



## 2017 Statistics Again Show Massive Recoveries in False Claims Act Cases

Newly released statistics illustrate that 2017 brought continued False Claims Act enforcement.

The Department of Justice announced that it recovered more than \$3.7 billion from all False Claims Act cases in fiscal year 2017. The government's total exceeded \$3 billion from FCA matters for the eighth year in a row, and the figure has exceeded \$1 billion for 17 of the last 18 years.

Beyond the continued massive recoveries, DOJ's statistics also reveal other notable trends. First, while slightly less than 2016, the total recovery exceeded 2015, 2013, and every year prior to 2012. Thus, while certain years have dipped, the general trend has remained a continual increase.

Second, the health care sector again represented the majority of recoveries. This year, \$2.4 billion in settlements and judgments involved the health care industry, including drug companies, laboratories, hospitals, pharmacies, and physicians.

Third, *qui tam* whistleblowers continue to drive the FCA enforcement agenda. Of the \$3.7 billion total, approximately \$3.4 billion came from cases initiated by *qui tam* relators. And significantly, relators initiated 675 of the 800 new matters (84 percent) in FY 2017.

Fourth, fiscal year 2017 was the largest year ever for recoveries in cases where the government declined to intervene. With increased frequency, relators now are willing to pursue cases on their own. As a result, while convincing the government to decline to intervene in an FCA matter continues to be an important step in the life of the case, it is only an initial step (a newly released DOJ memo could result in the government exercising its little-used authority to dismiss cases when it declines to intervene, but that remains to be seen). FCA defendants must prepare themselves to continue to vigorously defend cases throughout the litigation.

Fifth, given the statistics, prior pronouncements that the change in presidential administration would quickly bring a significant decline in False Claims Act activity appear to have been premature.

Looking forward, companies will need to remain ever-mindful of the potential that an FCA matter, no matter the merits, could create massive risk, regardless of which political party occupies the White House. As such, defendants will need to continue to look for ways to aggressively defend against FCA actions, which are requiring ever-more-innovative advocacy both inside and outside the courtroom.

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