



FALSE CLAIMS ACT

The False Claims Act (“FCA”) is a federal statute designed to combat fraud against federal programs by allowing whistleblowers (called “relators”) to bring suit on behalf of the Government against entities that fraudulently obtain federal funds or property.

The FCA was originally passed in 1863 by President Abraham Lincoln to deal with unscrupulous contractors who sold defective weapons and equipment to the military. Since it was amended in 1986, the FCA has been the government’s most effective weapon to combat fraud against nearly every Government program with more than \$38 billion recovered by the end of 2013 and more than \$17 billion recovered in the last five years alone.

Because the U.S. relies on whistleblowers to expose and combat fraud against federal programs, the FCA empowers private citizens to file suit on behalf of the U.S. and collect a portion of whatever funds are recovered from the defendant. Over 70% of the \$38 billion recovered since 1986 has come from whistleblower suits.

Fraud Covered by the FCA

The FCA was broadly designed to prevent fraudulent acts used to obtain federal money or property. It specifically prohibits:

- Knowingly presenting or causing to be presented a false claim for payment or approval from the Government;
- Knowingly creating a false record material to a false claim;
- Conspiring to commit a violation of the FCA;
- Knowingly creating a false record material to an obligation to pay money owed to the Government;
- Knowingly avoiding or decreasing an obligation to pay money or property owed to the Government.

These provisions cover numerous types of fraud by federal contractors and federal fund recipients in all types of industries including: healthcare, defense, pharmaceutical, financial, education, and research.

For example, an FCA suit could be brought against:

- a hospital that bills Medicare for services not provided or bills for more expensive services than those provided;
- a drug company that markets drugs for off-label purposes;
- a physician practice that receives kickbacks for referrals paid for by Medicare or Medicaid;
- a defense contractor that bills the Department of Defense for substandard equipment;
- a financial institution that knowingly underwrites non-compliant mortgages receiving federal insurance coverage;
- an oil company that fails to pay royalties for oil or gas obtained from federal lands;

To be liable under the FCA, a defendant must act “knowingly”. This means that the defendant must at the very least act with reckless disregard to the truth of the claims submitted to the Government. Mere negligence or honest mistakes are not covered under the FCA.

In addition, the claims submitted to the Government must be “false”. A claim is “false” for purposes of the FCA, if the claim misrepresents the goods or services provided or if the contractor submits the claim while knowingly violating a precondition of payment.

Defendants that are found liable under the FCA are responsible for paying between \$5,500 and \$11,000 for each false claim they submitted to the U.S. along with three times the amount of damages sustained by the U.S. as a result of their false claims.

How to File a Case

To initiate an FCA action, a whistleblower must file a Complaint under seal in a U.S. District Court. Filing under seal means that the lawsuit is essentially secret - a copy of the Complaint is not served on the defendant and the existence of the lawsuit is not made public. In addition, the whistleblower must provide a copy of the Complaint and a written disclosure of the evidence supporting the alleged fraud to the Attorney General and the U.S. Attorney for the federal district where the suit was filed.

After the case is filed, the Department of Justice has 60 days to investigate the allegations contained in the whistleblower’s Complaint and decide to intervene (take over responsibility of litigating the case). This 60 day period is frequently extended, as the Government may need a longer period of time to investigate the alleged fraud.

Once this investigatory period has ended, and the U.S. has made its intervention decision, the lawsuit will come out from under seal. This means that the Defendant will be served a copy of the Complaint and the existence of the lawsuit will become public.

The FCA requires whistleblowers to be represented by an attorney. Thus, before you file a case, you should speak with an attorney who is experienced

in handling whistleblower matters. If you would like to speak confidentially with one of our attorneys you may contact us here ([link to intake form](#)) or call us at (610) 667-7706.

What Can You Recover

Whistleblowers who file suit under the False Claims Act are eligible to receive between 15 and 25% of funds recovered from a defendant's settlement or judgment if the Government chooses to intervene in the suit and between 25 and 30% if the Government chooses not to intervene. Whistleblowers may also obtain attorney's fees and costs for bringing the suit.

Protection Against Retaliation

The FCA also prohibits contractors from retaliating against whistleblowers for filing a suit under the FCA or taking steps to stop violations of the FCA. Whistleblowers that are fired, demoted, harassed, threatened, suspended, or in other ways discriminated against for bringing an FCA suit or for taking actions to stop FCA violations are entitled to relief under the statute. This relief includes reinstatement with the same seniority status, two times the amount of back pay with interest, compensation for special damages suffered, as well as reasonable costs and attorney's fees. These protections apply to both employees and independent contractors.

Contact Us

If you would like to speak to one of our attorneys about a potential whistleblower matter, please email us at wbinfo@ktmc.com or call us at (610) 667-7706. All case evaluations are confidential and free.