex rel. Springfield Terminal Ry. Co., 14 F.3d at 653–54.

134/ United States ex rel. Found. Aiding the Elderly v. Horizon West, Inc., 265 F.3d 1011 (9th Cir. 2001), 43 GC ¶ 398.

135/ 31 U.S.C. § 3730(e)(4)(B).

136/ S. Rep. No. 99-345, at 4 (1986), reprinted in 1986 U.S.C.C.A.N. 5266, 5269.

137/ United States ex rel. Barth v. Ridgedale Elec., Inc., 44 F.3d 699, 703 (8th Cir. 1995), 37 GC ¶ 197.

138/ United States ex rel. Devlin v. California, 84 F.3d 358, 361 (9th Cir. 1996); see also United States ex rel. Aflatooni v. Kitsap Physicians Servs., 163 F.3d 516, 524–26 (9th Cir. 1999); United States v. Alcan Elec. & Eng'g, Inc., 197 F.3d 1014, 1020–21 (9th Cir. 1999); United States ex rel. Fine v. Advanced Scis., Inc., 99 F.3d 1000 (10th Cir. 1996); United States ex rel. Fine v. MK-Ferguson Co., 99 F.3d 1538 (10th Cir. 1996).

139/ United States ex rel. Stone v. Rockwell Intl. Corp., 265 F.3d 1157 (10th Cir. 2001), 43 GC ¶ 427.

140/ 31 U.S.C. § 3730(e)(4)(B).

141/ United States & Mathews v. Bank of Farmington, 166 F.3d 853, 865–66 (7th Cir. 1999); 31 U.S.C. § 3730(b)(2); see also United States ex rel. Barth, 44 F.3d at 704; United States ex rel. Ackley v. IBM Corp., 76 F. Supp. 2d 654 (S.D. Md. 1999).

142/ United States ex rel. McKenzie v. BellSouth Telecommunications, Inc., 123 F.3d 935, 943 (6th Cir. 1997); United States ex rel. Findley v. FPC-Boron Employees' Club, 105 F.3d 675, 691 (D.C. Cir. 1997); United States ex rel. Settlemire v. District of Columbia, 198 F.3d 913, 919 (D.C. Cir. 1999);

143/ See Wang ex rel. United States v. FMC Corp., 975 F.2d 1412, 1419 (9th Cir. 1992). United States ex rel. Dick v. Long Island Lighting Co., 912 F.2d 13, 16 (2d Cir. 1990); United States ex rel. McKenzie, 123 F.3d 935.

144/ See United States & Mathews, 166 F.3d at 865; United States ex rel. Findley, 105 F.3d 675; United States ex rel. Fine v. Advanced Scis., Inc., 99 F.3d 1000; United States ex rel. Siller v. Becton Dickinson & Co., 21 F.3d 1339, 1355 (4th Cir. 1994); Cooper ex rel. United States v. Blue Cross & Blue Shield of Fla., Inc., 19 F.3d 562, 568 n.13 (11th Cir. 1994), 37 GC ¶ 353; United States ex rel. Stinson, Lyons, Gerlin & Bustamonte, P.A. v. Prudential Ins. Co., 944 F.2d 1149, 1160 (3d Cir. 1991).

145/ See 31 U.S.C. § 3730(b)(2), (3); United States ex rel. Windsor v. Dyncorp, Inc., 895 F. Supp. 844, 847–48 (E.D. Va. 1995), 37 GC ¶ 509.

146/ United States ex rel. Windsor, 895 F. Supp. at 847.

147/ 31 U.S.C. § 3730(c).

148/ Id. § 3730(b)(4)(B).

149/ See 18 U.S.C. § 287.

150/ See Robert K. Huffman et al., "The Perils of Parallel Civil and Criminal Proceedings: A Primer," 10 Health Law. No. 4 (Mar. 1998).

151/ Id. § 3730(c)(2)(A)–(C).

152/ Id. § 3730(c)(3).

153/ 31 U.S.C. § 3730(b)(5).

154/ United States ex rel. LaCorte v. SmithKline Beecham Clinical Labs., Inc., 149 F.3d 227, 232–33 (3d Cir. 1998), 40 GC ¶ 545; United States ex rel. Lechler v. AlliedSignal, Inc., No. 00-3670 (3d Cir. Oct. 29, 2001).

155/ United States ex rel. LaCorte, 149 F.3d at 235–37.

156/ Palladino ex rel. United States v. VNA of S. N.J., Inc., 68 F. Supp. 2d 455, 478–79 (D.N.J. 1999); see also United States ex rel. Hyatt v. Northrop Corp., No. 87-6892-KN (C.D. Cal. Dec. 27, 1989) (unpublished); Erickson ex rel. United States v. American Inst. of Biological Scis., 716 F. Supp. 908, 918 (E.D. Va. 1989), 32 GC ¶ 157 (Note).

157/ 31 U.S.C. § 3730(e)(3).

158/ United States ex rel. Prawer & Co. v. Fleet Bank, 24 F.3d 320, 327–28 (1st Cir. 1994).

159/ See United States ex rel. Alexander v. Dyncorp, Inc., 924 F. Supp. 292, 303 (D.D.C. 1996), 38 GC ¶ 357 (Note); United States ex rel. Stone v. AmWest Savs. Ass'n, 999 F. Supp. 852, 855–56 (N.D. Tex. 1997).

160/ 31 U.S.C. § 3730(d)(1); see also United States ex rel. Merena v. SmithKline Beecham Corp., 205 F.3d 97 (3d Cir. 2000); United States ex rel. Fox v. Northwest Nephrology Ass'n, 87 F. Supp. 2d 1103 (E.D. Wash. 2000).

161/ 31 U.S.C. § 3730(d)(1).

162/ Id. § 3730(d)(1); see United States ex rel. Taxpayers Against Fraud v. General Elec. Co., 41 F.3d 1032 (6th Cir. 1994).

163/ 31 U.S.C. § 3730(d)(2).

164/ Id. § 3730(d)(3).

165/ Id. § 3730(h).

166/ Id.

167/ See Hardin v. DuPont Scandanavia (ARA-JET), 731 F. Supp. 1202, 1205 (S.D.N.Y. 1990).

168/ 31 U.S.C. § 3730(h).

169/ United States ex rel. Ramseyer v. Century Healthcare Corp., 90 F.3d 1514, 1522 (10th Cir. 1996); United States ex rel. Sikkenga v. Regence Blue Cross Blue Shield of Utah, No. 2:99CV86K, slip op. at 16 (C.D. Utah Nov. 27, 2001).

170/ Robertson v. Bell Helicopter Textron, Inc., 32 F.3d 948, 951 (5th Cir. 1994).

171/ Id. at 951–52; see also United States ex rel. Ramseyer, 90 F.3d at 1522–23.

172/ 31 U.S.C. § 3729(a)(7).

173/ E.g., American Textile Mfrs. Inst., Inc. v. Limited, Inc., 190 F.3d 729, 740 (6th Cir. 1999), cert. denied, 529 U.S. 1054 (2000).

174/ United States ex rel. Oliver v. Parsons Co., 195 F.3d 457 (9th Cir. 1999), cert. denied, 530 U.S. 1228 (2000).

175/ Id. at 464.

176/ United States v. Southern Md. Home Health Servs., Inc., 95 F. Supp. 2d 465 (D. Md. 2000).

177/ E.g., United States ex rel. Fine v. Chevron, U.S.A., Inc., 72 F.3d 740 (9th Cir. 1995); United States ex rel. Biddle v. Board of Trs., 147 F.3d 821 (9th Cir. 1998), 40 GC ¶ 401; LeBlanc v. Raytheon Co., 913 F.2d 17 (1st Cir. 1990), 32 GC ¶ 299 (Note).

WEST GROUP

A THOMSON COMPANY