

Qui Tam False Claims Act Litigation

Presented by :

Angela Campbell

Dickey & Campbell Law Firm PLC

Des Moines, IA 50309

515-288-5008

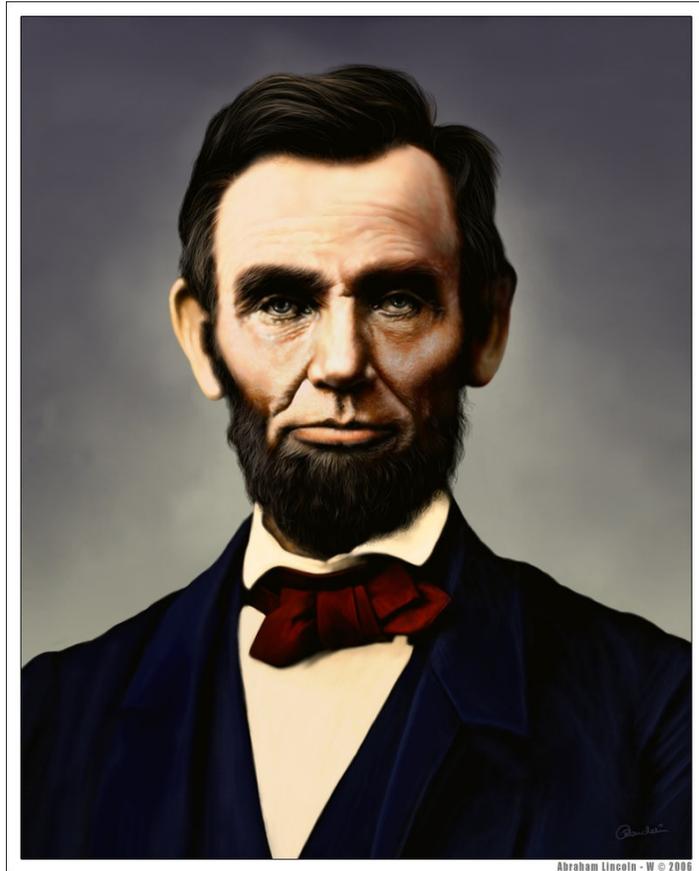
angela@dickeycampbell.com

How It Works

- Suit by a private party brought on behalf of the United States Government
- Persons bringing such suits are called “Relators”
- The Attorney General “shall” investigate the claims.
- Determination of intervention.
- Recovery.

False Claims Act – History

The “Lincoln Law”



31 USC §§ 3729-3733

Qui Tams: “he who brings an action for the king as well as for himself”

“setting a rogue to catch a rogue”

False Claims Act -- History

The FCA was enacted in 1863 in an effort to stop the rampant fraud being perpetrated on the United States government by private Civil War defense contractors. (“For sugar [the government] often got sand; for coffee, rye; for leather, something no better than brown paper; for sound horses and mules, spavined beasts and dying donkeys; and for serviceable muskets and pistols, the experimental failures of sanguine inventors, or the refuse of shops and foreign armories. *United States ex rel. Newsham v. Lockheed Missiles and Space Co., Inc.*, 722 F. Supp. 607, 609 (N.D. Cal. 1989) (quoting 1 F. Shannon, *The Organization and Administration of the Union Army, 1861-1865*, at 5456 (1965)).

False Claims Act Requirements

- False Claim: Presenting, or causing to be presented, makes, uses, or causes to be made or used a claim that is false.
- Federal Money.

Federal False Claims Act (FCA)

31 U.S.C. section 3729, et. seq.

Who is subject to suit:

Individuals, Private Corporations, Public
Corporations, Municipalities

***generally not states or state entities

Why?

Relator's share: 15-30% of recovery

Treble Damages + Penalties (\$5,500 to \$11,000)

Reasonable Attorney Fees

*Reduced Damages for Voluntary Compliance

Federal FCA Statute of Limitations

- Six years from when the claim was submitted, or
- Three years from the date the fraud was discovered by a responsible government official
- But in no event, more than ten years from when the claim was submitted. 31 U.S.C. § 3731(b).

Iowa False Claims Act

Iowa Code sections 685.1-685.7

- 3 times actual damages to the state, plus fine.
- 15-25% to realtor if State intervenes.
- 25-30% to realtor if State does not intervene.

What Private Attorneys Do

- Initial investigation – looking for federal and state money that was overpaid.
- Files Relators lawsuit under seal.
- Serves it on the United States Attorney's Office and the U.S. Attorney General.
- Also serves a summary of “all information” relating to the fraud with the complaint to the U.S. Attorney's Office.
- Assist the US Attorney as requested during “seal/intervention” period, where the United States investigates the allegations.
- Assists if US Attorney intervenes, or prosecues case if declines intervention.

What to look for:

- “Upcoding”
- Billing for “worthless” services
- Submitting fraudulent time sheets or cost reports
- Inaccurate certification of eligibility for benefits
- Billing for work not done
- Double billing
- The use of false financial, accounting, or progress reports

What Happens After Filing?

- If the United States intervenes, it takes over the case and litigates it
- Relator may continue to participate in the case.
- The Relator may be limited in their participation, and the United States may settle the case over the Relator's objection, if the settlement is fair, adequate, and reasonable.
- If the United States declines intervention, the Relator may continue to pursue the case, but the United States can still intervene later, and is still able to be involved.

The Relator's Share

Can be increased if:

The Relator properly reported the fraud, the Relator tried to stop the fraud, the *qui tam* action brought a halt to the fraud, the Relator warned the government of a significant safety issue, the complaint exposed a nationwide practice, the Relator knew extensive details of the fraud, the government had no prior knowledge of the fraud, the Relator provided substantial assistance during the case, the Relator was an excellent witness during deposition or at trial, the Relator's attorney provided substantial assistance to the government, the Relator and their attorney cooperated with the government, the case went to trial, the FCA recovery was relatively small, the case had a substantial adverse impact on the Relator.

The Relator's Share

Can be decreased if:

- The Relator participated in the fraud, the Relator delayed in reporting the fraud or filing the complaint, the Relator (or the relator's attorney) violated FCA procedures, the Relator had little knowledge of the fraud, the Relator's knowledge was based primarily on public information, the Relator learned of the fraud in the course of their government employment, the government already knew of the fraud, the case settled early, the recovery was relatively large, the case required a substantial effort by the government to develop the facts, etc.
- The Relator's share can also be decreased if the Relator, or the Relator's attorney, did not provide any help after filing the complaint, hampered the government's efforts in developing the case, or unreasonably opposed the government's position in litigation.

What's a Whistleblower?

- Whistleblower is another name for Relator
- The Relator may bring a personal claim for retaliation if the Relator was discriminated against “because of lawful acts done by” the Relator...in furtherance of “efforts to stop one or more [FCA] violations.” 31 U.S.C. section 3730(h).
- State law provides that the Relator “shall be entitled to all relief necessary” to make the Relator “whole” if they were “discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in terms and conditions of employment.” Iowa Code section 685.3(6).

What to get.

- Documentation.
- Who, what, when, where.
- Explanation in simple terms on how fraud committed.
- Telephone memos, emails, correspondence, claims, reviews.
- Medical records

**Home-care agency to pay \$5.6 million to settle fraudulent
billing allegations**
Des Moines Register February 10, 2015

“A home-healthcare company has agreed to pay \$5.6 million to settle allegations that it submitted false bills to Iowa's Medicaid program and to the federal Medicare program.

The settlement by ResCare Iowa was announced Tuesday by the U.S. attorney's office in Cedar Rapids....

Federal prosecutors said the company violated a Medicaid and Medicare rule that an independent physician must verify in a "face-to-face" assessment that a person needs in-home care....”

FALSE CLAIMS ACT SETTLEMENT EXAMPLES

- **5/31/2013** American Commercial Colleges Inc. (ACC) N.D. Tex. \$2,500,000.00 Educational False certification of eligibility under student aid assistance program
- **5/2/2014** New Deal's Food Market D.S.C. \$238,000.00 Other Food stamp fraud
- **7/1/2014** HSBC Holdings PLC S.D.N.Y. \$10,000,000.00 Other Failed to oversee charges re foreclosures (FHA)
- **8/21/2014** Bank of America Corp. \$1,000,000,000.00 Other Mortgage fraud
- **8/29/2014** Omni Surgical L.P. N.D. Ind. \$2,600,000.00 Health Care Kickbacks
- **9/5/2014** Life Care Services LLC D. Mass. \$3,750,000.00 Health Care Unnecessary rehabilitation services

See: <https://www.crowell.com/files/False-Claims-Act-FCA-Settlements-Crowell-Moring.pdf>