INTRODUCTION: RECENT DEVELOPMENTS IN FALSE CLAIMS ACT LITIGATION

Thomas M. Greene, Program Chair and Moderator[1]
Greene LLP
33 Broad Street, 5th Floor
Boston, MA 02109
www.greenellp.com
(617) 261-0040

"This bill is reported for the purpose of ferreting out and punishing these enormous frauds upon our Government; and, for one, my sympathies are with the Government, and not with the men who are committing these frauds…I trust that the Senate will pass this bill, or some bill that will put fraudulent contractors in a position where they may be punished for their frauds."

–Senator Henry Wilson of Massachusetts, 1863[2]

False Claims Act litigation has enjoyed a golden age since significant amendments in 1986, with over $28.8 billion in verdicts and settlements since those amendments became effective.[3] Because of the False Claims Act's status as a *qui tam* statute, the law is of interest to government attorneys and defense counsel, but also to relators' counsel, attorneys who represent private parties who may sue on behalf of the government. The

[1] J.D. Suffolk University Law School 1977; B.A. *cum laude* Boston College 1974. Senior Partner, Greene LLP.

[2] 33 Cong. Globe 956 (1863), in reference to the False Claims Act.

[3] "Protecting American Taxpayers: Significant Accomplishments and Ongoing Challenges in the Fight Against Fraud," Statement of Tony West, Assistant Attorney General, Civil Division, Department of Justice, before the Committee on the Judiciary, United States Senate, presented on January 26, 2011, p.3.

federal government can and has sued under the False Claims Act of its own right, but *qui tam* suits dominate False Claims Act litigation.[4]

The *Recent Developments in False Claims Act Litigation* program will present a large number of topics. This introduction is a brief recitation of some of the technical aspects of *qui tam* practice, and may be used as preparation for the program or as a reference during the presentations of panelists.

***Qui Tam* and Informer Reward Statutes**

Qui tam is a short form of a longer phrase that designates the status of an individual who has standing to sue on behalf of the government.[5] The English innovation was frequently employed in the 14th through 16th centuries in England, but its true origin may be much older.[6] The term and the concept were familiar to early members of Congress, many of whom were lawyers trained in English jurisprudence. Colonial laws in the United States drew from that tradition, including in Massachusetts.[7]

In dictum, the Supreme Court wrote in 2000 that there were four *qui tam* laws then in force.[8] The False Claims Act is the most employed of those four. The false patent marking statute has been the basis of recent litigation,[9] but is likely to be repealed.[10]

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[4] Since the 1986 amendments to the False Claims Act, recoveries in *qui tam* cases account for over $19 billion of the $28.8 billion in recoveries during that time. "Protecting American Taxpayers," p.7.

[5]"*Qui tam*" is short for "*qui tam pro domino rege quam pro se ipso in hac parte sequitur*." 3 Blackstone, Commentaries on the Laws of England, p.161. Roughly translated, the phrase means "he who appears for the king when appearing for himself and shares in what follows for the king."

[6] *See* Beck, "The False Claims Act and the English Eradication of *Qui Tam* Legislation," 78 North Carolina Law Review 539, 567 (2000), citing a 695 declaration stating "If a freeman works during the forbidden time, he shall forfeit his *healsfang*, and the man who informs against him shall have half the fine, and [the profits] from the labour."

[7] Colonial Laws of Massachusetts 8 (1686) (fraud discovered in the sale of bread to result in forfeiture, with one-third to the discoverer and the remaining two-thirds to the town), at 54 (an informer entitled to half of penalties recovered for mackerel caught out of season, with the remaining half to the town).

[8] *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765, 768-69 n.1 (2000) (citing the False Claims Act, 31 U.S.C. §§ 3729-3733; the Patent Act, 35 U.S.C. §292; Indian protection laws, 25 U.S.C. §201; and another Indian protection law codified at 25 U.S.C. §81 which no longer authorizes *qui tam* actions).

[9] *See Stauffer v. Brooks Brothers, Inc.*, 619 F.3d 1321 (Fed. Cir. 2010) (reversing lower court's decision that private party did not have standing to sue under the false patent marking statute and ruling that the government had a right to intervene); *but see Unique Product Solutions, Ltd. v. Hy-Grade Valve, Inc.*, Case No. 5:10-CV-1912 (N.D. Ohio Feb. 23, 2011) (ruling the *qui tam* provision of the False Marking Statute unconstitutional).

Since the Department of Justice was created in 1870,[11] new laws designed to encourage whistleblowers have followed a model of informer reward provisions.[12] SEC and IRS regulations authorized by statute offer rewards for information that leads to civil fines or recovery of back taxes, but a whistleblower is not allowed to conduct litigation with respect to either situation. The *qui tam* aspect of the False Claims Act explicitly grants a relator standing to sue on behalf of the government.

Originally enacted in 1863, the False Claims Act has undergone significant revisions. In 1943, the Act was amended, lowering the relator's share in recoveries and providing that the government had an express right to intervene in any *qui tam* suit. The Act was revitalized in 1986, increasing the potential damages recoverable and the percentage that could be assigned to the relator. 1986 also saw the addition of a public disclosure bar and potential liability for reverse false claims, both of which have been amended significantly in 2010 and 2009, respectively.

<u>False Claims Act Causes of Action</u>

As currently constituted, there are seven forms of conduct that constitute fraud on the government and for which there are causes of action in the False Claims Act:

- Presenting a false or fraudulent claim for payment or approval to the government, or causing a false or fraudulent claim to be submitted;[13]
- Making, using, or causing to made or used a false record or statement material to a false or fraudulent claim;[14]
- Delivering or causing to be delivered less than all of money or property owned by the government, if in possession, custody or control of the money or property;[15]

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[10] A Senate bill currently in consideration would thoroughly alter patent law in the United States to conform to international standards, and because it contains a provision to eliminate standing for relators, it is likely that the False Claims Act will soon be the only *qui tam* statute in use. S. 23, 112th Cong. (1st Sess. 2011). The bill has been approved by the Senate Committee on the Judiciary for consideration by the full Senate.

[11] An Act to Establish the Department of Justice, C. 150, 16 Stat. 162 (1870).

[12] For example, in the case of the Rivers and Harbors Act, which includes an informer reward provision, federal courts have refused to assume authority for qui tam actions. *Jacklovich v. Interlake, Inc.*, 458 F.2d 923, 924 (7th Cir. 1972) (no *qui tam* authority may be drawn from the informer reward provision of the Rivers and Harbors Act); *Connecticut Action Now, Inc. v. Roberts Plating Co.*, 457 F.2d 81, 84-88 (2d Cir. 1972) (same).

[13] 31 U.S.C. §3729(a)(1)(A).

[14] 31 U.S.C. §3729(a)(1)(B).

- Making or delivering a receipt of property used by the government without knowing that the information on the receipt is completely true, if done with intent to defraud (regardless of whether the receipt is false);[16]
- Buying, or receiving in satisfaction of an obligation or debt, public property from a government officer or member of the armed forces who is not authorized to sell it;[17]
- Reverse false claims, which may include making, using, or causing to be made a false record or statement material to an obligation to pay the government, but which also may include concealing, avoiding, or decreasing an obligation to the government in money or property;[18] and
- Conspiring to commit violations of the other six types of conduct.[19]

Presentment of a False Claim

In the context of the False Claims Act, a false claim is "any request or demand, whether under a contract or otherwise, for money or property."[20] To violate the first of the seven causes of action listed above, the false claim must be presented to the United States, directly or indirectly. The Fraud Enforcement and Recovery Act ("FERA") enacted in 2009 amended the statute such that the presentment need not be to "an officer, employee, or agent" of the government, but may be presented "to a contractor, grantee, or other recipient."[21] To qualify as a false claim, the money or property for which payment is requested must be "used on the Government's behalf or to advance a Government program or interest."[22] Thus, liability for a false claim may attach in circumstances where the United States is paying for goods or services for citizens, such as through Medicare.

[15] 31 U.S.C. §3729(a)(1)(D).

[16] 31 U.S.C. §3729(a)(1)(E).

[17] 31 U.S.C. §3729(a)(1)(F).

[18] 31 U.S.C. §3729(a)(1)(G).

[19] 31 U.S.C. §3729(a)(1)(C).

[20] 31 U.S.C. §3729(b)(2).

[21] *Id.*

[22] *Id.*

False Records or Statements

False records or statements material to false claims lead to liability through the second cause of action listed above. Before FERA, the provision attached liability to any person who knowingly made, used, or caused to made or used "a false record or statement to get a false record or claim paid or approved by the Government."[23] The Supreme Court interpreted this to mean that a person must intend that the United States would be the entity that would pay the claim.[24] Through FERA, Congress overruled this reading to depend more on the definition of a false claim.[25] A false record or statement must simply be material to a false claim, and material is now defined by statute as "having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property."[26]

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The first, second, fifth, and sixth types of conduct listed above must be done "knowingly."[27] Specific intent to defraud is not required, and "knowingly" is not construed the same way as the criminal standard.[28] The False Claims Act definition includes actions undertaken with specific intent to defraud, but also actions taken in deliberate ignorance of the truth or in reckless disregard of the truth or falsity of a claim or record.[29] The scienter standard for reckless disregard has been considered a lesser degree of knowledge than is required under common law fraud.[30] The lowered standard of "knowingly" may make it easier for *qui tam* relators to prove their cases, but FERA's amendment to the new standard is not retroactive and applies only to cases filed after its enactment in 2009.[31]

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[23] 31 U.S.C. §3729(a)(2)(2006 ed.)

[24] *See Allison Engine Co. v. United States ex rel. Sanders*, 128 S.Ct. 2123 (2008).

[25] 31 U.S.C. §3729(a)(1)(B).

[26] 31 U.S.C. §3729(b)(4).

[27] 31 U.S.C. §3729(a)(1)(A), (B), (F), (G).

[28] *See United States v. Sawyer*, 239 F.3d 31, 40 (1st Cir. 2001).

[29] 31 U.S.C. §3729(b).

[30] *See United States ex rel. K&R Ltd. Partnership v. Massachusetts Housing Finance Agency*, 530 F.3d 980 (D.C. Cir. 2008), *citing Safeco Insurance Co. v. Burr*, 127 S. Ct. 2201 (2007).

[31] *See United States ex rel. Bahrani v. Conagra, Inc.*, 2010 WL 4188251 (10th Cir. Oct 26, 2010).

Reverse False Claims

The sixth cause of action listed above covers conduct referred to as "reverse false claims." Added to the False Claims Act in 1986, reverse false claims are false statements presented to reduce an obligation to pay the United States.[32] Reverse false claims are designed not to obtain money or property from the government, but to avoid an obligation to the government. FERA broadened the reverse false claims provision to include improper avoidance of paying an obligation to the United States even in the absence of a false statement.[33] Unlike the presentation cause of action, the reverse false claims provision covers "any knowing and improper conduct" – with no presentment requirement. Reverse false claims include improper retention of overpayments. The Patient Protection and Affordable Care Act of 2010 ("PPACA") set a time period for when a retention of overpayment gives rise to False Claims Act liability, but only in the Medicare and Medicaid contexts: 60 days after the date on which the overpayment was identified or the date of the cost report corresponding to the overpayment, whichever is later.[34]

Retaliation

The False Claims Act also gives private parties a cause of action for retaliation, first established in the 1986 amendments.[35] The retaliation provision in subsection (h) was instituted not so much for fairness, but to encourage False Claims Act litigation in cases where "if the person stands to lose his job, he may be unwilling to expose company fraud."[36] FERA expanded the subsection (h) retaliation provision to cover contractors and agents in addition to employees.[37] If an employee, agent, or contractor is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against because of lawful efforts to stop a violation of the False Claims Act, he or she is entitled

[32] 31 U.S.C. §3729(a)(7)(1988 ed.).

[33] 31 U.S.C. §3729(a)(1)(G).

[34] 31 U.S.C. §3729(a)(1)(G), H.R. 3590 §6402(a).

[35] 31 U.S.C. §3730(h)(1988 ed.). The House considered that there was "no federal whistle blower protection statute for persons who are fired or otherwise discriminated against by their employer because of their lawful participation in a False Claims Act case," and a concern that "the employee within the company may be the only person who can bring the information forward." H. Rep. No. 99-660, at 63.

[36] *Id.*; *see United States ex rel. Barajas v. United States*, 258 F.3d 1004, 1012 (9th Cir. 2001).

[37] 31 U.S.C. §3730(h).

to "all relief necessary" to make the party whole, which may include reinstatement, double back pay, interest, and special damages.[38]

State False Claims Act Statutes

States often take part in False Claims Act litigation, particularly in the health care arena. The partnership role of states in funding Medicaid is not the only basis for their role in False Claims Act litigation, however. Thirty-two states and the District of Columbia have statutes similar to the False Claims Act, although only twenty-three and D.C. have statutes with *qui tam* provisions.[39] Six of these state statutes apply only to Medicaid fraud,[40] but the Massachusetts False Claims Act is patterned on the federal law and applies to any type of fraud on the Commonwealth.[41]

False Claims Act Procedure

Statute of Limitations

Within six years of a fraud on the government covered by the False Claims Act, a *qui tam* relator can file suit in a Federal District Court on behalf of the United States. The six year statute of limitations may be extended in cases involving fraudulent concealment.[42] The statute of limitations refers to all causes of action listed in §3729; because the False Claims Act's retaliation cause of action is contained in §3730(h), no False Claims Act limitation applies and the effective limitation is likely to be that of state law.[43] FERA clarified that if the government intervenes or amends a relator's complaint,

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[38] *Id.*

[39] *See* "States That Have Enacted a False Claims Act, 2009" http://www.statehealthfacts.org/comparetable.jsp?ind=260&cat=4 (accessed February 24, 2009). Kentucky and Ohio have similar bills under consideration in their state legislatures.

[40] Id.

[41] Mass. Gen. Laws. ch. 12 §§5A-5O.

[42] 31 U.S.C. §3731(h).

[43] The applicable state law is most likely to be the state in which the harm occurred. Because False Claims Act cases can be filed in any district in which a defendant does business, retaliation claims are often heard through supplemental jurisdiction and may not be heard in the same state in which that harm occurred.

the government's complaint relates back to the earlier date for statute of limitations purposes.[44]

Filing and Intervention

A False Claims Act suit may be filed in any district in which a violation occurs or wherever a defendant resides or does business, and must be filed under seal.[45] Relators must then submit a disclosure to the Attorney General and the United States Attorney for the appropriate district, detailing all material evidence in their possession.[46] The government has 60 days to investigate and decide whether to intervene,[47] but may intervene at any later time if it declines within the investigation period.[48] During the investigation period, the government may make use of Civil Investigative Demands ("CIDs") to compel documents or testimony, which can be used to aid in its decision-making.[49] The False Claims Act allows the government to extend the 60 day investigative period by motion for good cause, and as a practical matter it frequently does so.[50] For cases filed in fiscal year 2007 and later, the average length of investigation periods has been 13 months.[51]

The Department of Justice has elected to intervene in 365 of the 1,644 elections it has made since the beginning of fiscal year 2006.[52] Regardless of whether the government intervenes or declines, a defendant is served immediately after that election and has 20 days to respond.[53] Depending on whether the government elects to intervene, a *qui tam* relator's involvement may vary greatly, but after the defendant is served, False Claims Act procedure differs little from other federal cases.

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[44] 31 U.S.C. §3731(c).

[45] 31 U.S.C. §3732(a), §3730(b)(2).

[46] 31 U.S.C. §3730(b)(2).

[47] 31 U.S.C. §3730(b)(2), (4).

[48] 31 U.S.C. §3730(b)(5).

[49] 31 U.S.C. §3733. Authorization for use of civil investigative demands was added to the False Claims Act in 1986, but required the personal authorization of the Attorney General. The Fraud Enforcement and Recovery Act of 2009 granted the Attorney General the power to delegate this authority. Attorney General Holder has delegated his power to the individual United States Attorneys.

[50] 31 U.S.C. §3730(b)(3).

[51] Letter from the Department of Justice and the Department of Health and Human Services, Office of the Inspector General, to Senator Charles Grassley, January 26, 2011, p.14.

[52] Letter to Grassley, p.15.

[53] 31 U.S.C. §3730(b)(3).

First to File

There are three principal ways that defendants use to dismiss *qui tam* cases early in litigation, two of which are created by the False Claims Act statute. The most significant of these may be the "first to file" bar. The False Claims Act contains a provision that disallows any person other than the government to intervene or file in a case based on the same underlying facts.[54] The phrase "same underlying facts" has been held to mean that complaints which share "material facts" are barred.[55] If a first to file complaint has been dismissed for want of jurisdiction because of the public disclosure bar, subsequent complaints may be allowed.[56]

The Public Disclosure Bar and the Original Source Exception

The second statutory defense is the public disclosure bar.[57] First instituted in 1943 as a way to ward off parasitic lawsuits, the bar contains an original source exception that allows suits when doing so is helpful to the government: specifically, the exception allows suits in which the relator has information which materially adds to the evidence which may have been publicly disclosed.[58] The bar was significantly amended last year by PPACA, and now that the bar is not jurisdictional in nature and a dismissal requires the consent of the government,[59] the successful use of that dismissal method may decline sharply. Basing a complaint primarily on publicly disclosed information may impact a relator's share in recovery even if he or she is entitled to pursue their case.[60]

The Rule 9(b) Requirement to Plead Fraud with Particularity

The third method of note concerns the Rule 9(b) requirement that fraud must be pleaded with particularity. Several courts have struggled with the question of whether 9(b) applies to allegations of false claims, but courts have consistently ruled that False Claims Act allegations must conform to Rule 9(b), alleging the who, what, where and

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[54] 31 U.S.C. §3730(b)(5).

[55] *See United States ex rel. Lujan v. Hughes Aircraft Co.*, 243 F.3d 1181, 1187 (9th Cir. 2001).

[56] *See United States ex rel. Campbell v. Redding Medical Center*, 421 F.3d 817, 824 (9th Cir. 2005).

[57] 31 U.S.C. §3730(e)(4).

[58] 31 U.S.C. §3730(e)(4)(B).

[59] 31 U.S.C. §3730(e)(4)(A).

[60] *See infra*, "Relator's Share."

when of allegedly false or fraudulent misrepresentation.[61] Unless Congress exempts the False Claims Act from the Rule 9(b) pleading requirements, it will remain a formidable defense in False Claims Act litigation.

False Claims Act Damages

Since 1986, False Claims Act damages have been subject to trebling.[62] A court has discretion to award double damages in lieu of treble damages if it finds that the defendant cooperated quickly and fully with an investigation, and if the defendant had no knowledge of criminal investigations against it based on that conduct.[63] Courts may also assess penalties of $5,500 to $11,000 per false claim,[64] the government's costs, and the relator's expenses, attorney's fees, and costs.[65] If a *qui tam* relator litigates a frivolous claim after the government has declined to intervene, a defendant may be awarded attorney's fees.[66]

Relator's Share

Since 1986, the relator's share in *qui tam* False Claims Act litigation has been set at 15-25% in cases when the government intervenes[67] and 25-30% when the government elects to decline and the relator proceeds alone.[68] If a relator's case is based primarily on

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[61] *See United States ex rel. Duxbury v. Ortho Biotech Products*, 579 F.3d 13, 30 (1st Cir. 2009) (ruling that the relator had sufficiently conformed his complaint to Rule 9(b) by alleging that free packages of a drug were made available to health care providers who submitted claims to Medicare, despite not identifying specific false claims); *but see United States ex rel. Rost v. Pfizer, Inc.*, 507 F.3d 720, 733 (1st Cir. 2007) (holding that the relator did not plead alleged fraud with sufficient particularity).

[62] 31 U.S.C. §3729(a)(1).

[63] 31 U.S.C. §3729(a)(2).

[64] 31 U.S.C. §3730(a)(3). From 1863 to 1986, the penalty amount was set at $2,000 per false claim. In 2009, FERA added a provision for inflationary adjustments to the penalty amount of $5,000 to $10,000, which currently equals $5,500 to $11,000.

[65] 31 U.S.C. §3730(d).

[66] 31 U.S.C. §3730(d)(4). Cost shifting of a defendant's attorneys fees, costs, and expenses may be appropriate only in "rare and special circumstances." *See United States ex rel. Rafizadeh v. Continental Common, Inc.*, 553 F.3d 869, 875 (10th Cir. 2004); *Pfingston v. Ronan Engineering Co.*, 284 F.3d 999, 1006-07 (9th Cir. 2002).

[67] 31 U.S.C. §3730(d)(2).

[68] 31 U.S.C. §3730(d)(1).

publicly disclosed information, the share may be reduced to 10%.[69] In extreme cases, the share may be reduced to nothing if the relator played an active role in perpetrating the fraud.[70]

Types of False Claims Act Cases

The causes of action contained in the False Claims Act have supported wide ranging litigation. The False Claims Act was originally enacted to combat fraud in which the government acted as a consumer. Countless government programs have been instituted by the federal government since that time. With the government acting as payor but not consumer in many of these programs, it is not ideally positioned to detect fraud or compare the amount paid to the benefit actually received. The following is a non-exhaustive list of types of fraud that have been the subject of False Claims Act litigation and settlements, complete with citations to press releases.

- Off-label promotion of drugs, forbidden by the Food, Drug and Cosmetics Act and causing false claims to federal health care programs.[71]
- False price reporting to the government, causing inflated “average wholesale prices” and false claims for reimbursement from health care providers.[72]
- Violation of Current Good Manufacturing Process regulations promulgated by the Food & Drug Administration, causing false claims for adulterated drugs.[73]
- Kickbacks by medical device manufacturers to physicians for using their devices.[74]

[69] *Id.*

[70] 31 U.S.C. §3730(d)(3) (if a relator is convicted of criminal conduct arising from the §3729 violation which is the subject of False Claims Act litigation, he or she may be dismissed from the case).

[71] “Warner-Lambert to Pay $430 Million to Resolve Criminal & Civil Health Care Liability Relating to Off-Label Promotion,” Department of Justice press release. http://www.justice.gov/opa/pr/2004/May/04_civ_322.htm (accessed February 24, 2011). The author wishes to disclose that he was attorney for the relator in the case.

[72] “TAP Pharmaceutical Products Inc. and Seven Others Charged with Health Care Crimes; Company Agrees to pay $875 Million to Settle Charges,” Department of Justice press release. http://www.justice.gov/opa/pr/2001/October/513civ.htm (accessed February 24, 2011).

[73] “GlaxoSmithKline to Plead Guilty & Pay $750 Million to Resolve Criminal and Civil Liability Regarding Manufacturing Deficiencies at Puerto Rico Plant,” Department of Justice press release. http://www.justice.gov/opa/pr/2010/October/10-civ-1205.html (accessed February 24, 2011).

- "Upcoding" or "unbundling" Medicare/Medicaid codes for reimbursement, or the submission of false claims by charging Medicare/Medicaid for more expensive procedures or for individual procedures instead of submitting claims as a package.[75]
- Submitting false claims for health care services that were not medically necessary or were not actually performed.[76]
- Shifting overhead costs to the government in violation of defense contracts.[77]
- In defense contracts, shifting costs from fixed price contracts to "cost-plus" contracts.[78]
- Improper referrals to personal or family owned businesses in the course of consulting contracts with the Armed Forces.[79]
- Causing false claims to federal student loan programs by compensating student recruiters based on enrollment figures, in violation of Title IV of the Higher Education Act.[80]

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[74] "St. Jude Medical Pays $16 Million to Settle Claims that it Paid Kickbacks to Physicians," Department of Justice press release. http://www.justice.gov/opa/pr/2011/January/11-civ-078.html (accessed February 24, 2011).

[75] "False Claims Act Settlement Reached with Local Doctor for Improper Billing Practices," press release of The United States Attorney's Office for the District of Massachusetts. http://www.justice.gov/usao/ma/Press%20Office%20-%20Press%20Release%20Files/June2010/KumarAnilPR.html (accessed February 24, 2011).

[76] "National Dental Management Company Pays $24 Million to Resolve Fraud Allegations," Department of Justice press release. http://www.justice.gov/opa/pr/2010/January/10-civ-052.html (accessed February 24, 2011).

[77] "Scheme to Defraud Government on Reconstruction Contracts Leads to Criminal Charges and Civil Penalties for Louis Berger Group, Inc." Department of Justice press release. http://www.justice.gov/usao/md/Public-Affairs/press_releases/press08/SchemetoDefraudGovernmentLeadstoCriminalChargesandCivilPenaltiesforLouisBergerGroupInc.html (accessed February 24, 2011).

[78] "Department of Justice Settles Dispute with Major Southern California Defense Contractor," Department of Justice press release. http://www.justice.gov/opa/pr/Pre_96/September94/527.txt.html (accessed February 24, 2011).

[79] "Dynamics Research Corporation to Pay $15 Million to Resolve Allegations of Kickbacks and False Claims on Air Force Contracts," press release of The United States Attorney's Office for the District of Massachusetts. http://www.justice.gov/usao/ma/Press%20Office%20-%20Press%20Release%20Files/Aug2009/DynamicsResearchCorporation.html (accessed February 24, 2011).

[80] "University of Phoenix Settles False Claims Act Lawsuit for $67.5 Million," Department of Justice press release. http://www.justice.gov/opa/pr/2009/December/09-civ-1345.html (accessed February 24, 2011).

- Underpaying royalties due to the government for oil profits from lands leased by the government or from Indian lands.[81]
- Submitting false claims to agricultural subsidies programs.[82]
- Submitting false claims for discounted United States Postal Service rates for pre-sorted mail.[83]

Many more varieties of False Claims Act cases exist, and yet more may be the subject of cases in the future. The often extensive timeline of False Claims Act litigation means that many new types of fraud cases may already be filed without being public – recent government programs such as Troubled Asset Relief Program investments and government conservatorship of mortgage lenders may already be the basis of new cases. With new programs on the horizon such as federal- and state-administered health exchanges, False Claims Act litigation is likely to increase in number and variety.

[81] "Chevron to Pay U.S. More than $45 Million to Resolve Allegations of False Claims for Royalties Underpayment," Department of Justice press release. http://www.justice.gov/opa/pr/2009/December/09-civ-1379.html (accessed February 24, 2011).

[82] "United States Files Claims Against Feed Dealers in USDA Livestock Feed Assistance Initiative Fraud Case," Department of Justice press release. http://www.justice.gov/opa/pr/2010/June/10-civ-712.html (accessed February 24, 2011).

[83] "Quicksort Inc. Pays $4.2 Million in Civil Penalties to Resolve False Claims Act Litigation," Department of Justice press release. http://www.justice.gov/usao/cae/news/docs/2010/10-20-10QuickSort.pdf (accessed February 24, 2011).