THE FALSE CLAIMS ACT
Past, Present, and Future

JOHN R. THOMAS JR., ANDREW M. BOWMAN, AND KIRK M. SOSEBEE

The False Claims Act (FCA) is a powerful statute—revered by many for its tremendous success in returning taxpayer dollars to the public fisc—but feared by many businesses for its procedural and punitive consequences. There is no doubt that the FCA has had an enormous impact—it is responsible for returning nearly $50 billion to taxpayers since 1986 alone. From the perspective of businesses, however, the FCA is an intimidating hydra, with numerous liability pitfalls and seemingly limitless damages.

To appreciate the FCA's current status in American jurisprudence requires an understanding of the FCA's origins, its goals over the years, and its successive amendments. The FCA has not enjoyed uninterrupted growth. On the contrary, courts limited its scope and effectiveness at several points in its history. Each time the FCA faced legislative or judicially imposed irrelevance, however, Congress and the president breathed new life into the statute, setting it against the fraud challenges of its day. One example of this was the 1986 amendments to the FCA, which marked the 30th anniversary of their passage this past October.

This article addresses the evolution of the FCA from its early years as an antifraud statute in the Civil War, through its various amendments, and to the present day. Analyzing the FCA's development illustrates its important and changing mission over the years, as well as its potential future applications.

What is the False Claims Act?

The FCA, 31 U.S.C. §§ 3729-3732, is one of the federal government's primary tools for combatting fraud against the government.[1] A key element of the FCA is its *qui tam* provision, which permits private citizens, known as relators, to bring actions on behalf of the government.[2] The FCA incentivizes relators by affording them a percentage of any funds recovered by the government. Private citizens' enforcement efforts supplement and aid the Department of Justice (DOJ)—the governmental entity primarily tasked with recovering fraudulently obtained funds—because the amount of fraud related to federal spending is so great that the government cannot bring all of the suits on its own.

To prove the most basic false claims theory, the relator and/or the government must show that the defendant knowingly submitted a false claim for payment to the government, and that the claim was material to a funding decision. Other valid false claims theories exist and are contained in 31 U.S.C. § 3729(a). These additional theories include creation of false records material to false claims,[3] conspiracy to submit false claims to the government,[4] and "reverse false claims," which involve knowingly concealing or avoiding an obligation to transmit funds to the government.[5]

Under the FCA, the government can recover triple damages, as well as civil penalties, for each false claim.[6] Violations committed after 1999 are subject to penalties of $5,500 to $11,000 per claim.[7] New regulations promulgated in 2016 have increased the penalties to $10,781 to $21,563 per false claim.[8]

The FCA's Past

Civil War Beginnings

During the Civil War, the demand for government supplies increased dramatically. This brought along with it the opportunity for fraud in government contracts.[9] Throughout the war, government contractors' profits rose, and allegations of fraud, defective weapons, and price-gouging were rampant.[10] Congress was forced to act. Con-

gressional hearings in 1862 and 1863 produced over 3,000 pages of testimony alleging waste and fraud in government contracts.[11]

To combat the growing fraud, Congress enacted the Act of March 2, 1863,[12] the first version of today's False Claims Act, which provided criminal penalties for the submission of false claims to the government and assessed double damages and a civil fine of $2,000 per violation.[13] This law was dubbed the "Informer's Act" or the "Lincoln Law."[14] It included a *qui tam* provision allowing private citizens to bring a lawsuit on behalf of the government and to receive half of any recovery obtained.[15] Similar *qui tam*[16] provisions had been commonly used by both the states and the federal government at this time.[17] The government was able to take over a *qui tam* suit brought by a relator at any time, at its discretion.[18] The *qui tam* provision was intended to assist the attorney general in combatting the amount of fraud that was taking place, since there was no DOJ at the time to assist the attorney general.[19]

After the Civil War, government spending, and the consequent opportunities for fraud and FCA claims, greatly diminished.[20] The proto-False Claims Act fell out of favor.[21]

Government Knowledge Defense

In the 1930s, the New Deal caused a sharp increase in government spending.[22] Enterprising relators began bringing suits based purely on information they obtained from public sources, including indictments, newspaper articles, and congressional investigations.[23] These "parasitical" *qui tam* actions grew sharply in the 1930s.[24]

The U.S. Supreme Court in *U.S. ex rel. Marcus v. Hess* ruled that the False Claims Act permitted these suits.[25] The relator in *Hess*, Morris Marcus, allegedly copied a criminal indictment, incorporated those allegations into an FCA suit, and then requested half of any civil judgment.[26] The DOJ opposed his attempt to gain half of the reward without doing any work, but the Supreme Court held that neither the language nor the history of the statute precluded relators from relying solely on public allegations of fraud.[27] Congress reacted to the *Hess* decision by amending the False Claims Act, and President Franklin D. Roosevelt signed the amendment into law on Dec. 21, 1943.[28] The biggest change in the amendments was the "government knowledge" provision, which removed jurisdiction for any FCA suit "based upon evidence or information in the possession of the United States, or any agency, officer or employee thereof, at the time such suit was brought."[29] The so-called "government knowledge" defense applied even if the relator was the original source of the government's information.[30] That is, the government knowledge defense precluded any FCA case brought by a relator under the *qui tam* provision—even those not publicly known at the time—if a government agency knew of the fraud.[31]

Under the new amendments, the government now only had 60 days to decide whether to intervene in a *qui tam* suit brought by a relator, and if the government intervened, it completely took over the case, with no role for the relator.[32] The recovery that relators could obtain was also reduced to at most 10 percent of the government's recovery if the government intervened, and 25 percent if the government did not.[33] This defense, combined with the much smaller reward to relators, reduced whistleblowers' incentives and greatly lowered the number of new *qui tam* cases. The average number of *qui tam* cases brought under the FCA from 1943 to 1986 was only six per year.[34] The FCA was largely irrelevant through these years, until Congress again amended the FCA in 1986.

1986 Amendments Breathe New Life Into the FCA

By the 1980s, the number of federal programs had expanded, and with this growth in government spending came more opportunities for fraud.[35] Congress grew concerned about rampant fraud and governmental acquiescence.[36] In 1986, the DOJ estimated that between 1 percent and 10 percent of the entire federal budget was lost to fraud.[37] In committee hearings on the 1986 amendments, the Senate learned that "45 of the 100 largest defense contractors, including nine of the top 10, were under investigation for multiple fraud offenses."[38] The Senate determined that the government was not able to police this fraud effectively, due to federal enforcement agencies' lack of resources.[39]

Congress enacted several important amendments to the FCA in order to address this problem and once again empower citizen whistleblowers.[40] These amendments required *qui tam* actions to be filed under seal for 60 days and served on the United States, not the defendant, to give the government time to decide whether to intervene.[41] The government was also given the option of intervening later in a declined case for "good cause."[42] After the 1943 amendments to the FCA, relators had no role in the litigation after the government intervened.[43] Under the new amendments, the *qui tam* relator was now allowed to continue participating in an intervened case, subject to controls designed to protect the government and defendants, including the government's ability to dismiss the case without the relator's consent, or settle the case after a hearing if the court determines that the settlement is "fair, adequate, and reasonable under all the circumstances."[44] The relator's involvement in the litigation could be further limited by the court if it was shown to interfere with the government's case or be for the purposes of harassment.[45]

To address the problem of "parasitic" lawsuits based on public information, the amendments got rid of the complete "government knowledge" defense, instead barring suit by relators based upon the public disclosure of allegations or transactions in a [government proceeding] or investigation, or from the news media, unless … the person bringing the action is an original source of the information."[46]

Congress also increased the rewards due to successful relators. In FCA cases where the government intervenes, the amendments gave a relator 15 percent to 25 percent of the proceeds of the action, depending on their contribution to the case and the litigation.[47] If the government did not intervene, a successful relator would receive from 25 percent to 30 percent of the proceeds.[48]

To further protect and incentivize whistleblowers, Congress created a new cause of action for any employee who is retaliated against for lawful acts in furtherance of False Claims Act proceedings.[49] This retaliation claim is not limited to relators, but protects anyone who investigates, initiates, testifies in furtherance of, or assists in an FCA action.[50] The relief available includes reinstatement, double back pay with interest, and attorney's fees.[51]

The 1986 amendments also clarified the standard of intent necessary for a violation of the FCA.[52] The amendments defined "knowingly" to clarify that a showing of specific intent to defraud was not needed. To establish knowledge, the government or a relator need only show that the defendant had (1) actual knowledge of the information, (2) acted in deliberate ignorance of the information, or (3) acted in reckless disregard of the truth of the information.[53] The 1986 amendments also clarified that the burden of proof in an FCA case is preponderance of the evidence.[54]

Congress amended the FCA statute of limitations and increased

the statutory time to the longer of (1) six years from the date of the violation or (2) three years after the material facts were known or should have been known by the United States, with a maximum length of 10 years after the date of the violation.[55]

The amendments increased the amount of damages available from double the government's damages to triple the government's damages.[56] If a defendant cooperates with the government and voluntarily discloses the false claim, it will only be liable for double damages.[57] The civil penalties were also increased by the 1986 amendments from $2,000 per claim to $5,000 to $10,000 per false claim.[58] Federal regulations in 1999 increased the civil penalties to between $5,500 and $11,000 per violation.[59]

In 1988, an amendment was added to the FCA to clarify that if the relator was involved in the underlying fraud, the court could reduce the relator's award, and if the relator was convicted of criminal conduct in connection with the fraud, his reward would be reduced to zero.[60]

The 1986 amendments have turned the FCA into an effective and widely used weapon against government-related fraud.[61] The success of these amendments was reported by the DOJ in 1993:

> Since amended in 1986, the False Claims Act has been a success which has substantially benefited the United States. No one can look at the ever-increasing recoveries in *qui tam* cases and come to any other conclusion. The act has allowed the government to obtain information about fraud that it did not independently have and to recover sums it might not have otherwise been able to identify. As recoveries have increased, the contracting community is more aware of the watch-dog effect of *qui tam*, which undoubtedly has led to the deterrence of fraudulent conduct.[62]

The number of FCA cases brought by the government increased from 199 cases in 1992, to 333 in 1996, and to 753 in 2013.[63] From 1986 to 2013 alone, the DOJ recovered over $38.9 billion in FCA cases, with $27.2 billion (70 percent) of this amount coming from cases originated by *qui tam* relators.[64]

Post-1986 Waves of Litigation

After the 1986 amendments, relators brought a wave of new FCA suits in the areas of defense and health care.

1980s: Defense Industry

The 1986 amendments to the FCA were aimed in a large part at the defense industry, and FCA suits against defense contractors increased after the amendments. The majority of FCA cases brought shortly after the 1986 amendments were brought against defense contractors.[65] For example, in October 1995, the DOJ settled an FCA case for $88 million with a British industrial corporation and two of its U.S. subsidiaries for failing to properly test military airplane parts and knowingly shipping defective parts to the Navy, Army, and Air Force under contracts with the Department of Defense.[66] The DOJ also settled an FCA suit with Rockwell International in July 1995 for $27 million, based on allegations that the company knowingly failed to provide the United States with complete and accurate information in negotiating multibillion dollar contracts in 1981 to develop and build the B1-B bomber.[67] Virtually every major defense contractor has faced significant FCA litigation since the 1986 amendments, with major defense contractors such as Northrup-Grumman, Boeing, Lockheed-Martin, and others facing multiple cases.

1990s: Medicaid and Medicare Fraud

Another growth area for FCA cases after 1986 was health care. In 1987, only 12 percent of FCA cases were health care cases, but by 1997, 54 percent of FCA cases were health care cases.[68] Health care fraud cases include overbilling, fraudulent cost reporting, billing for services not provided, failure to provide the required quality of care, marketing off-label drugs, and implied false certifications to the government.[69]

In 1998, the DOJ settled an FCA case with the University of Texas Health Science Center at San Antonio (UTHSCSA) for $17.2 million that was based on allegations that UTHSCSA submitted false claims for reimbursement to federally funded health care insurance programs.[70] The DOJ also settled an FCA suit with a Florida-based emergency physician billing company in July 1999 for $15 million that was based on allegations of "up-coding," which is making it appear that more extensive services were rendered than those actually provided.[71] Blue Cross and Blue Shield of Illinois settled a large FCA case in 1998 for $140 million for improper processing of Medicare claims. In September 1999, Walgreens paid $7.6 million to settle an FCA case accusing it of billing the government for the full amount of prescriptions when those prescriptions were only partially filled.[72]

Other health care fraud cases include false claims involving laboratory testing, such as the $111 million settlement with National Health Laboratories in 1992. SmithKline Beecham Clinical Laboratories settled a similar case for improper "bundling" of lab services ($325 million), as well as National Medical Care for billing for unnecessary tests ($375 million).

2000s: Off-Label Marketing

FCA cases involving "off-label marketing" dominated the legal news for much of the past decade, leading to some of the largest legal settlements in U.S. history. Off-label marketing cases center on the theory that improper marketing schemes by pharmaceutical companies (and prohibited under Medicare/Medicaid regulations) cause false claims to be submitted to Medicare and Medicaid for non-allowed uses of these drugs.

The first off-label marketing case was *United States ex rel. Franklin v. Parke-Davis,*[73] a declined case brought in the District of Massachusetts in 1996. After eight years of litigation that saw a groundbreaking summary judgment decision by Judge Patti B. Saris recognizing the validity of the off-label marketing theory,[74] Pfizer settled in 2004 for $430 million.[75] In the following years, similar off-label marketing cases arose throughout the country. Notable settlements included Eli Lilly ($1.415 billion in 2009), Pfizer ($2.3 billion in 2009), AstraZeneca ($520 million in 2010), Abbott Laboratories ($800 million in 2012), GlaxoSmithKline ($1.043 billion in 2012), Amgen ($612 million in 2012), and Johnson & Johnson ($1.391 billion in 2013).

The FCA's Present

Fraud Enforcement and Recovery Act of 2009 and Affordable Care Act Amendments

Congress amended the FCA again in 2009 and 2010. In both instances, Congress sought to strengthen the FCA in the wake of judicial decisions limiting its scope. The first of these was the unanimous

Supreme Court decision in *Allison Engine Co. v. United States ex rel. Sanders* that limited FCA liability to false statements or claims made by defendants for the purpose of getting the government to pay the claim.[76] In *Allison Engine*, the Court held that FCA liability was limited to fraudulent statements that were designed "to get" false claims paid or approved "by the government."[77] The Court also found that FCA conspiracy liability was limited to a conspiracy "to get" a false claim paid "by the government"—that the conspiracy had to have the purpose of defrauding the government as its goal.[78]

Partially in response to *Allison Engine*, President Barack Obama signed the Fraud Enforcement and Recovery Act of 2009 (FERA) into law on May 20, 2009.[79] Thus, Congress and the president enacted FERA to address restrictive court interpretations of the act and to clarify Congress' intent in enacting the 1986 amendments.[80] But FERA also arrived on the heels of the financial downturn and was targeted in part at the financial fraud that had taken place, although the amendments applied to every kind of fraud against government money or property.[81] FERA revised the FCA's liability, retaliation, and civil investigative demand provisions and made other changes to make it even easier for the government and relators to conduct investigations and win recoveries under the FCA.[82] One of the main ways it did so was by eliminating the defenses that the courts had developed since the 1986 amendments.[83]

The amendments redefined key terms such as "claim," "materiality," and "obligation" to expand FCA liability.[84] For example, the 2009 amendments clarified that the government need not show that a false claim was presented directly to a government official or employee and need not show that a false statement was made for the purpose of getting a false claim paid.[85] This removed language that the unanimous Supreme Court had relied on in *Allison Engine* to limit FCA liability to false statements or claims made by defendants for the purpose of getting the government to pay the claim.[86]

FERA also amended the FCA to remove the "to get" and the "by the government" language.[87] Instead, the definition of "claim" now includes a nexus to the government requirement, covering requests for funds to a contractor, grantee, or other recipient if the money requested "is to be spent or used on the government's behalf" or "to advance a government program or interest."[88] False statements under the FCA now need not have been made with the purpose of getting a false claim paid by the government.[89]

The definition of "claim" specifically excludes requests for money that the government paid "as compensation for federal employment or as an income subsidy," such as government workers' salaries and Social Security payments.[90] The key liability provisions after FERA are (1) false claims, (2) false statements supporting false claims, (3) conspiracy, and (4) reverse false claims.[91] Another amendment to § 3729(a)(7) expanded the scope of reverse false claims liability to include retention of overpayments.[92]

The FERA amendments also redefined "materiality" as "having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property."[93]

FERA amended the Civil Investigative Demand (CID) provisions of the False Claims Act, as well. Before 2009, only the attorney general was authorized to approve a CID under the FCA, and information received in response to a CID could not be shared with relators or their counsel.[94] FERA allowed the attorney general to delegate the authority to issue a CID, and allowed the attorney general or his or her designee to share the information obtained with a *qui tam* relator if the attorney general determines that it is "necessary as part of any false claims act investigation."[95]

The 2009 FERA amendments only apply prospectively to conduct that has taken place after May 20, 2009.[96]

The Affordable Care Act of 2010

The Patient Protection and Affordable Care Act of 2010 (ACA) also amended the FCA.[97] These amendments limited the public disclosure bar and expanded the original source exception to the bar.[98] One of these amendments reversed a Supreme Court decision (before it was issued) on what "public disclosure" means.[99] The amendments also changed the public disclosure bar from being a subject-matter jurisdictional bar to merely a defense and gave the

THE BASICS: What Every Attorney Should Know About the False Claims Act

WHO: Who has standing to bring an FCA case?
Any person can bring a claim under the *qui tam* provisions of the FCA.

WHAT: What is a "false claim"?
A false claim is a fraud on the government. It can take a variety of different forms, but the most common case is when a person knowingly makes a claim to the government for payment that includes information that is false and material to the funding decision.

WHEN: When must a case be brought? When does the statute of limitations run out?
The statute of limitations in FCA cases is six years from the date of the false claim, or three years from when the government learns or should have learned of the false claim, but no later than 10 years after the date of the false claim.

WHERE: Where can an FCA case be brought?
An FCA case may be brought in any federal district where one of the defendants resides or transacts business.

WHY: Why are FCA cases brought?
FCA cases may be brought in a variety of different contexts, including health care (Medicare/Medicaid) fraud, pharmaceutical fraud (off-label marketing), defense contracting fraud, mortgage and financial fraud, and government contracting and procurement fraud.

HOW: How does a whistleblower bring a case?
A *qui tam* relator files a disclosure statement with the Department of Justice and a sealed complaint in federal court.

government the option of vetoing any public disclosure defense raised by an FCA defendant.[100] The amendments narrowed the field of public disclosures from any governmental hearings and investigations to only *federal* hearings and investigations, reversing (prospectively) the Supreme Court's ruling in *Graham County Soil & Water Conservation Dist. v. United States ex. rel. Wilson*[101] that state, local, and federal hearings and investigations triggered the public disclosure bar.[102] This revision eliminated defenses based on disclosures from state and local government sources, unless the information was also disclosed in the news media or otherwise publicly disclosed.[103]

The amendments also expanded the original source exception by removing the requirement that the original source have "direct and independent" knowledge of the allegations.[104] Instead, the original source must merely have "independent" knowledge that "materially adds" to the publicly disclosed allegations.[105]

The ACA also amended the Anti-Kickback Statute to provide that Medicare or Medicaid claims that include items or services that result in kickback violations are false claims under the FCA[106] and specified that retention of an overpayment under Medicare or Medicaid gives rise to FCA liability.[107] The ACA provides that "payments made by, through, or in connection with [a Health Care] Exchange" are subject to the FCA.[108] The ACA's amendments to the FCA also only apply prospectively to actions occurring after 2010.[109]

Other Recent Developments

In 2010, as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Congress amended the FCA's retaliation provision in § 3730(h).[110] Under this amendment, Congress protected both lawful acts in furtherance of a *qui tam* suit as well as efforts to stop a violation of the FCA.[111] The acts of employees, contractors, and agents, as well as acts of anyone "associated" with them, are covered.[112] The amendment also added a statute of limitations of three years for retaliation actions.[113]

On June 16, 2016, the Supreme Court handed down a decision addressing the FCA in *Universal Health Services v. United States ex rel. Escobar*. The unanimous Court settled a circuit split, upholding the "implied false certification" theory of FCA liability that "when a defendant submits a claim, it impliedly certifies compliance with all conditions of payment."[114] The Court held that FCA "liability can attach when the defendant submits a claim for payment that makes specific representations about the goods or services provided but knowingly fails to disclose the defendant's noncompliance with a statutory, regulatory, or contractual requirement. In these circumstances, liability may attach if the omission renders those representations misleading."[115]

The Court also addressed the FCA's materiality requirement: "having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property."[116] The Court noted that the materiality standard is "demanding."[117] Merely because the government designates "compliance with a particular statutory, regulatory, or contractual requirement as a condition of payment" does not make noncompliance with that requirement "material" under the FCA.[118] Instead, the Court said an example of materiality would be proof that "that the defendant knows that the government consistently refuses to pay claims in the mine run of cases based on noncompliance with the particular statutory, regulatory, or contractual requirement" and, as an example of nonmateriality, evidence that "the government pays a particular claim in full despite its actual knowledge that certain requirements were violated."[119]

New Federal Regulations promulgated in 2016 will increase the FCA's civil penalties to $10,781 to $21,563 per false claim for FCA violations taking place after Nov. 2, 2015.[120]

The FCA's Future

It is difficult to predict the future of the FCA with precision. Since its origin as a wartime antifraud statute, the FCA was applied in a variety of different contexts and industries. Looking forward, we can only assess some of the government's spending priorities and recent developments involving fraud to forecast the new directions of the FCA.

Financial Fraud

The DOJ has prosecuted financial fraud with renewed vigor over the past decade, and the FCA has played a central role in this aggressive campaign. From 2009 through the end of 2015, the DOJ recovered over $5 billion arising out of housing and mortgage fraud.[121] The 2014 $16.65 billion settlement between the DOJ and Bank of America, the largest civil settlement with a single entity in U.S. history, may prove to be an example of the type of FCA financial fraud settlements we will see in the future.

The involvement of the federal government in all aspects of finance—from the Fair Housing Administration, to the backing of consumer bank accounts, to the precedent for supporting for foundering financial institutions in the financial crisis—provides the basis for FCA liability when fraud inevitably occurs. When these federal interventions become embroiled in fraud, it is taxpayer funds that are lost.

The use of the FCA to address financial fraud will likely continue in the future. The FCA offers individual plaintiffs advantages over traditional causes of action for financial crimes, such as the assistance and cooperation of the DOJ, avenues to significant recoveries, and enhanced incentives for individual plaintiffs.

Research Grant Fraud

For those interested in science, recent years have brought a number of disturbing scandals involving medical research. From the 2015 conviction of an Iowa State researcher for fabricating AIDS research[122] to the major fabrication scandal of cancer researcher Anil Potti, fraud within science appears to be a growing problem.

Fraud in research is not limited to the substantive science. Research institutions can also defraud federal funding agencies through the intricacies of the federal grants system. In a recent example, Columbia University settled an FCA case for $9.5 million for submitting false claims in connection with facilities and administration cost recoveries.[123]

The significant federal investment in scientific research, coupled with the need to address the crisis in research integrity, will likely lead to increased DOJ involvement in FCA actions involving research funding. As the development of previously novel FCA theories demonstrates, the FCA could be an effective tool for the government to deal with this problem.

Local and State Government Aid and Grants and 'Arm of the State' Issues

Federal assistance programs to state and local governments increased dramatically in the aftermath of the financial crisis of

2008/2009 and the passage of the American Recovery and Reinvestment Act of 2009.[124] Trends appear to show that this spending will only continue to increase over time. The inevitable fraud and waste accompanying government spending makes it likely, therefore, that state and local government grants will be a new growth area for FCA litigation in the future.

Qui tam relators may not bring actions against an "arm of [a] state" pursuant to the 11th Amendment, as outlined in the Supreme Court decision in *Vermont Agency of Natural Resources v. United States ex rel. Stevens*.[125] Drawing the line between an "arm of the state" and a viable target for a *qui tam* action is becoming more difficult, however. A recent Fourth Circuit decision involving the Pennsylvania Higher Education Assistance Agency raised the bar for an entity to claim "arm of the state" status and increases the likelihood that *qui tam* relators will continue to push the bounds into uncharted territory.[126]

Conclusion

The history of the FCA illustrates both its unique development as well as its seemingly privileged position in American law. No matter the obstacles thrown in its path, the FCA's important function and political allure seems to guarantee that Congress will continue to protect it from judicial curtailment. Its history over the last 30 years demonstrates almost irresistible inertia, to the frustration of its critics (and target industries).

The history of the FCA shows that its future development is difficult to predict. Certain industries, such as health care, will remain important targets for the DOJ's antifraud efforts. As government programs change, however, and novel applications for the FCA develop, new industries will become the battlegrounds of future FCA litigation.

Attorneys of all practice areas should take the time to understand the FCA and recognize its potential impact on their clients. No matter one's area of practice, a solid understanding of the FCA enables an attorney to deliver tremendous value. Such knowledge could help an attorney spot a problematic business practice at a long-term client or allow an attorney to identify an opportunity for a client to become a relator. Whatever the role it plays in one's practice, understanding the FCA's history, appreciating its present importance, and anticipating its future impact is an obligation of the federal practitioner. ⊙

John R. Thomas Jr. is the chair of the FBA Qui Tam Section and a partner at Gentry Locke in Roanoke, Va. Andrew M. Bowman and Kirk M. Sosebee are associates with Gentry Locke's False Claims Act practice.

Endnotes

[1]Claire M. Sylvia, The False Claims Act: Fraud Against the Government § 1.1, 3 (2d ed. 2010).
[2]31 U.S.C. § 3730(b)(1).
[3]31 U.S.C. § 3729(a)(1)(B).
[4]31 U.S.C. § 3729(a)(1)(C).
[5]31 U.S.C. § 3729(a)(1)(G).
[6]31 U.S.C. § 3729(a)(1).
[7]John T. Boese, Civil False Claims and Qui Tam Actions 1-5 (4th ed. 2016).
[8]Jeff Overley, *FCA Penalties Set to Double, Raising Fears of Excess Finds,* Law360 (May 3, 2016, 8:35 PM EDT), http://www.law360.com/articles/791644/fca-penalties-set-to-double-raising-fears-of-excess-fines; Bonnie I. Scott and Olivia Seraphim, *FCA Penalty Spike Confirmed by DOJ,* Lexology (July 26, 2016), http://www.lexology.com/library/detail.aspx?g=b93751e7-da4c-4041-a926-903aecd986a3; Doug Chartier, *FCA Penalties Doubled,* Law Week Colorado (Aug. 1, 2016), http://www.lawweekonline.com/2016/08/fca-penalties-doubled.
[9]Sylvia, § 2.6, 42.
[10]Boese, 1-5.
[11] Boese, § 1.01[A], 1-8.
[12]Act of Mar. 2, 1863, ch. 67, 12 Stat. 696-698.
[13]Boese, § 1.01[A], 1-8; Sylvia, § 2.6, 44.
[14]Boese, 1-5.
[15]Act of Mar. 2, 1863, ch. 67, § 4, 12 Stat. 696, 698.
[16]*"Qui tam"* is short for the Latin phrase *"qui tam pro domino rege quam pro se ipso in hac parte sequitur,"* which means "he who pursues this action in our Lord the King's behalf as well as his own."
[17]Boese, § 1.01[A], 1-9.
[18]Act of Mar. 2, 1863, ch. 67, § 6, 12 Stat. 696, 698.
[19]Boese, § 1.01[A], 1-8.
[20]Boese, § 1.01[B], 1-13.
[21]Francis E. Purcell Jr., *Qui Tam Suits Under the False Claims Act Amendments of 1986: The Need for Clear Legislative Expression,* 42 Cath. U. L. Rev. 935 (1993).
[22]Boese, § 1.01[B], 1-13.
[23]Sylvia, § 2.7, 48.
[24]Boese, § 1.01[B], 1-13, 14.
[25]317 U.S. 537, *reh'g denied,* 318 U.S. 799 (1943).
[26]317 U.S. 537, 545.
[27]317 U.S. at 545-46.
[28]Boese, § 1.02, 1-15; Sylvia, § 2.8, 51.
[29]Act of Dec. 23, 1943, ch. 377, 57 Stat. 608.
[30]Boese, § 1.02, 1-15.
[31]Sylvia, § 2.9, 53-54.
[32]Boese, § 1.03, 1-19.
[33]Sylvia, § 2.8, 52.
[34]Sylvia, § 2.9, 54.
[35]*Id.*
[36]S. Rep. No. 99-345, at 2-3 (1986).
[37]*Id.*
[38]S. Rep. No. 345, 99th Cong., 2d Sess. (1986).
[39]Sylvia, § 2.9, 56.
[40]*Id.*
[41]31 U.S.C. §§ 3730(b)(2) to (3) (1994).
[42]31 U.S.C. § 3730(c)(3) (1994).
[43]Boese, § 1.03, 1-19; Sylvia, § 2.9, 54.
[44]31 U.S.C. § 3730(c)(2)(B) (1994).
[45]31 U.S.C. § 3730(c)(2)(C) (1994).
[46]Sylvia, § 2.9, 59.
[47]31 U.S.C. § 3730(d)(1) (1994).
[48]31 U.S.C. § 3730(d)(2) (1994).

[49]Sylvia, § 2.9, 59-60.
[50]31 U.S.C. § 3730(h) (1994).
[51]*Id.*
[52]Boese, § 1.04[B], 1-21.
[53]31 U.S.C. § 3729(b) (2000).
[54]Boese, § 1.04[C], 1-22.
[55]31 U.S.C. § 3731(b).
[56]Boese, § 1.04[E], 1-23.
[57]*Id.*
[58]Boese, § 1.04[F], 1-24.
[59]*Id.*
[60]Sylvia, § 2.9, 60.
[61]Boese, § 1.04[H], 1-26.
[62]Sylvia, § 2.11, 62-63.
[63]Boese, § 1.04[H], 1-26.
[64]*Id.*
[65]Sylvia, § 2.14, 65.
[66]Press Release, Department of Justice, Lucas Industries Pays U.S. $88 Million to Settle Lawsuit (Oct. 2, 1995), https://www.justice.gov/archive/opa/pr/Pre_96/October95/523.txt.html.
[67]Press Release, Department of Justice, United States Settles with Rockwell International for $27 Million in B1-B Bomber Overcharging Case (July 31, 1995), https://www.justice.gov/archive/opa/pr/Pre_96/July95/423.txt.html.
[68]12 False Claims Act & Qui Tam Q. Rev. 41 (Jan. 1998) (reporting Department of Justice statistics).
[69]Sylvia, § 2.15, 67.
[70]Press Release, Department of Justice, Health Center in San Antonio Will Pay U.S. $17.2 Million to Settle False Claims Case (June 12, 1998), https://www.justice.gov/archive/opa/pr/1998/June/278.html.
[71]Press Release, Department of Justice, Emergency Physician Billing Company to Pay $15 Million to Settle Health Care Billing Fraud Claims (July 12, 1999), https://www.justice.gov/archive/opa/pr/1999/July/299civ.htm.
[72]Press Release, Department of Justice, Walgreen Co. Pays $7.6 Million to Settle False Claims Case: Company is First to Settle Claims of Billing Federal Health Insurance Programs for Full Amount of Prescriptions That Were Partially Filled (Sept. 15, 1999), https://www.justice.gov/archive/opa/pr/1999/September/410civ.htm.
[73]District of Massachusetts, Civil Action No. 96-11651PBS.
[74]2003 U.S. Dist. LEXIS 15754 (D. Mass. Aug. 22, 2003).
[75]Pfizer purchased Parke-Davis parent corporation Warner-Lambert in 2000. *See* Melody Petersen, Our Daily Meds: How the Pharmaceutical Companies Transformed Themselves into Slick Marketing Machines and Hooked the Nation on Prescription Drugs (2008).
[76]Boese, § 1.09, 1-74.
[77]Boese, § 1.09[A][1], 1-76.
[78]*Id.*
[79]Boese, § 1.09, 1-73.
[80]Sylvia, § 2.12, 64.
[81]Boese, § 1.09, 1-73.
[82]Boese, § 1.04[H], 1-28.
[83]Boese, § 1.09, 1-73.
[84]Boese, § 1.09, 1-74.
[85]Sylvia, § 2.12, 64.
[86]Boese, § 1.09, 1-74.
[87]Boese, § 1.09[A][1], 1-76.
[88]Boese, § 1.09[A][1], 1-76, 77.
[89]Boese, § 1.09[A][1], 1-77.
[90]Boese, § 1.09[A][1], 1-76.
[91]Boese, § 1.09[A], 1-74.
[92]Boese, § 1.09, 1-74.
[93]Boese, § 1.09[A][2], 1-77.
[94]Boese, § 1.09[B][1], 1-82.
[95]Boese, § 1.04[H][2], 1-33; § 1.09[B][1], 1-82.
[96]Boese, § 1.09, 1-74; § 1.09[A][6], 1-80.5.
[97]Boese, § 1.10[A], 1-85.
[98]Boese, § 1.10[A], 1-85, 86.
[99]Boese, § 1.04[H], 1-28, 29.
[100]Boese, § 1.10[A], 1-86.
[101]*Graham County Soil & Water Conservation Dist. v. United States ex. rel. Wilson,* 559 U.S. 280 (2010).
[102]Boese, § 1.10[A], 1-86.
[103]*Id.*
[104]*Id.*
[105]*Id.*
[106]Boese, § 1.10[B], 1-86.
[107]Boese, § 1.10[C], 1-87.
[108]Boese, § 1.10[D], 1-87.
[109]*Graham County,* 559 U.S. at 283 n.1.
[110]Boese, § 1.11, 1-88.
[111]Boese, § 1.11, 1-88, 89.
[112]Boese, § 1.11, 1-89.
[113]*Id.*
[114]136 S. Ct. 1989, slip op. at 1 (2016).
[115]*Id.* at *1–2.
[116]*Id.* at *14.
[117]*Id.* at *15.
[118]*Id.* at *15.
[119]*Id.* at *16.
[120]*Supra* n.8.
[121]Press Release, Department of Justice, Justice Department Recovers Over $3.5 Billion From False Claims Act Cases in Fiscal Year 2015 (Dec. 3, 2015), https://www.justice.gov/opa/pr/justice-department-recovers-over-35-billion-false-claims-act-cases-fiscal-year-2015.
[122]Rachel Bernstein, *HIV researcher found guilty of research misconduct sentenced to prison,* Science (July 6, 2015).
[123]Press Release, Department of Justice, Manhattan U.S. Attorney Announces $9.5 Million Settlement with Columbia University for Improperly Seeking Excessive Cost Recoveries in Connection with Federal Research Grants (July 14, 2016), https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-announces-95-million-settlement-columbia-university-improperly.
[124]Federal Grants to State and Local Government: A Historical Perspective on Contemporary Issues, Congressional Research Service (Mar. 5, 2015).
[125]*Vermont Agency of Natural Res. v. United States ex rel. Stevens,* 529 U.S. 765 (2000).
[126]*United States ex rel. Oberg v. Pennsylvania Higher Educ. Assistance Agency,* 804 F.3d 646 (4th Cir. 2015).