



Advanced Legal Studies

Recent Developments in False Claims Act Litigation

Introduction

Thomas M. Greene

GREENELLP

Enacted in 1863 to combat war profiteering

- ▶ -Senator Jacob Merritt Howard: “In short, sir, I have based the [qui tam provision] upon the old fashioned idea of holding out a temptation and setting a rogue to catch a rogue, which is the safest and most expeditious way I have ever discovered of bringing rogues to justice.”
- ▶ -Senator Henry Wilson (MA): “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...”

What is a false claim?

- ▶ Representation to the government that is untrue, in request for payment or certification to reduce obligation to government
- ▶ Claim must be submitted knowingly, or in deliberate ignorance or reckless disregard of falsity

Filing and procedure

- ▶ File under seal
- ▶ Serve on DOJ with disclosure of all material evidence
- ▶ Government gets 60 days (frequently extended) to investigate and intervene or decline case
- ▶ Relator may pursue case if government does not intervene
- ▶ A relator's suit may be barred if:
 - ▶ Relator is not the "first to file"
 - ▶ Relator's complaint is based on publicly disclosed information, with some exceptions

False Claims Act damages

Years	Damages	Penalties
1863-1986	Double	\$2,000 per false claim
1986-present	Treble	\$5,000-\$10,000* per false claim

*set to Consumer Price Index to account for inflation;
currently at \$5,500-\$11,000

The relator's share

Years	Intervention	No Intervention
1863-1943	N/A	50%
1943-1986	10%	Up to 25%
1986-present	15-25%	25-30%

But:

- If claim is based mostly on publicly disclosed information, 10%
- If relator is responsible for the fraud, 0%

Retaliation “section h” claims

- ▶ 31 U.S.C. §3730(h) Relief From Retaliatory Actions
- ▶ Any employee, contractor or agent must be made whole if retaliated against because of lawful acts to prevent False Claims Act violations
- ▶ Relief includes reinstatement; double back pay plus interest; and compensation for special damages, including costs and attorneys’ fees.

Recoveries since 1986

- ▶ Total False Claims Act recoveries: \$28.8 billion
- ▶ Total recoveries from *qui tam* suits: \$19 billion
- ▶ Total relator awards: \$3.2 billion

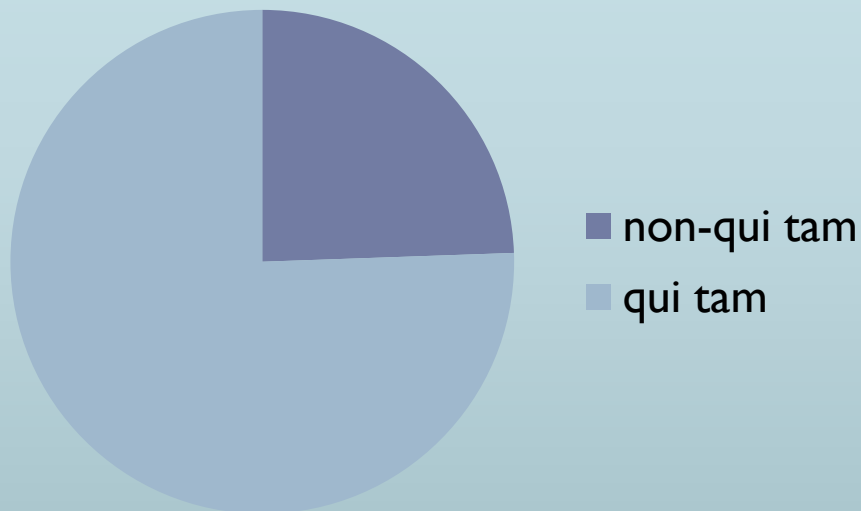


▶ Data from: Statement of Asst. Attorney Gen. Tony West, Jan. 26, 2011

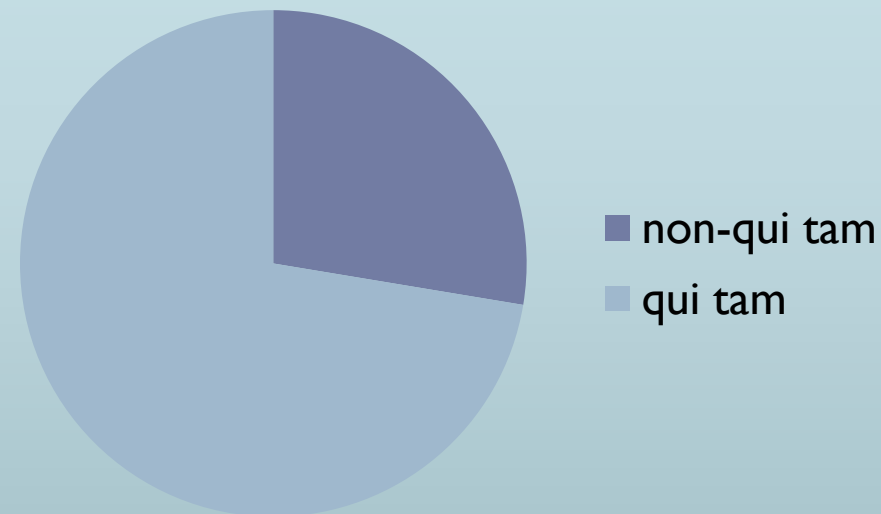
Number of False Claims Act cases, FY2006 through January 4, 2011

- ▶ 716 cases ended in judgments, settlements
 - ▶ 541 were *qui tam* cases
 - ▶ \$3.7 billion from non *qui tam* cases
 - ▶ \$9.7 billion from *qui tam* cases

Number of cases resolved without dismissal



Dollars recovered



Government intervention elections, FY2006 through January 4, 2011

- ▶ Government elections to intervene: 365
- ▶ Government elections to decline: 1,279
- ▶ Government has intervened in an average of 22% of *qui tam* cases filed

Fiscal Year	Elections	Interventions	Percentage
FY2006	397	85	21.40%
FY2007	359	79	22.00%
FY2008	324	64	19.80%
FY2009	311	77	24.80%
FY2010	224	53	23.70%
FY2011 to Jan 4	29	7	24.10%
TOTAL:	1,644	365	22.20%

Data from: DOJ/HHS Letter to Sen. Grassley, Jan. 24, 2011

Cases under investigation on Jan 4, 2011

- ▶ 1,341 *qui tam* cases were under investigation, pending election decision
- ▶ 887 alleged health care fraud, including 180 which alleged marketing or pricing fraud by pharmaceutical companies
- ▶ In the last five years, cases have been under investigation by the Department of Justice for an average of 13 months

Recent Developments in False Claims Act Litigation, Day 1

- ▶ 4:20 – 5:30: **Panel 1 Discussion**
- ▶ 5:30 – 5:45: **Panel 1 Q&A**

- ▶ 5:45 – 6:00: **Networking Break**

- ▶ 6:00 – 7:15: **Panel 2 Discussion**
- ▶ 7:15 – 7:30: **Panel 2 Q&A**