

FORENSIC RISK MANAGEMENT

Forensic Accountants and Qui Tam Actions Under the False Claims Act

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Federal False Claims Act litigation often requires the skill set of forensic accountants. The Federal False Claims Act¹ (FCA) was enacted in 1863 to protect the government from fraud perpetrated by unscrupulous Civil War contractors. Today, the law is aimed at those responsible for the \$100 billion or more fraudulently diverted every year from federal health-care, defense, and other programs.² The current version of the False Claims Act makes liable any person who knowingly presents or causes to be presented, a false or fraudulent claim to the United States for payment or approval.³ The law also imposes liability for making false records or statements designed to conceal, avoid, or decrease an obligation to pay or transmit money or property to the United States.⁴ A unique characteristic of the False Claims Act is the qui tam action.⁵

Such an action is a civil lawsuit brought by a private person on behalf of oneself and the U.S. government for alleged violation of the FCA. The private citizen filing the lawsuit is known as the qui tam relator, qui tam plaintiff, or whistleblower. A qui tam plaintiff may recover a maximum of 25 percent of the damages in a case in which the government intervenes⁶ and 25 to 30 percent in a case in which the government does not intervene.⁷

The FCA has become a strong deterrent for those who defraud the federal government. The cost of defrauding the federal government is rising, the probability of being caught is increasing, and the consequences are more severe. Between 1987 and 2003, the volume of qui tam litigation grew. In that time period, over 4,200 qui tam lawsuits were initiated that resulted in the recovery of over \$7.8 billion.⁸ Such a significant volume of qui tam litigation means a significant role for forensic accountants as expert witnesses, investigators, damage assessors, etc. Hence, it behooves forensic accountants to acquire a basic familiarity with the FCA. The purposes of this article are to introduce and provide a basic overview of the

¹ Act of March 2, 1863, ch. 67, 12 Stat. 696 (1863)(current version at 31 U.S.C. §§3729-3733 (2005)).

² Sinton, P. 1997. Whistle-blowing Gaining Steam. *The San Francisco Chronicle*, August 11, p. E1.

³ 31 U.S.C. §3729(a)(2005).

⁴ 31 U.S.C. §3729(a)(7)(2005).

⁵ "Qui tam" is a term derived from the Latin phrase "qui tam pro domino rege quam pro se ipso in hac parte sequitur," which means "who pursues this action on our Lord the King's behalf as well as his own." *Black's Law Dictionary* 1262 (7th ed. 1999).

⁶ 31 U.S.C. §3730(d)(1)(2005).

⁷ 31 U.S.C. §3730(d)(2)(2005).

⁸ See <http://www.friedfrank.com/quitam/fcastats.htm> (last visited May 2, 2006).

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