The False Claims Act: It's More Than Just Healthcare

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I. Introduction

In the fiscal year ending September 30, 2014, the United States Department of Justice ("DOJ") collected $5.69 billion in settlements and judgments under the federal False Claims Act ("FCA"), the majority of which was the result of actions filed under the FCA's whistleblower (or *qui tam*) provisions.[1] Despite popular belief that FCA investigations and litigation are confined to the healthcare industry, less than half of the DOJ's total FCA recoveries in 2014 were obtained in healthcare matters."[2]

The largest portion of FCA recoveries in 2014—$3.1 billion—were in housing and mortgage fraud matters.[3] Another nearly $300 million came from settlements and judgments against entities and individuals in various other industries, including technology and software companies, and defense and highway contractors. Even professional cyclist Lance Armstrong is a defendant in a pending FCA *qui tam* brought by his former teammate Floyd Landis, based on allegations that Armstrong used performance-enhancing drugs while accepting sponsorship money from the U.S. Postal Service.[4]

Because the FCA can be used as a tool against any person or entity that receives money from the federal government, it is important that all defense lawyers—not just healthcare lawyers—have a general understanding of the FCA, including what type of conduct could lead to FCA liability and what to do when a client becomes the target of an FCA investigation.

II. The FCA Today: A Brief Overview

The current version of the FCA provides for the imposition of per-claim penalties of between $5,500 and $11,000, as well as treble damages, against any person who:

- Knowingly presents, or causes to be presented, a

false or fraudulent claim for payment or approval;[5]

- Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;[6]
- Has possession, custody, or control of property or money used, or to be used, by the government and knowingly delivers, or causes to be delivered, less than all of that money or property;[7]
- Makes or delivers a document certifying the receipt of property used, or to be used, by the government without completely knowing that the information on the receipt is true;[8]
- Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the government, or a member of the Armed Forces, who lawfully may not sell or pledge property;[9]
- Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money to the government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the government;[10] or
- Conspires to do any of the foregoing.[11]

Although the FCA is often described as a "fraud" statute, the FCA expressly provides that no proof of specific intent to defraud is required to prove an FCA violation.[12] Instead, an FCA defendant must only act "knowingly," which the FCA defines as acting with actual knowledge, reckless disregard, or deliberate ignorance.[13]

An FCA action may either be brought directly by the DOJ or by a private person, known as a "relator."[14] A relator in a *qui tam* action under the FCA is typically entitled to an award equal to 15% and 25% of the government's recovery if the government proceeds with (or "intervenes in") the action, and between 25% and 30% if the government declines to intervene.[15] The FCA also provides for relief from retaliation against an FCA relator including reinstatement, two-times back pay plus interest, compensation for any special damages, costs and attorneys' fees.[16]

The FCA has a broad venue provision, permitting an FCA action to be brought in any judicial district in which the defendant, or in the case of multiple defendants, any one defendant, can be found, resides, transacts business, or in which the prohibited conduct in question occurred.[17] The FCA's statute of limitations is the later of six years from the date of the violation or three years from the

date the material facts are known or reasonably should be known to a responsible federal government official, not to exceed ten years from the date of the violation.[18]

III. History of *Qui Tam* Provisions and the FCA

A. *Qui Tam* Provisions Under English and Colonial Law

The term "*qui tam*" is short for "*qui tam pro domino rege quam pro se ispo in hac parte sequituri*," which means "who pursues this action on our Lord the King's behalf as well as his own."[19] According to the Congressional Research Service, the earliest known example of a qui tam provision was in 695 when King Wihtred of Kent issued a declaration which stated that "[i]f a freeman works during the forbidden time [i.e., the Sabbath], he shall forfeit his healsfang, and the man who informs against him shall have half the fine, and [the profits arising] from the labour."[20] By the sixteenth century, statutes containing qui tam provisions were common under English law.[21] The proliferation of *qui tam* provisions in England led to the rise of professional informers (often referred to today as "serial relators"), who developed an unsavory reputation as "varlets."[22] Sir Edward Coke, in his Institutes of Laws of England, described these professional informers as "viperous Vermin' preying upon the Chinch and the Commonwealth."[23] According to Coke, the professional informers were "a class of unruly men."[24]

In colonial America, several colonial legislatures passed laws containing *qui tam* provisions. For example, a 1686 law from the Colony of Massachusetts imposed penalties for fraud in the sale of bread and provided that the inspector who discovered the fraud would be entitled to one-third of the recovery.[25] The Colony of New York passed legislation in 1715 which imposed penalties for taking oysters out of season and provided that half of the recovery go to the informer.[26] *Qui tam* statutes were also passed in colonial Connecticut and Virginia.[27]

B. Birth of the FCA

The FCA was originally enacted in 1863 as a result of contractors selling subpar goods to the Union Army during the Civil War.[28] In the beginning, "the law was used to recover monies from unscrupulous contractors who sold the Union Army decrepit horses and mules in ill health, faulty rifles and ammunitions, and rancid rations and provisions.[29] The original FCA was often referred to as the "Lincoln Law", nicknamed after President Lincoln, who once said: "Worse than traitors in arms are the men who pretend loyalty to the flag, feast and fatten on the misfortunes of the nation while patriotic blood is crimsoning the plains of the south and their countrymen are moldering in the

dust."[30] Originally, relators were entitled to half of the government's recovery.[31]

C. The FCA's Near Death Experience

During World War II, Attorney General Francis Biddle asked Congress to repeal the *qui tam* provisions of the FCA, explaining that *qui tam* actions had "become mere parasitical actions, occasionally brought only after law-enforcement offices have investigated and prosecuted persons guilty of a violation of law and solely because of the hope of a large reward."[32] Although both Houses of Congress actually voted to repeal the FCA's *qui tam* provisions, Congress ultimately softened its stance and instead passed legislation that kept—but severely curtailed—the FCA's *qui tam* provisions.[33] Among the major amendments were the "government knowledge bar"—precluding *qui tam* suits based on information already in the government's possession—and a reduction of the relator's share from 50% to no more than 25% (or 10% if the government litigated the case).[34]

D. The FCA's Rebirth

In 1986, President Reagan signed into law several major amendments to the FCA, which were crafted by Iowa Senator Chuck Grassley.[35] Senator Grassley drafted the amendments in response to instances of fraud, waste, and abuse, including reports of $900 toilet seats and $500 hammers being sold to the federal government, including the Department of Defense.[36] According to Senator Grassley, his 1986 amendments "restored the teeth and breathed new life into a law that was designed to do nothing but to protect all American taxpayers."[37] Among the 1986 amendments were provisions protecting FCA relators from retaliation, increasing FCA damages and penalties, adding a "reverse false claims" provision (discussed more below), increasing the relator's award, eliminating the government knowledge bar, and expanding the statute of limitations.[38] Since Senator Grassley's 1986 amendments, the federal government has recovered over $30 billion under the FCA.[39]

E. 2009 Amendments

The next significant date in the life of the FCA was 2009, when the Fraud Enforcement and Recovery Act ("FERA") was signed into law. FERA contained several important amendments to the FCA, including clarifying that a false claim need not be submitted directly to a federal officer or employee, defining materiality to encompass false statements having a "natural tendency" to influence payment, expansion of the conspiracy provision to apply to all substantive FCA violations, and – perhaps most significantly—expansion of the "reverse false claims" provision to expand FCA liability for knowingly and improperly avoiding or decreasing

an obligation to pay or transmit money or property to the government, including the retention of an overpayment.[40] These amendments reinforced Senator Grassley's 1986 amendments and solidified the FCA as the government's fraud-fighting statute of choice.

F. The Affordable Care Act and the FCA

In 2010, President Obama signed into law the Patient Protection and Affordable Care Act. Although better known for its provisions regarding access to health insurance, the Affordable Care Act also contained a number of provisions amending, or otherwise affecting, the FCA. Among these provisions were amendments to the FCA's public disclosure bar and original source rule (discussed in more detail below).[41]

IV. The Nuts and Bolts of an FCA Investigation

A. The Seal Period in *Qui Tam* Actions

Although the DOJ can initiate an FCA investigation on its own accord (these investigations are often triggered by a referral from a federal agency or a civilian tip), most FCA investigations begin with the filing of a qui tarn complaint by a relator.[42] *Qui tam* complaints are brought in the name of the government and are filed in federal district court in camera and under seal.[43] The complaint remains under seal for at least 60 days while the government investigates, and is not served on the defendant until the court orders.[44]

Once the relator serves the government with a copy of the complaint and a written disclosure statement, the clock begins for the government to investigate and determine whether it wants to proceed with and conduct ("intervene in") the action, or decline to take over the action, in which case the relator has the right to conduct the action unless the government moves to dismiss.[45] Although the FCA gives the government only 60 days to investigate and make its intervention decision, the government almost always avails itself of its statutory right to ask the court for extensions of that deadline.[46] Although DOJ attorneys are encouraged to make an intervention decision in less than a year, the average length of an FCA investigation was around two years in 2011 (the last year this statistic is publicly available), and FCA investigations often last considerably longer.[47]

In recent years, however, federal district court judges have begun to express frustration with the amount of time FCA investigations are taking. In 2012, for example, Judge Harry Mattice of the Eastern District of Tennessee issued a scathing opinion in which he stated that the government in that case had

stretched the FCA's "under seal" requirement "to its breaking point."[48] Judge Mattice stated that the government had used the seal period as a means to conduct "unchecked" and "one-sided" discovery, a practice that he noted was neither contemplated by Congress nor authorized by the FCA.[49]

B. Document Production

In most FCA investigations, the defendant's first indication that the government is conducting such an investigation is when it receives a request for documents. Although such requests sometimes come in the form of an informal request such as a letter from the Department of Justice or the local U.S. Attorney's Office, most of the time the request is in the form of an inspector general ("IG") subpoena or Civil Investigative Demand ("CID"). The Inspector General Act of 1978 gives the Offices of Inspector General of the various federal agencies the authority to issue subpoenas for documents.[50] So, for example, where the Department of Defense ("DoD") Office of Inspector General is investigating a potential FCA violation affecting the DoD, it may issue a DoD IG subpoena for documents.

In addition to an IG subpoena, an FCA defendant—or any other person who might have custody of relevant documents—might receive a CID for documents. The FCA permits the DOJ to issue a CID to any person who "may be in possession, custody, or control of any documentary material or information relevant to" an FCA investigation.[51] Prior to 2009, only the Attorney General had the authority to issue a CID, obviously limiting the number of CIDs that were issued every year.[52] The 2009 FERA amendments, however, allowed the Attorney General to delegate this authority, and the DOJ did just that in 2010, delegating the FCA's CID authority to each United States Attorney.[53]

Similar to a subpoena, a CID must contain a sufficient description of the documents it seeks and a deadline for production of those documents, which cannot be less than twenty days after the date of service.[54] A CID can be served anywhere in the country,[55] and the DOJ can seek to enforce a CID in the district court in the district in which the recipient is located.[56] Although both IG subpoenas and CIDs contain a production deadline, as with document requests under the Federal Rules of Civil Procedure, in most FCA investigations, the recipient can negotiate an extension of the production deadline, a "rolling" production of documents, or a limitation of the documents requested.

C. Witness Interviews

In almost every FCA investigation, the government also conducts witness interviews, both formally and informally. An informal interview is typically

accomplished by a federal law enforcement agent, DOJ investigator, DOJ attorney, or a combination thereof, either calling the witness or showing up at the witness' home or place of business unannounced. Frequently, such informal interviews will be of former employees of the defendant or other individuals with potentially relevant information.

The DOJ also often requests an interview of the defendant or—in the case of an entity—a current employee of the defendant. Although the government should typically not contact a witness once the government lawyer knows that the witness is represented by counsel,[57] or knows that the witness is employed by an organization that is represented by counsel,[58] the government may request an informal interview of a current employee through the organization's counsel, or by serving a CID for testimony. Like a CID for documents, a CID for testimony can be served nationwide on anyone with potentially relevant information.[59] Although a CID for testimony is not subject to Federal Rule of Civil Procedure 30, it is very similar to a deposition taken under that rule. The testifying witness has the right to the presence of an attorney who may advise the witness and object when appropriate, and the testimony is under oath and taken before a court reporter.[60] Also similar to a deposition conducted under the Federal Rules, the witness has the right to read the transcript and make any appropriate changes.[61]

D. Other Investigative Tools and Techniques

Other tools and techniques that the government uses in FCA investigations include CIDs for answers to written interrogatories,[62] the use of undercover agents and hidden recording devices, and various types of data analysis. As technology advances and fraud schemes become more sophisticated, so do the tools the government uses to investigate allegations of fraud or other wrongdoing.

V. Recent FCA Activity Outside of the Healthcare Industry

Although the majority of FCA activity involves healthcare providers, as discussed, the FCA is potentially implicated any time a person or entity receives federal money or property. Recent examples of FCA investigations and resolutions outside of the healthcare industry include:

A. Mortgage/Banking Fraud

In 2012, the DOJ (led by U.S. Attorney for the Eastern District of New York Loretta Lynch) announced a $1 billion FCA settlement with Bank of America ("BoA") and Countrywide Financial Corporation (a BoA subsidiary) to resolve claims that BoA and

Countrywide violated the FCA by knowingly making loans insured by the Federal Housing Administration ("FHA") to unqualified homebuyers.[63] According to the DOJ press release, the FHA incurred hundreds of millions of dollars in damages as a result of BoA and Countrywide's submission of inflated appraisals to the FHA.[64]

On December 31, 2014, the U.S. Attorney's Office for the Southern District of New York announced a similar settlement with Golden First Mortgage Company and its owner/President, who paid $36 million and $300,000, respectively, to resolve allegations that they fraudulently certified compliance with FHA regulations and violated the FCA by originating and underwriting FHA loans that should not have been approved.[65] Earlier this year, MetLife Home Loans agreed to pay nearly $125 million to resolve an FCA case with similar allegations.[66]

B. Defense and Other Government Contractor Fraud

As discussed, the FCA was signed into law during the Civil War to fight defense contractor fraud against the Union Army. The government continues to use the FCA to investigate allegations of fraud by defense contractors. For example, in December 2014, Lockheed Martin agreed to pay $27.5 million to resolve allegations that it violated the FCA by knowingly overbilling the government for work performed by Lockheed employees who lacked job qualifications.[67] According to the DOJ's press release, Lockheed violated the terms of their contracts with the DoD by using under-qualified employees who were billed to the government at the rates of more qualified employees.[68]

In October 2014, a ship repair company paid $1 million to resolve allegations that it violated the FCA by establishing a "front company" in order to be awarded Coast Guard contracts that were designated for Service Disabled Veteran Owned Small Businesses.[69] That same month, an antenna and radio system company paid $10 million to resolve an FCA case alleging that it misrepresented certain facts during contract negotiations with the Army.[70] In March 2014, a California company paid $500,000 to resolve allegations that it violated the FCA by falsely certifying that products it sold to the U.S. Army were manufactured in the United States as required by the Buy American Act.[71]

Government contractors outside of the defense industry have also found themselves on the wrong side of FCA investigations. Late last year, for example, Iron Mountain paid over $44 million to settle allegations that it overcharged federal agencies for record storage services under General Services Administration ("GSA") contracts.[72] In May 2014,

two highway contracting companies—one based in Georgia—paid $400,000 to settle allegations of false certification related to the Department of Transportation's Disadvantaged Business Enterprise ("DBE") program.[73]

C. Evasion of Customs Duties

The government has used the FCA on a number of recent occasions to investigate companies for improperly evading customs duties. In February 2015, for example, the DOJ collected over $3 million from three companies accused of evading customs duties on imports of aluminum extrusions from China by misrepresenting the country of origin of the imported products.[74] In 2014, an importer of computer cable assemblies paid over $1 million to settle an FCA investigation related to allegations that it submitted deflated invoices in order to underpay custom duties.[75]

D. Bid-Rigging and Kickbacks

Engaging in anticompetitive behavior such as bid-rigging and paying kickbacks in relation to government contracts can also lead to FCA liability. In late 2014, for example, a New York-based environmental remediation firm paid nearly $3 million to resolve an FCA suit alleging that it accepted kickbacks and rigged bids, and passed inflated charges on to the EPA in connection with work performed at a federal Superfund site.[76] In 2012, the DOJ announced a $47 million FCA settlement with Harbert Corporation and other companies resulting from allegations that they violated the FCA by rigging bids on government contracts.[77]

E. Other Non-Healthcare-Related FCA Settlements

There have been dozens of other non-healthcare-related FCA settlements in the last several years. In April 2015, a Florida company and its owner agreed to pay $250,000 plus a percentage of future revenues to resolve allegations that they falsely certified that an office was located in a Small Business Administration-designated Historically Underutilized Business Zone by setting up an unmanned "virtual office" in that location.[78] The previous month, Fireman's Fund Insurance Company paid $44 million to settle FCA allegations that it knowingly issued federally reinsured crop insurance policies that were ineligible for federal reinsurance.[79] The same month, a panel of the Eleventh Circuit partially revived an FCA *qui tam* against Kaplan University for allegedly violating the Higher Education Act's ban on universities paying bonuses to recruiters based on the number of students enrolled.[80]

VI. FCA Litigation and Common Defenses

A. Government Intervention

Although the vast majority of FCA investigations result in a resolution without the necessity of litigation—largely because of the potentially devastating consequences of losing, including treble damages, per-claim penalties, attorneys' fees, and the potential for program exclusion/debarment—if the government, the relator, and the defendant cannot reach a settlement prior to the intervention deadline,[81] the government must either decide to proceed with the case in district court, or decline to do so and allow the relator to move forward with the case on its behalf.[82] If the government does intervene in the action, it may file its own complaint or amend the relator's *qui tam* complaint.[83]

B. Common Defenses

Rule 9(b): In the vast majority of FCA cases that result in litigation, the defendant files a motion to dismiss for failure to allege fraud with particularity under Federal Rule of Civil Procedure 9(b). Federal courts in all circuits require *qui tam* complaints to satisfy Rule 9(b), although circuit courts disagree on how to apply Rule 9(b) to FCA complaints.[84] The Eleventh Circuit has held that an FCA complaint must plead "facts as to time, place and substance of the defendant's alleged fraud," specifically "the details of the defendant's allegedly fraudulent acts, when they occurred, and who engaged in them."[85]

C. Public Disclosure

The public disclosure requires a court to dismiss an FCA *qui tam* action if "substantially the same allegations or transactions" alleged in the action were publicly disclosed in a federal criminal, civil, or administrative hearing which the government or its agent is a party; in a congressional, Government Accountability Office, or other federal report, hearing, audit, or investigation; or from the news media.[86] Courts have applied the public disclosure bar broadly. For example, the Supreme Court has held that the word "report" in the public disclosure bar means "something that gives information" or a "notification."[87] The Eleventh Circuit has held that a publicly available website qualifies as "news media" for purposes of the public disclosure bar.[88]

Importantly, the public disclosure bar does not apply to actions brought directly by the DOJ, and the government can veto the use of the public disclosure bar in a *qui tam* action.[89] Finally, the public disclosure bar does not apply where the relator is the "original source" of the information, meaning that the relator either voluntarily disclosed the information to the government prior to a public disclosure, or has knowledge that is "independent of

and materially adds to" the publicly disclosed information and voluntarily provided the information to the government before filing the action.[90]

D. First to File

Another defense available to FCA defendants in a *qui tam* action is the FCA's first to file bar. That bar provides that "[w]hen 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."[91] Like the public disclosure bar, the first to file bar applies only to *qui tam* actions, not direct government actions.[92]

VII. Conclusion

The government's continued success in collecting billions of dollars in so-called "fraud" recoveries in industries other than healthcare means that non-healthcare attorneys are now learning what healthcare attorneys have known for quite some time: that the FCA remains, and will remain, one of the government's most powerful tools to go after those who accept money from the government—whether in exchange for decrepit horses, $900 toilet seats, or lucrative defense contracts—without following the myriad of government rules and regulations.

End Notes

[1] http://www.justice.gov/opa/pr/justice-department-recovers-nearly-6-billion-false-claims-act-cases-fiscal-year-2014

[2] *Id.*

[3] *Id.*

[4] http://www.justice.gov/opa/pr/united-states-joins-lawsuit-alleging-lance-armstrong-and-others-caused-submission-false.

[5] 31 U.S.C. § 3729(a)(1)(A).

[6] 31 U.S.C. §3729(a)(1)(B).

[7] *Id.* §3729(a)(1)(D).

[8] *Id.* § 3729(a)(1)(E).

[9] *Id.* §3729(a)(l)(F).

[10] *Id.* § 3729(a)(1)(G).

[11] *Id.* § 3729(a)(1)(G).

[12] *Id.* § 3729(a)(1)(C).

[13] *Id.* § 3729(b)(1)(A).

[14] *Id.* §3730(a), (b).

[15] *Id.* §3730(d)(1), (2).

[16] *Id.* §3732(h)

[17] *Id.* §3732(a)

[18] *Id.* §3731(b)

[19] *Vt. Agency Natural Res.V.United States ex rel. Stevens*, 529 U.S. 765, 768 n.1 (2000).

[20] Charles Doyle, *Qui Tam*: *The False Claims Act and Related Federal Statutes*, Congressional Research Service (Aug. 6, 2009), at p. 2.

[21] *Id.*

[22] Beck, *The False Claims Act and the English Eradication of Qui Tam Legislation*, 78 North Carolina Law Review 539, 577-78 (2000).

[23] *Id.* at 578 (quoting Edward Coke, the Third Part of the Institutes of the Laws of England, at 194).

[24] Doyle, *supra*, at p. 2.

[25] *Id.* at n.14 (citing Colonial Laws of Massachusetts 8 (1686)).

[26] *Id.* (citing 1 Collnial Laws of New York, 1664-1719, 845 (1715)).

[27] *Id.*

[28]http://www.justice.gov/opa/pr/justice-department-celebrates-25th- anniversary-false-claims-act-amendments-1986.

[29] *Id.*

[30]http://www.michbar.org/journal/pdf/pdf4articlel590.pdf

[31] Section 6, Act of March 2, 1863, 12 Stat. at 698.

[32] Doyle, *supra*, at p. 6 (quoting S. Rept. No. 77-1708, at 2; H. Rept. No. 78-263 at 2).

[33] *Id.* at 6-7.

[34] *Id.* at 7.

[35]http://www.okbar.org/members/BarJournal/archive2005/Aprarchive05/obj7612fal.aspx

[36] *Id.*

[37] Congressional Record—Senate, Vol. 155, Pt. 4, at 5458 (Feb. 24, 2009).

[38] Doyle, *supra*, at pp. 7-8.

[39]http://www.justice.gov/opa/pr/justice-department-celebrates-25th-anniversary-false-claims-act-amendments-1986.

[40] Doyle, *supra*, at p. 8

[41]http://www.greenellp.com/wp-content/uploads/2011/04/Michael-Tabb-PPACA-Amendments.pdf.

[42] In addition to collecting nearly $6 billion in FCA recoveries in 2014, the DOJ reported that over 700 new qui tarn complaints were filed last year alone. http://www.justice.gov/opa/pr/justice-department-recovers-nearly-6-billion-faIse-claims-act-cases-fiscal-year-2014.

[43] 31 U.S.C. § 3730(b).

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47]http://www.mainjustice.eom/2011/07/27/length-of-fraud-probes-frustrating-congress-judges-and-attorneys/

[48] *United States ex rel. Martin v. Life Care Centers of America, Inc.*, 912 F. Supp. 2d 617, 623 (E.D. Tenn. 2012).

[49] *Id.* at 623-24.

[50] 5a U.S.C. App. § 6.

[51] 31 U.S.C. §3733(a)(1).

[52] 31 U.S.C. §3733(a)(1) (2008).

[53] 75 Fed. Reg. 14070, 14072 (Final Rule March 24, 2010).

[54] 31 U.S.C. §3733(a)(2)(B),(E).

[55] 31 U.S.C. §3733(c)(1).

[56] 31 U.S.C. §3733(j).

[57] *See* Model R. Prof. Cond. 4.2. Georgia Rule of Professional Conduct 4.2(b) expressly makes this rule applicable to attorneys for the state and federal governments.

[58] Comment 7 of Model Rule 4.2, *supra*, states that in the case of a represented organization, the Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Comment 4A to the Georgia Rule contains similar language. Although the Rules permit a government lawyer to interview a former employee of a represented organization, in Georgia there are

limitations, including that the information sought must not be privileged, the lawyer must make full disclosure as to the identify of his/her client, and the former employee must consent. See Georgia Formal Advisory Opinion No. 94-3.

[59] 31 U.S.C. § 3733(a)(c).

[60] 31 U.S.C. § 3733(h).

[61] *Id.*

[62] *Id.* § 3733(a)(1)(B)

[63]http://www.justice.gov/usao/nye/pr/2012/2012feb09.html.

[64] *Id.*

[65]http://www.justice.gov/usao/nys/pressreleases/Decemberl4/GoldenFirstSettlementPR.php.

[66]http://www.justice.gov/opa/pr/metlife-home-loans-llc-successor-metlife-bank-na-pay-1235-million-resolve-alleged-federal.

[67]http://www.justice.gov/opa/pr/defense-contractor-agrees-pay-275-million-settle-overbilling-allegations.

[68] *Id.*

[69]http://www.justice.gov/opa/pr/north-florida-shipyards-pay-l-million-resolve-false-claims-allegations.

[70]http://www.justice.gov/opa/pr/first-rf-corporation-agrees-pay-10-million-resolve-false-claims-act-allegations.

[71]http://www.justice.gov/usao/cac/Pressroom/2014/033a.html.

[72]http://www.justice.gov/opa/pr/iron-mountain-companies-pay-445-million-settle-alleged-false-billings-storing-government.

[73]http://www.justice.gov/usao-sc/pr/construction-firms-pay-settle-alleged-false-claims-connection-colleton-county-road/

[74]http://www.justice.gov/opa/pr/three-importers-pay-over-3-million-settle-false-claims-act-suit-alleging-evaded-customs

[75]http://www.justice.gov/usao-ndca/pr/united-states-settles-false-claims-act-allegations-against-importer.

[76]http://www.justice.gov/opa/pr/sevenson-environmentaI-services-inc-agrees-pay-272-million-settle-claims-alleged-bid-rigging.

[77]http://www.justice.gov/opa/pr/harbert-companies-agree-pay-47-million-resolve-false-claims-act-allegations.

[78]http://www.justice.gov/opa/pr/florida-company-and-owner-agree-resolve-alleged-false-claims-act-violations-regarding.

[79]http://www.justice.gov/opa/pr/firemans-fund-insurance-company-pay-44-million-settle-false-claims-act-allegations.

[80] *Urquilla-Diaz v. Kaplan University*, 780 F.3d 1039 (11th Cir. 2015).

[81] The FCA permits the government to settle the action with the defendant notwithstanding any objections by the relator if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. *Id.* § 3730(c)(2)(B).

[82] The government can also move to dismiss the action upon notification to the relator. *Id.* §3730(c)(2)(A).

[83] *Id.* § 3731(c). For statute of limitations purposes, such complaint relates back to the filing date of the original qui tam complaint so long as the government's claim arises out of the conduct, transactions, or occurrences set forth in the original complaint. *Id.*

[84] See *United States ex rel. Nathan v. Takeda Pharmaceuticals North America, Inc.*, No 12-1349, Supplemental Brief For Petitioner, 2014 WL 975915 (March 12, 2014); *United States ex rel. Clausen v. Laboratory Corp. of America*, 290 F.3d 1301, 1308-09 (11th Cir. 2002).

[85] *United States ex rel. Cooper v. Blue Cross & Blue Shield of Fla.*, 19 F.3d 562, 567-68 (11th Cir. 1994).

[86] 31 U.S.C. § 3730(e)(4)(A).

[87] *Schindler Elevator Corp. v. US. ex rel. Kirk*, 131 S. Ct. 1885, 1891 (2011).

[88] *United States ex rel. Osheroffv. Humana Inc.*, 776 F.3d 805, 813 (11th Cir. 2015).

[89] 31 U.S.C.§ 3730(e)(4)(A).

[90] 31 U.S.C.§ 3730(e)(4)(B).

[91] *Id.* § 3730(b)(5).

[92] *Id.*