

Whistleblower Watch

A quarterly update on FCA Enforcement and Qui Tam Litigation

***Whistleblower Watch** is a comprehensive source for all False Claims Act (FCA) news and information. Every quarter, Cozen O'Connor will provide in-house counsel and compliance professionals with a summary of the most notable FCA enforcement actions, settlements, and legal trends, as well as an in-depth look at emerging and significant FCA-related issues. Subscribe to stay on top of these changes and find out how they may affect you.*

Recent FCA Settlements and Enforcement Actions

Clean-up continues from the 2008 financial crisis (Eastern District of Michigan)

On February 13, 2023, the Department of Justice announced that the Detroit Land Bank Authority agreed to pay \$1.5 million to settle alleged False Claims Act violations related to unverified and fraudulent invoices. The invoices were for backfill dirt used by demolition contractors and were reimbursed by the United States through the Hardest Hit Fund, which was established in 2010 to aid states most affected by the 2008 economic and housing market downturn.

A rare high-value settlement in a non-intervention case (District of South Carolina)

On February 6, 2023, Relators announced a \$19 million settlement with Laboratory Corporation of America (Labcorp) that resolved their 10-year *qui tam* non-intervened lawsuit. The suit alleged that Labcorp participated in a conspiracy with two other labs to pay referring providers kickbacks disguised as "draw fees" or "process and handling" fees. The two other labs, HDL and Singulex Inc., reached settlements totaling nearly \$50 million in 2014, and both companies have since declared bankruptcy.

Fake invoices in freight (District of New Jersey)

On January 12, 2023, New Jersey-based shipping company, Blue Water Shipping U.S. Inc., agreed to pay \$1.89 million to resolve overbilling allegations arising from an employee who created a fake company to bill the United States for freight services that were never actually performed.

Enforcement continues in the durable medical equipment sector (District of New Jersey)

On January 26, 2023, the Department of Justice announced that two individuals pled guilty to engaging in a scheme to defraud Medicare by paying kickbacks of approximately \$1,500 per patient in exchange for orders of medical devices.

Individual liability in biotechnology settlement (Northern District of California)

On December 21, 2022, the Department of Justice announced that two biotechnology companies and their co-founder agreed to pay more than \$10 million to resolve allegations under the FCA that they engaged in various schemes to inflate costs and overbill the United States through federal grant programs.

Legal Trends and Insights



Arthur P. Fritzingler

Member

afritzing@cozen.com
Phone: (215) 665-7264
Fax: (215) 665-2013



Calli Jo Padilla

Member
 Co-Chair, Women's Initiative

cpadilla@cozen.com
Phone: (215) 665-6938
Fax: (215) 253-6777

Related Practice Areas

- White Collar Defense & Investigations

Fraud in customs and duties

The Department of Justice recently settled several FCA enforcement actions arising from underpayment of customs duties for imported products. This species of FCA enforcement is likely to accelerate in 2023.

On December 19, 2022, the District of New Jersey announced a settlement totaling over \$500,000, against a Chinese manufacturer, a New Jersey import company, and two individuals, resolving allegations that the defendants generated false invoices that undervalued the goods being imported in order to avoid customs duties.

On January 31, 2023, the Southern District of New York announced a \$1.3 million settlement of a civil fraud lawsuit against High Life LLC, an apparel design and import company headquartered in Manhattan, resolving claims that it underreported the value of imported apparel to avoid payment of customs duties.

On February 7, 2023, the Southern District of New York announced a \$1 million settlement of a whistleblower action against Samsung S&T America, Inc., for submitting false documentation and underpaying customs duties related to imported footwear.

The Supreme Court to clarify the FCA scienter standard

On January 13, 2023, the Supreme Court agreed to hear two FCA cases, U.S. ex rel. Schutte et al. v. SuperValu Inc. et al., and U.S. ex rel. Proctor v. Safeway Inc.. The Court will clarify the knowledge requirement for FCA cases and determine whether FCA liability should be rejected wherever there is an “objectively reasonable” interpretation of the regulation at issue, regardless of a defendant’s subjective intent. Read our full Alert on these potential landmark cases [here](#).

The increasing value of self-reporting

On January 17, 2023, the Department of Justice announced a significant change to its existing Corporate Enforcement Policy that will grant as much as a 75% reduction in fines for companies that voluntarily self-report wrongdoing and fully cooperate with federal investigations. Read our full Alert on this change [here](#).

Legal Trends and Insights

2022 saw unprecedented activity in the FCA arena, much of which stemmed from pandemic-related fraud activity. We expect that trend to continue into 2023 and beyond. For a deeper look at the DOJ’s efforts, to combat pandemic-related fraud, [click here](#).
