



New Frontiers in False Claims Act Enforcement

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Speakers



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Overview of Today's Presentation

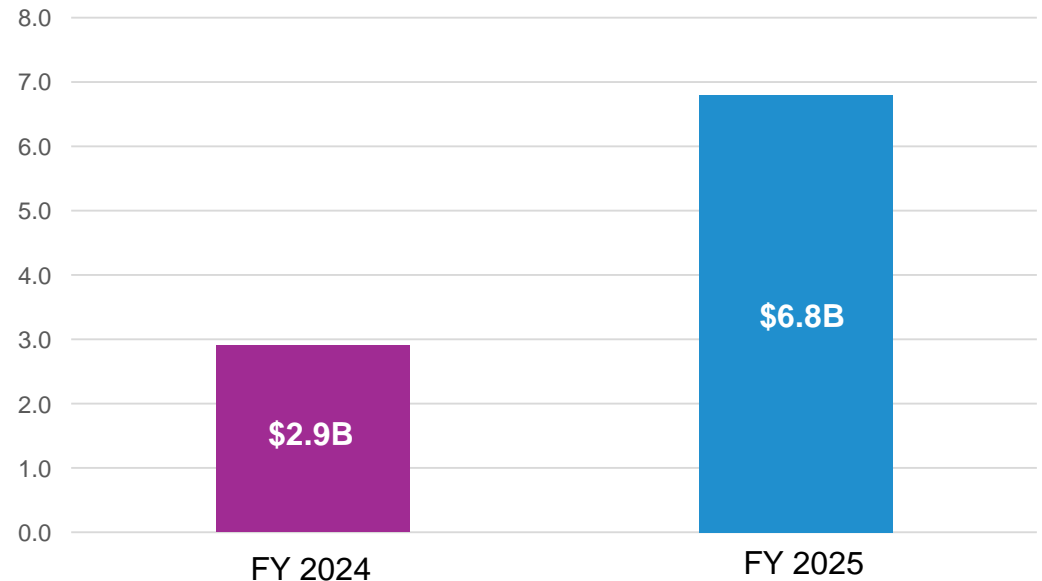
- FCA Overview & Recent Enforcement Trends
- Cybersecurity & the Civil Cyber-Fraud Initiative
- Data Analytics and DOJ's National Fraud Efforts
- DEI, Eligibility Certifications, and Civil Rights–Related Fraud
- Trade, Customs, and Supply Chain Fraud
- Whistleblower Dynamics & Investigations
- Q&A

FCA Overview

False Claims Act

- The state and federal government's primary tool for combatting fraud against public programs
- Imposes liability for knowingly submitting or causing submission of false or fraudulent claims for government funds
- Civil actions filed by:
 1. DOJ
 2. State AGs
 3. Whistleblowers (i.e., relators) via “*qui tam*” lawsuits on the government's behalf
 - Relators may share in any recovered awards

- FCA enforcement has led to billions in settlements annually
 - FY 2025: ~\$6.8 billion in settlements (relators received share over \$330M)
 - FY 2024: ~\$2.9 billion in settlements (relators received share over \$400M)



Enforcement Trends from 2025

Trump II Administration (FY 2025)

FCA Cases	1,698
<i>Qui tam</i>	1,297
<i>Non qui tam</i>	401
Total Spent	~6.8 billion
Relator Share	~330 million

FCA Observations From the Front Lines

- **Increased FCA activity used in a “creative” manner can be expected**
 - Administrative policies and statements encouraging *qui tam* relators and FCA cases
 - Underscored by former Deputy Assistant AG’s statements regarding the administration's focus on “aggressively” enforcing the FCA and the DOJ Criminal Division’s White-Collar Enforcement Plan specifically identifying “exploitation of government programs, such as health care and procurement fraud” as one of the Division’s key areas of focus
 - Several significant DOJ policy changes over the last twelve months
 - DOJ Criminal Division’s updated Corporate Whistleblower Awards Pilot Program was revised in May 2025 to incentivize the reporting of corporate crime, with a specific focus on healthcare-related fraud
 - Dovetails with the administration's focus on reducing government spending via the Department of Government Efficiency (“DOGE”)
 - Focus on telehealth as the new opportunity for DOJ involvement
 - AI-driven billing and data manipulation theories

Cybersecurity & the Civil Cyber-Fraud Initiative

- **DOJ's Civil Cyber-Fraud Initiative remains active**
 - Pursuing government contractors and grant recipients who knowingly provide deficient cybersecurity products or services
- **Seven cybersecurity-related settlements worth approximately \$51 million in 2025**
 - In July 2025, the DOJ announced a \$9.8M settlement with Illumina Inc. to resolve allegations that the biotechnology company misrepresented compliance with federal cybersecurity requirements for medical device software.
 - In December 2025, the DOJ announced a ~\$421,000 settlement with Swiss Automation Inc. to resolve alleged FCA violations related to its failure to provide adequate cybersecurity for technical drawings of parts supplied to Department of Defense contractors

Data Analytics and DOJ's National Fraud Efforts

- Under the current administration, there is an expansion on the use of data analytics and artificial intelligence for case development relating to FCA enforcement
 - In February 2025, former Deputy Assistant AG Michael Granston highlighted an “increasing reliance” on data analytics to identify fraud, particularly in healthcare
- The DOJ has already begun to use these tools in FCA-related healthcare investigations, looking to identify doctors at highest risk of making fraudulent claims as well as relationships between providers that may be indicative of illegal payments
- Companies should expect closer DOJ scrutiny of disclosures given its own utilization of emerging technologies to identify false claims
- Consistent focus on healthcare providers, pharmaceutical companies, and pharmacies that contributed to and exacerbated the opioid crisis

DEI, Eligibility Certifications, and Civil Rights– Related Fraud

- On January 21, 2025, the administration issued Executive Order, No. 14173 (the “Order”), “Ending Illegal Discrimination and Restoring Merit-Based Opportunity”
 - Stated purpose is to enforce civil rights laws “by ending illegal preferences and discrimination”
- In May 2025, the DOJ announced the Civil Rights Fraud Initiative, which uses the FCA as a basis for investigating recipients of Title IV student financial aid and research grants who “defraud the United States by taking its money while knowingly violating civil rights laws”

Key Takeaway

Review DEI policies and conduct related risk assessments with the assistance of counsel to ensure privilege

Employment & Immigration

- **New enforcement of employment verification practices**
 - In January 2025, Bollinger Shipyard LLC paid more than \$1 million to settle claims that it had failed to verify workers' employment eligibility
 - In September 2025, the DOJ alleged that a New Jersey-based contractor improperly employed unauthorized undocumented individuals on military ships and entered into a \$4 million settlement

Key Takeaway

Review policies concerning employee documentation requirements and ensure paperwork is properly in place

Trade, Customs, and Supply Chain Fraud

- The FCA is continuing to be used to prosecute customs/tariff evasions schemes in line with the current administration's trade policies, alleging “reverse” false claims—e.g., making a knowingly false statement to avoid an obligation to pay the government for something owed, such as a customs duty or tariff
 - In August 2025, Allied Stone, Inc. agreed to pay \$12.4 million to resolve FCA allegations related to the misrepresentation of products to avoid antidumping and countervailing duties
- **While the tariff landscape is changing and more limited due to the *Learning Resources, Inc.* SCOTUS decision, the Trump II Administration is maintaining its position that it will continue to impose tariffs**
- *Island Industries, Inc. v. Sigma Corporation*, 151 F.4th 1003 (9th Cir. 2025)
 - Island Industries alleged that its competitor, Sigma Corporation, submitted false statements on customs forms to avoid antidumping duties
 - Notable in that competitors may be using qui tam actions

Key Takeaway

Assess potential exposure regarding tariffs that are applicable to
you

Whistleblower Dynamics

Internal Whistleblower Investigation Considerations

- **Conduct internal investigation**
- **Company determines the outcome**
- **Self-Reporting Assessment**
- **Employment and HR Concerns**
- **De-escalation**

Threshold Considerations

- **Conduct an initial assessment of:**
 - Who will conduct the investigation;
 - How factual information will be developed;
 - The initial goals and scope of the investigation (likely will evolve over time);
 - How the investigation will ultimately be resolved and reported;
 - Consult the Code of Conduct; and
 - Be consistent in your handling of complaints.
- **Depending on nature of the allegation, consult with counsel right away.**

Who Should Investigate?

- **At the outset need to determine:**
 - Who will lead the investigation – *i.e.*, In-House Legal, HR and/or Outside Counsel.
 - Who will supervise the investigation – *i.e.*, General Counsel or Senior Management, Board of Directors, and/or Special Board Committee.
 - Should the investigative team retain subject matter experts or other resources – *i.e.*, PR/crisis management, or other experts.
 - Keep an eye on privilege issues.
 - Industry-specific knowledge.
 - Ensuring investigative team is diverse.

Goals of the Investigation

- **Develop facts and evidence**
 - Ask who, what, where, and when; review documents.
 - Draw conclusions.
- **Inspire confidence in the process**
 - Completing the investigation fairly, consistently, confidentially, and with a firm commitment of no retaliation for reports made in good faith.
- **Identify wrongdoing, and:**
 - Remedy past misconduct.
 - Formulate a strategy to ensure the organization is fostering a meaningfully inclusive and respectful work environment.
- **Identify opportunities for enhanced policies, procedures, training, and other internal controls.**

Scope and Timing of the Investigation

- Determine the appropriate scope of the investigation—need to balance efficiency with quality and thoroughness.
- Develop a strategy and timeline for the investigation.
- Identify key documents, employees, and other information to be evaluated during the investigation.
- Consider potential external factors that could impact timing or scope (upcoming disclosures, anticipated employment actions, news or media reports, etc.).

Conducting the Investigation

- **At the start, investigators must consider:**
 - Document and data preservation and collection (employee files, HR files, emails, electronic documents, and hard copy documents).
 - Temporary measures to address potentially volatile circumstances (*i.e.*, employee safety concerns, temporary reassignment or leave with pay).
 - Initial communications with person(s) making allegations and with the “target” of the allegations, and a plan for “process” updates to these and other relevant stakeholders.
 - When to engage PR or media consultants.

Witness Interviews

- **Who should be interviewed?**
- **Sequence and location of interviews—complainant first? Accused first and last?**
- **Who should conduct the interviews, and should anyone else be present?**
- **Communicating point of contact and ways to report (hotline, emails, etc.)**
- **For employee complaints:**
 - Talk to the employee.
 - Practical tip: Tell the employee that you are taking the allegations seriously and that, if you find them to have merit, the company may report to the authorities.
 - Also tell the employee that he or she will still get “credit” if the company reports to the authorities—this might delay any impulse by the employee to go to the authorities directly.

Confidentiality and Privilege Concerns

- **Preservation of attorney-client and work product privileges.**
 - *Upjohn* warnings.
 - *Upjohn Co. v. United States*, 449 U.S. 383 (1981)
- **Stress need for confidentiality and no retaliation.**
 - But cannot instruct witnesses that they are prohibited from speaking with or reporting suspected violations of law to the government.
- **Consider separate counsel for accused executives.**
- **How to safely engage in fact-gathering from former employees.**

Consider Retaining Outside Counsel

- **Whether you should retain outside counsel depends on a number of factors:**
 - The egregiousness of the allegation
 - The impact on the company
 - The need for credibility with the government
 - Cost
 - Speed

Concluding the Investigation

- At the outset of the investigative process, consideration should be given to how the results of the investigation will ultimately be disclosed, and to whom.
- Oral versus written report.
- Potential remedial measures.
- Opportunities for enhancements to training and/or policies.
- Communications with complainant.
- Identify any conduct that needs to be reported to a government agency
 - Strategy for self-reporting

Consider Self-Reporting

- **DOJ is open to companies proactively discussing concerns relating to enforcement activity, particularly when it comes to the FCA**
 - Companies should consider whether they should be contacting DOJ leadership
- If misconduct was found at the end of the internal investigation, consider whether self-reporting to the relevant regulator is necessary/and or beneficial.
- Some regulators have strict reporting requirements that require companies to report any knowledge of fraud or certain corporate misconduct.
- Additionally, self reporting may earn credibility with the regulator.
- Going to the authorities to report the allegation, investigation, and conclusion may also preempt a whistleblower complaint and buy you more time.

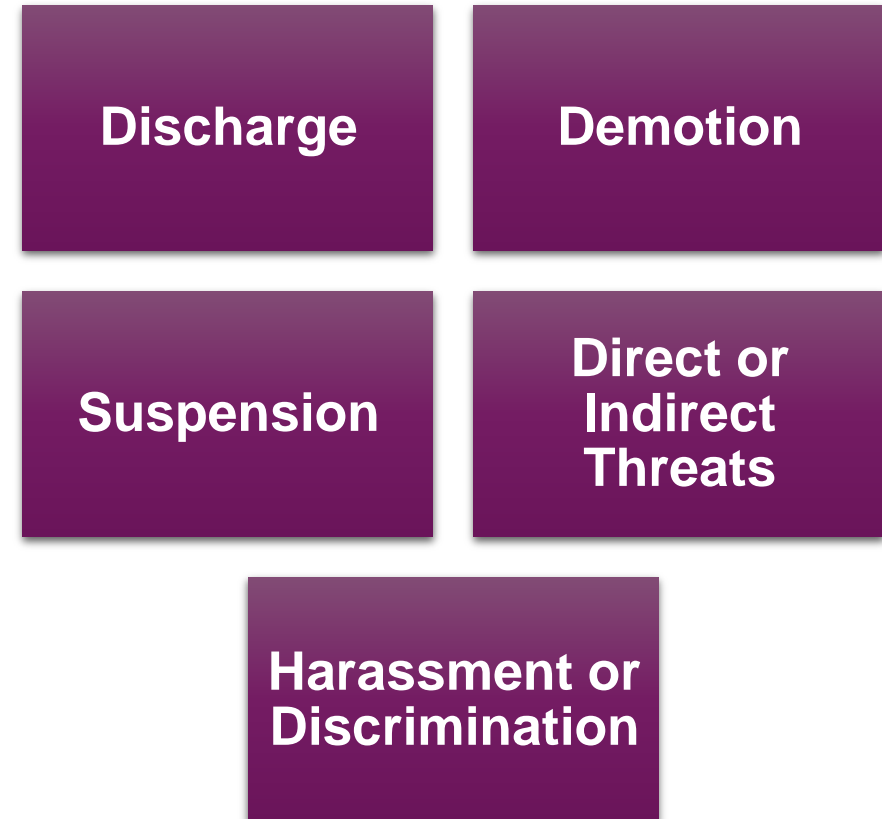
Employment/HR Considerations

- **Retaliation and Intimidation**
- **Reintegration/continuing to work with the whistleblower**
- **Litigation within the litigation**
 - Future employment litigation
- **Discovery concerns**
- **Communication is key**

Avoiding Retaliation

- **To mitigate the risk of a retaliation claim:**
 - Thank the individual for bringing the matter to the company's attention and inform them of the company's anti-retaliation policy.
 - Keep the lines of communication open and maintain periodic contact with the whistleblower and individuals involved.
 - Inform all people in the whistleblower's supervisory chain, human resources and/or compliance that the individual has reported a possible violation of the company policy and/or the law and reiterate the company's anti-retaliation policy.
- **If retaliatory action is actually occurring, promptly remediate it.**

What is retaliation?



Key Takeaways and Reminders

- **Monitor whistleblower complaints**
- **Be mindful of red flags**
- **Ask questions at exit interviews and engagement surveys**
- **Don't retaliate!**
- **Consider contacting the DOJ or other enforcement agencies**

Responding to Government Investigations of Whistleblower Complaints

Whistleblower Complaints to the Government

- **Making contact with the government**
 - Introductions
 - Limiting the document requests/witness interviews
- **Presentations**
- **Attorney proffer**
- **Witness proffer**

Government Investigation Response Process

- **Same general process as internal investigations**
- **Document hold**
- **Document review and production**
- **Interrogatory responses**
- **Witness testimony**
 - Order
 - Preparation
 - Separate counsel

Role of Outside Counsel

- Early engagement can be helpful
- Come to internal issue with a fresh eyes
- Relationships with government attorneys

Resolution

- **Goal: Government closes investigation**
- **Litigate or settle**
 - Government remedies
 - PR concerns
- **Can take years**

Active State Attorneys General

- **Parallel state statutes**
- **Even when federal government declines, seeing trend of state government going forward**
- **Upward trend in State AG activity**
 - Active states: Massachusetts, New York, Illinois, Texas
 - Multi-State AG Investigations

Thank You